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HEARING

BEFORE THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

JOHN C. TRUESDALE, OF MARYLAND, TO BE A MEMBER OF
THE NATIONAL LABOR RELATIONS BOARD

OCTOBER 6, 1977

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(II)

NOMINATION

THURSDAY, OCTOBER 6, 1977

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

The committee met, pursuant to call, in room 4232, of the Dirksen Senate Office Building, at 8:23 a.m., Senator Harrison A. Williams, Jr. (chairman), presiding.

Present: Senators Williams, Javits, and Hatch.

The CHAIRMAN. We will turn to the nomination of Mr. John C. Truesdale, of Maryland, to be a member of the National Labor Relations Board.

Mr. Truesdale?

Mr. Truesdale, we welcome you. I would like to say at the outset that the nomination of Mr. Truesdale by the President is to serve on the National Labor Relations Board to fill the unexpired term of Peter J. Walther, who has resigned. The term for which Mr. Truesdale has been nominated will run until August 27, 1980.

I am pleased to have this opportunity to consider the nomination of an individual who has had such a long and distinguished career with the agency to which he has been appointed. Except for 6 years, during which he served with the National Academy of Sciences, Mr. Truesdale has been with the NLRB since 1948. He began his NLRB career with the agency's Buffalo, N.Y., office as a field examiner, and later served in that same position in the 15th region in New Orleans.

From 1963 through 1972, he served first as Associate Executive Secretary, then as Deputy Executive Secretary to the Board here in Washington. In 1972 he became the Executive Secretary of the Board, which is the agency's chief administrative and executive position.

Since the interests of both labor and management are so fundamentally affected by NLRB decisions, it is extremely important that Board members have a broad range of experience in the field of labor law and be viewed by both labor and management as competent, fair-minded, and willing to examine the facts of each case impartially.

Mr. Truesdale is acknowledged by all parties to be such a man.

The appointment of a career employee who has held positions of responsibility in an agency and become intimately familiar with its operations at the local and regional level is an occurrence which is all too rare. I am sure that Mr. Truesdale's broad range of experience makes him well suited to serve as a Board member. And I am confident that he will serve with distinction.

We include in the record at this time Mr. Truesdale's biography as well as a brief description of the functions of the Board.

[The following were received for the record:]

BIOGRAPHICAL SKETCH - JOHN C. TRUESDALE

Residence: 5123 Worthington Drive, Bethesda, Maryland 20016
 Place and date of birth: Grand Rapids, Michigan: July 17, 1921
 Married: Karin Nelson of Springfield, New Jersey: Three sons,
 Jack, Charles, Andrew and one daughter, Margaret

EXPERIENCE

1948 - 1957, 1963 to date -- National Labor Relations Board
 3/48 - 1/51 Field Examiner, Third Region, Buffalo, New York
 1/51 - 7/52 Field Examiner, Fifteenth Region, New Orleans, La.
 7/52 - 8/57 Administrative Analyst, Division of Operations,
 Office of General Counsel, Washington, D. C.
 1957 - 1963 -- National Academy of Sciences, Washington, D. C.

Posts held during this period:

9/57 - 9/59 Deputy Director of Information, U.S. National
 Committee of International Geophysical Year.
 9/59 - 9/60 Director of Information for IGY.
 9/60 - 9/63 In addition to above duties: Secretary of Panel
 on Biological and Medical Sciences; Committee on
 Polar Research; Secretary of Committee on
 Consolidated Upper Atmosphere and Space Data,
 Space Science Board; Director of World Data
 Center A for Rockets and Satellites; National
 Contact for Spacewarn.
 9/63 - 10/68 Associate Executive Secretary, Washington, D. C.
 10/68 - 6/72 Deputy Executive Secretary, Washington, D. C.
 6/4/72 to date Executive Secretary, Washington, D. C.

EDUCATION

Graduated from Grinnell (Iowa) High School 1938
 Grinnell College 1942 (A.B.)
 Cornell University 1948 (M.S. in Industrial &
 Labor Relations)
 Georgetown University Law Center 1972 (J.D.)

MILITARY

2/43 - 6/46 U.S. Coast Guard Reserve. Rank at discharge Lt. (j.g.)

DUTIES AND FUNCTIONS OF THE NATIONAL LABOR RELATIONS BOARD

(Excerpt from United States Government Manual, 1977/78)

The National Labor Relations Board is an independent agency created by the National Labor Relations Act of 1935 (Wagner Act), as amended by the acts of 1947 (Taft-Hartley Act) and 1959 (Landrum-Griffin Act).

The act affirms the right of employees to self-organization and to bargain collectively through representatives of their own choosing or to refrain from such activities. The act prohibits certain unfair labor practices by employers and labor organizations or their agents and authorizes the Board to designate appropriate units for collective bargaining and to conduct secret ballot elections to determine whether employees desire representation by a labor organization.

As of July 1, 1971, the Postal Reorganization Act (84 Stat. 719; 39 U.S.C. Prec. 101 note) conferred jurisdiction upon the Board over unfair labor practice charges and representation elections affecting U.S. Postal Service employees. As of August 25, 1974, jurisdiction over all privately operated Health Care Institutions was conferred on the NLRB by an amendment to the act (29 U.S.C. 152 et seq.).

FUNCTIONS AND ACTIVITIES

The Board has two principal functions under the act: preventing and remedying unfair labor practices by employers and labor organizations or their agents, and conducting secret ballot elections among employees in appropriate collective-bargaining units to determine

whether or not they desire to be represented by a labor organization. The Board also conducts secret ballot elections among employees who have been covered by a union-shop agreement to determine whether or not they wish to revoke their union's authority to make such agreements; in jurisdictional disputes, decides and determines which competing group of workers is entitled to perform the work involved; and conducts secret ballot elections among employees concerning employers' final settlement offers in national emergency labor disputes.

The General Counsel in unfair labor practice cases has final authority to investigate charges, issue complaints, and prosecute such complaints before the Board. The General Counsel, on behalf of the Board, prosecutes injunction proceedings; handles courts of appeals proceedings to enforce or review Board orders; participates in miscellaneous court litigation; and obtains compliance with Board orders and court judgments. The General Counsel is responsible for the processing by field personnel of the several types of employee elections referred to above.

Under general supervision of the General Counsel, 32 regional directors and their staffs process representation, unfair labor practice, and jurisdictional dispute cases. (Some regions have subregional or resident offices.) They issue complaints in unfair labor practice cases; seek settlement of unfair labor practice charges; obtain compliance with Board orders and court judgments; and petition district

courts for injunctions to prevent or remedy unfair labor practices. The regional directors also direct hearings in representation cases; conduct elections pursuant to agreement or the decision-making authority delegated to them by the Board, or pursuant to Board directions; and issue certifications of representatives when unions win or certify the results when unions lose employee elections. They process petitions for bargaining unit clarification, for amendment of certification, and for rescission of a labor organization's authority to make a union-shop agreement. They also conduct national emergency employee referendums.

The Board can act only when it is formally requested to do so. Individuals, employers, or unions may initiate cases by filing charges of unfair labor practices or petitions for employee representation elections with the Board field offices serving the area where the case arises.

In the event a regional director declines to proceed on a representation petition, the party filing the petition may appeal to the Board. Where a regional director declines to proceed on an unfair labor practice charge, the filing party may appeal to the General Counsel.

Administrative Law Judges conduct hearings in unfair labor practice cases, make findings, and recommend remedies for violations found. Their decisions are reviewable by the Board if exceptions to the decision are filed.

The CHAIRMAN. Senator Javits, do you have anything to say at the outset?

Senator JAVITS. Mr. Truesdale has been in to see me. I have had access to records concerning his personal and career background, and I am satisfied that he is eligible for consideration as a member of the National Labor Relations Board.

The CHAIRMAN. Thank you. Mr. Truesdale, we welcome any statement you might want to make.

**STATEMENT OF JOHN C. TRUESDALE, OF MARYLAND, TO BE A
MEMBER OF THE NATIONAL LABOR RELATIONS BOARD**

Mr. TRUESDALE. I thank you very much for those kind remarks, Mr. Chairman, Senator Javits. I have no prepared statement, but I am delighted to answer any questions that you may wish to ask me.

The CHAIRMAN. All right. As you know, we are considering legislation that deals with the procedures of the NLRB, and I would like to ask a question or two on not so much the policy as the effect of certain provisions that are in the bill that we are considering here.

It has been charged that the speeded up election procedures which the bill that I have introduced would require will inevitably result in a reduction in the number of consent and stipulated elections which employers will enter into. If this turns out to be the case, enormous administrative difficulties will result.

I wonder if you could tell us what your experience has been with the decision of employers to agree to consent and stipulated elections, what effect this shorter timeframe might have in this area?

Mr. TRUESDALE. Mr. Chairman, I think that the record of the National Labor Relations Board in obtaining voluntary compliance with the provisions of the statute has been very good. I think to say at this time whether the proposed provision in the Williams-Javits bill would decrease the amount of voluntarism is really speculative.

I would say that I think that if the Congress of the United States decides that a shorter period of time is necessary for the conduct of elections, I believe that the unions and the employers will continue their record of voluntary compliance with the statute. It might be a different story if the Board were to adopt such a procedure, just as a matter of adoption of a rule. But when the Congress has said that it wants to have a more expedited procedure for the conduct of elections, I am confident that the NLRB will be able to devise procedures to carry out the will of Congress, and I can't believe that the employers and the unions in this country, Congress having spoken in this respect, will not make every effort to continue the spirit of voluntary compliance that they have had in the past.

The CHAIRMAN. Thank you. That is reassuring. Now, we, of course, have discussed at some length the workload that is presented to the Board over a period of years, and the fact that the workload has substantially increased. From your perspective, has that increase reduced the Board's ability to process cases expeditiously?

Mr. TRUESDALE. I don't think there is any question about that fact. Since I have been in the Executive Secretary's Office, the number of cases which the Board has been required to decide has approximately

doubled, with very little if any increase in the number of persons able to consider those cases—I am talking about staff to Board members, and, of course, the Board members themselves have not increased.

Since 1968, for example, the number of cases taken in by the agency, the number of unfair labor practice cases, has doubled. In 1968 there were approximately 17,000 unfair labor practice cases received by the agency; last year it was about 34,000.

The number of decisions, for example, issued by the Board in the fiscal year just completed is more than 1,800—1,127 contested unfair labor practice decisions, 700 contested election decisions. This is more than 1,800 decisions for a five-member Board to decide.

There is no question about the fact that the increased volume of cases coming to the Board has led to a situation in which the Board is unable to render speedy decisions. It is quite clear that because the Board is handling a larger number of decisions, obviously there has been an increase in productivity. In 1974, for example, the Board issued 977 unfair labor practice decisions; skipping 1975, which was kind of a freak year for many reasons of vacancies on the Board and so forth—then the Board in 1976 issued 1,033 decisions, an increase in productivity, I think, of about 10 percent. And now this year 1,127 decisions.

There has been a steady progression in the number of decisions the Board has been able to issue, but with the projected number of cases coming to the Board, it is predictable that this five-member Board is not going to be able to continue to handle these cases with anything like the attention that each one ought to be receiving.

The CHAIRMAN. Well, you know, we are proposing that the Board be increased from five to seven members. And it is suggested that this expansion might cause a slowdown in the processing of unfair labor practice cases because of the requirement that nonpanel Board members review panel decisions before an order is issued. That's the law, isn't it?

Mr. TRUESDALE. Well, I am not certain it is the law, but it certainly is the practice of the Board. I would say that 95 percent of the decisions issued by the Board are issued by panels. Of the 1,127 decisions, unfair labor practice decisions, issued by the Board this last fiscal year, only approximately 60 of those were issued by the full Board; the remainder were issued by panels.

So that the increase in the number of Board members would undoubtedly enable the Board to handle the panel cases which the Board's overwhelming number of cases consists of, would enable the Board to handle that greater part of its caseload much more quickly.

All cases begin at the Board as panel cases—and one particular Board staff is the originating staff. When the panel makes a tentative decision, it is translated into writing by the originating Board staff, and when approved by the originating Board member then is put into circulation for the two other participating members to consider and the two nonparticipating members to clear.

The time given the Board for this process is 2 weeks. Almost without exception, the clearance procedure is completed by the two clearing members within a day at the least, to maybe a few days at the most; it is rare, if ever, that the issuance of a Board decision has to wait clearance by clearing members.

I anticipate, and I think the Board members anticipate, no real problem in clearance by four, if that is the procedure that is put into effect—clearance by four rather than by two.

The clearance procedure is not for the other Board members to see specifically whether they agree with the decision, but whether it reflects the majority opinion of the Board in policy matters and so forth. It gives the clearing Board members an opportunity to call up to the full Board a proposed decision that they think might not represent the majority opinion of the Board.

But, as I said, 95 percent of the Board's cases—all cases begin as panel cases, and 95 percent of them end that way. So we anticipate no real problem in the clearance procedure.

The CHAIRMAN. Thank you. Senator Javits?

Senator JAVITS. Thank you. Mr. Truesdale, have you ever practiced labor law or law generally?

Mr. TRUESDALE. No, I have not.

Senator JAVITS. You are a lawyer?

Mr. TRUESDALE. Yes, I am.

Senator JAVITS. And do you feel that your grasp of the substantive issues has been adequately acquired to entitle you to be a member of the Board through your work with the Board over the years?

Mr. TRUESDALE. Yes, I do. I have had experience in the field processing cases directly and through my experience in the positions in the Executive Secretary's Office, and feel that I am adequately prepared for the position.

Senator JAVITS. Do you see any possible conflict of interest between your deciding cases on the merits, as a member of the Board, and your having handled cases as Executive Secretary?

Mr. TRUESDALE. No, I do not. It is difficult to see how such a conflict might arise, but certainly I would be sensitive to that, and if some combination of circumstances, not now foreseen, should come up, I would disqualify myself in any case.

Senator JAVITS. I noticed your answer to Senator Williams' question on the legislation we have, which intends to speed up the handling of the cases so they may be decided earlier and set certain time limits—and you are satisfied that labor and business will give the voluntary cooperation they have.

But that doesn't answer whether in your professional judgment you think the new time parameters are just to both sides, or whether they are too accelerated, or whether they are still giving too much time.

Mr. TRUESDALE. Well, Senator, I can only say in that respect that I think it is difficult for me to advise the Congress on what it considers to be the appropriate time in which an election should be conducted. I do think that if the Congress should decide that the time provisions that are now in the bill, 15-to-20-day provision for certain kinds of cases, is adequate, that I am confident that the NLRB can devise the procedures that will carry out the will of Congress.

Senator JAVITS. But if we are going to act, we certainly ought to know whether you gentlemen, who are professionals, feel that we are doing the right thing. Sure, you will do whatever we say you should do—that will be the law; but that doesn't make our decision the best one, the optimum decision—that is what I am asking you.

I think we are entitled to a professional judgment from you, as Executive Secretary, whether these time parameters are feasible and just.

Mr. TRUESDALE. I think they are, because I believe that the parties to the cases, and the Board itself, will be able to work out procedures that will carry out the will of Congress to have elections in that period of time.

Senator JAVITS. I appreciate that answer; that is what I was looking for. What about the rulemaking procedures of the Board, are they used enough, or should they be used more in order to dispose of cases more expeditiously?

Mr. TRUESDALE. Well, in the past the Board has not used its rulemaking procedures, as you know, because it felt that Congress wanted the Board to decide each case based on the facts of that case.

If Congress now says that the Board should use its rulemaking procedures, then, of course, the Board will.

Senator JAVITS. And do you think that that could effect a material improvement in the activities of the Board?

Mr. TRUESDALE. I would say for the Board to outline, for example, in the area of units, the units that it considers plainly appropriate—I think this is the language of the proposed bill—taken in connection with the expedited procedures for election, that that will be an improvement.

Senator JAVITS. Thank you, Mr. Truesdale.

The CHAIRMAN. It is important for us from time to time to have people who pass through here on confirmation to come back on legislative matters and be ready for us to hear the individual when we need him.

I know the Board has members who have had reservations about testimony on certain matters, such as policy questions that are legislative matters. But would you, when appropriate, be available to come before this committee as a witness?

Mr. TRUESDALE. I personally would certainly comply with any requests of the committee. Traditionally, the Chairman of the Board has been the one to come before congressional committees to speak, and I, as a person who is not yet confirmed, find it a little difficult to say, yes, I would come, if in fact the Board would prefer that the Chairman speak for the Board. But I personally would, of course, comply with any request of the committee.

The CHAIRMAN. I said when appropriate. Now, who is going to determine when it is appropriate? I guess we will determine when it is appropriate.

Mr. TRUESDALE. That's right.

The CHAIRMAN. All right, thank you very much.

Mr. TRUESDALE. Thank you.

Senator JAVITS. Thank you, Mr. Truesdale.

[The following material was subsequently supplied for the hearing record:]



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

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PHONE: (202) 296-7484

October 3, 1977

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

Dear Mr. Chairman,

I understand your committee is considering the nomination of John C. Truesdale to be a member of the National Labor Relations Board.

The UAW is enthusiastic about Mr. Truesdale, and we strongly urge his confirmation. He is a talented and dedicated public servant with a reputation for judicial fairness. He is extremely well qualified.

On a personal note, I have been privileged to know Mr. Truesdale on both a professional and social level for many years. I am proud to call him a friend.

I have often heard those from management praise his objective manner and the quality of his professional ability.

He is truly a good man.

He will add greatly to the National Labor Relations Board's reputation.

I would be grateful if you would enter this letter in the record of his confirmation hearings.

Sincerely,

Stephen I. Schlossberg
Stephen I. Schlossberg

SIS:car
opeiu494
cc
Doug Fraser

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WASHINGTON, D.C.

COMMITTEE ON
HUMAN RESOURCES
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The CHAIRMAN. We will recess for 5 minutes, and then regroup for the beginning of our hearings on program evaluation.
[The committee adjourned at 9:32 a.m.]

