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Stenographic Transcript Of

HEARINGS

Before The

SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

H. R. 5900, H.R. 7552 AND RELATED BILLS

EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

Washington, D. C.

June 6, 1975

Alderson Reporting Company, Inc.

Official Reporters

300 Seventh St., S. W. Washington, D. C.

NA 8-2345

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House of Representatives, Washington, D. C.

Subcommittee on Labor-Management Relations
of the Committee on Education and Labor, June 5, 1975

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EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

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THURSDAY, JUNE 5, 1975

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House of Representatives,

Subcommittee on Labor-Management Relations, of the Committee on Education and Labor

Washington, D. C.

The subcommittee met at 10:00 a.m., pursuant to notice, in room 2175, Rayburn House Office Building, Hon. Frank Thompson (chairman of the subcommittee) presiding.

Present: Representatives Thompson, Ford, Clay, Biaggi, Miller, Ashbrook, Esch and Quie.

Present also: Representative Peyser

Daniel H. Pollitt, counsel; Edith C. Baum, minority counsel for Labor; and Jeunesse M. Beaumont, subcommittee clerk.

Mr. Thompson. We begin hearings today on H.R. 5900, H.R. 7552, and related bills to amend Section 8(b) (4) (B), the so-called "secondary boycott" provision of the National Labor Relations Act.

Section 8(b) (4) (B) makes it an unfair labor practice for a union to picket an employer or his place of business when an object of the picketing is to force "any person"

to doing business "with any other person." The purpose of this section, as the legislative history demonstrates, is to protect the innocent neutral from the backlash of a labor dispute in which he is"wholly unconcerned."

H.R. 5900 has a long progeny, going back to the 1951 Denver Building Trades Council case. There, a general contractor hired union labor, for most of his operations, but contracted-out the electrical work to a subcontractor who hired non-union electricians at a rate considerably below the prevailing union scale. The Denver Building Trades Council picketed the job site to protest this subcontract, and the general contractor dismissed the electrical subcontractor, and replaced him with a subcontractor who employed union electricians.

The dismissed subcontractor filed unfair labor charges with the Labor Board, and ultimately won the ruling that the union was in violation of Section 8(b) (4) (B). An object of the picketing, said the Labor Board with Supreme Court approval, was to force the general contractor to cease doing business with the electrical subcontractor. Each in the eyes of the law was a separate legal entity, and within the literal language of Section 8(b) (4) (B) the general contractor was a "person," and the electrical subcontractor was an "any other person." But was either the contractor or the subcontractor either innocent, neutral, or "wholly unconcerned" with the labor disputes of the other? I think not, and I am joined by President

Eisenhower, Kennedy, Johnson and Nixon on this score.

Efforts to overrule the Denver case have a long history, beginning with a President Eisenhower Message to Congress in 1954. Republican Alexander Smith, of my home State of New Jersey, introduced a Senate bill that year, and it was favorably reported but never came to a vote. For the next twenty years the effort continued: sometimes in the House, sometimes in the Senate, sometimes in both chambers. It was always favorably reported, but somehow never put to vote.

I hope this session marks a different outcome.

We have the pleasure and honor this morning to have as our first witness Dr. John T. Dunlop, the Secretary of the United States Department of Labor. By unanimous consent I would like to make a part of the record at this point Dr. Dunlop's very impressive and long association with the construction industry going back as far as 1943 -- 1947 when he served on the Wage Adjustment Board down to as recently as 1975 before becoming Secretary as part of a collective bargaining committee in construction. I think it is safe to say that in terms of all the distinguished secretaries who preceeded Dr. Dunlop his expertise in this particular area of labor law is the most impressive we have seen.

(The document referred to follows:)

You are, indeed, very welcome this morning, Mr. Secretary. You may proceed as you wish with your statement.

STATEMENT BY JOHN T. DUNLOP, SECRETARY, DEPARTMENT OF LABOR (ACCOMPANIED BY: WILLIAM KILBERG, SOLICITOR, DEPARTMENT OF LABOR).

Mr. Dunlop. Thank you, Mr. Chairman and members of the committee.

I would like to say just a word about the record, the item that I have submitted and I am delighted you put in the record. I had a different purpose in mind and that is to be sure that to the members of the committee and in the printed record it was clear as to my previous associations in the industry. Those ten assignments on a part-time basis include seven assignments with the government and three of a joint labor-management relationship. I wanted there to be no withholding of information with respect to that matter.

Mr. Chairman, since my statement is brief, I would like to read it, with your permission.

Mr. Thompson. Please do.

Mr. Dunlop. I appear before you today to discuss H.R. 5900, a bill designed to remove certain restrictions upon peaceful labor picketing at construction and building sites. Accompanying me is William Kilberg, Solicitor of the Department of Labor.

The industrial relations climate in the construction industry under collective bargaining improved significantly in the period 1971-1974, it is generally agreed, following years of deterioration after the middle sixties. Only the superficial

observer would confine attention to the marked retardation in the rate of wage and benefit increases under the Construction Industry Stabilization Committee. (First year increases declined from 15-17 percent in 1970 to 5.4 percent for wages and fringes in 1973.) No less significant was the marked reduction in this period in work stoppages over the terms of collective bargaining agreements; the widening of the geographical and craft structure of negotiations in many localities; the differentiation of wages and conditions in many localities to particular branches of the industry, such as housing and heavy and highway work; the rationalization of work rules and conditions in many areas; the greater cohesiveness and devotion of the national labor and contractor leaders to the problems of the industry; and the greater understanding and organization of the owners in their concern with construction. I wish to pay my respect to the courage and responsibility exercised by the national union and contractor officials in the public interest in that period.

It was not possible to maintain this momentum in the industry with the disappearance of wage and price controls in construction on May 1, 1974, despite my repeated advance urginings. Some parts of the country have reverted to the former malaise of widespread stoppages, whipsawing negotiations, disregard for productivity, and excessive increases, and to a decline in the respect for leadership from national union and

contractor groups alike. The long-term state of the industry and national interests understandably attracts local people much less than the national leaders on both sides. But the national leaders on both sides are largely without authority to deal with the problems of local bargaining, although a number are courageously seeking to use their influence constructively in a limited number of situations.

Into this somewhat volatile situation at the height of the bargaining season enters another stage in the legislative debate over situs picketing after a lapse of six years. I want to say publicly what I have been saying in recent weeks to all segments of the industry. I implore all interested parties to conduct the discussion and the resolution of these sensitive issues factually, dispassionately, realistically, and in tolerance and good humor. Only a reasoned discussion can encompass the complex conditions that characterize the industry. Moreover, I would hope that these discussions can be carried on in a way not to exacerbate industrial relations in the industry, but rather to contribute to greater understanding and resolve to get this and other basic problems behind us. The industry is far too important to the country.

As you said, Mr. Chairman, the common situs issue has a long history with which many members of this subcommittee are very familiar, indeed, more familiar than I am with the legislative background. The Taft-Hartley amendments to the National

Labor Relations Act prohibited union efforts aimed at a neutral employer to have him cease doing business with the employer against whom the union had a dispute. Although such "secondary boycotts" became unlawful, a union's right to engage in a strike or picketing against the primary employer was preserved. In interpreting the secondary boycott prohibition under circumstances where there was more than one employer at a worksite, the courts and the NLRB drew a sharp distinction between lawful primary picketing in a general industry setting and lawful primary picketing on a construction site. In general industry, the interpreters of the law had no difficulty in determining that picketing of the entire plant site was, ordinarily, lawful primary activity. In construction, a project with many different contractors was not considered a site which could be broadly picketed. Complex restrictions were placed upon activities at construction sites.

Turning to the bill itself, H.R. 5900 would amend the secondary boycott provisions of the NSRA to make it clear that certain activities affecting secondary employers engaged as joint venturers or in the relationship of contractors and subcontractors with a primary employer on construction projects are not prohibited. The bill also contains a requirement of 10-day notice to the Federal Mediation and Conciliation Service for disputes involving defense or NASA facilities. The bill further provides that certain other kinds of activities

are not permitted; (1) activities otherwise unlawful under the NLRA; (2) activities in violation of an existing collective bargai-ing agreement; (3) activities when the issues in the dispute involve a union which represents employees of an employer not primarily engaged in the construction industry; and (4) picketing for the purpose of excluding an employee because of race, creed, color, or national origin.

Both sides in the construction industry have long been of the general view that a construction site should have a common labor relations policy regardless of how many separate contracts or contractors, prime or subcontractors, are involved. The mixing of labor policies is not conducive to industrial peace, productivity, or good management. Despite short-term presumptions in many quarters, it is not clear whether the adoption of this principle in this legislative form will enhance or reduce the segment of the industry that operates under collective bargaining agreements.

The basic proposal embodied in H.R. 5900 has a long history of bipartisan endorsement. Over the past 25 years, four Presidents, all Secretaries of Labor, and many Members of Congress from both parties have supported enactment of similar legislation. (See Secretary's Shultz' testimony of April 22, 1969 before this committee for a full account.) For example, in 1954 President Eisenhower's labor-management relations message recommended clarification of the NLRA, making it

specific that concerted action against an employer on a construction project who, with other employers, is engaged in work at the site of the project, will not be treated as a secondary boycott.

Mr. Thompson. I would like to interrupt for a minute out to suggest, as I take from your testimony, the reference to Secretary Shultz' testimony, that immediately following your presentation in the record that the previous testimony of the other Secretary of Labor preceeding you will be made part of the record for the benefit of the committee and the members of the House.

Mr. Dunlop. Fine.

Mr. Chairman, if I may proceed. For my own part, in the words of former Secretary of Labor George P. Shultz, "I am here today to indicate my support for legislation to legalize common situs picketing, if that legislation is carefully designed to incorporate appropriate and essential safeguards."

At that time, Secretary Shultz enunciated several guidelines or principles which he felt should be reflected in such legislation. First, other than common situs picketing, no presently unlawful activity should be transformed into lawful activity. Second, the legislation should not apply to general contractors and subcontractors operating under State laws requiring direct and separate contracts on State or municipal

projects. Third, the interest of industrial and independent unions must be protected. Fourth, the legislation should include language to permit enforceability of no-strike clauses of contracts by injunction. Fifth, the legislation should encourage the private settlement of disputes which could lead to the total shutting down of a construction project by such means as a requirement for giving notice prior to picketing and limiting the duration of picketing.

Most of the principles which concerned Secretary Shultz have been met by the present bill, or have been the subject of subsequent developments in case law, or can be dealt with by appropriate legislative history. For example, one significant potential source of unlawful activity which should not be protected is picketing which has the objective of excluding any employee on the basis of race, creed, color or national origin; the bill's antidiscriminatory provisions are clear in this respect. Additionally, the Supreme Court decision in the Boy's Market case satisfies the principle that no-strike clauses in contracts should be enforceable by injunction.

There is one principle suggested by Secretary Shultz which might well be substantially expanded, and I suggest that consideration be given in your deliberations to its incorporation. My reference is to the encouragement of private settlement procedures by notice to picket and authorization at a national level.

Requiring a notice of intent to picket would assure at least a limited cooling-off period, during which the immediate parties to the dispute could have an opportunity for considered evaluation of alternatives and the consequences of their proposed actions. Secretary Shultz proposed that such notice be served upon all employers and unions at the site. I would carry that proposal a step further, requiring ten day's notice to the standard national labor and management organizations engaged in collective bargaining in the industry whose local unions or member contractors are involved in or affected by the dispute. I would also suggest the principle that authorization of such picketing by the appropriate national union be required. The national union should be held not liable for any damages growing out of such authorized picketing initiated by local unions. Consideration might also be given to making the authorization subject to a tripartite arbitration process within the 10-day period.

The international unions and the national employer associations are the major private interested groups functioning at a national level. Notice to such organizations, which are in a position to assist in bringing together the parties to a dispute, could materially contribute to the resolution of the dispute. The parties to the dispute would have not only the benefit of a brief cooling-off period, but also the benefit of potential guidance and mediation by national

organizations of unions and contractors who may be able to encourage a settlement. They could take into account the vast variety of situations which practical people recognize and which have not been recognized by the NLRB and the courts in the past. Furthermore, such notice provisions would recognize, in some measure, the interests of the other employees and employers at the site and give appropriate warning of activities which could affect them. I can envisage the development of a joint labor-management machinery to review individual cases.

Insofar as the duration of picketing is concerned, I would suggest a limit of 30 days, a period which is analogous to that provided by Section 8 (b) (7) of the NLRA for recognition and organizational picketing. As with notice provisions, a limit upon the duration of picketing of the entire site strikes a reasonable balance between the right of labor organizations to take appropriate action and the need to recognize the separate identities of the employing contractors and subcontractors, as well as the potential for disruption flowing from picketing which is unlimited as to duration.

As I previously indicated, the basic principles underlying this bill have been repeatedly endorsed, on a bipartisan basis for many years. A basic and adequate legal structure recognizing the rights of the affected parties and achieving a balance among those rights is essential. But a legal framework

is only one element in the overall picture. To achieve needed improvements in industrial relations in the construction industry requires a responsible exercise of those rights by all parties, and a continuing effort to work toward adjustments in many areas of dispute prevention and resolution. Mechanisms to assure resoltuion of problems can be developed best in an atmosphere generated by reasoned discourse.

I would like to reemphasize, therefore, that in dealing with the immediate issues of H.R. 5900, it is important to recognize that the atmosphere which develops on this bill can affect, and set the tone for, the approaches to other problems of industrial relations in the construction industry as a whole. As a practical matter, reasoned discussion calculated to promote positive solutions, or vitrolic debate enhancing bitter conflict, may well be as significant as any statute itself.

A more general comment may be appropriate. I have come to the conclusion over the past decade that the legal framework of collective bargaining in the construction industry is in need of serious review. On January 28, 1975 in a unanimous statement the leaders of labor and management operating under collective agreements in this industry also expressed the view that "it is timely for labor and management to explore ... a more viable and practical legal framework for collective bargaining." A vastly enhanced role for national unions and national contractor associations, working as a group, is essential

in my view if the whipsawing and distortions of the past are to be avoided and if the problems of collective bargaining structure, productivity and manpower development are to be constructively approached by the industry itself, and in cooperation with governmental agencies. I would hope that this subcommittee could give attention to this serious range of problems after the parties on each side have had the opportunity to consider the issues more thoroughly.

The Department of Labor will be available to the committee to explore the suggestions which I have made in this testimony and to work with the committee on the range of issues involved in the legislation.

Thank you for the opportunity to present my views on these issues. I shall seek to answer any questions you may have.

Mr. Thompson. Thank you very much, Mr. Secretary. One suggesetion with which I thoroughly agree in your testimony is that the discussion of the whole subject matter should be conducted factually -- and I might suggest that we do know the facts and the history -- dispassionately and realistically and in tolerance and good humor. I hope very much that is the case although there was put on my desk a release for today from the Associated General Contractors which I hope can be reversed in which they say,"Let us call it for what it is. The secondary boycott bill before the House Labor-

Management Subcommittee is nothing more than a twofolded well-calculated attempt by the building trades to force management to its knees and the construction worker who does not belong to a union off the job site." I hope by the time they testify they will cool off a little bit, having vented their spleen so early.

I would suggest, too, although I have not seen such insidiary things from those advocating this bill, that they not comment in those tones because I don't think they are very constructive.

The safeguards referred to by Secretary Shultz have very nearly been 100 percent met and we are still open and considering further alternatives. I have had some discussions with Mr. Erlenborn and some others.

I have some reservations, Mr. Secretary, about the 10-day notice suggested on Page 7 of your testimony to the parent organization and the authorization required by them. I can see the value of a notice but I am concerned that with the number of construction sites and with the number of possible conflicts, to give a 10-day notice to the parent organization might in some cases be difficult.

Now by the parent organ-zation let us assume, for instance, that the carpenters on a construction site have a dispute with their employer. Would they notify their international or is it your suggestion that they notify the

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international?

Mr. Dunlop. Yes, sir.

Mr. Thompson. And that the international authorize any strike action before it can be taken?

Mr. Dunlop. Yes, sir. That is the international, in my view, one of the suggestions I made on Page 7. There are several there. In that view the international union ought to review the situation and decide whether it is appropriate under the circumstances to authorize that. The history of the industry is replete with the idea that the national union ought to review contract disputes and authorize local unions who may choose to use the strike weapon in collective bargaining over the terms of the agreement. The industry has long agreed that in the jurisdictional dispute area the use of the strike should be subjected to national union review and in that sense I am extending that principle to a different range of controversy in order to provide review by more dispassionate people, by those who look at the problem in the large and who may have a more considered judgment by means to be used in a given dispute.

Mr. Thompson. In your view, Mr. Secretary, would this maintain the status quo so that the hypothetical subcontractor involved would have to get off the site during that 10-day period?

Mr. Dunlop. My judgment was that the situation as it was at the time of the notice remain as it was for ten days

and presumably within that time there would be mandates that the national union should either approve or disapprove.

Mr. Thompson. I just question, Mr. Secretary, although I see some merit in this, the business of putting the Federal Government into the degree of control over the internal affairs of a labor union. I don't take exception to the tripartite arbitration process within the 10-day period, I think it might be valuable. There are all sorts of variations on this theme,as you know. In the case of the hospital industry we give very careful consideration to impasse procedures, the idea being, of course, our interest in the patients involved. In that case we brought the Federal Mediation and Conciliation Service into the picture. We have not had much experience with that yet. I hope it works well. There are other problems to which I could allude within that industry, particularly relating to the number of units in a given bargaining situation.

Do you think there is any possibility, Mr. Secretary, that if we were to write a 30-day limitation on picketing that this would or could amount to an invitation on the part of the employer involved simply to hold out for 30 days? It seems to me it would encourage him. Further, if that employer were a member, for instance, of the Associated General Contractors, before he decided to lock out or take other action, if the union would need the approval of its international and a

10-day notice period, wouldn't it be reasonable to say that the Associated General Contractors should be notified by the constituent member contractor for a period of ten days and get their approval?

Mr. Dunlop. Mr. Chairman, what I had envisaged in one of the variants set forth on Page 7 is that the local union that wanted to engage in this activity would notify its national union and the national employers association, in the case you mentioned the particular association, as well as the people on the local site. I do not mean the individual on the local site. I mean the contractors organization on the local site.

Now it is my view that if that were done the relationship between the national union and the national office of the association you mentioned and others should be utilized to try to resolve the dispute, recognizing that in general the principle that is advocated in the bill would go into affect. But there are a number of extenuating circumstances in particular cases and those extenuating circumstances could be explored either by the national organizations on both sides or, in the other variant, by an arbitration process passing judgment on the quality of those special circumstances.

Mr. Chairman, if I might elaborate that with a couple of illustrations. You see, one of the problems with this issue over the years as I see it is that people have been fighting it on the level of principle and that always is fine and,

therefore, one must have a uniform solution. When you write legislation you write it uniformly that would apply to all jobs and under all circumstances. Let me give you a couple of illustrations, if I may.

Mr. Thompson. Please do.

Mr. Dunlop. Take the following case: a general contractor, union, lets a series of specialty contracts and he wishes to have a uniform labor policy on the job of a union nature. So he lets the contract. He comes to one of the subs that he has let to in that area. There may be a shortage of specialty contractors in that particular area at the time. They may be full of good business. As a result the bids which he gets may be very, very high. The result of that is that the general may say "wait a minute." Although I choose to have a uniform policy,I am not about to pay that amount of money for the subcontract." Dealing with that particular case, he then decides to let the particular contract, non-union. Well, I don't think it is possible for the board or the courts or anybody else to go into the question of what was the price of the bid and was it reasonable and all that kind of business. But national people, I think, can understand and can act on the sense of whether that made any sense or didn't under all the circumstances.

On the other hand, you can think of just opposite cases where the contract was let, somewhat akin to the original

facts of the Denver case to which you referred, Mr. Chairman, in which all of the contracts have been let according to this uniform policy and the contractor at the last moment finds a way in which, by letting it to somebody else, he may pick up a good many thousands of dollars by having a divided labor policy and that may be quite disruptive under those circumstances. It seems to me that is a very different set of facts than the one I just mentioned a moment ago.

What I really have in mind out of my own experience is that people with a little detachment, who learn to get along at the national level, ought to have a chance to look at some of these cases and to draw a line on advice and involvement, as they are, I may add, daily on contract disputes and it ought to be more so, as they are on jurisdictional questions, and so also in the extending to this difficult range the concept of a machinery to resolve the disputes where parties have demonstrated their capacity to resolve disputes of an analogous and different character.

Mr. Thompson. Thank you. I agree. With respect to uniformity, when the 1959 restriction of the act, commonly known as Landrum-given, was passed in the Congress, I am sure you remember what a divisive time and what a divisive issue it was. The object was, however, particularly in the conference, to establish uniformity. In the 1947 Taft-Hartley Act the object was the same there. The late Senator Taft never

envisioned, nor did any of the authors, the interpretation which the court handed down in Denver Building Trades. In 1959, in a perfectly analogous situation, relief was given to the garment industry. I remember very well going to the House Parliamentarian with those two perfectly analogous industries. In one case he said that with respect to the garment trades the amendment would be germane. On the very same point with respect to the building trades he said it would not be germane.

In the Senate debate on the conference report, Senator Dirksen took note of this, Senator Goldwater, the Majority Leader of the Senate, then the late President Johnson, and others, and promised relief, as was promised in the House by Mr. Kearns, a former member from Pennsylvania, the ranking Republican, and myself. So, we did not achieve the uniformity that we would have had. Had that been done we would not be here.

I can't help but think, though, with respect to the limitation of 30 days, of the possibility that there might arise a situation such as arose last year in the Brookside Coal Company case where the United Mineworkers was recognized in an NLRB conducted election and where the strikers lost. The company held out so long that the strikers lost their status as strikers after a 12 month period. What really brought that to an end in some measure was the intervention of this subcommittee and the tragic death of one of the young miners.

I want to make one or two more comments and then yield to my colleagues. I have taken more time than I should.

I could not agree more than I do with your statement with respect to arriving at a solution to this whole problem in a dispassionate and constructive way. I think that it should be susceptible of that type of atmosphere.

The subcommittee in July is going to undertake rather extensive oversite hearings and have the members of the National Labor Relations Board before us. This subject will no doubt come up, as will subjects affecting a number of other matters. In some areas the employers have been nothing less than outrageously defiant of the law, particularly in 8 (a) (3) cases in the textile industry where for years and years J.P. Stevens and others, notwithstanding six or seven United States Supreme Court decisions and contempt citations, persist in 8 (a) (3) violations.

So, Mr. Secretary, for my part I thank you for what I consider to be a very constructive statement and assure you that we will look at these alternatives which you suggest, to see to what degree in the solution of this problem we can adopt those suggestions. It might be that we could arrive at something near unanimity if, as you suggest, the discussions are conducted dispassionately and with good will.

Mr. Ashbrook.

Mr. Ashbrook. Thank you, Mr. Chairman. Like you, I

have many, many questions. I will try not to take too much time. If there is time at the end I will come back.

On Page 5 you state, "the mixing of labor policies is not conducive to industrial peace, productivity or good management." Is it implied here that you believe the policy would be better on a construction site to have either all union or all non-union?

Mr. Dunlop. Yes.

Mr. Ashbrook. That is a good answer. If you answer like that I won't take very long.

Second, in your previous capacity on the Wage Board you were quoted widely in the press as having declared that construction industry wage rates posed the very grave possibility of an inflationary spiral, in one case a new inflationary spiral. That was a couple years ago. Now I note in your May 1975 Monthly Labor Review which is published by your department, on Page 118 it indicates over "the past six years the construction industry has had a much greater increase in wages than manufacturing, in some cases more than twice as much. That is, in 1969 the overall manufacturing was 6.0; construction 13.1. Another year, 1974, it was 6.1 increase in manufacturing as against 9.6 in construction.

In view of this superior performance in the construction trades at the bargaining table or for whatever reason, how can you justify the position that construction workers somehow

or other are unequal and, therefore, need redress of their grievance in H.R. 5900?

Mr. Dunlop. Mr. Ashbrook, let me say first I was never on the pay board. I was the Chairman of the Construction Industry Stabilization Committee which had the responsibility for handling stabilization under construction and, as my testimony sets forth on Page 1, you will note that the situation I not only conceded but have stated was out of hand in 1969 and 1970 and I spent a great deal of my time mediating and working with the national leaders on the union side and management side and the government to formulate a machinery, the committee, the construction industry stabilization committee, in order to get that thing into a more reasonable posture, not only in respect to wages but the other items to which I referred at the bottom of Page 1 and the top of Page 2 which in some senses are often more important, productivity elements, that is, than even the rate, itself. I think everyone that I know of would agree that by 1972, 1973, early 1974 the behavior of the industry in wages and benefits and the structure of wages and benefits was pretty good and I know of no criticism of that.

Mr. Ashbrook. It may have been pretty good but still it was 50 percent higher than the overall increase in the manufacturing segment. You must be aware that some of the contracts have already been negotiated on the West Coast,

the plumbers and others. Wouldyou call those very good?

Mr. Dunlop. Mr. Ashbrook, I tried specifically to refer to the sort of thing you are talking about in the paragraph on Page 2 where I say"some parts of the country have reverted," etc. I agree with that and I am fully informed about it.

Mr. Ashbrook. Historically what one section of the country gets becomes a pattern for another section. Is that not your experience or is it the opposite?

Mr. Dunlop. It is much more complicated than that.

Mr. Ashbrook. In general it still becomes a pattern. If you get it in the San Francisco area, sooner or later it goes throughout the West Coast, does it not?

Mr. Dunlop. It does create pressures and tensions in that area.

Mr. Ashbrook. Of an upward trend. The pressures are strictly upward as far as rates are concerned, are they not?

Mr. Dunlop. I assure you, having spent my life in mediating those disputes, I agree.

May I come back to the question which is central to the area of your question to me which is the relevance of that to the issue that is set forth in the bill.

I happen to think -- this is very important -- that the problems of wage inflation, if you want to put it that way, in the industry are derived from the issues of the structure of bargaining and the relative roles of the local unions and

national unions and local employers and national employers equally on both sides and reform in that area is essential to achieve moderation.

Mr. Ashbrook. What does that mean in plain English?

Mr. Dunlop. That means that until collective bargaining has a greater role with national unions and national employers you will not mitigate this tendency of the industry to have an upward rise faster than other industries in wage and benefit levels.

Mr. Ashbrook. Then you look upon H.R. 5900 as strengthening the union position in bargaining?

Mr. Dunlop. I do not believe, what I am about to say is that I do not think that the approach to the problem of situs picketing has very much to do one way or another with wage negotiations and that they are separable from it. That is my judgment.

Mr. Ashbrook. I guess I would differ but I certainly respect your opinion.

Now, let us go to several specific areas that Secretary Shultz touched on. You dwelled heavily on those.

Mr. Dunlop. Yes, sir.

Mr. Ashbrook. In meeting the former Secretary's suggestion, that is, where in H.R. 5900 is there any addressing of this problem of a requirement that when a state law requires a separate contract the contractor on those projects should not

be held responsible for each others labor policies?

Mr. Dunlop. The answer can likewise be brief; it is not there.

Mr. Ashbrook. Where in H.R. 5900 or related bills is the point Secretary Shultz raised regarding the protection of the interest of industrial and individual unions covered?

Mr. Dunlop. May I ask Mr. Kilberg to answer it. The industrial plant situation is specifically included.

Mr. Kilberg. That is my understanding. Both the current bill and the 1969 bill would not legalize common situs picketing if "the issues in the dispute," I am quoting from the bills, "involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry."

I think that point is adequately handled. You are correct in saying that nothing in the bill specifically deals with the protection of the rates of individual unions. However, I think that the proscription of Section 8 (B) (7) on recognition and organization picketing would continue to be applicable. Therefore, if an individual union was picketing for the purpose of recognition, it would be barred and continued to be barred by Section 8 (B) (7).

Mr. Ashbrook. Are you looking at Page 2? I take it from your previous answer you were talking about lines 8 to about 13, 10, 11, 12?

Mr. Kilberg. I am sorry. Are you referring to H.R. 5900?

Mr. Ashbrook. 5900, yes. The basic bill.

Mr. Kilberg. That is correct.

Mr. Ashbrook. I am not as intelligent as some but to me that looks a little bit ambiguous.

Mr. Kilberg. I think to the extent that it is ambiguous that could be corrected by appropriate legislative history.

Mr. Thompson. I think the record should show that Mr. Ashbrook is as intelligent as some.

Mr. Ashbrook. But not as intelligent as most.

To me that looks a little ambiguous. I am not sure that legislative history corrects those things. What legislative history do you think we should make to remove the ambiguity since you have admitted there is some ambiguity.

Mr. Kilberg. I am not sure there is. I said to the extent you feel that there is I think it could be corrected by legislative history. I think the language of the bill in my view is quite clear, that the bill does not extend to issues in dispute which do not involve labor organization which is representing the employees of an employer at the site which is not engaged primarily in the construction industry.

Mr. Ashbrook. Another point that Secretary Shultz raised was enforcement of the contract by injunction. The Boys Market case only covers those instances where there is a no strike clause in the contract. But suppose there are no such

contract clauses, what protection would be offered under 5900 in your opinion?

Mr. Dunlop. Let me comment. First of all, since I asked our solicitor to do some research and compare the bills and advise me I would want him to respond since I do think you are asking a question that involves knowledge of these court cases. My own comment, though, would be that I do not know very many contracts in construction or in any other industry today that do not include some form of no strike provision.

I suggest he respond.

Mr. Kilberg. I think, as I recall Secretary Shultz' testimony, it was the Boys Market type situation that he was referring to. There was also some discussion at that time of inuunctions which might be reached, which might be achieved to enjoin jurisdictional disputes, and I believe that 8 (B) (4) (D) of the statute presently handles that adequately.

Mr. Ashbrook. Where in the bill is there encouragement of private settlement of disputes?

Mr. Dunlop. Mr. Ashbrook, I would say that in one sense the notice provision for certain kinds of disputes in the bill might be construed by some to constitute rudiments of such machinery. My own ideas on the subject are those to which I have been referring in my exchange of comments with the Chairman of the committee and are referred to on Page 7 of my testimony.

Mr. Ashbrook. One last question. I have probably 20 or

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30 more but there are other members. I will try to take another minute or two.

You referred to court cases. I am particularly interested in the Connell case. If H. R. 5900 would legalize picketing of secondary employers with the avowed purpose of restriking their business relationships with subcontractors, this would be a secondary employer situation. Do you think there is some danger under this in the dictum of the Connell case that this type of union relationship or union activity could come under the antitrust laws? We are talking about secondary employers in both cases. That seems to be a gate that could be opened.

Mr. Dunlop. Why don't you, Mr. Kilberg, respond to that. I have had a memo on the recent opinion of the court prepared for my education. I came generally to the conclusion on the basis of the very preliminary discussions with the solicitor and his staff that there was not very much bearing of one upon the other. But let him comment on your question because it is a legal question.

Mr. Ashbrook. Or possibly send along your opinion later. I think quite often people think that committees and Secretaries have everything set out in advance. We clearly have not orchestrated any questions and I have asked you significant legal questions of long range implications. If you can't answer now I will ask you to submit your written comments for the

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record.

Mr. Kilberg. I will ask to have included in the record a full discussion of the Connell case and its relationship with H.R. 5900. I think at this point it would be important to note that this bill, as I believe unlike its 1969 predecessor, provides that nothing in the amendment would permit common situs picketing. That is, nothing in the amendment permitting common situs picketing would prohibit any act which is not currently an unfair labor practice. In the Connell case the Supreme Court did find that the activities of the plumbers local in that instance were relative of the hot cargo cause. They were an unfair labor practice under 8 (E) of the statute, and as I read this amendment along with the Connell case this amendment would not make legal that which the Supreme Court has determined is an unfair labor practice under the statute aside from the antitrust questions which were also raised by Connell and, of course, are the main focus of the Connell case.

Mr. Ashbrook. My specific question is whether or not, since we are talking about secondary employers, that would not bring about a different situation which would make the bargaining relationship subject to federal antitrust law.

Mr. Kilberg. I am not sure that one follows from the other, sir.

Mr. Ashbrook. I am not either. That is my point.

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I think you may open up a gate of uncharted areas and make more difficult the entire area at a time in the economy when we are trying to have fewer disputes. I guess that is one of the reasons I am not that much smitten with H.R. 5900. I think it opens up more problems than it solves.

Mr. Kilberg. We will be happy again to submit more detailed legal analysis of the relationships between common situs picketing in the construction context and potential of anti-trust violations, given the courts opinion in Connell.

Mr. Ashbrook. As I recall the court in the Connell case said the union activity was beyond HC and, therefore, not covered by NLRA.

Mr. Kilberg. I don't think we read the case the same way.

Mr. Thompson. We certainly would accept with alacrity your offer and will look forward to hearing from you on that subject.

The Connell case has just come down. I think all of us have examined it but have yet probably not digested it, on a preliminary basis at least. It takes us back to 1914. I am constrained to agree that with respect to this particular situation it would not be affected.

(The information referred to follows:)

Mr. Thompson. Mr. Ford.

Mr. Ford. Thank you, Mr. Chairman.

Mr. Secretary, I would like to compliment you on the approach that you have taken on behalf of the Administration in coming in, a change in recent years to have a person of your stature speaking for the Administration, come in with constructive suggestions about how to improve legislation rather than the bushel of reasons why we should not legislative, although I find some problems with what I am sure you submit to us as constructive suggestions. Would it be asking too much to ask you to submit to the committee your suggested language changes that reflect the several suggestions for improvement that you made in your statement? It might be easier for me to understand specifically what you intend because I am having some difficulty with interpretations.

Mr. Dunlop. Congressman Ford, my intentions, in particularly those parts of my testimony on Page 7, were designed to open up some suggestions for the committee and it was my hope that members of the committee or their staff and our staff could work together on the matter. There are several different variants, as you notice, that I thought ought to deserve consideration. If the committee is interested in language in any one of those, I would be happy to have our people work with yours or the committee staff to put it into language. You notice on Page 7 I did not say I think it

ought to be exactly that way or this way. I deliberately sought to open up a range of ideas for the committee to consider.

Mr. Ford. With all due respect, Mr. Secretary, that sounds like Will Rogers' solution to the U-Boat problem. I am sure you remember the story how Will Rogers suggested that we could solve the problem in World War I if we simply would let up the ocean so that when the U-Boat surfaced because of the extreme heat we could then shoot them. He was asked, "that sounds great but how do you let up the ocean?" His response was, "I came up with the idea; you work out the details."

I would be better able to understand what you are specifically recommending as a change in this legislation if we had a specific recommendation. I am not looking for an argument. I am looking for a clear definition of what you intend.

Let me see if I can share with you the kind of concern I have. First, if I can back off, the press release that the Chairman read at the beginning is not unusual rhetoric, coming from the Associated General Contractors spokesmen. I sometimes think that that association ought to be supporting the Chairman and me and some of the others who keep introducing this kind of legislative because I am inclined to think that we keep them and Reed Larson's right to work committee in business. But there is a very startling contrast here. If you look at his last sentence, "Do the unions have so little

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left to offer that they must resort to legislative strong arm tactics to impose their will on the unwilling?" I am sure he has not seen your testimony because I find throughout the testimony an emphasis by you on the fact that national or international unions should be injected in every stage of the collective bargaining process and should in fact, as you imply here, have some kind of veto power over local action and that national organizations such as AGC or ABC or some of the others should have a similar kind of power with respect to the building. That raises several questions. I don't know whether or not it would be a violation of the antitrust law for a builder to belong to an organization that purported to have that much power setting wages and other things in the industry. I think since last Monday at least there is a serious question as to whether or not that organization might be involved in antitrust activities. I am not so sure that the union, if they attempted even by legislative fiat to impose that kind of discipline, wouldn't be in some kind of difficulty. I find it difficult to square your statement and your answers to Mr. Ashbrook about protecting independent unions with the constant reference in particular here toward the end to "a vastly enhanced role for national unions and national contractor associations, working as a group, is essential in my view if the whipsawing distortions of the past are to be avoided and if the problems of collective bargaining structure, productivity and manpower development

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It would seem we would be legislating a closed shop for the national builders association because presumably you would not have access to the processes you are talking about unless you belonged to a national organization with whom you could consult and be advised or who could represent you in the consultations in this tripartite activity that you suggest take place at the national level. While I certainly have had difficulty with some of the people who have urged the degree to which there should be so-called independents for other reasons and particularly in the construction industry over the years that I have been involved with these problems, I try to think back to the reaction we would have had in the past if it were suggested by organized labor that national unions get this exalted position suggested here by statute. Not only would we be rewriting the structure of the union responsibility between the national heirarchy and respective components but we would be virtually dictating that an independent union would have to be on the outside of this whole process. The process would only be available, as I understand your proposal here, if you had some national status by belonging to a national union. That would seem to me to invite, as one of the sponsors of this legislation, a fight that we don't want to take on and I see no reason to take on with all of those people who become very upset over any kind of legislation that interferes with what

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they consider to be their independence. So, if we could have some specific legislative suggestions about how we would implement this general suggestion that you have, maybe my problems would be cleared up and it would be much easier for me to grapple with it and come to some conclusion about whether it is a wise direction to legislate in or not. That is, what if the employer belongs to more than one national association? Say, he is a contractor who is primarily in the heating and cooling industry. So he belongs to the Associated General Contractors, the Michigan Contractors Association and so on and so forth. He is likely to belong to a multiple number of organizations all of which can be characterized as part of a national organization. Now does he have the choice when he gets a problem of which organization he will pick to be his leg on the milking stool? You have a three-legged stool constructed for us here at the national level. Does he have the option at the time the problem arises to decide which organization will represent him?

Mr. Dunlop. Congressman Ford, you have said a lot of things.

Mr. Ford. I finally did ask a question.

Mr. Dunlop. I would like, if I may, to try to make several brief comments including the answer that I will be happy to submit several variants of ideas in legislative language reflecting the several types of suggestions on Page 7.

I am anxious, however, to take one minute to suggest that

39 I may not have made myself clear. I am not proposing that local unions and local contractor associations be done away with and all their functions be taken over by national people. Far from it. I am, however, of the view that collective bargaining in this industry over a hundred years is evolving and has been gradually evolving towards larger areas of bargaining geographically. Part of it is the result of a high wage system, a lot of it for the changing areas of competition, and that a larger role of the national union and national employers association is a logical development. That is in no way a violation of antitrust arrangements. We have national bargaining completely in the steel industry. We have national bargaining completely in a host of other industries. I am not proposing going that far in construction. There is nothing illegal with maritime bargaining or steel bargaining or airplane bargaining.

Mr. Ford. Mr. Secretary, I understand that is not what you are advocating. You see, we make striking legal under the national labor relations act. We say as we did with legalized liquor, it is only legal if you use it for the right purpose at the right time and place and subject to all the rules. We are talking about the rules here. You are suggesting that as one of the neutrals, regardless of whether the objective that is being sought by the people striking is legal or not legal or proscribed under the law, at that particular

point the specific question has to be referred to Washington.

Mr. Dunlop. Yes.

Mr. Ford. Not the general policy of what reasons there should be for striking in the carpenters industry, that is, but the specific issue in Keokuk, Iowa, that would have to be referred up to Washington before they could do anything out in Keokuk about settling their differences.

Mr. Dunlop. Mri Ford, of course if they work it out locally it would not have to come up. May I say to you that that is precisely the situation in Keokuk, Iowa, with respect to who puts in a metal ceiling, whether it should be done by the sheet metal workers or done by the carpenters or done by the lathers. That decision is appealable under a national machinery to a private machinery which has been in existence since 1948 which I had the pleasure of starting in 1948, I served as Chairman for ten years and then was on the Appeals Board for three more years. So it is not alien in this industry to take issues that can not be resolved locally on a safe and mutual basis and take it to national machinery.

Mr. Ford. You are talking about two components of the international union submitting their respective points of view to their own organization.

Mr. Dunlop. I am taking about the right of employers. The employer has a right to institute a case in the jurisdictional machinery because the employers are just as much involved

in jurisdictional disputes as the unions are. Anyone who understands the industry knows that. They are also as responsible for jurisdictional disputes as the unions are. So, it is an orderly national machinery for disputes that cannot be resolved locally. As I am saying is that I do not regard it as a harsh new principle to refer to the national level matters that cannot be resolved locally.

Mr. Ford. We are talking specifically about giving a 10-day notice during that period of referring the issue.

Mr. Dunlop. Ten days, that is right.

Mr. Ford. Now, if the building site we are talking about is a new Rayburn building or this extension of the library over here where the construction goes on for years, a 10-day notice does not bother me very much. But if the building site we are talking about is in fact a tract of new homes where the plumbers will hit a house and be out of it the same day they hit it, how do you, as a matter of fact, have any right to strike if you have a 10-day waiting period under those circumstances?

Mr. Dunlop. Well, that range of questions is an interesting one. I think on the tract it would be more customary for people to do the tract with certainly more than one house per contractor, as I know that business. I do agree that there are very small jobs and very short jobs of limited duration. That is your point and I agree with it. My own view is that-

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first of all, the kinds of jobs which have multiple numbers of contractors are generally larger jobs. Secondly, I remind you that there will be nothing wrong with raising this matter --

Mr. Ford. I don't know as much about this industry as I would like to and I defer to your greater experience but when you say that the kind of job I have described to you does not have multiple contractors it suggests that I have been more closely associated with it than you. I can't think of any kind of job that is going to give you a wider potential for multiple contractors than the home building industry. I can't think of any trade that does not get involved. The swimming pool industry and highway construction industry have limited trades but home building has them all.

Mr. Dunlop. I grant you that. When you said a tract I thought of contracts being let for more than one house. That is what I meant. But the general answer to your remark, I think, or observation is that typically contracts are let so that people know about them more than ten days in advance. The issue is not when the work starts. The issue could be raised once the contract had been let. You could ask a general to whom he had let his contract if he let them under ordinary procedure, you know about it in advance of the start of the work. He has to make certain preparations and so forth. That would not be unusual.

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In the home building branch it is conceivable that you will have a number of small one-house operations in which case I agree that procedure would work adversely to those interests except the issue before us is picketing. That is all we are talking about.

Mr. Kilberg. Congressman, I would add you made the statement that the right to strike would be delayed. It is not in fact the right to strike which is at issue here. It is the right to picket the situs commonly. Even there we are talking about a broad kind of picketing which this bill would permit rather than the limited kind of picketing which is presently permitted under the rules of the NLRB and courts.

Mr. Ford. One more question, if I may, Mr. Chairman.

The 30 day period also raises questions. Again we are talking about a large single site like a commercial building. I visualize it one way if we are talking about a series of jobs, whether you call it a tract or not, that are smaller. If it is viewed another way it works in reverse of the problems I see with the 10 days on the front. The 30 day picketing limitation on the small job could be a pretty effective period of time. On the big job it looses its effectiveness. Moreover,in my own experience in representing people dealing with contractors, I can't think of anybody entering into a contract with a performance schedule and the final completion date that does not have an escape for a variety

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of things including work stoppages. So that the contractor looses nothing except, you know, he is simply delayed. The contractor has the job under contract. He agrees that by a certain date he is going to finish it. When he finishes it he gets his money; or that he will reach certain stages of completion and at those stages he will get his money. If he has a picketing situation or a strike on his hands he can sit it out almost indefinitely, he does not loose a penny under that contract because he is excused day for day from his performance requirements during that period of time.

Now, what I think always has to be borne in mind in trying to adjust collective bargaining process is anything that will tilt us away from a fairly even sort of situation at the table, where neither side is, by the way the rules are written, so disadvantaged that they are discouraged from good faith bargaining. I am fearful that this is an invitation here for simply saying, well, we will sit it out and then we will go back to work when these fellows have to get off the job.

I am not so much troubled about whether 30 days is long enough to picket as I am that the 30 days might become in fact an encouragement to delay any good faith bargaining for at least 30 days. That is the trouble we always have with these things.

Mr. Dunlop. I appreciate the concern. I guess I should

say generally I included the specific 10 and 30, trying to give some reasons for each by a notion that the 10 was about as short a time as you could expect effectively to get national people in on the situation, also to provide some opportunity to look at it. On the other hand, the 30 day period I chose because it is already in the legislation regarding organizational picketing.

Mr. Ford. Yes, except there is no comparison with those two objectives and what we are talking about. That is what is referred to as blackmail picketing. You have a stranger involved here as distinguished from a situation where you have an existing relatioship, whatever it may be, between the contractor and some of the unions involved.

Mr. Thompson. If the gentleman will yield, that is a direct reference to a Section 8 (B) (7).

Mr. Ford. Thank you, Mr. Chairman. Thank you, Mr. Secretary.

Mr. Thompson. Mr. Quie.

Mr. Quie. Thank you, Mr. Chairman.

Mr. Secretary, as I look at Page 8 and the last point Mr. Ford was talking about, is my understanding correct that there would be a limit of 30 days on the entire site but that at the conclusion of that 30 days if a settlement has not been reached, then they would move back to the present situation which existed prior to this legislation being enacted so that

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Moore Drydock standards would then apply.

Mr. Dunlop. Yes, sir.

Mr. Quie. Mr. Ashbrook asked you if you felt that the union general contractor should deal only with union subcontractors and non-union general contractors deal with non-union subcontractors and you indicated that is how you felt it ought to be.

Now, the problems do not arise only between union and non-union but also jurisdictional problems where, for instance, another union actually had organized workers in one of the trades, for instance, UAW, and then there is opposition to that, or United Mine Workers. Do you feel that the opportunity that would exist if this bill were passed for a site to be closed down because one of the subcontractors was non-union should also be permitted that you could shut down the entire site if one of the subcontractors had signed with a union which the rest of the employees did not agree with?

Mr. Dunlop. First, let me go back to what I thought I said in response to Mr. Ashbrook. He asked me whether the implication, as I understood it, of my statement at the bottom of Page 4 and top of Page 5 implied that a job in this sense ought to be either one hundred percent union or one hundred percent non-union. It was that interpretation of what I had said that I was trying to respond to rather than my notion of how the world in fact is run. I am sure you did

not understand me to say that some legislation should be enacted incorporating that principle.

Now, with respect to the specific question about other than the standard unions, first of all that is relatively rare in the industry, as I am sure you are aware. In all of the governmental bodies involved we have always had occasions to provide for handling of those problems, say under wage controls or under other machinery, to deal with what might be described as a non-standard labor organization.

Mr.Thompson. If the gentleman will yield, there is a reference on Page 7 of the text of the act, Section (D), 8 (B) (4) (D). That is the District 50 application.

Mr. Dunlop. Yes. We would, I think, hold, Mr. Kilberg and I, that the 8 (B) (4) (D), which is the jurisdiction prohibition in the statute, would apply and that it would be inappropriate to picket for the purpose of seeking to remove one of the non-standard organizations. Yes.

Mr. Quie. Does not that apply where there is a question of who shall do the job rather than the question of whom actually the employees have affiliated with as far as the union?

Mr. Dunlop. I have not looked at that question recently. In the years up to 1965 when I was handling these matters every day I recall that the board and the courts had not infrequently interpretated the section to include the kind of case we are talking about.

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Mr. Thompson. If the gentleman will yield, on looking at 8 (B) (4) (D), it says, "forcing or requiring any employer to assign particular work to employees," and here are the key words, "in a particular labor organization," or particular trade and so on. There is a considerable body of case law on the subject relating to District 50. I can give you some citations.

Mr.Quie. Let me back up a little bit. You indicated that your general views were expressed on the bottom of Page 4 and top of Page 5 and you were not recommending any specific legislation. It is my understanding, and tell me if I am wrong, that presently it is possible for the general contractor to subcontract with a non-union subcontractor and if this bill were passed this would make it impossible.

Mr. Dunlop. No. The answer to the first part of your question is yes, that it is done both ways. That is, you have a non-union general who will sub to a union subcontractor and you have cases of union generals who will sub to non-union specialty contractors. Both cases take place in the real world.

The statute does not in any way specify what may or may not be subcontracted and to whom work will be subcontracted. What it does, rather, is to say that under certain circumstances the site should be treated as a site for purposes of peaceful picketing. That is not the same as dealing with the question of the right to subcontract.

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Mr. Quie. Will that not be the end result, however?

Mr. Dunlop. I think, Mr. Quie, that it is very hard to predict the result of this sort of legislation. I think many people talk about it as if they knew. It is for that reason, Mr. Quie, that I added the second sentence to the paragraph to which you have just alluded at the tope of Page 5. I honestly believe that it is not clear whether the adoption of this principle would tend to make for a higher degree of organization or a lesser degree of organization.

Mr. Quie. My understanding of that is that it will tend to make then non-union general contractors deal only with non-union subcontractors and to that extend, if that were the case and they were stronger than the AGC, you would then have more of the work going to the non-union side of the whole construction industry and it might enhance that part. I did not know you referred there that it may actually mean that they could continue going as they are now where it would not be additional leverage given to the union to insure that there were no nnn-union subcontractors in the case the general contractor was union.

Mr. Dunlop. Mr. Quie, this is a large and complex industry, 10,000 local unions or so scattered all over the country, all kinds of local arrangements grow up and many understandings. The division of work and jurisdictions in many other ways varies from locality to locality in the sharpest way. I would

agree with your inference that there is a tendency to work in that direction. I agree that it would tend to make for a more uniform policy but I think that would be very gradual and I think it is very hard to predict how fast that would be. The notion that the passing of this law or any other instantaneously changes the real world I think is very doubtful.

Mr. Quie. In the industrial area where you don't have the problem of the site that is actually what has happened, however. Are there situations where an industry's employees were union and the custodial workers are not union or some portion of that industry is not union?

Mr. Dunlop. Yes. In the industrial scene, as you know, within the bargaining unit the union has a statutory obligation to represent fairly and without hostile discrimination -- the language of the report -- all the employees in a plant. But in a given industrial plant we have all kinds of places in which the board has drawn units in which maintenance and production workers may be union, all kinds of other units, guards, various groups of exempted employees are non-union. Sometimes you have clerical people organized, sometimes you don't. The configuration of organization within many plants is very nonstandard. It is not uniform as you very well know.

Mr. Quie. I did not know that. I recognize when you move away from the blue collar then there is a different question. In the blue collar they are either in or out.

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Mr. Dunlop. We have many plants, Mr. Quie, in which we have an industrial union organizing the production people where we have another union organizing all maintenance.

Mr. Quie. Different unions?

Mr. Dunlop. Different unions.

Mr. Quie. But where there are union and non-union people working, blue collar, in the same plant?

Mr. Dunlop. Yes, there are many places in the country in which you may have part of the blue collar workers organized if the board sets a unit that way. There will be other production workers not so organized. It depends on the unit.

Mr. Quie. I will leave that point and go on to your testimony on Page 7 where you mentioned the tripartite arbitration process. Who would be the third party in this case? I assume you are not talking about the Federal Mediation and Conciliation Service?

Mr. Dunlop. What I am thinking about, Mr. Quie, is an agreement between the two sides in the industry nationally to pick a neutral who would be working on these problems in just the same way at the present time that there is a neutral or neutrals who decide jurisdictional disputes in the industry.

Mr. Quie. The way you have it stated here, can the national union only authorize the picketing if the tripartite arbitration process were set up?

Mr. Dunlop. On Page 7, Mr. Quie, I have really two

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variants of it. That is one of the matters I was implying in my discussion with Mr. Ford. The first would be to say that the national unions decision would be final. That is one view, but only if it were decided it could authorize it -- that would require no neutral at all.

The second suggestion I made, which is implied in the last sentence in the paragraph on Page 7, would be that the national union, if it wished to authorize it, had to have that reviewed by a committee of the union. To be precise you might have a board of two union fellows and two contractor association representatives and a neutral. I say two because of the general sub specialty split in the industry on both sides.

The second suggestion would be that that board would review it for what I have called extenuating circumstances in my discussion this morning, namely if there were the kind of case I mentioned earlier or other special circumstances one might pay particular reference to some defense situation that you might want to pay a good deal of attention to and only in the second suggestion, if the neutral ruled that it was not an extenuating circumstance, would there be a limit on the picket, would there be an objection to the picket.

In other words, the neutral would review the request in effect of the national union.

Mr. Quie. Is your recommendation to mandate it or only the option be given?

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Mr. Dunlop. What I was trying to do was suggest to the committee, Mr. Quie, that the committee might explore this way to develop Secretary Shultz' original suggestion about bringing private machinery into it. I had not in my testimony deliberately said which of these two alternatives would I, myself, prefer. I would be happy to try to think about that and follow up the suggestion of Mr. Ford to reduce them to writing and bring them back to the committee.

Mr. Quie. That would be helpful if you would.

Mr. Thompson. If the gentleman will yield, we will be very grateful for that also, Mr. Secretary. We are looking for as much guidance as we can get.

Mr. Dunlop. We will.

Mr. Quie. Let me ask you another question on your suggestion of ten days notice to the standard National Labor Management Organization, why you chose that rather than the National Collective Bargaining Committee in Construction which I believe you are a member of?

Mr. Dunlop. For some purposes it might very well turn out to be the same group of people. At the present time, the President, as you know, established by Executive Order the Collective Bargaining Committee in Construction. I guess I wrote the words the way I did because I wanted to recognize that that Committee was existing by Executive Order, it might not continue. I think the responsibility ought to be with the

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national union. But your question does, of course, perhaps make it possible to simplify what must appear to many people as a lot of paper here, but if you had a committee office, such as the committee to which you refer, the notice might be sent there and in that fashion all national unions and all national employer associations be directly advised, although I think my preference would be to have the notice sent to the national unions and there employer associations directly for the following reason. They then could get on the phone and find out more about the facts of the case than if it went to some central committee first. That, by the way, is the tradition in the industry. We did that in World War II, we did it in this last wage control period as well.

Mr. Quie. The requirement of notice that exists now in one proviso in the bill that begins at the bottom of Page 2 and top of Page 3 you would state could be expanded to other situations than just in the development, production, testing, firing or launching of munitions, and so forth.

Mr. Dunlop. Yes. In other words, I am suggesting that the committee give consideration to the idea of expanding the notion which is there now as applied to defense work and make it more general.

Mr. Quie. One last question. As the law presently applies to the suppliers of materials and supplies to the construction site, would that in any way be changed if

H. R. 5900 was adopted?

Mr. Kilberg. No, it would not, not under the courts ruling in Markwell and Hart's case where it was very clear in that case that certainly the affected union could picket the gate of the primary employer and the gate of the suppliers to the primary employer.

I don't think that would be affected at all. I would also like to add, Congressman Quie, in relation to your earlier question in which we cited 8 (B) (4) (D), that area standards picketing, which is picketing to truthfully inform the public that a particular employer is paying less than the prevailing wage in a given area, is not prohibited by Section 8 (B) (7) and is not affected by this legislation.

The question of the right of a union to picket with regard to matters of an informational nature which are related to its wages and other conditions of employment is a very complex and sensitive area and I think one which to the extent possible we ought to avoid getting into in this particular legislation.

Mr. Quie. Thank you, Mr. Chairman.

Mr. Thompson. The Markwell case is somewhat unique in that it was thought for a time at least, at least the AFL-CIO Trades Council Union argued that on appeal the General Electric case had been overridden by Markwell and there three separate opinions. A very distinguished lawyer who is present

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in the room argued that case, Mr. Louis Sherman.

Mr. Biaggi.

Mr. Biaggi. Thank you, Mr. Chairman.

Mr. Secretary, I am pleased by your statement of your support of the legislation and the intervening colloquy that we have had indicates that there are a great number of questions that still require answering. Your proposals are interesting. As my colleague, Mr. Ford, said, we have to reduce them to some definite legislative position. I would suggest, Mr. Chairman, in the light of the pleas made by the Secretary in his statement for tolerance and good humor and dispassionate and realistic approach to the problem, that we send a copy of this statement to Mr. Sprouse of the General Contractors Association. There are many areas that have to be discussed and explored. I am sure that ensuing hearings will give us more opportunity. We are restrained a great deal by the time factor this morning. I prefer to defer my questions at this point because I see we have next on the list Mr. Georgine who is President of the Building and Construction Trades Department of the AFL-CIO. I am sure his contribution will be of great substance.

I would like to close by congratulating you, Professor, and thanking you for your support and your enlightened and candid responses.

Mr. Dunlop. Thank you.

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Mr. Thompson. Mr. Peyser.

Mr. Peyser. Thank you very much, Mr. Chairman. I also would like to welcome you here. I certainly am pleased to hear your support of H.R. 5900. I am a co-sponsor of this legislation and I believe that we are finally going to take a kind of positive action on this that should have been taken some time ago. I think also due to the time and due to the detailed questioning that you and counsel have been through I am not going to go any further into the questioning. I want to simply state, though, the particular reference in the title of the bill because I think it really expresses the thought very well. While we are avoiding the use of the term "situs picketing" we are saying basically the bill is "to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers."

It is amazing to me that we have gone through all these years with a great deal of support, incidentally, from different Administrations and never have reached the point of actually enacting what to me is just a question of fair play.

So, once again I simply want to thank you for your previous testimony and your answers, and I thank you, Mr. Chairman, for letting me join you this morning. I will plan on being back this afternoon even though I am not an official member

of your subcommittee.

Mr. Thompson. You are most welcome. Although you are not a member of the subcommittee, I am delighted that you are a co-sponsor of this legislation, Mr. Peyser.

Mr. Ashbrook, we have a few minutes. We have taken a lot of the Secretary's time and we are very grateful for it. I saw him looking at his watch. I assume that he has other commitments.

Mr. Dunlop. Yes, sir.

Mr. Ashbrook. I do have a couple of questions. Say H.R. 5900 passes and a manufacturing facility is having some construction or something repaired. In your opinion could a building trades union having a dispute with a sub-contractor on the job picket the entire manufacturing facility on the basis that it was a construction site under this bill?

Mr. Dunlop. No.

Mr. Kilberg. I think he would be subject to the Supreme Court's ruling in the General Electric case. The question would become on of whether the construction on the manufacturing site was relevant to the operations of the manufacturing site. If not, then they would be limited to picketing at the construction gate.

Mr. Ashbrook. The Moore Drydock situation.

Mr. Kilberg. Or if this amendment be successful, you

would have permission for common situs picketing of those construction gates. I think you would have to separate out the construction site first and you look to G.E. for that.

Mr. Thompson. I think it is quite clear in this bill and in the blue sheet we say that an employer at the site who is not engaged primarily in the construction industry which would answer that question I think.

Mr. Ashbrook. I raise this again because that was your construction of lines 10 to 13 on Page 2 that we discussed. Now I don't think that it does prevent picketing of a job site which indirectly causes industrial workers to stay off the job in sympathy with the building trades dispute. Now, if they indirectly and in sympathy stay off what is the remedy at that point? You say they can't shut it down but I think we all know in picketing that the side effects are sometimes as extensive as the direct effect. Say that they have observed the basic criteria, the Moore Drydock decision, and are not trying to shut down the whole site but in effect it does happen. What is the result? What can be done in that case?

Mr. Kilberg. The courts have indicated a number of times since then, I believe it was the International Rice Milling Case, I believe that is the citation, back in the early 1950's, that it is not the effect of the picketing

but its purpose and object that is the question before the courts. I should think that in the hypothetical you raised what the industrial employer would attempt to do is to set out separate gates for his industrial employees and the employees working on the construction project. Then, again, you would go back to the Supreme Court's standards set out in the General Electric case in 1961.

Mr. Ashbrook. Even if they do this and they stay off the job in sympathy, in effect you are saying very little can be done.

Mr. Kilberg. No. We are not talking in a picketing context. If the industrial employees choose to walk off the job site because of the dispute which a separate construction union may have with that employer, then the employer has remedies presumably at the outset under the collective bargaining agreement and the no strike clause under that collective bargaining agreement, given Boy's Market, he would be subjecting himself to receive an unjunction on that walk out.

Mr. Ashbrook. I think we may be opening something that may, in the long run, be a problem. I have one last statement. I notice the Secretary of Labor is always concerned about man hours lost, jobs shut down. In a situation where under the present law you have a fight with one of the sub-contractors, say an air conditioning installation crew of

61 three men, you shut that down for a week, tha- is 15 man-days lost. If you apply H.R. 5900 to the entire site and 200 men you escalate from 15 man-days lost to 1,015 man-days lost. Now you certainly have considered some projection of anticipated man hours lost under 5900. Do you think it is a problem? Have you done any projection on this and is this exactly what the economy needs at this particular point?

Mr. Dunlop. My answer to that would be no, I have not done any statistical work on the problem. The reason, Mr. Ashbrook, why I propose the suggestion with respect to the machinery that I did on Page 7 was in my view that those private machineries of the several forms I suggested would reduce the extent of such work stoppages by providing means to resolve the dispute and in that way it would be mitigated. If you say to me how much would be the net effect, I do not know.

Mr. Ashbrook. I notice in your statement you indicate it is questionable whether it would be more union or less union.

Mr. Dunlop. Yes.

Mr. Ashbrook. Which, of course, is an asnwer I suppose but I think many of us worry about the practical effect.

Mr. Thompson. I have one comment in that regard. Forty years ago in the Wagner Act the Congress declared that it is the national policy to encourage collective bargaining. I have little doubt that there would be a period, I would hope

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it would be a short period, of turmoil possibly unless all parties were really reasonable as the Secretary would like them to be and we would like them to be. Inevitably there are going to be strikes. It takes us back to the uniformity of the National Labor Reatations Act which we are trying to achieve.

Mr. Dunlop. May I say one thing about your statement. I agree with that, Mr. Chairman. I do think in trying to appraise the effect I would have said the principle effect would be in the way contracts are written. After all, owners who let contracts, how many primes on the job, how many sub-contractors and to whom they subcontract, the existence of the statute would have significant effect in my judgment upon the way the contracts are written and those might be much more important than assuming that the contracts are going to be written the way they have been in the past and then people are going out exercising these rights under the contract.

Mr. Thompson. There has been considerable revolutions in recent years in various labor management situations and a tremendously increasing number of contracts with no strike clauses involved.

Mr. Secretary, we are most grateful to you for your appearance. We do look forward to receiving the opinions and the documents and the suggestions which you and your solicitor have promised us. With that the subcommittee will

recess to meet at 2:00 p.m. to hear our next witness.

Thank you very much, sir.

(Whereupon, at 12:05 p.m., the subcommittee was recessed, to reconvene at 2:00 p.m. the same day.)