The original documents are located in Box 2, folder "Common Situs Picketing - Transcripts of Hearings (4)" of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.

Stenographic Transcript Of

HEARINGS

Before The

SUBCOMMITTEE ON LABOR-LABOR MANAGEMENT RELATIONS

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 10, 1975

Alderson Reporting Company, Inc.

Official Reporters

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

NA 8-2345

CONTENTS

House of Representatives — Washington, D.C.

Subcommittee on Labor-Management Relations of the Committee on Education and Labor — June 10, 1975

STATEMENT OF: — PAGE

H.R. 5900, H.R. 7552 AND RELATED BILLS
EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

- - -

TUESDAY, JUNE 10, 1975

- - -

House of Representatives,

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

Washington, D. C.

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

Present: Representatives Thompson, Clay, Miller and Ashbrook.

Present also: Thomas R. Wolanin, Staff Director; Jeunesse M. Beaumont, Subcommittee Clerk; and Edith Baum, Minority Counsel for Labor.

Mr. Thompson. The subcommittee will be in order.

We changed the schedule today to accommodate Mr. Abel who had to catch a plane. It developed that, unfortunately, he had to catch a plane earlier than anticipated because of some urgent business. So, we won't change the schedule.

Instead, Mr. Abel will be -- no pun intended --ably represented by Mr. Jacob Clayman.

I might inform the witnesses on the schedule this

morning that something beyond our control happened.

The House is going in at 11 o'clock. We will no doubt have a quorum call very shortly after 11 o'clock. We can come back, I hope at least two of us, to take testimony.

The first business at hand is going to be an attempt to override the President's veto on the strip-mining bill, and then I believe there is an appropriations bill of one or another sort and then the continuation of the debate on the energy bill. So that, we will ask your indulgence.

We will make every possible effort to see that all of the witnesses are heard. At the very least, if the situation worsens, we will, of course, take the statements of all of the witnesses and by unanimous consent make them a part of the record as if read.

So, we will proceed now with an old frine of mine and many of the rest of us, Mr. Jake Clayman, head of the Industrial Union Department representing Mr. I. W. Abel, the President of the Industrial Union Department and of the U. S. Steelworkers.

STATEMENT OF JACOB CLAYMAN, HEAD OF THE INDUSTRIAL UNION DEPARTMENT, AFL-CIO (ACCOMPANIED BY: PHILIP DAUGHERTY.)

Mr. Clayman. Mr. Chairman and members of the committee:

Just a quick comment before I read the statement of Mr. Abel.

Mr. Abel intended to be here personally and when the arrangements were made for his testimony he fully expected to be here. Subsequent events pursued and overtook him. As a matter of fact, he is out of the country at the moment. But he did want me to tell you, Mr. Chairman and members of the committee, that he apologizes for the problem that has beset him but he felt so deeply about this issue and felt that relief was so long overdue for the building and construction tradesmen that he wanted this to be his statement, as indeed it is, and while the voice is not his the words and the sentiments are truly his.

Incidentally, Mr. Phil Daugherty of our IUD is here at my side.

STATEMENT OF I. W. BABEL, PRESIDENT, UNITED STEELWORKERS OF AMERICA, AFL-CIO; AND PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO.

Mr. Abel. My name is I. W. Abel. I am the President of the Industrial Union Department, AFL-CIO.

I am pleased to appear in behalf of the Industrial Union Department in wholehearted support of H. R. 5900.

Firstly, Mr. Chairman, I want to congratulate you and your co-sponsors for your profound understanding and appreciation of labor-management relations.

Your bill offers ample evidence that you appreciate the reality of stable and equitable labor-management relations. The stability of these relationships is obviously of enormous importance to the entire nation.

The issue before your committee is not new. So many notables, both Democrats and Republicans -- five presidents commencing with President Truman, virtually every Secretary of Labor since that administration, uncounted U. S. Senators and Representatives -- have heaped such unstinting praise on predecessors of this bill that it is a source of sheer amazement to me that it has not been the law of the land for the last 20 years.

Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon -- the lsit is longer -- Secretaries of Labor Durkin, Mitchell, Goldberg, Wirtz, Hodson, Schultz and Brennan, and now I understand, in principle, Secretary Dunlop, have spoken

our for legislation such as your bill, Mr. Chairman, but there is even more -- New Jersey Republican, former Senator Alexander Smith, Chairman of the Senate Committee on Labor and Public Welfare in 1954, when there was a Republican majority in both Houses of Congress, fathered a bill similar tothe measure before this committee.

Equally interesting and intriguing is the fact that such disparates as Senator John F. Kennedy and Senator Prouty were both for this remedial action in 1959.

So, Mr. Chairman, historically you have had a lot of company on this issue not only from your own party but from Republicans, as well.

The hard fact remains, however, that the building and construction tradesmen still have not been given the protection so many in the highest places in the land have so strongly and eloquently recommended these past 21 years. Hardly ever in the annals of Congress have so many important and influential people uttered so many warm words of praise and support over so long a period for a sound and honest legislative idea without that idea being translated into law. The time for verbiage surely is over; the time for action is now long overdue.

The Taft-Hartley Act of 1947, of course, placed severe restrictions on the types of concerted activities in which workers may engage, including a broad prohibition on secondary

boycotts.

Then, an unduly harsh limitation on the right of construction workers to strike and to picket was imposed as a result of the decision of the United States Supreme Court interpreting the secondary boycott prohibition. (NLRB versus Denver Building and Construction Trades Council, 341 U.S. 675).

Briefly, that case held that a union which objected to a non-union electrical contractor working at a construction site committed an unfair labor practice by picketing the entire project because such picketing induced the employees of the other contractors to stop working.

As I have indicated, even supporters of Taft-Hartley's broad prohibition on secondary boycotts have recognized that this particular application of the prohibition deprives the workers affected by it of any meaningful right to picket.

Why should a union not be permitted to picket the construction project where a labor dispute is in progress, just as a union may picket an industrial plant where a labor dispute exists? Are not all construction contractors working on a single job or project engaged in a single venture very similar to an industrial plant?

In my judgment, the Denver Building and Construction Trades Council's decision is predicated on an elaborate fiction, namely, that general contractors and the various subcontractors are so individual and separate that they must be treated as

utterly different entities as far as labor-management problems are concerned.

The reality is that every building site has many subcontractors working on the same construction job -- bricklayers, carpenters, puplumbers, electrical workers, et cetera. They may be working for different employers but their work functions are parts of a homogenous whole, a mutual package.

There is always a general contractor to bring together the many subcontractors to create a single result. The fact is in the overwhelming number of strikes in the construction industry, the labor dispute is against the general contractors with whome thesubcontractors have joined by agreement.

The general contractor may indeed be the symphony orchestra conductor but the subcontractors constitute the symphony orchestra -- brass, strings, wind instruments, percussion -- all of which merge in the ultimate sound of music. They ara inseparable; they are one, director and orchestra.

I suspect it would indeed be music to the ears of the construction tradesmen that ultimately after all these years, 21 years, if this committee would quickly approve this bill and send it to the Floor of the House and approve it and, hoe hopefully, the President willsign it. That, indeed, will be music as well as, incidentally, justice.

Now, Mr. Chairman, I know you are an expert on music and symphony orchestras. It may be that justice and the

harmony of musical sound can play together but that is another subject and maybe some day I will be asked to testify on that issue. But they are inseparable; they are one, the director and the orchestra.

We believe that it is an overly legalistic and artificial argument to suggest that because such employers are separate legal entities those not immediately engaged in the specific labor disputes are so neutral and unrelated to the general contractors on the site that the slightest possibility of damaged to them should prohibit any meaningful picketing of the site by aggrieved workers.

The essential reality is that, regardless of the separate entity thesis, there is so much mutuality of interest on the same building site that picketing is essentially primary rather than secondary in its intent, purpose and result in regard to all of the employers on the premises.

The heart of the matter is that the Denver Building Trades Council's decision is aimed at the basic right of the construction workers to strike; after you separate all the chatter and folderol, that is the guts of the issue, as we see it.

As long as the Denver Building Trades Council's decision is permitted to stand, for all practical purposes, strikes at building sites by building tradesmen will have been eliminated as a meaningful instrument in labor-management relationships.

This will do grievous injury to our democratic system, as well as to those workers directly involved.

We find no reason whatsoever to treat building and construction tradesmen different than virtually all other American workers in our society. Industrial workers possess the right to strike and picket the work site. Building and constructio tradesmen need and are entitled to this same priceless American expression of freedom.

We earnestly urge the quick approval of this committee in Congress of H.R. 5900 which is specificallyaimed, as were previous bills, at correcting this particular inequity. (See testimony of Willard Wirtz, Secretary of Labor, Hearings before the Special Subcommitteeon Labor of the Committee on Education and Labor, House of Representatives, 89th Congress, First Session (1965), pages 2-12). Its time has come.

Mr. Chairman, if I may add one quick word to this reading.

We in the Industrial Union Department, and we represent about 6.5 million industrialworkers in 59 national or, as we call them, international unions, we feel strongly over the injustice which has been perpetrated overthese long years to fellow workers who are no different from the rest of us, whose legitimate right to strike in the real sense, meaning full right to strike, has been trimmed, circumscribed by a Supreme Court decision that, in our judgment failed to

interpret the law of the land as it should have been. We consider our industrial union rights as precious and one of those rights, as you know, is the right to strike.

How any court, indeed the Congress, can differentiate between the rights of industrial workers and the rights of building tradesmen is beyond our comprehension.

So, let the record show that at le t on the part of many, many mili ons of industrial workers, we offer our hand in support and we will be working doggedly to see that elementary labor-management justice is done to the building tradesmen in America.

Since I appear to be filibustering, let me add another quick word.

I took a look at the statistics yesterday on unemployment among the building tradesmen. The statistics I saw were 21.8 per cent. That, Mr. Chairman and gentlemen of the committee, is depression, not recession. It is sheer depression, bitter depression for these workers who are building tradesmen.

To have this additional burden remain on their backs, in our judgment at least, is unconscionable.

Thank you for the opportunity to be heard.

Mr. Thompson. Thank you, Mr. Clayman.

I hope that you will thank Mr. Able very much for his statement. Of course, we understand why he can't be here.

The statistics to which you refer are national statistics. New Jersey has the highest unemployment of any state in the Union, more than 40 per cent of my building trades constituents are unemployed. Of course, the whole economic situation affects not only them but their prospective employers, as well.

It really is not the fault of the construction industry. The fault lies somewhere in the economy.

We would like to see all of them back to work, all of the members of the Association of General Contractors and other employer organizations have work and contracts and be back at work, and perhaps by the time work comes their way -- because, if they don't get it they can't employ anyone -- they will be working under a revision of the law which will nullify the Denver Building Trades case.

Then when they go back to work it will be a much more peaceful situation than it has been in the past.

I agree that the Denver case is a fiction. It really stands out in a rather unique way as an interpretation of the National Labor Relations Act. As you say, it is perfectly true that the construction tradesmen are denied rights which those whom you represent in the industrial unions have.

It is surprising, also, that with the support of each President since the case came down, including President Ford, and all of the Secretaries of Labor, many people on both sides of the political aisle, that we have been unable until now to

pass this bill or substantially similar ones. I am more optimistic this time than I have been in the past.

In the testimony the other day, Mr. Georgine said in different words what Mr. Abel said, that in this industry the subcontractors and the contractors are all interrelated allies, whichis, of course, true, and your figure of speech relating to the symphony is quite so.

I must confess to have heard some symphonies where I didn't know whether it was the orchestra or conductor; they didn't work too well together, but at least the strings were there and to just sort of stretch our your figure of speech, I don't thinkthe Cleveland Orchestera would sound very good with its brass section or its percussion section or its strings. Not even George Szeld could remedy that situation.

I have no further comment because Mr. Abel's statement is so complete.

This is the eighteenth year that I have sponsored this legislation. I hope it passes so that I can turn my attention for the next 18 years to some other matters.

Mr. Ashbrook.

Mr. Ashbrook. Thank you, Mr. Chairman.

I was interestedin the reference tothe symphony. I guess I remember once a critic stated the Budapest String Quartet played Brahms last night and Brahms lost. I can't help but wonder with this particular symphony who is going to win and

who is going to lose.

I guess I will say to my old friend, and we are old friends because we started out in the Ohio Legislature some years ago, longer than I wish to talk about, Mr. Clayman is a good advocate of the position he represents and I respect that.

What I have a hard time realizing and understanding, because construction tradesmen are our kind of people everywhere, I guess I couldn't get from Mr. Georgine, and I guess I can't get from you, just what suffering this limitation has caused over the years.

What is it that the average tradesman has not been able to do or what is it that he is lacking over the years that this particular legislation would fulfill, some basic goal?

When you look at the tradesmen, sure, there is a turndown row but inthe normal situation he is pretty much at the topcof the heap of the so-called workers.

I guess I don't see where this limitation has caused any undue suffering. Maybe you can tell me, Mr. Clayman.

Mr. Clayman. I dind't listen to Mr. Georgine's testimony.

Mr. Ashbrook. He is a very able spokesman for the cause.

Mr. Clayman. I didn't hear the discussion that took place between you and him. If he is not able to answer that, I can't because he knows more about this issue than I do.

But let me stumble along for a minute.

Let us use the analogy that is being used here, comparability between industrial workers and building tradesmen.

Steel workers, for example, organize a plant; there are all kinds of workers there, including a few carpenters, a few plumbers, a few pipefitters, the whole family of steel workers.

Mr. Thompson. I think most of the plumbers are in the automobile industry today.

Mr. Clayman. Well, I won't take you up on that one.

Now, would you say that we should separate them in terms of picketing and labor-management relations? We don't because there is a mutuality of interest. The only difference between the two situations, as I see it, is the legalism that they are separate entities working on the same project.

In reality, in terms of human relationships I see no difference between the two at all.

I am not one of those who wants to permit that kind of legalism, that kind of technical strategy, to separate effective labor-management or human exchanges. In my judgment, that is the real picture.

Now, from your point of view, I am included to believe that you will place great emphasis on the technical, legal separability of the various contractors. I do not because this is not what makes the relationship meaningful.

Now, does it affect the future of building tradesmen?

I apologize to the building tradesmen who know much more about it than I and this perhaps is territory I should not rtread upon but I would say, hell, yes; I would say that this bill hinders the further establishment of labor-management contracts which in the 1930's at least we came to the conclusion was wholesome and desirable in America as a matter of public policy.

Insofar as that public policy is thwarted, Number 1, it affects the capacity of workers to gain what they believe to be decent wages. It affects their capacity to bargain effectively and it affects their capacity to join together in commonality.

Mr. Ashbrook. I assume what you are saying is that it would thwart further unionizationin the building trades.

Mr. Clayman. That is one way of putting it;yes, which, in my judgment, and in terms of the Labor-Management Act, is considered a worthy public policy in America.

Has it been changed yet?

Mr. Ashbrook. To be achieved butnot necessarily with force.

Mr. Clayman. You say "force"

Is picketing considered an exercise of force, informational picketing? In America, we call it free speech.

Mr. Ashbrook. I hear the testimony, and the truth of

the matter is that tradesmen can now picket or strike but it has to be against their employer.

Using your industrial analogy, I guess that is where we would part company.

Take an area where weknow something about, Rockwell Standard or Owens Corning in Norwalk, Ohio. You have one common employer. While you might have glassblowers and machinists inthe Owens Corning plant, nevertheless they have one common employer. They have a contract. There is accountability. If there is a wildcat strike, the employer has a righ t to expect certain contractual relationships with the employees but at a site I don't see how you can say you have 10 air-conditioning men on the job of 300 and with reference to the complaint of the 10, what about the other 290 and their employers? Their contract is not with those employers. It would not be the same mutuality you refer to.

I guess what you think is legalistic looks pretty basic to me.

Mr. Clayman. That reminds me of some early discussions we had many, many years ago.

Mr. Ashbrook. We still don't know who is right and wrong on those.

Mr. Clayman. It has always been pleasant and enjoyable to me at least.

Mr. Thompson. At least you might be not on the same

track but, thank God, there are two tracks.

Mr. Clayman. Yes. Well, I want them to merge.

Mr. Ashbrook. I think Jake and I have been on different ones.

Mr. Clayman. Not always. In thevery early days, we often were on similar tracks.

Mr. Thompson. Which one of you moved?

Mr Ashbrook. Jake moved up in the world. Really, I think that is the difference.

Mr. Clayman. Let me get down towhat I consider to be basic.

I think it has to be admitted that essentially the right to strike, the right for informational picketing is involved here. If, for example, as most sites are, you have a variety of contractors, the general contractor, the subcontractor, and if you can't picket that site at all because it may affect the rights of those whose workers are not involved theoretically in the immediate dispute or informational picketing, then effectively informational picketing becomes outlawed, has become outlawed for building tradesmen.

Mr. Ashbrook. Aren't the key words "at all"?

You said if they can't strike at all.

Can you name a site or situation where building tradesmen in the Moore Drydock criteria, the basic criteria laid down, have not been able to strike at all?

That is where I disagree with the testimony, that you cannot strike at all.

I cannot think of a situation where you could not strike at all if you did adhere to those guidelines.

Mr. Clayman. I can't answer that because the names are not in my ken, but I am sure the building tradesmen could, but what is clear, and I thought it has been rather generally recognized, is that the essential right for, let us say, informational picketing is impossible unless all of the elements on the building site are involved in the dispute.

Now, what is more important as you weigh damage, let us say, to both parties? Who gets hamed more by the case that now is the law of the land? Is it the building tradesmen who can't exercise the normal kind of activities, organizing and otherwise, that other workers can, or is it the subcontractors who will be hurt the most?

As I weigh the equities between the parties, as I try to measure the harm, one against the other, I come out quite clearly that the most important factor and function to make trade union work in America is this right ultimately for picketing. Take that away and you have a paper tiger and it has been taken away.

I say that it ought to be reinstituted so at least in the balancing of damage or harm or equity the building construction people will come out even. At least, that is the point of

view that I harbor, and I am sure I. W. Abel, the witness, harbors this notion, except that he would express it more eloquently and more effectively.

Mr. Ashbrook. I thank you for your testimony.

The only thing I would say in closing is that the paper tiger, at least on statistics, has been able to run anywhere from one and a half to two times ahead of the general increase of their fellow industrial workers. I am not begrudging them. Maybe the industrial workers are not making enough. At least the paper tiger has not suffered under that disability.

I do appreciate your testimony as always and the clarity of your thought, and I willkeep thinking about it.

Thank you.

Mr. Clayman. Thank you.

Mr. Thompson. With respect to wages, of course, there are considerable differences between the industrial unions and the construction unions in that the construction workers do not have the opportunity to work 40 hours each week;there is seasonal employment involved and weather and other factors. That accounts, at least in some measure, for the difference.

If one were to compare the annual wages, the disparity would virtually disappear.

Mr. Clay.

Mr. Clay. Thank you, Mr. Chairman.

Speaking of wages, I would think that the basis for wages is the ability of the employer to pay. Apparently, those employers in the construction industry are able to pay the kind of wages that are being paid to the construction people bidding on contracts.

I tend to agree with you, Mr. Clayman, in regard to the fundamental right of free speech. I agree that it is one of the most important rights that we have, and the framers of our Constitution saw it in that vein and that is why they included it in the First Amendment to the Constitution.

The right of free speech also implies the right to be heard. It does not mean that you are exercising your right of free speech if you are in the telephone booth shouting at the top of your voice and no one hears you.

I think basically that is the question here in regard to informational picketing, that the construction worker has to have the right to be heard. Otherwise, it is meaningless to picket where people cannot see you.

The opponents of this bill cite a number of things that might happen if this bill is passed.

You refer to the unemployment rate of 21.8 per cent in the industry. What is the labor's answer to the opponents who contend that if this bill is passed it will hae higher cost, less efficiency, and more unemployment?

Mr. Clayman. My answer is that I do not truly

comprehend their argument at all, unless you are prepared to say or they are prepared to say that the answer to our national problems is continual high unemployment which will make for a pliable, meek labor force and you can impose whatever wage rate you want.

If youaare prepared to accept that argument, I think it makes sense.

If you have weak unions, if you have large unemployment in the country, the plain fact is that we will cut down drastically the wage levels. Then you have to ask yourself the question: Is this what we want in America?

Now, your answer, I suspect, and my answer are pretty clear. We don't want this in America. This is not the basic philosophy of our country, either management or labor. So, I don't fully comprehend the argument that is made and I obviously do not agree with it.

I haven't found serious evidence that if you have strong and responsible unions that it knocks either production or wages out of kilter. I think those eras when America seemed to progress with the greatest speed and with the greatest hope were those eras when trade unionism was burgeoning and wages were going along nicely.

If you want to examine, it seems to me, and I am trying to behave like a philosopher now and a historian, and I am neither, if you want to examine the history of progress,

economic and otherwise, social, in this country, it seems to me you will discover, as I think I have, that effective trade unionism, strong trade unionism, and responsible trade unionists is an enormous economic asset, as well as a social asset and in the process wages have gone up and employers have gone up and in the main consumers have profited.

So, if you accept this kind of rationale, it seems to me that you haa a very gloomy picture of the future of America.

Mr. Clay. Thank you.

I have no further questions.

Mr. Thompson. Thank you very much, Mr. Clayman.

It is nice to see you.

Mr. Clayman. Thank you, Mr. Chairman.

Mr. Thompson. Our next witness is Mr. James D. McClary, Chairman of the Legislative Committee of the Associated General Contractors of America.

Mr. McClary, you are most welcome.

If you will, identify the gentlemen with you.

STATEMENT OF JAMES C. McCLARY, CHAIRMAN, LEGISLATIVE COMMITTEE, ASSOCIATED GENERAL CONTRACTORS OF AMERICA (ACCOMPANIED BY: JAMES M. SPROUSE, EXECUTIVE DIRECTOR; AND ARTHUR F. HINTZE, DIRECTOR, GOVERNMENT SERVICES DIVISION.)

Mr. McClary. Yes, sir, Mr. Chairman.

On my right is Mr. James M. Sprouse, Executive Director of our Association; and on my left is Mr. Arthur F. Hintze, Director of the Government Services Division of our Association.

Thank you.

Mr. Thompson. You are very welcome.

May I suggest this.

You may do whatever makes you most comfortable. You may read this statement or, if you prefer, you may summarize it.

Mr. McClary. I hae a summary, Mr. Chairman.

Mr. Thompson. Without objection, your full statement will be made a part of the record.

Mr. McClary. Thank you, sir.

I would also like to ask: We have copies of this, too, and I would like to have both of them in the record, if we may.

Mr. Thompson. Without objection, immediately following your recitation it will be made part of the record.

Mr. McClary. Thank you, Mr. Chairman.

My name is James D. McClary.

I am Chairman of the Board of Morrison-Knudsen Company, Boise, Idaho, a general contracting, engineering and development company.

I am here today representing the Associated General Contractors of America, which I serve as Chairman of its Legislative Committee. I am a past president of the Association.

I am accompanied by, on my right, James M. Sprouse, Executive Director of the Association; and on my left by Arthur F. Hintze, Director, Government Services Division of the Association.

The Associated General Contractors is a national association representing more than 8,000 union and open shop general construction forms.

Our members perform more than 60 per cent of theanannual construction volume in the United States, and perform work across the full spectrum of the industry, including the construction of highways, buildings, municipal-utilities projects and heavy and industrial facilities. Construction volume accounts for nearly 15 per cent of the gross national product. Construction is our nation's largest industry.

You have before you a copy of our formal statement, and I have a much shorter paper which I would like to read. I request, however, that both be carried in the printed testimony.

H.R. 5900 is called by its supporters, "A bill to provide equal treatment of craft and industrial workers", and for a shorter description is referred to as "Common Situs" legislation.

For the purposes of my appearance hre today, I must refer to it for what it is -- a bill to legalize secondary boycotts in the construction industry and to suppress competition in the construction industry. No amount of verbal or written camouflage can change the nature of this beast.

With unemployment in the nation currently almost at nine per cent, almost 22 per cent inthe construction industry, with inflation still close to double-digit figures, and with our economy just now showing signs of some recovery from recession, it is almost beyond belief that Congress would be considering passage of legislation which would further exacerbate our present economic position.

Gentlemen, my Association is opposed to this bill -- not to just technicalities of the bill, but to the very intent and philosophy of this bill.

The heart of our opposition to this bill is that it is a maor step towards imposition of more restrictions on

competition in the construction industry.

The plain fact is that the only salvation for the construction industry today is to do exactly the opposite, to release the forces of competition and give the Government, and other users of construction services, the greatest economy and efficiency in construction that are possible to provide.

I doubt that I would run into any opposition from anyone on this committee, or anywhere in the country, on the desirability of achieving the greatest possible economy and efficiency in construction, in view of the total effect construction has on our future, in terms of energy sufficiency, clean water, housing, defense -- even to providing a lift to help the nation out of its present economic slump -- you name it -- and efficiency and economy in the construction industry are vital to all of these and more.

While we all have an important stake in economy and efficiency in construction, and the indispensable role competition must play in bringing that about, there is disagreement on what effects this bill would have on those desirable objectives.

The building trades unions and the advocates of this bill obviously contend this proposed legislation will further these objectives on putting the unions in a position from which they can exert what they say would be constructive leadership from the labor side of the construction industry.

So, we must all understand at the outset that this bill would restrict competition and impair the maximum attainment of economy and efficiency inthe construction industry.

The bill would do so because it would authorize the building trades unions to restrict the general contractor's choice of subcontractors and products in a competitive market, issues totally unrelated to wages and working conditions.

This is where the issue over this bill is joined. The building trades unions' representative advised the committee last week that his case rests on the "relatedness" of the contractors and subcontractors on a construction site. He repeatedly used such terms as "closely related", "interrelatedness", "work relatedness", and the committee's own statement threw in the phrase "agent-ally".

If these terms are meant to provide the justification for this bill, the bill has no justification in reality. These terms are purely imaginative phrases having no meaning to the realities of the construction industry. They have no meaning in terms of the Supreme Court's decisionin the General Electric case from which theyare supposed to have originated.

I have been in construction all my adult life and I do not know what they are supposed to mean or what kind of response they are expected to evoke.

The relationship among contractors and subcontractors on a construction site is purely a relationship of independent

independent contractors. Each assumes a hard and fast contractual commitment to perform his portion of a project for a price, and each general contractor and subcontractor has complete and total responsibility over what means he will use in accomplishing that end.

Each one is an independent business entity, responsible for his own financing, bonding, purchasing of equipment and materials, and, most importantly, for hisown labor policies and his own work force. Failure to live up to any one of these responsibilities will terminate the contract and be treated as a default with the appropriate liabilities on a hard business basis.

These are the realities of the contractor and subcontractor relationships on construction sites and the realities bear no relationship to the "agent-ally" relationship, the close "interrelatedness", et cetera, which the unions and the drafter of the committee statement apparently have tried to convey.

The proponents of this bill have tried to show the construction industry as being ripe for this bill, by references to "double-breasted" contractors. The realities of "double-breasted"operations are again a far cry from the allegations. They are two independently operated corporations with their own respective construction markets and labor relations policies.

They do not, as the bill suggests, function as joint ventures with one another, since that kind of joint operation would clearly destroy their legality under existing law. A joint venture, I should add, as theterm may not be widely understood, is actually a single business enterprise with a unified management in which two or more independent corporations are joined in apartnership of cooperation to perform under a single construction contract.

It is wholly legitimate, involves no special labor relations problems that I ever heard of, and has nothing whatever to do with"double-breasted" operations, or with the normal contractor and subcontractor relationships referred to earlier.

The supporters of the bill, I believe, neglected to include, in their observations on contractors and subcontractors, the bill's effect on product boycotts of materials used in construction contracts. The Supreme Court opened the door to authorize union restrictions on the use of fabricated products that cut into their traditional on-site work in violation of a labor agreement.

The courts and the NLRB have limited product boycotts under that ruling to cases where the signatory contractor has control of the choice and selected the wrong product, or where he has no control and is not at fault for having lost the control. H.R. 5900 would wipe out all restraints against product boycotts used in on-site construction.

The alleged proof of the argument of "close relatedness" is the Supreme Court decision in the General Electric case. That case has no relevance here.

The reserved gate, which the NLRB ruled could be picketed by the striking plant union, was used by men who were performing work that was, in part, exactly the same kind of work that had been performed by the striking General Electric employees. In that context, the Supreme Court said to bar picketing of a reserved gate, it must be used by men not performing work related to the normal operations of the plant, by the plant's employees then on strike.

Precisely the same rule already applies to construction sites, because if the reserved gate were used by employees to perform the same work thatwas being performed by the general contractor's employees then on strike, the striking union would have everyright to picket the gate. So, where is the big inequality? It is a myth, spun out of a phrase taken out of context from that decision.

The only logical counter to the prime reason given so far for passage of H.R. 5900 is that contractors and subcontractors have a strictly independent contractor relationship, each functioning as a separate business enterprise while at the same time working as a coordinated team in putting the project together.

The fallacy in the proponents' position is the absence

of an employment relationship, or a collective bargaining relationship, between the many building trades unions that will utilize this bill to picket the general contractor to control his use of particular subcontractors.

The importance of the employment relationship was emphasized repeatedly by the Supreme Court in the Connell case, the National Woodwork case, and the General Electric case.

Unions having a collective bargaining relationship with general contractors have a right to strike and picket to obtain restrictive subcontractor clauses, and the right to strike and picket to enforce them, on the basis that violations are a primary dispute with the signatory contractor.

As distasteful as this law may be to construction management, it would appear that the building trades unions have as much authority to influence signatory contractors in the use of subcontractors under the present law, as this subcommittee can give to them if it wanted to pass H.R. 5900.

If this subcommittee undertakes to authorize the building trades unions to use restrictive subcontractor clauses against general contractors, with whom they have no established collective bargaining relationship, it probably would be wasting its time, because the Supreme Court has held, not only in the Connel case the other day, but in Woodwork and others, that such restrictions outside the context of a collective bargaining relationship is subject to antitrust law and we know the unions

do not want that beknghted status.

Another way of looking at the building trades unions' problem, from the standpoint of this subcommittee, is that these unions have the opportunityand the authority to establish the necessary relationships withinthe industry, on the basis of voluntary aragreements, that would give them a solution to their problem within permissible antitrust limits, and that they ought to be encouraged to try aself-solution before asking for the enactment of major legislation, such as is involved in this bill.

Let me add, Mr. Chairman, if the construction union were a sigle construction union such as the industrial unions are, this problem would not exist.

Referring to the part of the testimony given last week by the Secretary of Labor, our Association would be more than willing to work with the Secretary, the construction unions and the Congress to try tobring some sanity to the badly fractured collective bargaining in our industry.

I will close by saying that, instead of adding to the immense power already granted labor, this Congress would be helping the construction industry -- from both the standpoint of labor and management -- and at the same time give a boost to a badly shaken economy if consideration were given to actions which would tend to equalize the strength at the bargaining table.

I hope I can answer any questions the members of the committee may have.

Thank you for the opportunity to express our views.

(The complete statement follows:)

Mr. Thompson. Thank you.

In your testimony, you say that H.R. 5900 would legalize secondary boycotts in the construction industry and override the Denver case.

Mr. McClary. Yes, sir.

Mr. Thompson. That is true because the contractor who retains the non-union subcontractor is not an innocent neutral.

Mr. McClary. Why not, sir?

Mr. Thompson. That is a matter of difference of opinion, I gather, from what you say.

I think I understand after all these years rather well your point of view and I respect your right to it.

Mr. McClary. Thank you, sir.

Mr. Thompson. In the course of it, I do not question or characterize your testimony as being camouflage or in any way deceitful, nor do I imply that. I wish I could say the same for you with relation to my point of view.

The secondary boycott provisions have no applicability if their spirit and purpose rather than their literal language is to be followed. You don't subscribe to that. You say further that the bill would put restriction on competition and that is bad. What it would do is permit picketing and that is put restrictions against picketing by non-union contractors who are retained by the contractor in most part because they are less expensive.

All unions put a restriction on competition by seeking an agreement not to subcontract work to lower-priced or sweatshop industry.

Then you mention the Connell Construction case which came down a week ago last Monday. In that case, the Supreme Court ruled that Section 8(e) of the Act is not intended by Congress to legalize picketing to obtain all-union construction on all-union jobs on a construction site.

You say that the Connell Company decision was, to quote it, "one of the truly significant decisions in the last 10 years."

Well, in the first place, from my point of view, the Supreme Court erred, with all due respect to it, when it construed what it called the intent of Congress. It quoted me twice in its decision and although certainly I am not supreme to the Supreme Court I am supreme to the Supreme Court in that I ought to know better than they what I meant about what I said and wrote during the 1959 debates on the Landrum-Griffin Act.

I don't think it is the most significant decision in the last 10 years. I think it is the most significant decision since the Supre Court drove the Danbury Hatters into bankruptcy and thereby brought about the Clayton Act of 1914. There again that is my point of view.

Yes; for the moment, it is not only significant but it is momentous. I think it points out, even more vividly than

ever, from my point of view, the need to enact H.R. 5900 because I am not at all sure that it applies; I rather doubt that it applies to H.R. 5900 any more than I am sure that the Moore Drydock case does or the General Electric case which really is analagous, at least right on the nose.

However, I don't want to bicker with your point of view. You have it and you hold it honestly and you state it strongly. There are differences, and very strong differences, between our points of view. I will let it go at that.

Mr. McClary. Yes, sir. That is what makes horse races, Mr. Chairman.

Mr. Thompson. I haa not had much luck with them lately. I thought Diablo might come in.

Mr. McClary. Who thought Avatar would come in.

Mr. Thompson. We have gone from symphony orchestras to horse-racing.

Mr. Ashbrook. Maybe that is where we are going; I don't know.

I am interested on page 2 where you talk about suppressing competition. You have been in the construction industry all your life. Could you explain the practical aspect of it? I am interested in hearing how something applies in the field. The theory in Washington is one thing. The theory in the field is something else.

The theory of OSHA is one thing; the phenomenon of

implementation is another thing.

What would be the effect of the implementation of H.R. 5900 and what do you mean by suppressing competition?

Mr. McClary. In two phases, Mr. Ashbrook.

In the first place, about 40 per cent of the work in the construction industry in this country is done by open-shop contractors.

The other thing that is of importance to preface my remark with is that everything that is done in the construction industry is paid eventually by the people inthe country. Construction prices do go up; yes, but people end up paying the price somewhere along the line, those who pay the service of construction.

A general contractor under the present law, unless he has signed an agreement with the unions not so subcontract a non-union contractor, has the right to subcontract to anyone he pleases. Most union contractors can do the work for less money and more economically than union subcontractors can. They do this without paying any different wages than the unions pay because under Davis-Bacon an all the rest of the laws that exist on this it is impossible for anyone to pay sweatshop wages in these industries.

When you eliminate the possibility of a contractor hiring a subcontractor when he figures the cost of his job who might be able to give a lower price you have restricted his ability

to go out and get competition for that work. The same thing is true on the boycott part of it when you restrict the general contractor who is buying the materials, when you restrict him in the places he can buy; if he has to buy a product from a union plant as compared to a non-union plant he is restricted from buying from a non-union plant even though the product is equally as good, maybe better; he can't buy it.

Mr. Ashbrook. You say under the present situation we do have agreements and contracts where the general contractor agrees not to use any non-union labor.

Mr. McClary. That has been approad. It is a so-called contracting clause. It is a negotiable item.

If the contractor in making agreement with the union with which he works agrees to use only union subcontractors, he is bound by the contract he signed.

Mr. Ashbrook. Secretary Dunlop said the other day something that raised a flak, I don't know plus or minus, but for a person who is in the field -- I asked the same question of Mr. Georgine -- he indicated that probably the best thing would be to have construction sites where they are either all-union or all non-union.

dg ends
dc fls

In your experience, do you think there is desirability or preference in achieving that, not necessarily a goal but a condition?

Mr. McClary. In reality, most contracts are either all-

dc fls
dg

union or all non-union.

Mr. Ashbrook. In your experience they are.

Mr. McClary. Yes, sir. However, when you say in the sense that the Secretary did that they would all be one or the other, I say under a law such as this purports to be how do they decide? Who is going to make the decision? The open shop contractor is not going to be able to stay in business too long because he can be picketed. The net result could be a diminution of the open shop non-union effort.

Mr. Ashbrook. You have referred to what you consider the threat of this bill. Is that part of that threat, or what did you mean?

Mr. McClary. That is part of it, yes, Frankly, the only real common sense that there has been in the wage structure in the construction industry over the past eight or ten years has been the existence of an open shop operation. I say that from the standpoint of a contractor who has been union for many, many years, who is glad to be union. We enjoy working with the unions. We get along most of the time. We have mutual respect for each other. We think the union principle is proper. But I still say one of the best dampers there has been on runaway wages in the last number of years has been the existence of the open shop operation. There is no question about it.

Mr. Ashbrook. Do you think a general contractor who in

the trade is going to use all non-union as against a general contractor who will use all union will have an advantage?

Mr. McClary. In the bidding process in the last four or five years where we can get an honest appraisal of that, where the general contractor is open shop and all his subcontractors presumably are open shop, the open shop contractor has been able to bid on most of his work as much as 30 percent lower than the union contractor, as much as 30 percent. Now the average is less, 18 to 20 percent, something like that. I can say that from experience because we keep losing jobs to them.

Mr. Ashbrook. I guess your opening statistic was that 40 percent of your association was an open shop?

Mr. McClary. Yes, sir. Forty percent by number of men.

Mr. Ashbrook. Has it grown?

Mr. McClary. Yes, sir. So, or 15 years ago the figure was probably closer to 20 or 22 percent. Now these are general contractors across the country. We represent all general contractors. But the percentage has grown from the middle of the 20s to about 40. It is still growing.

Mr. Ashbrook. Has the passage of 5700 had a practical effect in this balance between open shop or non-union?

Mr. McClary. They prefer to be called open shop. Non-union is sort of a negative.

Mr. Thompson. We prefer this to be called equal treatment.

Mr. McClary. Yes.

Mr. Ashbrook. I guess what I am getting to is the practical effect of this as far as you are concerned, speaking for both open shop and union contractors, would be what? What would be the final results?

Mr. McClary. The passage of this bill?

Mr. Ashbrook. Yes.

Mr. McClary. The two things we talk about.

Mr. Ashbrook. Decreasing competition and giving the union more power.

Mr. McClary. And the instigation of the product boycott. This goes to a question you asked a witness earlier, Mr. Ashbrook. I fail to see where the building and construction unions have been hurt by this bill since the passage of the original Taft-Hartly based on achievements they have made in wage increases over the last 25 years.

Mr. Thompson. What was passed in Taft-Hartly?

Mr. McClary. I say since the passage of the Taft-Hartly Act I fail to see where they have been hurt by any of these restrictions. Look at their increases in wages since 1959, Mr. Chairman.

Mr. Thompson. How about your profits?

Mr. McClary. Our profits, sir, have stayed about the

same. A little bit more than the corner grocery, about 1.2 percent after taxes.

Mr. Thompson. Corner grocery store?

Mr. McClary. Yes, sir. Slightly more than the supermarkets.

Mr. Ashbrook. You indicated we could probably better spend our time doing other things in a positive way in the labor management field. You didn't give any indication of what you were talking about. What would that be?

Mr. McClary. In that sense, to a large degree we agree with the suggestion made by both Secretary Shultz last time around on this, and Secretary Dunlop here. There are many things that can be done on this to help labor and management. Let me say this. I know that the national leaders of the labor unions are honestly trying to bring something out of the whole construction industry fragmentation the same as we are.

Mr. Thompson. You say the same as you are?

Mr. McClary. Yes, sir. We are trying to do something with it. I will say this in all honesty, not for the benefit of my friend sitting behind me, but it is an honest fact. Some of the things that were put into Taft-Hartly and some of the things primarily in Landrum-Griffin, if I may say so, sir, have put restraints on our national labor unions to the point they cannot control their locals. There are a

lot of those things that should be investigated by people who thoroughly understand this from both sides if we did a better job to try to get some things done so all of us can work together.

Today the presidents of our international unions are almost powerless to control the local unions. They just go maverick. They are surprised to hear me say that. I have said it to them privately, so I might as well say it publicly.

Mr. Ashbrook. Jimmy Hoffa had an answer to that. He called the trustee of local unions.

Mr. McClary. That is the other side of the same problem. One of the other things I did mention as an aside in my oral statement, the building and construction trades union today would not be needing the kind of legislation you are trying to give them here today if they were a single construction union like the industrial unions are. If they want to go that route we are all for it. Instead of having to negotiate 19 times a year we have to negotiate once. We would have a strong, responsible union with whom we can do business. We can't under the present situation.

Mr. Ashbrook. Thank you.

Mr. Thompson. Mr. Clay.

Mr. Clay. Thank you, Mr. Chairman.

On page 7 you say, "We feel that in spite of the no-strike project agreement, this bill could enable the

building trades unions to picket and cause a total-site work stoppage, from Valdez to Prudhoe Bay, because of a dispute between one of the many unions with one of the many hundreds of employers on that project."

Mr. McClary. Yes, sir.

Mr. Clay. Where in HR 5900 do you interpret it to provide for strike on the Alaska Pipeline?

Mr. McClary. We believe that a strike by any one of the unions against any one of the hundreds of contractors on the Alaska Pipeline could shut the whole thing down.

Mr. Clay. In spite of a no strike agreement in the contract?

Mr. McClary. Yes. Here is what happens, if I may ---

Mr. Clay. Yes, explain to us what happens.

Mr. McClary. If there is a honest grievance between one trade and one contractor and within the general description of the legitimacy of the legitimate picket line established on the job, the other members of the building and construction trades department honor the picket line and the job is down.

Mr. Clay. HR 5900 permits picketing in violation of the contract? The Court has held that in a breach of contract that the agrieved party can get injunctive relief. Tell me where HR 5900 would permit the unions to close down the Alaska Pipeline.

agreement, this bill could enable the building trades unions to picket and cause a total-site work stoppage, from Valdez to Prudhoe Bay, because of a dispute between one of the many unions with one of the many hundreds of employers on that project."

Mr. McClary. Let us say this, a picket line is established in violation of the agreement. Let us say the picket line is established. The other unions will not cross that picket line. Now you say we have a right to injunctive relief. You are right. By the time we get through doing that how much time has gone by?

Mr. Clay. I have seen courts act with dispatch, putting union labor leaders and members in jail. Don't tell me about the time. The time is 24 hours or less.

Mr. McClary. Maybe in Ohio, but not out in my part.

Mr. Clay. All over this country. You ask the transit workers in New York City how long it took them to get an injunction and put the head of the Transit Union in jail. You ask the Teacher's Union in New Jersey and other States how long it took them to get an injunction and put them in jail.

Mr. McClary. I have no argument on that. Whether it is State law or Federal law makes a difference of course.

Mr. Clay. Maybe you want to change your statement here on page 7.

Mr. McClary. No, sir, I do not. That situation is as

real, and it is there, it is studied out, and it was thoughtfully put in, and we do not care to change it.

What about a dispute that is not in violation of the agreement?

Mr. Clay. That is not what you are saying. We have no argument about that. If a dispute is in perfect harmony with the contract we have no argument. You are saying in spite of a contractual agreement that they can't close down the Alaskan Pipeline. I am asking you if you want to correct that.

Mr. McClary. No, sir, I do not.

Let me say this. In the realities of construction bargaining or union bargaining anyplace, the alleged reason for the picket line or for the strike is one always within the contract. The real reason does not necessarily even come out in the open.

Mr. Clay. If they are in violation of the contract the courts would readily decide that.

Mr. McClary. The answer is yes, of course.

Mr. Clay. Apparently we are not going to agree on what you actually said on page 7, but I think the record will speak for itself.

On page 4 you say that restrictions of competition would result from granting imunity to the building trades union, and this would force many subcontractors not

operating with labor agreements out of the construction market even though they may in fact be paying as much or more than the union negotiated or prevailing wage rates and working conditions in the area. How widespread is this practice of non-union contractors paying more than those that are unionized?

Mr. McClary. Quite widespread.

Mr. Clay. Quite widespread?

Mr. McClary. Yes, sir.

Mr. Clay. Then maybe you ought to explain what you say in part no. 5 when you say what effect this bill will have. Part no. 5 on page 2, you say if this bill is passed it would result in more unemployment, higher cost, and less efficiency.

Mr. McClary. Yes, sir.

Mr. Clay. If it is a widespread practice that non-union organizations are paying more than union organizations, how will the passage of this bill result in higher cost in the construction industry?

Mr. McClary. Because this bill will give the unions the right to go in and picket, and picket, and picket, until they can put the non-union people out of business.

Mr. Clay. It looks like that would save the contractors money.

Mr. McClary. No, sir.

Mr. Clay. If they put an organization out of business that is charging more for its labor than they are charging it

looks like the end result would be to save money to the contractor.

Mr. McClary. You cannot relate as I explained earlier, the wage paid itself is not the answer. It is the efficiency with which that man works, and the restrictions which he does not work under. A non-union contractor as I said earlier will normally do a job for as much as 30 percent less. The average is 15 to 18 percent in that range less total cost to the general contractor and, therefore, to the owner.

Mr. Thompson. Will the gentleman yield?

Mr. Clay. Yes.

Mr. Thompson. I think if we are going to catch this quorum we had better recess for a few minutes and come back.

Mr. Clay. I have no further questions.

Mr. Thompson. Don't you want to come back and ask some more?

Mr. Clay. I will be back, but I don't have any more questions.

Mr. McClary. Do you have any further questions of me, Mr. Chairman?

Mr. Thompson. I think not.

Mr. McClary. We appreciate being here.

Mr. Thompson. Thank you.

(Recess)

Mr. Thompson. The subcommittee will be in order.

Our next witness is Mr. Michael Markowitz, the Director of Labor-Management Relations for the National Association of Manufacturers.

Mr. Markowitz, I wonder if we could ask you to summarize your statement which would take quite some time to read. I rather doubt that we will be able to come back after another roll call, and there are three witnesses scheduled to follow you.

Mr. Markowitz. Yes, Mr. Chairman. I will take excerpts from my testimony, and that should shorten it considerably.

STATEMENT OF MICHAEL MARKOWITZ, DIRECTOR OF LABOR-MANAGEMENT RELATIONS FOR THE NATIONAL ASSOCIATION OF MANUFACTURERS, ACCOMPANIED BY ROBERT J. HICKEY, ESQ., ATTORNEY, WITH THE FIRM OF KIRLIN, CAMPBELL AND KEATING

Mr. Markowitz. Appearing with me is Robert J. Hickey, an attorney with the law firm of Kirlin, Campbell and Keating.

Mr. Thompson. May I interrupt to say that without objection your statement in full will be made a part of the record at this point.

Mr. Markowitz. Thank you, sir.

(The written statement of Mr. Markowitz follows:)

Mr. Markowitz. As major users of construction our members have a vital interest in HR 5900. NAM's interest, and that of our membership, is not limited just to issues involving the direct cost of construction although this is certainly important to us. Our concern also is that the law presently in effect regarding secondary boycotts in the construction industry not be undermined because once this process begins it will undoubtedly spread to industry generally.

Accordingly, speaking for American industry, we wish to make several points with respect to HR 5900 which we believe lead to the inevitable conclusion that its passage would be a step backwards in the efforts of Congress, the NLRB and the Courts to maintain sound, balanced and rational labor-management relations.

Our fundamental position is that there is no good reason for disturbing the existing law regarding secondary boycotts.

When the Congress passed Section 8(b)(4)(B) -- the secondary boycott provision -- of the Taft-Hartley Act it knew it was engaged in a most difficult process. It was attempting to strike an extremely delicate balance in labor disputes -- the protection of the power of employees to strike and publicize disputes with their employer and the right of neutral employers to be free of such disputes. Congress did not attempt to restrict picketing unreasonably in a primary dispute situation,

since in such a dispute the parties are true antagonists. One side wants something from the other side which in turn is resisting the demand. The law does not in these circumstances choose sides. The "winner" is determined on the basis of strength and perserverance; the law presumes either that most such disputes are fair fights or that in any event the Government has no business intervening in these matters. The underlying principle is that of laissez faire and the belief that ultimately this is in the public interest.

The intent of Congress with respect to secondary boycotts, however, was vastly different. In these cases it was believed that no longer was there a fair fight situation. The union is no longer taking on its foe directly with its own resources and muscle. In a secondary boycott the union strikes or pickets an employer who is not involved in the primary dispute so that such an employer, who is really a "neutral", will put pressure on the primary employer to make him give in to the union.

This point cannot be stressed too emphatically. Congress believed that putting pressure on a neutral third party to force it to intervene on the union's behalf in the real dispute is unfair and wrong. And all the NLRB and court decisions written since the enactment of 8(b)(4)(B) have been designed to interpret and put flesh on that fundamental determination of Congress.

We go on in our testimony to summarize the development of the law, going into Denver Building Trades, General Electric, Markwell and Hartz, and other cases. Since, as you say our statement will be read in the record in toto I will skip over that portion of our testimony.

Now with respect to the proposed legislation, in simplest terms, HR 5900 would grant the building trades unions a significant exemption from the secondary boycott provisions of Section 8(b)(4)(B). As written, the construction trades could engage in the following kinds of strikes and picketing on a common situs which would shut the entire project down:

1. To force a non-building trades union employer off the job. This is not limited to the subcontractor which is not unionized but would also include an employer with a contract with a union which is not affiliated with the AFL-CIO Building Trades Department. This can be done by simply claiming that the employer is not paying union, euphemistically termed "area", wages, or not utilizing union restrictive procedures, for example, bans on how many bricks can be laid an hour.

2. To prohibit the use of prefabricated material on the job site. Under the provisos of course of natural woodwork doctrine.

3. To shut down industrial sites. Thus, if General Motors subcontracted its painting work to a painting contractor whose employees were not members of the AFL-CIO Building Trades

Department, the employer could be struck based on the claim that the employer was not paying craft union wages or not using craft union restrictive practices. Because the industrial employer could not set up gates reserved for the subcontractor's employees, the entire industrial complex could be subject to picketing and a possible shutdown.

4. To force an employer to accept its interpretation of the contract where the contract does not have a no-strike provision. It should be noted that where contracts do contain a no-strike clause, the more powerful union could merely eliminate it after expiration of the current contracts.

The real issue presented by HR 5900 is whether it would be sound public policy to override present NLRB and court interpretations of Denver Building Trades and declare, in effect, that all employers engaged in construction on a construction site are interrelated for 8(b)(4)(B) purposes.

A number of legal scholars have considered this question and, as Professor Norman Cantor of Rutgers Law School concluded after a thorough review of the authorities, they have "supported the Board's refusal to extend the related work rationale to construction industry cases." Separate Gates, Related Work, and Secondary Boycotts, Rutgers Law Review, Spring, 1974, Pages 613-659. According to Professor Cantor:

The scholarly consensus is, therefore, that the Board is correct in withholding such broad power from the building trades

unions.

These opinions are based on the fact that because of the inherent interrelatedness of construction tasks, unions would, under the General Electric standard, be able to shut down entire projects over any and all legitimate labor disputes, no matter how significant.

Mr. Thompson. I am glad to hear that Rutgers has a legal scholar. I went one year there and had a very successful year. I thought largely on the basis of their lack of scholarship because I got very good grades.

Mr. Markowitz. I went there for one year as well.

Mr. Thompson. You sound it.

Mr. Markowitz. I guess we both do.

We believe that the legal scholarship in the field is correct and we take the position that HR 5900 is unsound for the following reasons:

1. The construction unions are seeking an unwarranted increase in their present enormous power.

We believe that consideration of HR 5900 must be in the context of the times in which we live and must take into account the relative position of construction unions vis a vis other unions, their employers, and other segments of our society. A casual reading of most newspapers discloses that home building has been in a slump for several years due in large measure to skyrocketing costs of labor in the construction

industry. We read about the large number of bankruptcies among the building contractors. We know, of course, about our rampaging inflation and the impact of huge wage increases on this inflation. We also are well aware of the great numbers of people either out of work or earning marginal incomes. It is in this context that the building trades unions come to you seeking greater privileges. Should you grant them these privileges? Let us see if they need them.

We have in our testimony a fairly detailed comparison of wages in the construction industry and the manufacturing segment, and we believe that these figures appearing on page 11 clearly indicate the relative advantages received by those in the construction field. I might point out, however, that in 1975, to be more specific, median first year wage increases negotiated to date in both manufacturing and nonmanufacturing, excluding construction, is 44.9 cents an hour. For construction, the year to date median is 76.0 cents an hour. In the most recent two-week period for which we have information -- May 6 through May 19, 1975 -- the median manufacturing increase was 39.7 cents an hour; in construction the median wage gain was 85.3 cents an hour.

Illustrative of the recent settlements in the construction industry is an agreement reached in Portland, Oregon, between United Association Local 51 and the Plumbing, Heating and Cooling Contractors Association, calling for a $2.30 an hour increase

in one year in wages and fringes. This settlement was so alarming that Secretary of Labor Dunlop recently singled it out for criticism.

Finally, translated into real terms, average hourly earnings for unionized construction workers, including contract-stipulated employer payments to health and welfare, insurance, pensions, and vacation funds, came to $10.00 an hour as of April 1, 1975.

It would seem, then, that the construction unions are not now suffering under a heavy and unequal yoke. Far from it -- they are actually faring much better than their counterparts in manufacturing. We therefore fail to see the need for a further expansion of their power which HR 5900 would grant them.

2. The claim of the construction unions that they are treated unequally under the law lacks merit.

Although the construction unions argue that the law as it presently stands makes them second class citizens actually the opposite is true. In fact the construction unions presently enjoy privileges and immunities not granted to other unions.

Section 8(e) of the NLRA grants to construction unions the right to enter into "hot cargo" agreements covering work at construction sites. Virtually all other unions are denied this special exemption from the law.

Section 8(f) of the Act grants special organizational and hiring hall rights to construction unions granted to no other unions.

We submit that this special treatment of construction unions did not come about by accident or happenstance. Congress believed that the construction industry had problems and needs that were unique to it and which required statutory recognition. But the fact remains that the construction unions do receive special and preferred treatment under law. How much more special treatment do they need?

3. Because of the nature of the construction industry the present NLRB and Court interpretation of Section 8(b)(4)(B) is both necessary and correct.

As just noted it is possible to contend that the nature of the construction industry requires that its unions have certain special rights above those granted to other unions. But we believe that the converse is also true; that the nature of the construction industry is also such that to apply the General Electric related work standards to it would be a major public policy mistake.

We believe that the principles enunciated in Denver and Markwell & Hartz are correct. To treat a construction situs situation the same way as a manufacturing situation would do incalculable harm. To apply the related work test is meaningless. All the other contractors will be treated as

neutrals or none of them will be so treated. Either position yields unsatisfactory consequences. And this, of course, is precisely the point made by the legal scholars who have dealt with the issue.

In manufacturing situations it is possible to look at a particular piece of work performed by an outside contractor and see if it is in fact related to the normal operations of the manufacturer or not. If it is related then the contractor is unprotected and vice versa. The conclusion will depend on a precise evaluation of the facts. A case could go either way depending on those facts. Thus the entire project or plant may be shut down under some circumstances but not under other circumstances.

This would not be the case in the construction industry if the related work test is applied and it is concluded that all of the numerous construction contractors usually present on a construction job are interrelated. Every union dispute with any contractor would involve every other contractor and would shut down the entire job. The question of whether related work was involved would have already been answered in the affirmative and unlimited picketing would automatically be allowed. This would be the result of applying the G.E. standards to construction. And this is what the drafters of HR 5900 would seek to do by legislation.

Every dispute between a union and one of many contractors or subcontractors, no matter how trivial, would be allowed to close a major building project. A dispute involving three or four employees would throw thousands of others out of work and add enormously to the costs of construction. Ultimately, these added costs would be passed on to us, the consumers.

In conclusion we believe that passage of HR 5900 is both unwarranted and unwise. Construction unions already too strong would be given a virtual stranglehold on our larges and most important industry -- construction. But the price, ultimately, will be paid by all of us.

Thank you, Mr. Chairman.

Mr. Thompson. Thank you, Mr. Markowitz.

I note on page 1 of your testimony you oppose HR 5900 because it might undermine existing law. Then you say that once this process begins it will undoubtedly spread to industry generally. That is rather a camel's nose theory. Why do you think it would spread to other industry?

Mr. Markowitz. I think that basically the provisions concerning secondary boycott have been in the Act for a number of years now and there has been up until now no serious effort, certainly nothing that has succeeded recently, to materially change, certainly not at all to change the provisions of the secondary boycott provision. We are

concerned that whenever you begin the process of change we don't know where that general process will lead.

Mr. Thompson. That is a general concern.

Mr. Markowitz. That is a general concern, that is correct.

Mr. Hickey. There is something to be added too. One of the thrusts of the construction trades union for having legislation is the unfair treatment they are receiving. If you pass this bill you will be unfairly treating industrial unions.

Mr. Thompson. Why?

Mr. Hickey. Because they don't have the privilege of 8(e) and 8(f).

Mr. Thompson. If they showed they were unfairly treated under 8(e) and 8(f) they would get sympathetic hearing here. Didn't Denver and other cases single out a particular group?

Mr. Hickey. No, Your Honor. The Denver Building applies ----

Mr. Thompson. I know I am honorable, but I am not an Honor.

Mr. Hickey. Denver Building applies to more than construction. It applies to shipbuilding, to mining. All these industries have the same problem.

Mr. Thompson. By shipbuilding you refer to Moore Drydock?

Mr. Hickey. That is correct, sir. It applies to all industries where the common situs is involved. You are taking out one single group where common situs picketing is involved and giving them rights and not to other groups.

Mr. Thompson. Isn't the reverse true now?

Mr. Hickey. No, it is not true. A mining company would have the exact same problems where you might have construction going on, two or three different groups going on, you might have a lease operation in manufacturing, several leaseholders. These are all subject to these rules but they are not going to get a benefit of this legislation if there is a benefit to it.

Mr. Thompson. You argue there is still reason for disturbing existing law to protect innocent neutrals. My answer to that is that I don't have any objection to protecting an innocent neutral, but I don't consider the contractor who subcontracts to a non-union sub is an innocent neutral.

Mr. Hickey. Let us take an example where a subcontract is to a non-CIO-AFL union, the union is strong in Milwaukee. It is a non-CIO union. It is a union though. It could be subject to the same picketing to force it off the site to give the work to AFL-CIO. You could have the Teamsters. You could have several types. You could have an industrial union, an industrial context. This picketing could occur in an industrial site. You could have an industrial union being

forced off the work because it is doing construction work. So this goes beyond the non-union situation.

Mr. Thompson. You refer, of course, to Moore Drydock, which in my judgment doesn't make any particular sense because of the unique nature of that case in the construction industry.

Further, you say on pages 7 and 8 that if HR 5900 becomes law it could force an employer off the job site if he had a contract with a union not affiliated with AFL-CIO. You just repeated that.

Now you know you can't picket if it would be illegal under the law. Section 8(b)(4)(D) deals with that, does it not. It deals with jurisdictional disputes.

Mr. Hickey. That is right. If you struck over area standards, or if you come in and say that the work that is being performed by "x" employees or x union does not conform to what your union does, that is area standards. Under the present Board law that is permissible to picket. So you have a single union fighting a single employer over a particular work practice which in fact will force that union off the site because, to take the simplest example, a painting union, they might use rollers, they might use spray guns, that particular painting union might say we don't want rollers or spray guns. In fact because of that particular group that is doing the work that is how they operate, that in fact will

force them off the job.

Mr. Thompson. Now HR 5900 permits picketing, to quote it, which is directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers, or in the relations of subcontractors in such construction. Now General Motors is not in the construction industry. So, your hypothesis I would think is not correct.

Mr. Hickey. The first sentence to the bill refers to repair of buildings. I don't know how that can be on a construction site. You are talking about an existing building. You can have painting on a site, and the union will come in and say this is construction work, and it might have been given to GM's own employees, or some other group. That is the way the bill is written. It covers painting and repair of building. So it does affect industrial sites.

Mr. Thompson. How about the language where it says that the strike must be directed at any of several employers who are in the construction industry?

Mr. Hickey. The repair of buildings would have no meaning. If it is struck, if that is what the sponsor meant then I think they should strike the reference to repair of building or painting on industrial sites or any industrial sites, but that is not what the bill says.

Mr. Thompson. Do you think under Section 8(e) that the construction industries are different from the manufacturing

industry?

Mr. Hickey. Congress recognized them to be with limited exceptions. It gave complete exemption for the garment industry, but it eliminated one for 8(e).

Mr. Thompson. We recognize construction is short term, so we allow pre-hire.

Mr. Hickey. Labor comes in and says we want all the benefits of the construction union that Congress has given us and all the benefits of an industrial union. Why one and why the other? They want both.

Mr. Thompson. Yes. I think they should have both.

Mr. Miller.

Mr. Miller. I have no questions, Mr. Chairman. I just would like to have for the record I was a little bit disturbed by the exchange that took place between the representative of the Associated General Contractors and Mr. Clay. I would hope that that does not reflect the sanctity with which his organizations hold binding contracts to say that in fact even when the parties have contracted to do one thing that this law will allow them to do another, which I think is a little bit spurious at a minimum.

Thank you.

Mr. Thompson. I agree.

Reference was made by the AGC, to their belief that if this law were enacted that the construction trades could shut

down the Alaska Pipeline. If the AGC wishes to provide a supplemental statement in support of that assertion we will be very glad to have it.

Thank you, Mr. Markowitz.

Mr. Hickey. Thank you, Mr. Chairman.

Mr. Thompson. Forgive my reference to Rutgers. I was there earlier than you.

Mr. Hickey. It didn't get much better.

Mr. Thompson. I am embarrassed because it is our State University. I won't say why I am embarrassed.