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RELIGIOUS CONSCIENTIOUS OBJECTION TO JOINING OR FINANCIALLY SUPPORTING A LABOR ORGANIZATION

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HEARING BEFORE THE SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS OF THE COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

H.R. 4774

TO AMEND THE NATIONAL LABOR RELATIONS ACT TO
PROVIDE THAT ANY EMPLOYEE WHO IS A MEMBER OF A
RELIGION OR SECT HISTORICALLY HOLDING CONSCIEN-
TIOUS OBJECTION TO JOINING OR FINANCIALLY SUPPORT-
ING A LABOR ORGANIZATION SHALL NOT BE REQUIRED
TO DO SO

HEARING HELD IN WASHINGTON, D.C., ON JULY 17, 1979

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RELIGIOUS CONSCIENTIOUS OBJECTION TO JOINING OR FINANCIALLY SUPPORTING A LABOR ORGANIZATION

TUESDAY, JULY 17, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2261, Rayburn House Office Building, Hon. Frank Thompson, Jr. (chairman of the subcommittee) presiding.

Members present: Representatives Thompson, Clay, Kildee, Ashbrook, and Erlenborn.

Staff present: Fredrick L. Feinstein, counsel; Jeunesse M. Beaumont, subcommittee clerk; and Edith C. Baum, minority counsel for labor.

Mr. THOMPSON. The subcommittee will be in order.

This hearing is called for consideration of H.R. 4774, to provide a special exception in the labor law for persons who conscientiously hold religious beliefs that preclude membership in the union.

[The text of H.R. 4774 and a staff analysis of the bill follow:]

(1)

96TH CONGRESS
1ST SESSION

H. R. 4774

To amend the National Labor Relations Act to provide that any employee who is a member of a religion or sect historically holding conscientious objection to joining or financially supporting a labor organization shall not be required to do so.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 1979

Mr. THOMPSON (for himself, Mr. ASHBROOK, Mr. ERLNBORN, Mr. DUNCAN of Oregon, Mr. STUMP, Mr. QUILLLEN, and Mr. CLAUSEN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the National Labor Relations Act to provide that any employee who is a member of a religion or sect historically holding conscientious objection to joining or financially supporting a labor organization shall not be required to do so.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 19 of the National Labor Relations Act be re-
4 placed by a new section 19 as follows:
5 “SEC. 19. Any employee who is a member of and ad-
6 heres to established and traditional tenets or teachings of a

1 bona fide religion, body, or sect which has historically held
2 conscientious objections to joining or financially supporting
3 labor organizations shall not be required to join or financially
4 support any labor organization as a condition of employment;
5 except that such employee may be required in a contract be-
6 tween such employees' employer and a labor organization in
7 lieu of periodic dues and initiation fees, to pay sums equal to
8 such dues and initiation fees to a nonreligious, nonlabor orga-
9 nization charitable fund exempt from taxation under section
10 501(c)(3) of title 26 of the Internal Revenue Code, chosen by
11 such employee from a list of at least three such funds, desig-
12 nated in such contract or if the contract fails to designate
13 such funds, then to any such fund chosen by the employee. If
14 such employee who holds conscientious objections pursuant
15 to this section requests the employee organization to use the
16 grievance-arbitration procedure on the employee's behalf, the
17 union is authorized to charge the employee for the reasonable
18 cost of using such procedure."

TO AMEND THE NATIONAL LABOR RELATIONS ACT

H.R. 4774**TO AMEND THE NATIONAL LABOR RELATIONS ACT TO PROVIDE THAT ANY EMPLOYEE WHO IS A MEMBER OF A RELIGION OR SECT HISTORICALLY HOLDING CONSCIENTIOUS OBJECTION TO JOINING OR FINANCIALLY SUPPORTING A LABOR ORGANIZATION SHALL NOT BE REQUIRED TO DO SO****Explanation of the Bill**

H.R. 4774, would extend and expand the conscientious objector provisions of the 1974 health care amendments to the National Labor Relations Act.

The 1974 NLRA amendments, in extending the coverage of the Act to the non-profit health care industry, included a provision exemption "any employee of a health care institution 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" from any obligation to join or financially support a union as a condition of employment.

H.R. 4774 would grant to all employees the right to abstain from union membership if they conscientiously belong to a religion which prohibits union membership.

The bill provides that an individual who maintains such religious conviction could as an alternative to union dues pay an equivalent sum to a pre-determined charity. In addition should such a person use the available union service, he or she would be required to reimburse the union for the cost of its services.

The bill is designed to accommodate conscientiously held religious convictions while at the same time assuring that this accommodation is not abused nor will it undermine the will of the majority of employees at a given work place.

CHANGES IN EXISTING LAW MADE BY H.R. 4774

(New matter is printed in italics, existing law proposed to be omitted is enclosed in brackets, and existing law in which no change is proposed is shown in roman.)

Individuals with Religious Convictions

SECTION 19.—Any employee [of a health care institution] 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 non-religious, non-labor organization charitable fund exempt from taxation under section 501(c) (3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds designated in [a] such contract [between such institution and a labor organization], or if the contract fails to designate such funds, then to any such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance-arbitration procedure on the employee's behalf, the union is authorized to charge the employee for the reasonable cost of using such procedure."

Individuals with Religious Convictions

Mr. THOMPSON. This is a bill that has been introduced over the past years by a number of Members of Congress. I thought that the bill would finally be enacted in the past Congress, when it was passed by an overwhelming margin in the House.

However, like another labor bill that received overwhelming support in the House, the bill never quite made it through the Senate, for different reasons, probably.

H.R. 4774 reflects the need to accommodate certain sincerely held religious convictions while at the same time assuring that this accommodation is not abused.

It also assures that the will of the majority of employees at a given workplace is not undermined by the accommodation. I believe that it accomplishes a reasonable compromise of conflicting interests.

I might add that in particular the representatives of the Seventh-day Adventists have been wonderfully cooperative and deeply interested in this for a number of years, as have a great many of my colleagues. At the risk of not mentioning some of them, Mr. Erlenborn and Mr. Clausen are interested, as is Mr. Duncan of Oregon, who will be here shortly, and our former colleague, Mrs. Pettis, was very interested.

This concept has worked extremely well. It has had a voluntary concept, with some unions, where it has worked well, and it has worked very well under the hospital legislation.

I do hope that since it is a matter with which we are all familiar, that we can dispose of the hearing quickly, since I don't see any serious opposition to the matter.

We will start today with our colleague, Representative Clausen. Don, do you intend to introduce the other witnesses?

Mr. CLAUSEN. I will be here just on my own behalf.

Mr. THOMPSON. You are more than welcome.

Without objection, all statements by all witnesses for the day will be printed in the record in full. We will ask to the extent possible that witnesses summarize their statements.

Don, you are most welcome.

STATEMENT OF HON. DON H. CLAUSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CLAUSEN. Mr. Chairman, this is truly a great day once again in the continuing efforts to try to achieve what has been our objective over the years—as you have stated so well.

I just want to say to you, Mr. Chairman, as I have said so many times, that the manner in which you, Mr. Erlenborn, and the other members of your professional staff, have handled this has been outstanding. You have come up with what I think is one of the most satisfactory compromises I have seen in the legislative arena. It truly puts you all in the category of really champions of religious liberty. We are all very grateful to you.

I am going to read a brief excerpt from my prepared statement that sums up this issue.

I was talking to our colleague from Michigan, Mr. Kildee, and he seemed to agree to this as well.

While religious liberty is our most valuable asset, it is also one of the most fragile. Our religious liberties depend totally on the concept of limiting the power of government and its control over the individual.

Because of this, we have a responsibility to insure that governmental intrusion in our lives is reduced to the smallest possible level and that any conflict between intrusion and religious beliefs must be resolved in favor of religion.

That is why we are here today, because we must conform to the first amendment of the Constitution.

I am very grateful to you. I will be working with you.

[The prepared statement of Congressman Clausen follows:]

PREPARED STATEMENT OF HON. DON H. CLAUSEN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

Mr. Chairman, it is a pleasure to submit this statement in support of our bill, H.R. 4774, and my bill, H.R. 199, to recognize the conscientious concerns of individuals who, for traditional and historic religious reasons cannot join a labor union and, therefore, should not be required to do so.

I want to commend you, Mr. Chairman, for your own conscientious leadership on this issue and for the way in which you have responded to our requests in behalf of this legislation.

The Committee will hear specific testimony on the impact this measure will have in solving a pressing national problem. This difficulty has been recognized by the House of Representatives which passed corrective legislation in the 95th Congress. Unfortunately, the Senate did not act on the bill before the Congress adjourned and we have lost some time.

However, by acting this year, I believe we can move the bill through both Houses and solve this problem once and for all.

I have many hard-working, concerned constituents who need to be relieved of this lingering cloud over their day-to-day working environment. By approving this measure we will be affirming the Constitutional commitment to the preservation of religious liberty for every American citizen.

One of the basic tenets of our society is religious freedom. It is the foundation upon which our great Nation was built. It was, and is, the magnet that attracts people from every other country in the world to our shores. Millions have come, but many tens of millions would like to and cannot. Religious freedom and the opportunities that go with it are the primary reason America commands the respect of all people of good will.

While religious liberty is our most valuable asset, it is also one of our most fragile. Our religious liberties depend totally on the concept of limiting the power of government and its control over the individual. Because of this we have a responsibility to insure that governmental intrusion in our lives is reduced to the smallest possible level and that any conflict between intrusion and religious beliefs must be resolved in favor of religion. That is why we are here today.

The text of our bill is simple, straight-forward and self-explanatory. I believe it would be appropriate to insert the actual language of this bill in the hearing record at this point:

"Any employee who is a member of or 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 employee's 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 non-religious, non-labor organization charitable fund exempt from taxation under section 501(c)(3) of title 26 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 such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance-arbitration procedure on the employee's behalf, the union is authorized to charge the employee for the reasonable cost of using such procedure."

Let me also say, Mr. Chairman, that those of us who have been pushing this bill recognize and appreciate the support we have had from a number of union leaders who, like us, recognize the importance of this idea.

It is regrettable that this type of legislation is necessary, but other Federal legislation has had the net effect of infringing upon religious freedom under the guise of granting protection to working people. Court cases have made it mandatory that we clarify once and for all any misinterpretations and ambiguities of the religious rights of our citizens.

I hope the Committee will move as rapidly as possible in considering this legislation so it can be considered by the House at the earliest possible opportunity.

Mr. THOMPSON. Thank you very much, Mr. Clausen.

At this point, I would like to enter into the record a statement from our colleague, Bob Stump of Arizona, who, unfortunately, could not be here.

[The prepared testimony of Congressman Stump follows:]

PREPARED TESTIMONY OF HON. BOB STUMP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman, it gives me a great deal of pleasure to be listed as one of the cosponsors of H.R. 4774. I have followed with interest this legislation in the past, even while I served as a Member of the Arizona State Senate.

I am interested in this bill for several reasons. First of all, I have a firm commitment to the constitutional principles of free exercise of religion. I believe that title VII of the Civil Rights Act and the National Labor Relations Act can exist harmoniously with the addition of this amendment. Instead of diminishing the stature of labor, the amendment can put organized labor on the side of religious freedom. This action has been recognized by many labor leaders in our Nation.

Second, as you know, I am also associated with the Seventh-day Adventist Church and have been a member for a number of years. I have followed with interest the case of Terry Burns, who also comes from Arizona. I have been pleased that his case was decided in his favor by the Ninth Circuit Court of Appeals. I trust that the day is not far off when such court cases will no longer need to be filed.

I believe that the provisions of H.R. 4774 are equitable for the person who holds deep religious convictions against joining or supporting labor organizations, while protecting the interest of organized labor. In all cases of the members of my denomination, with which I am familiar, Seventh-day Adventists have been happy to demonstrate their religious convictions by offering to make a charity substitution payment. Thus, they do not become "free riders." Under the provisions of this bill, if they wish to use the union machinery for grievance or arbitration proceedings, they will be required to pay for such services. Since the AFL-CIO Executive Committee supports the concept of religious accommodations, this bill has no anti-labor overtones. It can be supported in the Congress as a bipartisan measure as an attempt to preserve the religious liberties guaranteed in the Constitution by our forefathers.

Despite the many favorable court decisions, as well as the decisions by EEOC, it concerns me when I hear that a number of individuals are still finding their employment to be in jeopardy because this type of provision is not being followed by some local labor organizations.

The time for action has come again in the House of Representatives. I hope that this matter can be reported favorably by this Subcommittee and the full Committee very soon, and overwhelmingly adopted by the House as it was during the last session. Again, I hope that during this session this bill will become part of the National Labor Relations Act so that one more flag can be raised for religious freedom in our great Nation.

Mr. THOMPSON. Our next witnesses are Mr. Gordon Engen and Robert W. Nixon, associate directors, department of public affairs and religious liberty, General Conference of the Seventh-day Adventists.

Gentlemen? Once again, good morning.

STATEMENTS OF GORDON O. ENGEN AND ROBERT W. NIXON,
ASSOCIATE DIRECTORS, DEPARTMENT OF PUBLIC AFFAIRS
AND RELIGIOUS LIBERTY, GENERAL CONFERENCE OF SEV-
ENTH-DAY ADVENTISTS

Mr. ENGEN. Good morning, Mr. Chairman, members of the committee. My name is Gordon Engen, associate director in the department of public affairs, religious liberty, of the General Conference of Seventh-day Adventists, which is the world headquarters of the Seventh-day Adventists Church, located in Takoma Park, here in Washington, D.C.

I am an ordained minister, having served in this capacity at the world headquarters, in the area of religious liberty, since 1975. From 1960 to 1975, I was director of public affairs and religious liberty for the Great Lakes area of the Seventh-day Adventist Church.

An associate of mine appearing with me here today is Robert W. Nixon, who is also an associate director in the department. As an attorney, he serves as legal adviser to the department of public affairs and religious liberty, and has specialized in the area of labor relations and civil rights.

The director of our department, W. Melvin Adams, found it necessary to be in Africa and was unable to be here, and he sent a telegram, which he asked me to give to you this morning.

He says in this telegram:

Greetings to you and your committee. Regret that a delay in Zambia prevents me from attending this very important hearing.

In behalf of myself and the Seventh-day Adventists in the United States I want to again express our appreciation to you for holding this hearing and for your continued efforts toward fairness and justice.

I trust that you will be able to complete the committee work soon so that this bill can be considered by both Houses of the Congress and signed into law by the President this year.

W. M. ADAMS.

After making our formal presentation here, we will be happy to answer any questions that members of the committee may have.

I have prepared a rather complete statement here for the committee, which I do not intend to read. It summarizes what we have been through in the past. It brings us up to date from where we were when we were before the committee last time.

At this point, Mr. Chairman, I would like to insert in the record our formal statement, which gives this historical background to you, and the cosponsors and the members of this committee. I trust that your action at this time can be as successful as it was last time when this came up.

I think that the vote in the House represents the work that you and the members of this committee did. We are very grateful to you.

[The prepared statement of Mr. Engen follows:]

PREPARED STATEMENT OF GORDON O. ENGEN ON BEHALF OF THE SEVENTH-DAY
ADVENTIST CHURCHES

The Honorable Frank Thompson, Jr., members of the Subcommittee on Labor-Management Relations, my name is Gordon Engen. I am an associate director in the Department of Public Affairs and Religious Liberty of the General Conference of Seventh-day Adventists, the world headquarters of the Seventh-day Adventist Church, in Washington, D.C. I am an ordained minister and have served in my capacity at the world headquarters in the area of religious liberty since 1975. From 1960 to 1975, I was director of Public Affairs and Religious Liberty for the Great Lakes area of the Seventh-day Adventist Church.

An associate of mine appearing with me today is Robert W. Nixon, who is also an associate director in the department. As an attorney, he serves as legal advisor to the Department of Public Affairs and Religious Liberty and has specialized in the area of labor relations and civil rights. After making our formal presentation, we will be happy to answer any questions that the members of the committee have.

At this point I would like to insert in the record our formal statement, giving the historical background to this problem which you, your co-sponsors, and the members of this committee have addressed yourselves to in H.R. 4774.

For many years, members of the Seventh-day Adventist Church, as well as a few other religious denominations holding similar religious convictions, have been faced

with a choice between following the dictates of their conscience and economic survival.

The teachings of the Seventh-day Adventist Church regarding the relationship of individual members to various types of organizations, including labor organizations, date back before the turn of the century, decades before any federal labor laws existed. In short, the Seventh-day Adventist Church teaches its members not to join or financially support labor organizations. See Appendix A for the official position statement.

Following World War II, some experiments were made to find accommodations for both membership and the payment of dues for those who desired to work in trades or in industries where labor unions were being formed. In the early 1960's, our church leaders again tried to concentrate on finding a mutually acceptable solution to the problem faced by individuals who held these conscientious convictions. The first significant strides took place in 1965 at the time the Congress was debating the repeal of Section 14(b) of the Taft-Hartley Act. Our church members and religious liberty leaders all over the country began to tell the story to their legislators concerning conscientious Christians who were willing to sacrifice their jobs, their homes, their security, and even the bread and butter on their tables in order to faithfully obey the voice of God as it spoke to their hearts. As legislators, judges, employers, and labor union officials began to listen, attitudes began to change.

Individuals such as Congresswoman Edith Green and the late Senator Wayne Morse, both from the state of Oregon, were instrumental in helping to develop what had become known over the years as the "conscience clause." When the 95th Congress dealt with this issue, it labeled it the "religious freedom amendment." The states of Oregon, Washington, Montana, and Alaska have all enacted similar conscience clauses in order to protect the religious freedoms of public employees. Washington State Senator Gary Grant, who serves also as a union official, was a guiding light in the enactment of the Washington law. The state of Michigan enacted a joint resolution "exhorting" public employers and bargaining representatives to enter into conscience clause arrangements. (See Appendix B) As the result, Bill Marshall and the Michigan State AFL-CIO Executive Board by unanimous action reaffirmed the policy of the national AFL-CIO taken in 1965 to accommodate individual religious conscientious convictions along the lines of the conscience clause. Similar positions were taken by the Washington State Labor Council, Joe Davis, president. The Michigan Council 55 of the American Federation of State, County, and Municipal Employees went on record in a similar way.

It was in 1965 that W. Melvin Adams, presently director of the Department of Public Affairs and Religious Liberty of the General Conference of Seventh-day Adventists, first testified on this subject before this committee. You, Mr. Chairman, were instrumental in arranging for the first airing of this issue. And it was Congresswoman Edith Green who after making a thorough investigation concluded that she, one of the strongest labor supporters in the House, would also sponsor this amendment (many referred to it as the Green Amendment).

The next time this matter was brought before the Congress was in 1970 in connection with the Postal Reform Bill. At that time, a conscience clause amendment introduced and adopted by the U.S. House Postal and Civil Service Committee on May 7, 1970, and by the U.S. Senate Postal and Civil Service Committee on May 25, 1970, and later adopted in identical wording by both houses of Congress stated:

"No individual who is a member of a religious sect, or division thereof, the established and traditional tenets or teaching of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment if such individual pays to the Treasurer of the United States a sum equal to the initiation fees and periodic dues uniformly required as a condition of acquiring and retaining membership in a labor organization which is representative of the employee unless said individual and said labor organization mutually agree upon some other condition of employment."

The Senate bill contained both the conscience clause amendment and the Right to Work amendment. The House bill contained only the conscience clause amendment. Later, in conference, the conferees agreed to the following language which protects the religious objector:

"Each employee of the Postal Service shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right."

Again in 1971 and 1974 the matter of the religious convictions of individuals who cannot join or support labor unions came to the attention of Congress, and thanks to you, Mr. Chairman, Congressman John Erlenborn, and others, Public Law 93-360

was enacted into law for private health-care institutions. With the enactment of this law, our problems in the labor relations field in private health-care institutions have ceased. It's been a tremendous success. Some labor unions working in hospitals not under the jurisdiction of Public Law 93-360 are voluntarily accepting the formula and recognizing the religious convictions of health-care individuals in public hospitals. A case in point is the Retail Store Employees Union, David Jarvis, president, with the assistance and guidance of representation from the national office of AFL-CIO, Carl Herwarth, voluntarily adopting the provisions of Public Law 93-360 when conducting a unionizing drive at the Pawating Hospital in Niles, Michigan. Even though the hospital did not come under Section 19 of Public Law 93-360, the local union officials, as well as Mr. Herwarth from the international office, endorsed its principles and voluntarily accepted them as their own.

I believe that the correspondence I carried on with Mr. David Jarvis at that time would be helpful in order to show what influence Public Law 93-360 had and how one union worked to solve what could have been a serious problem.

DECEMBER 20, 1974.

Mr. DAVID JARVIS,
President, Retail Store Employees' Union, Local 36,
Kalamazoo, Mich.

DEAR MR. JARVIS: Several members of the Seventh-day Adventist Church have contacted our office expressing grave concern over the possibility that a union shop will be voted at the Pawating Hospital in Niles, Michigan, by your union.

As you know, the Seventh-day Adventist Church has historically taught that its members should not be involved in labor union activity either by membership or by payment of dues. However, in order to show good faith, our members have volunteered to pay the equivalent of dues to a non-religious, non-union charity.

What provisions to you propose for making an accommodation for religious beliefs and practices of our members who work there, as required by Title VII of the Civil Rights Act?

I would recommend that you adopt as your policy the provision of the new law covering private hospitals passed by the U.S. Congress, Public Law 93-360 (copy enclosed). This same principle was spelled out for public employees in a joint resolution No. 173 passed by the Michigan legislature. [See Appendix B.]

We feel that this is the appropriate time for you to state your position in this regard.

I will be happy to discuss this with you either in private or on the phone at your convenience.

I will be looking forward to your early reply.

Sincerely yours,

GORDON ENGEN,
Religious Liberty Secretary.

RETAIL STORE EMPLOYEES UNION,
LOCAL NO. 36 OF SOUTHERN MICHIGAN,
Kalamazoo, Mich., January 13, 1975.

Mr. GORDON ENGEN,
Religious Liberty Director, Lake Union Conference of Seventh-day Adventists, Berrien
Springs, Mich.

DEAR MR. ENGEN: This is to confirm the understanding which was made between yourself, Elder Eckman and Ray Sones, John Barry and Carl Herwarth at Niles on Thursday January 9, 1975 in regard to exclusion of individuals with religious convictions from union membership at Pawating Hospital.

It is the intent of Local 36 to abide fully with Public Law 93-360 and in particular with Section 19 which states as follows:

INDIVIDUALS WITH RELIGIOUS CONVICTIONS

Sec. 19. Any employee of a health care institution 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 lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a non-religious 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 a contract between such institution and a labor organization, or if the contract fails to designate such funds, then to any such fund chosen by the employee.

Sec. 4. The amendments made by this Act shall become effective on the thirtieth day after its date of enactment. Approved July 26, 1974.

It is our intent to propose the above provisions when contract negotiations are entered into with Pawating Hospital and you may rest assured that Local 36 will not require Union membership of any individual who would come under the provisions of Section 19 of the Act.

If we may be of any further assistance in any way please do not hesitate to contact me.

With kindest regards, I am,

DAVID JARVIS, *President.*

MARCH 10, 1975.

Mr. DAVID JARVIS,
President, Retail Store Employees' Union, Local 36,
Kalamazoo, Mich.

DEAR MR. JARVIS: I have waited to answer your letter of January 13, until I learned some more specifics concerning the NLRB election in Niles at Pawating Hospital. I understand now that things had been postponed.

I appreciated your letter very much and I immediately contacted our Adventist employees at the hospital informing them of the position that your union had taken. As I explained to Mr. Herwarth, when there is no issue of conscience involved and there is protection for individual religious freedoms the church does not enter into unionizing activities one way or the other from that point on, for we are not engaged in any activity which either is intended to campaign for or against labor. As a church we are interested in the sole area of the preservation of individual freedoms, both for members of our church and for those of other faiths.

We sincerely appreciate your efforts in this area and we will be interested to follow through with any further details that should come up in the future.

Sincerely yours,

GORDON ENGEN,
Religious Liberty Director.

Mrs. Margaret Gatz, a nurse at the Gladwyn Hospital, was reduced from full-time employment status to part-time employment upon the demand of the United Steelworkers of America because of her conscientious convictions regarding labor union membership and support. Upon the enactment of Public Law 93-360 with its conscience clause, she was reinstated as a full-time nurse without complications or difficulties.

In other areas of private employment, numerous individuals have been summarily dismissed. In only a few instances, negotiations have resulted in reinstatement, such as with Fred Pulcer, who was dismissed because of a union security agreement between the Canteen Company and the Teamsters. The agreement entered into in this case contained an interesting provision which is reflected in the bill currently before this committee.

As we dealt with Attorney Jimmy Hoffa, Jr., in Detroit, who was representing the Teamsters, he reported the reluctance on the part of the union to enter into this agreement because Mr. Pulcer would have access to the union's grievance and arbitration procedures but would not be paying any dues or fees. Mr. Pulcer's assurance that he did not intend to utilize the union's machinery was translated into a stipulation for dismissal made under the court's supervision as follows:

"7. That in the event that Plaintiff seeks the representation of defendant labor organization, he shall pay directly to said labor union the reasonable costs of such representation."

A similar reinstatement took place in Coos Bay, Oregon, involving John Campbell and the Teamsters.

In the 94th Congress, this committee again dealt with the conscience clause, holding hearings on July 28, 1976, on H.R. 1528, a bill sponsored by Congressman John Erlenborn. Again we were happy to be represented among those who testified in favor of this provision. It was reassuring to see the many members of Congress who came forward to support this bill: the Honorable Robert Duncan of Oregon, the Honorable Floyd Hicks of Washington, the Honorable Don Clausen of California, the Honorable Shirley Pettis of California, the Honorable Don Bonker of Washington, and, of course, the sponsor of the bill, the Honorable John Erlenborn of Illinois.

It has been reassuring also, Mr. Chairman, to read the statements you had made which were printed in the Congressional Record pledging your support for this legislation. Subsequent visits in your office and then the support you gave at the hearings were translated into action in the 95th Congress when you introduced H.R.

3384. We were again thrilled with the almost unanimous endorsement the bill received as our members contacted their representatives across the country. I sat in the gallery of the House of Representatives when your bill, H.R. 3384, came up for floor action. Again a number of individuals came forward and spoke on behalf of it. Your work and the many other members of Congress who have sponsored similar bills was evident in the vote—400 to 7 in favor of the bill.

In the Senate we found similar support for the bill. Mr. Williams and the Labor Subcommittee attached it, however, to the labor reform bill which went down to defeat due to the filibuster. We are now back again to bring this item to the attention of the members of the Congress. From contacts that have been made, we sense an even-greater support for this bill than before. We agree with you wholeheartedly that this bill should stand on its own. It is not a partisan issue. It is supported by both the members of Congress as well as by the AFL-CIO.

In 1965 when the conscience clause was originally brought to the House and Senate, the AFL-CIO Executive Council went on record on September 20, 1965, urging local unions to make accommodations. (See Appendix C.)

Mr. Meany's position remained the same over the years as evidenced by his testimony September 8, 1977, regarding H.R. 8410 on which this committee was conducting hearings. At that time the following exchange took place at the hearing:

"Mr. ERLBORN. Let me thank you for your appearance. I am surprised though that you would not have one kind word to say about 8310. For instance, maybe the provision that would no longer force someone to choose between his religion and his job.

"Now I recall Mr. Biemiller testified favorably concerning that in the past, and I think with your okay.

"I would have been thrilled if you had come in here today to say, 'Well, Mr. Erlborn does have one good idea. We ought to accommodate the religious beliefs of those working men and women who are in a situation where they now have to choose between their job and their religion.' and I invite you to respond to that now, hopefully in favor of that proposition.

"Mr. MEANY. Our position on that I think has been clear for years, and I think it is a fair position on the people who have conscientious objections to joining unions. We think they should participate, that they are the beneficiaries of good contracts where we get good contracts. At the same time we want to recognize their obligations to their particular religion. So we say in effect that they should make a contribution not to us but to some charitable—

"Mr. ERLBORN. That is my bill and I thank you for endorsing it.

"Mr. THOMPSON. Mr. Meany, before yielding to Mr. Ford, I am glad that you were so forthright with respect to Mr. Erlborn's comments on conscientious objection. I have assured Mr. Erlborn and others of a hearing and action, and of my support of a piece of legislation. I don't think it belongs properly here. Mr. Erlborn suggested that we get together, and I hope that we do on the point of conscientious objection.

"Mr. THOMPSON. I favor the principle that we embodied in the hospital legislation wherein we recognized for the first time in labor law conscientious objection. They enjoyed the benefits of collective bargaining, of the work of the organizers, of the work of the union. If they object to paying dues, then an amount equal to the dues goes to one of several charities of their choice."

After the House approved your bill, H.R. 3384, Mr. Chairman, the AFL-CIO News published the following article on November 5, 1977:

"DUES WAIVER VOTED RELIGIOUS OBJECTORS

"The House voted 400-7 approval of a bill allowing workers whose religious beliefs prevent compliance with union shop or agency shop agreements to contribute the equivalent of union dues to a designated charity.

"Such an exemption is already in effect for employees of health care institutions under a 1974 amendment to the National Labor Relations Act, and the AFL-CIO supported its extension to all forms of employment.

"The bill, which now goes to the Senate, was introduced by Rep. Frank Thompson, Jr. (D-N.J.) and unanimously endorsed by the House Labor Committee.

"The AFL-CIO has had a long-standing policy of encouraging unions to accommodate genuine religious beliefs of workers, and many of its affiliates have done so.

"Under the pending legislation, a worker qualifying for the religious exemption would be required to make a monthly payment equal to union dues or agency shop fees to a non-religious, tax-exempt charity. He would have a choice among three

such charities designated in a contract between the union and the employer. If no such charity were designated by contract, the worker could contribute to the charitable fund of his choice.

"The Seventh Day Adventists is the largest religious group of such conscientious objectors. Smaller groups include the Amish and Menonites." [sic]

The Communication Workers of America have taken a bold step to place themselves in harmony with what you are proposing to do in H.R. 4774. When their union security clause was secured in 1976, they put into operation a special program for individuals who have conscientious convictions against the payment of dues. The program provides for payment of the dues equivalent to several charitable organizations, currently the Heart Fund, the American Red Cross, and the American Cancer Society. Reports come to our office twice a year. Of the approximately 500,000 members in the CWA, about fifteen have taken advantage of the CWA program. Most of these individuals were Seventh-day Adventists. As you can readily calculate, this represents only three one-thousandths of 1 percent. Certainly that figure—three one-thousandths of 1 percent—reaffirms the idea that this is not an issue that will open up some hypothetical floodgate that will destroy organized labor. This statistic should allay the fears of any labor organization. And it should reaffirm the conviction of members of the AFL-CIO Executive Committee that their 1965 action was a wise one indeed.

The question has been raised about the possibility of having the dues money paid to religious organizations rather than non-religious charities. Although we are happy to see the Lord's treasury increased so that the work of the church may be expanded, we would prefer that the dues money not come to our own church or to any church for that matter. We have no intention or desire to channel the funds ordinarily going to a union to the church. It is a matter of conscience—the individual member's conscience. In order that there can be no question concerning the motivation for this action, we encourage our members to give to a neutral charity, not to a charity operated by the union nor to a charity operated by the church. The types of charities provided for in this bill—non-religious, non-union charities—have worked well in many situations. We feel it can work just as well all across the country.

On numerous occasions, individuals who have lost their jobs because of their religious convictions toward the support of labor organizations have filed complaints with the Federal Equal Employment Opportunity Commission, claiming that they have been victims of religious discrimination, which is prohibited by Title VII of the Civil Rights Act of 1964. Following a number of investigations, EEOC has found probable cause for such violations. In Decision No. 74-107, April 4, 1974, EEOC stated that both the employer and the labor organization had a duty to make reasonable attempts to accommodate. (The full text of the decision appears at the end of our statement as Appendix D.)

At the time of the hearing in 1976 on H.R. 1528, several federal courts were considering whether the conscience clause concept was a reasonable accommodation of religious belief and practice as required by Title VII of the Civil Rights Act of 1964, as amended. While there have been federal district court decisions both ways, to date all federal courts of appeal that have considered this issue have ruled in favor of those arguing that Title VII requires such an accommodation. Let me briefly summarize these cases:

Cooper v. General Dynamics, 533 F. 2d 163 (5th Cir. 1976). Reversing the United States District Court for the Northern District of Texas, the Court of Appeals for the Fifth Circuit held that all reasonable accommodations of an employee's religious beliefs on the subject of labor organizations, including allowing the employee to pay the equivalent to dues and fees to a charity, is mandated by Section 701(j) of the Civil Rights Act. On June 27, 1977, the Supreme Court of the United States denied a petition for a writ of certiorari in the case, then titled *International Association of Machinists v. Hopkins*, 45 U.S.L.W. 3837. On remand to the United States District Court for the Northern District of Texas and after settlement discussions, the court entered a judgment under which the plaintiffs paid the equivalent of union dues and fees to a charity. The judgment said that "this Court finds that the provisions as above stipulated and agreed to are in the circumstances of this case a reasonable accommodation. . . ."

McDaniel v. Essex International, 571 F. 2d 338 (6th Cir. 1978). The Court of Appeals for the Sixth Circuit in *McDaniel* cited the Fifth Circuit's *Cooper* decision and *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977), and held that Section 701(j) of the Civil Rights Act of 1964 requires that a reasonable accommodation be made of the religious beliefs of Mrs. Doris McDaniel, a Seventh-day Adventist who conscientiously could not join or financially support a labor organization. That case

is on remand to the United States District Court for the Western District of Michigan.

Anderson v. General Dynamics, 589 F. 2d 397 (9th Cir. 1978). Reversing the United States District Court for the Southern District of California, the Ninth Circuit held that the employer and the labor organization had not met their burden of proving undue hardship when Seventh-day Adventist David Anderson declined to maintain membership in the labor organization or to pay an agency fee, offering instead to pay dues equivalent to a charity. The International Association of Machinists petitioned the Supreme Court of the United States for a writ of certiorari, which was denied on June 4, 1979, 47 U.S.L.W. 3787.

Burns v. Southern Pacific Transportation Co., 589 F. 2d 403 (9th Cir. 1978). Reversing the United States District Court for the District of Arizona, the Ninth Circuit held that the employer and labor organization had failed to prove that accommodating Seventh-day Adventist Duane Terrell Burns' religious beliefs against joining or financially supporting a labor organization was an undue hardship under the Civil Rights Act of 1964. The case, unlike the three preceding which involved the National Labor Relations Act, involved the Railway Labor Act. The United Transportation Union petitioned the Supreme Court of the United States for a writ of certiorari, which was denied on January 8, 1979, 47 U.S.L.W. 3464, and the case is now on remand.

The highest courts of two states also have held that state human rights laws require the reasonable accommodation of religious dissenters who refuse to join or financially support a labor organization. See *Maine Human Rights Commission v. Local 1361, United Paperworkers International Union*, 383 A. 2nd 369 (Maine 1978), and *Wondzell v. Alaska Wood Products, Inc.*, No. 1720, Alaska Supreme Court, filed June 1, 1979.

It is evident that the courts, from their decisions, have adopted the concept that the charity substitution provision, similar to the one you have placed in this bill, satisfies the requirement under Title VII of the Civil Rights Act that employers as well as labor unions have an obligation to make a reasonable accommodation to religious observances and practices of employees and that this does not, in the cases considered by the courts, constitute an undue hardship.

The First Amendment to our federal Constitution guarantees free exercise of religion. We feel H.R. 4774 provides for that concept.

In talking with various legislators I have been told that there is a feeling that it is high time for the Congress to bring the National Labor Relations Law into harmony with the court decisions under Title VII of the Civil Rights Act. In spite of the above court decisions, we continually get reports of individuals who are finding it impossible to negotiate charity substitution payments.

In the past, several of the smaller religious bodies in our country have joined in supporting similar legislation. Among them have been Amish, Mennonites, and Plymouth Brethren IV. We also heard from a segment of the National Association of Evangelicals, from the Christian Missionary Alliance, and from the Old German Baptists. Numerous other church bodies contacted us in support of the right of individuals to practice religious beliefs in harmony with the dictates of their conscience.

We recommend you, Mr. Thompson, for your persistence in bringing this matter back again to the House of Representatives, where we trust that it again can be handled with dispatch as it was during the 95th Congress. It is evident, Mr. Chairman, that this is truly a noncontroversial, bipartisan issue verified by the overwhelming vote it received in the last session and the bipartisan group that has joined you in co-sponsoring the bill during this session. We concur with you that it should be a single issue uncomplicated by other factors with might tend to make it a partisan or controversial issue.

The speedy enactment of this bill affecting the entire National Labor Relations Act would save a great deal of time and money that is now being wasted in litigation and negotiation. It would keep valuable men and women working across the country—people who are among the finest employees—people with good work records—people with valued skills—people who are conscientious, whose only "crime" is that of having deep religious convictions against financially supporting labor organizations. These people would not needlessly be added to the unemployment rolls. Hundreds of thousands of dollars—perhaps even into the seven-digit figures—has been paid by the rank-and-file union members across the country through their unions to defend lawsuits that have been incurred because of violations of Title VII. Neither should money contributed by church members have to be used in defending individuals whose religious civil rights have been violated. Both unions and churches could get on quickly with the more important work each has to do.

The action contemplated today by the Subcommittee would be in harmony with the great historic conditions of our country, following the unique exceptions made to meet certain unique circumstances such as:

Draft Laws.—Provision for those young men whose consciences do not permit them to take other men's lives.

State Sunday Laws.—Provision for individuals observing Saturday.

Social Security.—Provision made to exempt Amish because their religious convictions prohibit any kind of life insurance.

School Attendance Laws.—Provision made to exempt Amish because their religious convictions prevent them from sending their children to school beyond the eighth grade.

Pledge of Allegiance to Flag.—Provision made to exempt those who cannot pledge their allegiance because of religious convictions.

Abortion and Sterilization.—Provision made to protect individuals and institutions who have religious convictions against these procedures.

In a day when many are losing faith in their government, I want to assure you that we take courage from your combined efforts to see that this bill is enacted into law. Many sincere, dedicated men and women across the country are watching with interest and concern. Their hopes and prayers are with you that the effort in this session of Congress will go through to completion.

APPENDIX A

LABOR UNIONS—SEVENTH-DAY ADVENTIST POSITION STATEMENT

Whereas, On the basis of principles set forth in the Bible, the Seventh-day Adventist Church teaches that Christ is to be Lord of the life, the ultimate authority to which Christians will submit all decisions and relationships (Acts 2:36; 5:29; Col. 3:23, 24); and

Whereas, The church teaches that Christians should stand apart from any organization or alliance that might impinge on the lordship of Christ in the life (Isa. 8:12, 13; 2 Cor. 6:14-18); and

Whereas, The Christian dare not violate his conscience by giving support to activities or policies incompatible with the principles and counsel set forth in God's Word; and

Whereas, An increasing number of Seventh-day Adventists are finding it necessary to explain the position of the church in relation to joining or financially supporting labor unions and similar organizations, *voted*,

1. That the Seventh-day Adventist Church hereby reaffirm its historical position that its members should not join or financially support labor unions and similar organizations.

2. That the Seventh-day Adventist Church member is following the teaching of the church when because of religious convictions he refuses to join or financially support labor unions and similar organizations or associations, or discontinues membership or financial support of a labor union, and similar organization or association.

3. That pastors diligently inform Seventh-day Adventist Church members through sermons, personal counseling, church publications and other media of the Bible principles and the Spirit of Prophecy counsel on which the church's position is based.

North American Division Committee on Administration
Mexico City
October 16-20, 1972

APPENDIX B

Senators Bouwsma, Byker, Stamm, McCollough, Rockwell, DeGrow, Plawecki, Lodge, Pursell, Bursley, DeMaso, Pittenger, Faust, Rozycki, Zaagman, and Novak offered the following concurrent resolution:

SENATE CONCURRENT RESOLUTION NO. 173

A concurrent resolution recommending an alternative method of compliance with agency shop agreements between a public employer and the employees' bargaining representative.

Whereas, Act. No. 336 of the Public Acts of 1947, as amended by Act. No. 25 of the Public Acts of 1973, permits a public employer to make an agreement with the employees' exclusive bargaining representative to require, as a condition of employment, all employees to pay union dues or a service fee; and

Whereas, the effect of such an agreement could be to compel members of certain religious bodies or sects either to violate their religious principles or to lose their jobs; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Legislature exhorts public employers and their employees' exclusive bargaining representative to negotiate contractual language whereby employees who are bona fide contributing members of a religious body or sect which objects to unionization on the basis of religious tenets, may contribute, in lieu of union dues or the service fee required by an agreement made pursuant to section 10 of Act. No. 336 of the Public Acts of 1947, as amended by Act. No. 25 of the Public Acts of 1973, an equivalent sum of money to a nonreligious, nonpolitical, nonprofit charitable organization.

APPENDIX C

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON UNION MEMBERSHIP AND RELIGIOUS OBJECTORS, NEW YORK, N.Y., SEPTEMBER 20, 1965

In connection with consideration by the Congress of repeal of Section 14(b) of the Taft-Hartley Act, representatives of certain religious groups testified that some of their members have personal religious convictions which may stand in the way of their formally joining unions or, to varying degrees, participating in or financially supporting union activities.

A number of national and international unions have in the past worked out arrangements with particular religious groups for handling this problem of individual religious objectors, but other unions have not yet done so.

The Senate Labor Committee has incorporated in the bill repealing Section 14(b) provisions giving to religious objectors the option of contributing to a non-religious charity, designated by the union, sums equal to union dues and initiation fees—provisions which the AFL-CIO supports. These provisions become operative where there are no voluntary agreements covering these matters. It is the conviction of the AFL-CIO that such voluntary union agreements are the best method for handling such matters.

Therefore this Executive Council declares it to be the policy of the AFL-CIO that unions should accommodate themselves to genuine individual religious scruples. We strongly urge all national and international unions affiliated with the AFL-CIO, that have not already done so, to:

1. Immediately adopt procedures for respecting sincere personal religious convictions as to union membership or activities; and
2. Undertake to insure that this policy is fully and sympathetically implemented by all local unions.

APPENDIX D

(6430) FAILURE TO ATTEMPT ACCOMMODATION OF SEVENTH-DAY ADVENTIST'S UNION BELIEFS IS RELIGIOUS BIAS

(Decision of Equal Employment Opportunity Commission, Decision No. 74-107, Apr. 2, 1974)

TITLE VII—CIVIL RIGHTS ACT OF 1964

Religious Discrimination—Duty of Accommodation—Union Shop—Seventh-day Adventists—Refusal to Join Union—Discharge.—Reasonable cause exists to believe that an employer engaged in unlawful religious discrimination by discharging a Seventh-day Adventist for non-compliance with union shop requirements where no attempt was made to accommodate the employee's religious beliefs. The duty of accommodating to an employee's religious belief is on the employer, and a reasonable attempt at accommodation is required before an employee may properly be discharged for a refusal to join a union based on religious grounds. 42 U.S.C. Sec. 2000e. Back reference.—1508.

Religious Discrimination—Labor Union—Union Shop—Seventh-day Adventist—Refusal to Join Union—Discharge.—Reasonable cause exists to believe that a labor union engaged in unlawful religious discrimination where it successfully requested a discharge of a Seventh-day Adventist who refused to comply with union shop requirements on religious grounds and where no reasonable attempt had been made to accommodate the employee's religious beliefs. 42 U.S.C. Sec. 2000e.

FULL TEXT OF EEOC DECISION

Summary of Charge

Charging party alleges that Respondent Employer violated Title VII of the Civil Rights Act of 1964, as amended, by discharging him because of his religion (Seventh-day Adventist). Charging party further alleges that Respondent Labor Organization violated Title VII of the Civil Rights Act of 1964, as amended (hereinafter "Title VII" or "The Act") by causing Respondent Employer to discharge Charging Party because of his religion.

Jurisdiction

Respondent Employer is an employer within the meaning of Section 701(b) of the Act.

Respondent Union is a labor organization within the meaning of Section 701 (d) and (e) of the Act.

All other jurisdictional requirements have been met.

Summary of Investigation

Charging party has been a member of the Seventh-day Adventist Church since 1959. Respondents have not challenged the sincerity of his religious convictions. The Church interprets certain Bible passages to be inconsistent with the philosophy of organized labor. Thus a Seventh-day Adventist position statement on labor union states, in part:

We recommend:

1. That the Seventh-day Adventist Church hereby reaffirm its historical position that its members should not join or financially support labor unions and similar organization.

2. That the Seventh-day Adventist Church member is following the teachings of the church when because of religious convictions he refused to join or financially support labor unions and similar organizations or associations, or discontinues membership or financial support of a labor union, and similar organization or association (sic).

On April 3, 1972, Respondent Employer entered into a collective bargaining agreement with Respondent Union which included a union shop clause¹ providing that an employee of Respondent Employer must, as a condition of employment, join the Union.² Nothing in the record indicates that this clause has not been uniformly applied. Upon notice that he would be terminated unless he joined the Union, Charging Party submitted a statement to Respondent Employer on June 12, 1972, to the effect that his religious convictions prevented him from belonging to such an organization. Upon being notified of this on June 14, Respondent Union immediately (on June 14) sent a letter to Respondent Employer requesting it to discharge Charging Party pursuant to the terms of the labor agreement. Respondent Employer complied with the Union's request on June 16, 1972.

The Commission's *Guidelines on Religious Discrimination* provide that:

"... the duty not to discriminate on religious grounds ... includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business." 29 CFR 1605.1(b).

The *Guidelines* have been judicially approved by two Circuit Courts of Appeal.³ Moreover, the *Guidelines* received Congressional approval in the 1972 amendments to the Act.⁴ The burden is thus on Respondents, not Charging Party, to initiate an

¹ Art. 9, Paragraph B of the collective bargaining agreement provides: "E. Any employee on the company's active payroll who is in the bargaining unit and is not a member of the union on 3 April 1972, shall, as a condition of continued employment in the bargaining unit, join the union within ten (10) days after the thirtieth (30th) day following the effective date of this agreement, and shall maintain his membership, as provided in paragraph A above." (Emphasis in original.)

² Such agreements are expressly recognized by Section 8(a)(3) of the National Labor Relations Act which provides that: "... nothing in this Act ... shall preclude an employer from making an agreement with a labor organization ... to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later. ..." 29 U.S.C. 158(a)(3).

³ See for example, *Reid v. Memphis Publishing Co.*, (5 EPD 8090) 468 F. 2d 346 (6th Cir. 1972); *Riley v. Bendix Corp.* (4 EPD 7902) 464 F. 2d 1113 (5th Cir. 1972).

⁴ Sec. 701(j) of the Act provides: "(j) the term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to

attempt at accommodation. Yet there is no evidence of record to indicate that Respondents made any effort at all to accommodate Charging Party's religious beliefs.⁵

We are aware of the First Amendment cases holding that when religious practices come into conflict with labor practices authorized by statute, a balancing of the interests involved requires that free exercise of religion yield, in part, to the Congressionally support principle of the union shop. See, for example, *Linscott v. Millers Falls Co.*, (3 EPD 8181) 440 F. 2d 14 (1st Cir. 1971), cert. denied, (4 EPD 7526) 404 U.S. 872 (1971); *Gray v. Gulf, Mobile and Ohio Railroad and Company*, (2 EPD 10,261) 429 F. 2d 1064 (5th Cir. 1970), cert. denied, (3 EPD 8080) 400 U.S. 1001 (1971); *Hammond v. United Papermakers and Paperworkers*, (4 EPD 7868) 462 F. 2d 174 (6th Cir. 1972), cert. denied (5 EPD 8575) 409 U.S. 1028 (1972). These cases involve fact situations virtually identical to that present here—the refusal of a Seventh-day Adventist to join a labor organization because of his religious convictions in the face of a union shop clause in the collective bargaining agreement. But these are not Title VII cases. Moreover, they arose prior to the codification of the reasonable accommodation requirement in Sec. 701(j) of Title VII. Thus there is no case law dealing with the potential conflict between the two statutes.⁶ In those Title VII cases where an employee refused to work on the Sabbath, in conflict with rules or policies of the employer, an attempt at reasonable accommodation by the employer has been required; however, discharge of the employee has been permitted where it is shown that no such accommodation is possible.⁷ Because the requirement of an attempt at reasonable accommodation has not been met in this case, we do not reach the question of how to resolve the potential conflict between Title VII and Section 8(a)(3) of the Nation Labor Relations Act.

CONCLUSION

There is reasonable cause to believe that Respondent Employer engaged in an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, as amended, by discharging Charging Party because of his religion.

There is reasonable cause to believe that Respondent Labor Organization engaged in an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, as amended, when it caused Respondent Employer to discharge Charging Party because of his religion.

Mr. ENGEN. Now I would like to ask Mr. Nixon to summarize in a few sentences the legal developments that have taken place since we were last here before the committee.

STATEMENT OF ROBERT W. NIXON, ASSOCIATE DIRECTOR, DEPARTMENT OF PUBLIC AFFAIRS AND RELIGIOUS LIBERTY, GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS

Mr. NIXON. The recent litigation is found at the bottom of pages 12, 13 and 14 of Mr. Engen's prepared statement.

In short, three Courts of Appeal have determined now that title VII of the Civil Rights Act of 1964, as amended, requires employers and labor organizations to make reasonable accommodations to those who have religious reasons against joining or financially supporting labor organizations. These are the fifth circuit, the sixth circuit and the ninth circuit.

Footnotes continued from last page

reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

⁵ We note, as evidence that such an accommodation should have been (and may still be) within the realm of possibility. Respondent Union's statement in a letter to the Commission that "(f) It is well known in the field of Labor Law . . . that . . . the individual is not required to take any oath of allegiance to the union. All that the (National Labor Relations) Act requires is for the individual to pay to the union a sum equal to (ther periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.)" Other avenues of accommodation may exist.

⁶ *Riley v. Bendix Corp.*, supra; *Reid v. Memphis Publishing Co.*, supra; *Claybaugh v. Pacific Northwest Bell Telephone Co.*,—F. Supp.—, 6 EPD 9015 (D.C. Ore. 1973).

⁷ *Johnson v. U.S. Postal Service*, (6 EPD 8984) 364 F. Supp. 37 (D.C. Fla. 1973).

In 1976 the fifth circuit in *Cooper v. General Dynamics* so held, and the Supreme Court in 1977 denied a writ of certiorari in that case, when the losing parties wished the Supreme Court to review the decision.

The sixth circuit held this way in 1978 in the case of *McDaniel v. Essex International*, and the ninth circuit last year, in a pair of cases, *Anderson v. General Dynamics* and *Burns v. Southern Pacific Transportation Co.*

The Anderson and Burns cases both have been denied writs of certiorari by the Supreme Court this year, Burns on January 8 and Anderson on June 4.

All of these cases, all four cases, have involved Seventh-day Adventists. There is one other case now pending before the ninth circuit, *Yott v. North American Rockwell Corp.*, which has been bouncing around in the courts for 7 or 8 years now.

The oral arguments have been held. That case involves a member of a Congregational church, not a Seventh-day Adventist, one church in California that has some similar religious belief.

A decision is expected from the ninth circuit in that case this fall.

Mr. THOMPSON. It would seem to me these cases ought to be not only persuasive, but dispositive of the issue, as I would see it. I am glad to have them because we did not have them in the past, although I don't anticipate any great conflict about this.

On another issue, with respect to conscientious objection—and Mr. Engen's recitation of this goes back quite a ways—it was a source of regret to me some years ago that on a point of germaneness, and only on that technical parliamentary point, was this taken out of the bill, H.R. 77, when it was on the floor.

That was another one of my legislative failures. I seem to have a particular genius for one-House legislation. I hope my luck changes somewhere along the line. But, it is good to have this.

Let me ask this. What is the attitude of the Seventh-day Adventists with respect to military service? Conscription?

Mr. ENGEN. We have in the past had a good relationship with the military in that the young men and young ladies who go into the service, young ladies, go in as 1-A-O, by and large, conscientious objectors. They do not bear arms but are assigned to noncombatant roles in the service.

Mr. THOMPSON. The same as the Society of Friends.

Mr. ENGEN. Basically, I would imagine it would be the same. They do participate in aiding the country in this way. Many of them have served in the Medical Corps during World War II, the Korean conflict and Vietnam, as well.

Also, an example of this, is Mr. Desmond Doss, a conscientious objector who received the Congressional Medal of Honor during World War II. I left a copy of the book "The Unlikeliest Hero" with you the other day.

Mr. THOMPSON. I did want to know that. It is my fervent hope we don't even go so far as to require registration, and that we keep an all-volunteer service. Personally, I would oppose legislation requiring registration, but would attempt to amend it to look after anyone with any conscientious objection, whether they belong to a religious organization or not.

My view is anyone has an absolute right not to serve, if he or she for whatever reason, conscientiously believes they should not.

Thank you very much.

Mr. Erlenborn?

Mr. ERLBORN. Thank you, Mr. Chairman.

Gentlemen, let me welcome you to the committee. I echo what my colleague, Mr. Clausen, said about this being a very important day, that we once again are looking toward the prompt passage of this legislation.

I hope, as does the chairman of the subcommittee, that passage in the House is not the end of the legislative process this time.

Mr. ENGEN. That is our hope, too.

Mr. ERLBORN. I would join with the chairman in exhorting our colleagues in the other body to move this as expeditiously as possible. I understand there might be some concern about opening up the act.

Just as we in the House could handle this under suspension of the rules, which would prohibit amendments, and therefore protect against any other amendments to the National Labor Relations Act, so I am certain a procedure could be found in the Senate to pass this legislation without any undue side effects.

Mr. THOMPSON. I don't think it is even susceptible of an antiabortion amendment.

Mr. ERLBORN. I would hope not.

Mr. THOMPSON. Or busing.

Mr. ERLBORN. If this was a Department of Education bill, of course it would be.

Mr. THOMPSON. Or a District of Columbia bill.

Mr. ERLBORN. This bill differs somewhat from previous similar legislation. The last clause of the bill says that, if one who is a conscientious objector and, avails himself of the procedures under this act asks the union to represent him in an adjustment of dispute or claim, the cost of that representation would be assessed to the person asking for that representation.

How do you feel about that provision, and do you think that anyone would utilize the services of the union for adjusting differences?

Mr. ENGEN. That is a question that we dealt with a few years back in several of the attempts to reconcile these problems on a local basis, a voluntary basis.

We have not actually proposed this as a part of this bill. We do not object to it. It came about first in a case in Detroit, which is referred to on page 8 of my statement here.

It seemed to erase all of the concerns of the union local that we were dealing with, that the union would be taken advantage of, by incurring an undue amount of expenses in handling all of the problems that might develop from this one person or other people who would be exempted from paying dues, but yet be using the machinery of the union. This would be a cost burden to the other members.

We assured them that this man had no such intention. The question then came, would he be willing to put this in a contract. So, in a stipulated agreement, supervised by the court, we worked on that principle.

Our people basically would not be affected by this because they would very likely not be requesting the union to do this for them. If they were going to do that, undoubtedly our members would then pay the dues, or pay the cost of this type of representation. It poses no problem to us.

Mr. ERLNBORN. Fine. I am glad to hear that.

One other question. What other religions, other than Seventh-day Adventists, if you know, have such conscientious objections to joining or paying dues to a labor union?

Mr. ENGEN. We have had contact with several of these, including certain branches of the Amish, Mennonites, and Plymouth Brethren. These are the primary ones. We have also heard from some in the National Association of Evangelicals who gave their support, the Christian Missionary Alliance, and some of the old German Baptists.

Besides that, other religious bodies have said even though they do not subscribe to this teaching themselves, they support the concept of this type of an exemption.

Mr. ERLNBORN. Thank you very much.

Thank you, Mr. Chairman.

Mr. THOMPSON. Mr. Clay?

Mr. CLAY. No questions, Mr. Chairman.

Mr. THOMPSON. Mr. Kildee?

Mr. KILDEE. Just a statement, Mr. Chairman.

While I was in the Michigan Legislature I worked very closely with the Seventh-day Adventists churches and found them always to be reasonable and cooperative and very clear in their position on this.

I have always believed that government should always try to accommodate itself to the religious beliefs of its citizens.

As I say, I enjoyed working with you in the past.

Mr. ENGEN. Thank you.

Mr. THOMPSON. Thank you very, very much.

Mr. ENGEN. Thank you, Mr. Chairman.

Mr. THOMPSON. Mr. Ashbrook just came in. He is familiar with the situation. He has no questions.

Mr. ASHBROOK. Thank you. Excuse me. I would like to have heard your testimony but this is the fourth subcommittee of the morning. I have an idea of what you were going to say.

Mr. THOMPSON. Our next witness is our distinguished colleague and friend from Oregon, Mr. Robert Duncan, who has had a very long time interest in this matter.

Good morning.

STATEMENT OF HON. ROBERT B. DUNCAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DUNCAN. Mr. Chairman, members of your committee, with your permission I will submit my statement for the record. I suspect, as Mr. Ashbrook did with the preceding witness, you know substantially what I am going to say.

This is a solution to a problem, perhaps not a major problem, but it is a good solution. It seems to me that it strikes a reasonable balance between the legitimate rights of union security and the basic constitutional rights of freedom to practice one's own religion.

I agree with Mr. Kildee that one of the great virtues of this form of government under which we live is the capacity and responsiveness of the Government to a need of this sort, regardless of the number of practitioners there are in this country who might be affected by it.

It seems to me it is almost a classic case of a small minority being able to petition their Government with a reasonable hope they will respond.

This committee has responded, passed it last time, it got tied up over in the Senate. I agree with Mr. Erlenborn. I never noticed any reticence, reluctance or inability of the Senate of the United States to accomplish a particular purpose if they once set their mind to it. They can find a vehicle without any difficulty.

Unfortunately, they can always find a vehicle which will frustrate it, perhaps unwittingly, but nevertheless that was the result.

I watched Senator Stennis the other day attach a complete disaster relief bill to the bill which we will probably consider today, the supplemental appropriation bill for 1979, and there wasn't even a no vote or a question about it. So, this can be done over in the Senate.

I urge you gentlemen and ladies to do your part to move it on. I thank you for your courtesy.

[The prepared statement of Congressman Duncan follows:]

PREPARED STATEMENT OF HON. ROBERT B. DUNCAN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OREGON

First of all I want to thank the subcommittee and its distinguished chairman, Frank Thompson, for the work you did in guiding the so called "conscience amendment" through the house in the 95th Congress and for your persistence in moving it again in the 96th Congress. I also want to thank the subcommittee for the opportunity to testify this morning.

The conscience amendment allows employees whose religious convictions prohibit union membership and consequently forbid payment of dues, to pay an equivalent amount to a nonreligious charitable organization mutually chosen by the employee and the union. The NLRA was amended in 1974 to provide employees in health care institutions this same option where union security and religious convictions clashed. That same reasonable solution should be available to all employees, regardless of where they work.

The House has already agreed to a bill similar to that we discuss today. A version of the conscience amendment passed this body under a suspension of the rules on November 1, 1977. It became involved in Labor Reform legislation and did not become law.

The conscience amendment is, as you know, not a new idea. My distinguished and able predecessor, Wayne Morse, worked diligently over the past 20 years to achieve the goals that the amendment promises. This committee and I are simply carrying on that struggle.

This legislation achieves five goals that have historically appeared mutually exclusive if not downright hostile. First, it protects the concept of majority rule and union security. By law a union selected in a fair and free election must represent every employee in the shop. That includes those who pay union dues as well as those who do not, the free riders, who take advantage of union services and membership but do not contribute their share to union coffers. The second bill addresses the problems of conscientious objectors by allowing them to contribute to a charity previously agreed on by both employee and union and authorizing the union to collect the expenses incurred when the individual utilizes the union's grievance-arbitration mechanism. This allows every individual to pay his way and also rids the union of the free rider problem. Third it simultaneously protects one's individual religious beliefs. Fourth, the bill insures fair union representation of all shop employees without the shadow of discrimination cast on those whose sincere convictions will not allow them to fully participate in union membership. And fifth, the conscience amendment eliminates costly piecemeal litigation and precludes the courts from deciding what is ultimately a problem that must be worked out between labor, management and the individual.

This amendment is definitely not an objection to labor unions per se. Religious beliefs prohibiting membership in any organization other than church certainly antedate the labor movement which began in mid-19th century. Individuals whose religious beliefs are incompatible with union membership should not be denied the right to earn a living on that basis alone. Unfortunately that is often the choice they face; their beliefs or their work. A compromise accommodating both parties must be reached.

Labor itself has been using such a compromise for years. Since the 1965 statement by AFL-CIO chief George Meany, that "unions should accommodate themselves to genuine individual religious scruples" many labor organizations have allowed individual employees to make equivalent contributions to charitable organizations on an ad hoc basis. With this legislation we follow the unions' own solution to an heretofore intractable problem.

The conscience amendment to the National Labor Relations Act is an "accommodation" in the best sense of that word. It upholds two rights cherished in America; an individual's right to practice his religion free of undue social interference and the equally important right to union representation and a peaceful workplace. It affords every employee the chance to work where he chooses and remain at peace with his own conscience.

The conscience amendment is an idea whose time is now. I thank this committee for its consideration.

Mr. THOMPSON. Thank you. I appreciate your statement very much. I appreciate as much as what is in your statement, what is not in it.

Mr. DUNCAN. I am glad you noticed the editorial corrections.

Mr. THOMPSON. Mr. Ashbrook?

Mr. ASHBROOK. No questions, thank you.

Mr. THOMPSON. Mr. Clay?

Mr. CLAY. No questions.

Mr. THOMPSON. Mr. Erlenborn?

Mr. ERLBORN. No questions.

Mr. KILDEE. No questions.

Mr. DUNCAN. Thank you very much.

[Whereupon, at 10:30 the hearing on H.R. 4774 adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF REED LARSON, PRESIDENT, THE NATIONAL RIGHT TO WORK COMMITTEE

As advocates of the principle of freedom of choice, we applaud the intent of H.R. 4774. It recognizes that a serious moral and constitutional injustice exists when individuals are forced—with the sanction of their government—to support private organizations whose policies are incompatible with their religious beliefs.

However, H.R. 4774 as written, disregards a much broader constitutional question: May a free citizen be compelled to support an unwanted labor organization whether his or her objection is, or is not, related to religious beliefs?

This legislation brings another important question into focus: Is it proper for government to (1) establish one standard for individuals whose religious beliefs conflict with compulsory unionism, and (2) employ a different standard for individuals who resist compulsory unionism for other reasons?

We contend that it is hypocritical and unconscionable to compel anyone to contribute a part of his earnings to a union whose representation he didn't seek and doesn't want.

Through the instrument of the First Amendment to the Constitution the nation's Founding Fathers denied Congress the authority to enact any law "respecting an establishment of religions or prohibiting the free exercise thereof."

Rabbi Jakob Petuchowski, research professor of Jewish theology and liturgy at Hebrew Union College, put this issue in clear perspective. He wrote that compulsory support of a union is "no more tolerable than forced support of a particular religious or political or social doctrine."

Many people of good conscience want no part of labor unions—especially those which resort to violence to achieve their ends and those whose officials are preoccupied with partisan politics. Only one out of every five wage earners in the nation's workforce is affiliated with organized labor. Many union members—if not most of them—are captives whose jobs depend on their payment of compulsory dues. Votes

against union representation were cast by 52 percent of the 417,563 workers who participated in elections supervised by the national labor Relations Board during its 1978 fiscal year.

H.R. 4774 accepts the dangerous premise that a citizen should be penalized for refusing to pay tribute to a labor union—good, bad or indifferent. It leaves unchanged that part of Section 19 which now provides that a Seventh-Day Adventist, for example, can retain his job only by paying the equivalent of union dues to a union-approved charity. Therefore, H.R. 4774 condones the practice of obligating members of religious sects to contribute money as a condition of employment.

This proposal also tends to validate the specious argument that all workers invariably benefit from union representation. If that argument were valid, the millions of non-union workers in this country would be flocking to union halls to sign up as voluntary members.

While we favor this effort to restrict the reach of compulsory unionism, we submit the public interest would be better served by positive action on the Edwards bill, H.R. 4656. Designed to repeal the existing authorization of compulsory unionism, it has been referred to the Education and Labor Committee.

We also favor repeal of the exclusive representation provisions in federal labor laws. Those provisions empower a union to represent and bind all employees in a bargaining unit if that union is supported by a bare majority of those employees. In our view, union officials should be relieved of the responsibility to represent any worker who does not wish to become a dues-paying member of that union.

We invite your attention to an essay published in the University of Pennsylvania Law Review, in April 1975. Written by Professor George Schatzki of the University of Texas, it is entitled "Majority Rule, Exclusive Representation, and the Interest of Individual Workers: Should Exclusivity be Abolished?"

Professor Schatzki recommended labor law reform whose keystone would be "the principle that every employee could select his or her own representative, if any." He proposed that "no one would be represented by a labor organization unless it was actually selected by that individual. An employee will be neither represented by, nor coerced into joining, any union other than one the employee wants."

H.R. 4774 represents a small step toward the remedy favored by an overwhelming majority of the American people. They are opposed to compulsory unionism, as surveys of public opinion have consistently shown. We urge the Congress to heed those wishes of most Americans.







