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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 11, 1975

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House of Representatives — Washington, D.C.

Subcommittee on Labor-Management Relations of the Committee on Education and Labor — June 11, 1975

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WEDNESDAY, JUNE 11, 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 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. Frank Thompson (chairman of the subcommittee) presiding.

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

Present Also: Daniel H. Pollitt, Counsel; Jeunesse M. Beaumont, Subcommittee Clerk; Edith Baum, Minority Counsel for Labor.

Mr. Thompson. The subcommittee will be in order for further hearings on the Bill, H.R. 5900 and related bills.

We were to have the honor this morning to have Mr. George Meany, the President of the American Federation of Labor-CIO, but unfortunately Mr. Meany, who is one of the most remarkably active men I have ever known, got a little too active and had some leg trouble as a result.

1 So, we have the pleasure of having the Legislative
2 Director, a former member of this body, and an old, old
3 friend in every sense of the word, who is going to present
4 to us Mr. Meany's statement, which I might emphasize was
5 prepared by Mr. Meany, and is being presented by Mr. Biemiller
6 because Mr. Meany can't be here.
7 Good morning, Mr. Biemiller.
8 STATEMENT OF ANDREW BIEMILLER, LEGISLATIVE DIRECTOR,
XXXX 9 AFL-CIO, APPEARING ON BEHALF OF GEORGE MEANY, PRESIDENT,
10 AFL-CIO, ACCOMPANIED BY LARRY GOLD, SPECIAL COUNSEL
11 Mr. Biemiller. Thank you, Mr. Chairman.
12 I am accompanied by Mr. Larry Gold, Special Counsel for
13 the AFL-CIO.
14 As you said, the testimony I am about to present is
15 Mr. Meany's own testimony.
16 I am here today to urge the prompt enactment into law
17 of H.R. 5900. The policy statement of the AFL-CIO's Executive
18 Council dated May 5, 1975, supporting that legislation is
19 attached to my testimony. That statement was unanimously
20 adopted by the Federation's Vice Presidents, who represent
21 every segment of the labor movement.
22 H.R. 5900 defines the scope of the right of building
23 tradesmen to engage in peaceful picketing and allied activity
24 at a site where two or more nominally separate employers are
25 present during a lawful labor dispute with one of those

1 employers.

2 The time for a legislative redefinition of that right is
3 plainly due, indeed, it is long past due.

4 The issue addressed by H.R. 5900 is hardly a new one.
5 The problem it solves came to light immediately after the
6 Taft-Hartley amendments added a list of union unfair labor
7 practices to the National Labor Relations Act. The most
8 complex of these was the Section 8(b)(4) prohibition of the
9 secondary boycott. In an early series of decisions, the
10 National Labor Relations Board, while still struggling to
11 understand the vast new area it had been called on to
12 administer, determined that where employees have a labor
13 dispute with one nominally separate employer at a building
14 site any peaceful picketing or allied activity directed at
15 securing the support of the employees of other employers work-
16 ing at that site is unlawful. That view of Section 8(b)(4)
17 was accepted in the Denver Building Trades case decided in
18 1951 (341 U.S. 674)

19 The Denver Building Trades decision has been the
20 subject of Congressional review on a number of occasions. The
21 result has been that over the past 20 years four Presidents of
22 the United States, seven Secretaries of Labor and numerous
23 members of both parties in Congress have stated their
24 support for legislation along the lines of the bill now
25 before this committee.

1 In 1959, when Congress was considering the legislation
2 which in its final form became the Landrum-Griffin Act, a
3 proposal to amend Section 8(b)(4) so as to overrule
4 Denver Building Trades was introduced by yourself,
5 Mr. Chairman, and by the then Senator John F. Kennedy. You
6 will recall, I am sure, that the addition of such a provision
7 in the bill was a major issue before the Conference Committee,
8 and that only a threatened point of order prevented that
9 committee from agreeing to its inclusion.

10 Again, throughout the 1960s, efforts were made in
11 Congress, with the approval of the Administration, to secure
12 the passage of legislation that would restore to building
13 tradesmen the full right to strike and picket.

14 The bi-partisan consensus that has emerged was aptly
15 stated by President Eisenhower. In 1954 and again in 1956
16 and 1958 he recommended: "That the /National Labor Relations/
17 Act be clarified by making it explicit that concerted action
18 against an employer on a construction project who, together
19 with other employers was engaged in work on the site of the
20 project will not be treated as a secondary boycott."

21 The reason for that consensus is easily stated. The
22 Denver Building Trades case was wrongly decided. It expanded
23 the protection of truly neutral employers that the Congress
24 had intended to enact into a protection for employers closely
25 allied with each other. Everyone who knows the construction

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1 industry knows that the operations on a job site are highly
2 interdependent and that the assignments to each contractor
3 are closely coordinated. Just last month the United States
4 Court of Appeals for the Seventh Circuit stated: "On a
5 multi-employer construction site it is the general contractor
6 who contractually controls the worksite." Anning-Johnson Co.
7 v. OSAHRC, Nos. 74-1381 and 1382; May 27, 1975.

8 Moreover, by allowing the form of business organization,
9 a matter within the employer's sole control, to determine the
10 right of building tradesmen to strike and pi cket, the
11 decision allows one side to a controversy to arrange its
12 affairs so as to give itself the maximum advantage.

13 Finally, Denver Building Trades disregards the
14 Congress' desire expressed in Section 13 of the Act, to
15 preserve the right to engage in traditional primary activity,
16 with the result that building tradesmen have, in practical
17 terms, been required to disregard their common interests and
18 break each other's strikes.

19 With very few exceptions the only opponents of legislation
20 to correct Denver Building Trades have been the anti-union
21 employers who benefit from the restrictions on the basic
22 right to strike and picket presently imposed on the building
23 trades alone. To this point through reams of misleading
24 propoganda and a series of delaying tactics and procedural
25 maneuvers, they have been able to forestall action. While they

1 have proved adept at securing delay and obscuring the single
2 point at issue they have never shown any ability to state
3 valid arguments for their position. I do not mean to blame
4 them for failing to address the merits of the case. For the
5 simple fact is there are no arguments for their position.
6 While there is a natural tendency to suppose that when a
7 debate over a legislative proposal has continued for a period
8 of time there must be some substance on both sides, that
9 supposition is unsound in this instance.

10 Two of the favorite themes of the supporters of
11 Denver Building Trades are that legislation such as H.R. 5900
12 will drive up wage rates and will harm minority employees.
13 But H.R. 5900 is not a bill to increase wage rates. It is
14 intended to correct a long standing injustice on a matter of
15 principle and to let the chips fall where they may. That is
16 all the labor movement asks.

17 Secretary of Labor John Dunlop is probably the leading
18 student of the construction industry. Last Thursday he
19 advised this committee that H.R. 5900 would not affect the
20 structure of wages in the industry. I think the committee
21 should be, and will be more interested in Dr. Dunlop's views
22 than in self-serving statements from anti-union employers.

23 The AFL-CIO has long been a forthright champion of
24 civil rights. Our commitment is attested to by our support
25 of Title VII's regulation of the labor movement. I don't

1 remember the employers, who show such concern about minorities
2 when legislation to overturn Denver Building Trades is
3 introduced, helping us pass Title VII in 1964, or helping us
4 strengthen Title VII in 1972. For their true interest is in
5 helping themselves by restricting the rights of all workers
6 regardless of race, creed or color. Even though this is so,
7 I commend you, Mr. Chairman, for adding a subsection to
8 H.R. 5900 making it plain that the bill does not sanction
9 picketing activated by a discriminatory purpose. That step
10 assures minority rights and removes a wholly irrelevant
11 issue.

12 As I noted at the outset, Denver Building Trades was
13 decided in 1951. In 1961 the Supreme Court decided a
14 Section 8(b)(4) case that arose at an industrial plant. In
15 that case the employees of General Electric's Louisville,
16 Kentucky plant struck the company. In support of their
17 strike they picketed an entrance reserved for employees of
18 independent contractors also working at that site. The NLRB,
19 following its approach at the time to all cases involving
20 two or more employers working at a single site, held the
21 picketing unlawful under Section 8(b)(4). The Supreme Court
22 reversed IUE v. NLRB (General Electric), 366 U.S. 667.
23 Justice Frankfurter stated that the "key to /this/ problem"
24 is to recognize that "appealing to neutral employees whose
25 tasks aid the employer's everyday operations" is "traditional

1 primary activity" expressly protected by the Act, and that
2 such appeals are unlawful only when directed at "independent
3 workers performing tasks unconnected to the normal operations
4 of the struck employer".

5 Obviously the General Electric case states a different
6 understanding of Section 8(b)(4) than that adopted in Denver
7 Building Trades. General Electric correctly captures the
8 Congressional intent: First, by distinguishing between truly
9 neutral employers -- "those performing tasks unconnected to
10 the normal operations of the struck employer" -- and
11 employers who are aiding the struck employer; and second, by
12 affording protection only to the true neutrals. That being
13 so the NLRB should have given the rule stated by Justice
14 Frankfurter universal application. This it has refused to do.
15 In cases arising at building sites the NLRB has held fast to
16 the discredited doctrine stated in Denver Building Trades.

17 Thus, at the present time the NLRB applies different
18 rules of law depending on the industry in which the labor
19 dispute arises. Nothing the Congress has ever said or done
20 justifies such a patent inequity. And, all of organized
21 labor regards the position of the NLRB abhorent to the
22 fundamental precept of equal justice under law.

23 In its leading decision in this area, MArkwell v. Hartz,
24 155 NLRB 319, the NLRB argued that application of the Supreme
25 Court across the board would require the overruling of a

1 prior precedent. The labor movement has no objection to
2 the principle of adhering to precedent. Indeed, the country
3 would be well served if the NLRB and the courts, as presently
4 constituted, would pay even-handed respect to that principle.
5 The situation today is that past precedents are respected
6 when they support the employer position.

7 But administrative and judicial decisions on statutory
8 questions do not bind Congress. The entire legislative
9 authority rests with this branch of the Government, and the
10 administrative agencies and the judiciary have the subordinate
11 role of carrying out the Congress' mandate. Where it is
12 apparent that those entrusted with the task of administering
13 the law have made a major mistake that creates a plain
14 inequity, and where it is also apparent that the administrative
15 agency is unwilling to fulfill its duty to correct that
16 mistake, it is time for Congress to exercise its prerogatives.
17 That is the situation before you, Mr. Chairman, and that is
18 why we seek the enactment of H.R. 5900.

19 If Congress does not make its will known where all those
20 conditions are present, it undermines its own authority.
21 The inevitable result of inaction is that administrative and
22 judicial activists feel greater freedom to make their own
23 policy and less compulsion to follow Congress' policy. The
24 labor movement has historically regarded that as a very
25 serious threat to the legal system. For experience has

1 demonstrated that only Congress has the capacity to establish
2 the terms on which labor-management relations shall be
3 conducted. The highly respected late Justice John M. Harlan
4 correctly characterized "judge made" labor law as "free
5 wheeling judicial exercises based on self mesmerized views of
6 economic and social theory and on statutory misconstructions".
7 (Trainmen v. Terminal Co., 394 U.S. 268).

8 A week ago the Supreme Court's decision in Connell Co.
9 v. Plumbers & Steamfitters (No. 73-1256; June 2, 1975),
10 provided new evidence of the continuing relevance of Justice
11 Harlan's reminder and of the continuing inability of the
12 Court to remember it. Congress has been uniform in its
13 insistence that the anti-trust laws are directed at business
14 enterprises, not at trade unions. Certain jurists have been
15 just as insistent on inverting that Congressional decision.
16 The Court's anti-trust decisions this year, including Connell,
17 indicate that they may now form a majority on the High Court.
18 As Chairman Thompson remarked this past Thursday, there is a
19 definite movement to the law as it was before 1914.

20 But the point about the Connell decision I wish to
21 emphasize here is that it demonstrates the generative force
22 of the error committed in the Denver Building Trades decision.
23 For the five-man Connell majority rejected the plain meaning
24 of the proviso to the "hot cargo" prohibition of Section
25 8(e), added to the NLRA by the Landrum-Griffin Amendments, that

1 permits agreements between a general contractor and a union
2 stating that subcontracts shall be let only to union
3 subcontractors. They did so although that meaning was
4 reinforced by the legislative history, and although that
5 provision did not conflict with any other express provision
6 of the Act. The majority was of the opinion that the
7 Connell subcontracting clause was not protected by the
8 Section 8(3) proviso since in their view that proviso was
9 merely an abortive attempt to overrule Denver Building Trades.
10 In other words, because Congress had not wiped the slate
11 completely clean the majority paid greater deference to the
12 theory of that case than to the express language of the Act.
13 It is therefore particularly timely for Congress to make
14 clear its intent that the rights of the building trades to
15 strike and picket shall not be limited by the manner in which
16 employers arrange their business affairs but shall be
17 determined according to the objective test of the General
18 Electric case.
19 The AFL-CIO calls for prompt enactment of H.R. 5900.
20 Mr. Thompson. Thank you very much, Mr. Biemiller.
21 I hope that you will express my appreciation and that of my
22 colleagues to President Meany for this very forceful and
23 comprehensive and accurate statement.
24 We have witnessed in the last couple of days really
25 incredible distortions of the law in testimony presented by

1 opponents of the legislation, some of which I reviewed last
2 night and this morning. I find it incredible that well
3 trained lawyers would in effect deliberately misinterpret
4 the Congressional intent.

5 As you know, Mr. Meany's statement said that the
6 decision came down in Denver Building Trades in 1951. I
7 arrived on the scene in 1955, and I have been sponsoring
8 legislation ever since.

9 One witness yesterday from the United States Chamber,
10 representing the Chamber, Mr. Thompson of South Carolina,
11 no relative, wondered why this legislation had not been
12 passed, it being from our point of view so meritorious.
13 I was rather reluctant to credit him with the ability of his
14 organization and others to obfuscate the thing in such a way
15 that we have not been able to pass it. I neglected to remind
16 him that I think the time has come when it will be passed.

17 I agree that the decision in the Connell case in
18 my judgment at least makes it imperative because taken to its
19 logical conclusion, as I said, and as you quote me of saying,
20 that decision takes us back to 1914 when the Danburry Hatters
21 were forced into bankruptcy, which resulted in the Clayton
22 Act.

23 Now we are back to that unhappy situation, although I do
24 not believe that Connell directly affects this situation.

25

1 Mr. Meany is correct that in 1959 during the conference on
2 the Landrum-Griffin Act, Section 8(b)(4) was discussed by the
3 conferees with respect to the garment industry and the
4 building trades. The result was a rather peculiar one in a
5 parliamentary sense, because on perfectly analogous points
6 relating to the same section of the Act the Senate
7 Parliamentarian agreed that both amendments, that for the
8 garment industry and that for the building trades, were
9 germane. The House Parliamentarian agreed in the first
10 instance, and then changed his mind overnight. I have always
11 thought that his mind was changed by some extremely persuasive
12 and vigorous arguments set forth by the then Senate Majority
13 Leader, who later became President Johnson.

14 The very next day, as a result perhaps of that
15 influence, or some peculiar intellectual exercise of his
16 own, the House Parliamentarian said that the garment trades
17 section was germane and the building trades section would not
18 be.

19 So I had the unhappy task of reporting back to the
20 conferees, having been assigned by the Chairman of the
21 conferees, the then Senator John F. Kennedy, to see what the
22 parliamentary situation in the House was, and I had the
23 unhappy task of reporting that the Denver Building Trades
24 section was not germane.
25

1 As a result of that conference, Senator Kennedy,
2 Senator Barry Goldwater, Senator Morse, the late Senator
3 Prouty, and any number of Members on the House side agreed
4 unanimously that we would introduce remedial legislation
5 which substantially is that which we have before us today.
6 One particularly meritorious addition to the early
7 legislation is that section which relates to the hiring of
8 minorities.
9 Yesterday quite a point was made of the fact that we
10 don't use the word "sex" in there, and we will take that
11 under consideration. I responded to the witness yesterday
12 that I had been wrestling with that question since I was
13 about 12 years old. He didn't understand that I was trying
14 to emancipate myself from my mother.
15 Mr. Ashbrook commented that I had done so over all
16 those years with varying success. But I think this is
17 susceptible of adding the word "sex" in here, and we will
18 probably do so.
19 I would assume, taking Secretary Weinberger's latest
20 regulations, that if there are dressing rooms on the
21 site they will be coed. After all, dormitories are,
22 gymnasiums are.
23 I asked the witness yesterday, Mr. Biemiller, how many
24 women employers there are in the organization which he
25 was representing. He said a few, mostly widows of

1 hard-working men who had prematurely died and the wives
2 inherited the business.
3 It led me to wonder what caused the death of those
4 fellows. I said probably those deceased contractors had done
5 their time in purgatory here and went straight to one of the
6 other two places.
7 I did not ask him how many female or Black employees there
8 were in his organization. I asked him if there are any
9 female lawyers, and he said they are very hard to get.
10 We have a very distinguished female lawyer here,
11 Miss Baum. She was hard to get. Somewhat dangerous. She
12 has been a former police person here in Washington.
13 With respect to the minority employees the bill will
14 give them protection, and they have been assured of the
15 increased opportunities coming their way, which will continue
16 to come their way, especially in terms of apprenticeships,
17 especially if employment opportunities arise.
18 The industry is in a terrible depression. We recognize
19 that there can't be hirings if the contractors don't have
20 work. If they do get the work, and I hope it comes soon,
21 with an easing of the economic situation, because it is
22 desparately needed both by the employers and the employees,
23 that there situation is going to be much healthier if we
24 enact HR 5900, and then giving building tradesmen the equal
25 opportunity which the legislation is aimed at.

1 We have, and I shall make a part of the record, a letter
2 from Mr. Bayard Rustin supporting the legislation in his
3 capacity as head of the Recruitment and Training Program.
4 (The letter from Mr. Rustin follows:)
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1 Mr. Thompson. With that I have no further comment,
2 except once again to thankMr. Meany, and to give my colleagues
3 an opportunity to question you.
4 The House is going to go in at 11, I might say to the
5 witnesses to follow you. So, after we have finished
6 questioning you on Mr. Meany's statement, we will ask them to
7 appear and of necessity I am afraid they will have to be
8 brief.
9 Mr. Ashbrook.
10 Mr. Ashbrook. Thank you, Mr. Chairman.
11 I welcome Mr. Biemiller. It is always good to have you
12 here because I knew when we get answers from you you do speak
13 for the labor movement with clarity, as you have over the
14 years.
15 I do have a number of questions.
16 First of all, going back to the winter conference in
17 Florida, it was very clear at that time for all those who
18 followed it that legislation of this type was not very high
19 on the agenda. As a matter of fact, when asked, Mr. Meany
20 indicated that as far as the Taft-Hartely Amendments were
21 concerned that they were living with it and making progress,
22 indicating he had a lot of other fish to fry.
23 BNA, which I think is an objective observer, states:
24 "Taft-Hartely amendments have not been discussed at this
25 winter session of the executive council. Meany explained

1 afterward that the reason for deferring the subject
2 indefinitely was that economic issues were of overriding
3 concern. He thinks Congress would have the same priorities
4 and, therefore, there is no use going to it for changes in
5 the Act."
6 Mr. Thompson. There has not been much overriding
7 lately, I might add.
8 Mr. Ashbrook. Overriding issues or overriding concerns.
9 Now, I note attached to your statement is your May
10 statement on this particular bill. Does that indicate some
11 change in policy of the AFL-CIO? I realize that not
12 expressing it at that particular time does not mean a lack of
13 interest. But it certainly meant it did not have you on
14 your highest point in your agenda.
15 Mr. Biemiller. The matter was discussed at some
16 length at the May meeting held in Washington. At that time
17 it was decided this issue should be made one of major
18 importance in our legislative program this year. That is the
19 change that took place.
20 It became perfectly obvious that the injustice that
21 was created by the Denver Building Trades really needed
22 clearing up. Hence by unanimous action of the Members of
23 the Executive Council, the Vice Presidents of the AFL-CIO,
24 who, as Mr. Meany says, represent every segment of the labor
25 movement, came to the conclusion that we would have to put on

1 a concerted drive to pass this legislation.

2 Mr. Ashbrook. I also note some change, at least it

3 would seem to be a change to an outsider, maybe not from the

4 standpoint of the AFL-CIO, but for many years your organization

5 refused to support the United Farm Workers secondary boycott

6 of stores carrying non-UFW lettuce, grapes and wine. I

7 understand the basic reason for that position was that the

8 secondary boycott involves innocent workers who might then be

9 kept off their job, although they had nothing to do with the

10 primary dispute.

11 Mr. Biemiller. You are in error, Mr. Congressman. The

12 AFL-CIO has supported the lettuce boycott, but not the wine

13 boycott.

14 Mr. Ashbrook. I think your general statement at the

15 time referred to secondary boycott, and the innocent

16 employees.

17 Mr. Biemiller. That was in terms of the wine boycott

18 because of the fact that there are other workers who are

19 adversely affected who have contracts with the Gallo wine.

20 Mr. Ashbrook. Lettuce, grape, and wine, you say you

21 did support the lettuce but not the wine?

22 Mr. Biemiller. We have supported the lettuce.

23 Mr. Ashbrook. The basis for not supporting that at the

24 time was that the secondary boycott harmed innocent workers,

25 many of whom were organized union workers in stores. I guess

1 this is where I have the question. It seems that the same
2 principle would apply to 5900 and its impact on employees
3 not concerned with the primary dispute. I know your testimony
4 indicates otherwise. It seems to me that the same general
5 principle would operate there would it not?
6 Mr. Biemiller. Let me bring my counsel into this
7 discussion.
8 Mr. Gold. Congressman Ashbrook, the term secondary
9 boycott, as you well know, is one of the most illusive in the
10 labor law. What this legislation seeks to do is to correct
11 a misconception about what a secondary boycott is. Where
12 there is a true secondary boycott you have true neutrals and
13 true neutral employees. But the very point of this
14 legislation is that the correct inquiries being made because
15 of an early error into who is a true neutral employer and who
16 is a true neutral employee. The prohibition is too broad.
17 We believe that the position taken on the wine boycott, which
18 was not supported, and this position in this legislation is
19 perfectly consistent. We don't think when you analyze the
20 issue, in terms of the best reasoning of the courts, and the
21 best reasoning of what 8(b)(4) is about, you have secondary
22 boycotts here.
23 Mr. Ashbrook. I realize that point is in contention.
24 That is why I said from some points of view there would be
25 that similarity although you are articulating a difference

1 that you have as a policy.

2 Another issue. When we had the building construction

3 trades open meeting before the labor meeting, I guess it was

4 last month, Congressman John Erlenborn asked Mr. Carlos

5 whether the building trades would support his attempt to

6 amend the NLRA to provide for what he called the freedom of

7 religion in the trade, knowing it doesn't mean a free ride,

8 but he suggested contributions equal to dues and fees would

9 be paid to charities selected in the contract. Mr. Carlos

10 at that time said he would refer the question to Mr. Meany.

11 I thought Mr. Meany would be here this morning to give us some

12 answers.

13 Has the AFL-CIO given it any thought? Is there a

14 position, and would they support or oppose such an amendment

15 by Mr. Erlenborn?

16 Mr. Biemiller. Several years ago Mr. Meany wrote a

17 letter to the Chairman, Mr. Thompson, stating that while we

18 thought this matter was better handled through collective

19 bargaining that we would not object to a proviso limiting

20 the question of membership of religious objectors provided

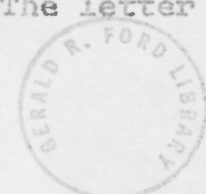
21 that those religious objectors would then pay the equivalent

22 dues into a charity not of their chosing.

23 Mr. Thompson. Would the gentleman yield?

24 Mr. Ashbrook. Yes.

25 Mr. Thompson. I remember well that letter. The letter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1 was reconsidered in the last Congress when we included all
2 of the medical industry under the labor-Management Act,
3 an amendment to 302(C). Mr. Erlenborn did present that
4 amendment. It was accepted, unopposed, as a matter of fact
5 with the acquiescence of organized labor and in particular
6 the unions involved such as SEIU and Laborers and others.

7 I would see no objection to its inclusion here with
8 the same caviat that if one of the workers or a group of
9 them belonged, for instance, to the Plymouth Brethren, that
10 in the bargaining processes at the table they agree with the
11 employer to designate x number of charities to which those in
12 lieu of dues contributions could be made, not to include a
13 charity of their own faith.

14 This makes rather good sense, particularly in the
15 hospital industry when so many religous orders of various
16 descriptions and faiths run hospitals. Were they to give
17 there in lieu of dues money to their own faith it would give
18 rise to a lot of questions. I told Mr. Erlenborn that I
19 thought that we could certainly give serious consideration
20 in this legislation.

21 Mr. Ashbrook. I thank the Chairman for that explanation.

22 I have one quick question. On page 3 you refer to the
23 subsection "Making it plain that the bill does not sanction
24 picketing activated by a discriminatory purpose."

25

1 Yesterday Mr. Debros in his testimony threw a lot of
2 cold water on this, indicating from this standpoint of the
3 minority contractors the discrimination took place before you
4 got to the site, and that was their major concern with the
5 bill. Discrimination or picketing for discrimination would
6 be minor, with little relevance to them because their basic
7 concern was actions, particularly within the hiring halls
8 and contracts in certain areas where their minority tradesmen
9 or prospective tradesmen cannot get in a trade.

10 So this was meaningless to them because their problem
11 preceded any questions that might be raised on the site.
12 I don't know whether you or the AFL-CIO has had a chance to
13 look at his testimony. We were both struck by the sharpness
14 of it. It was very critical. He minced no words. That
15 particular point did stick out throughout his entire testimony.

16 I wonder if you have any comments on that particular
17 aspect of it?

18 Mr. Biemiller. We shall be happy to take a look at
19 that testimony and file an answer with you, but I can tell
20 you right now that there is no discrimination left in the
21 building trades. The organization, for example, which
22 Mr. Bayard Rustin represents, and that put the letter in
23 this morning, has been very active with the full and active
24 support of our building trades unions in recruiting minorities
25 into the building trades.

1 The real problem in the building trades today is the
2 one the Chairman referred to, with 21.8 percent unemployment.
3 Unfortunately, you train a Black youth and he becomes a
4 journeyman, and there isn't any work, and that is a pretty
5 tough kind of situation not only for him but for a white
6 apprentice or yellow apprentice, or an apprentice of any
7 color.

8 Mr. Ashbrook. It is your position there is no
9 discrimination whatsoever in the hiring halls?

10 Mr. Biemiller. It has been wiped out entirely in the
11 building trades.

12 Mr. Thompson. I would like to make one comment. A
13 relatively recent case, the Hughes Tool Company case, even in
14 the absence of the language which we have in this legislation,
15 affords the protection to the minorities. I think that we
16 succeeded in reassuring Mr. Debros yesterday, who incidentally
17 was a splendid witness -- my interpretation of his testimony
18 was that this gave him a long sought after opportunity to
19 express some grievances which he did in a most reasonable and
20 articulate manner.

21 In conversations with him afterwards, he being a union
22 employer, he said to me, "You know, fundamentally I am not
23 opposed to HR 5900. I see considerable merit. But I saw
24 an opportunity today, and we all recognize the past history
25 of discrimination. We recognize also that substantial

1 progress has been made, and progress is yet to be made. It
2 can't be made to the degree that we would like until there
3 are work opportunities available."
4 I yield to Mr. Clay.
5 Mr. Clay. I was not here to hear Mr. Debros' testimony,
6 but I talked to him before the hearing. He cited a specific
7 plumbing local in Seattle. He told me before the hearing that
8 there were only two Black plumbers in the entire local, but
9 they had gone to court. The courts had issued a cease and
10 desist order, and the union had completely ignored those
11 orders.
12 Are you stating categorically that there is no racial
13 discrimination in the building trades union?
14 Mr. Biemiller. I am saying categorically that there is
15 no policy of discrimination in the building trades. In any
16 case that is called to the attention of the AFL-CIO we take
17 immediate steps to try to rectify any errors that may be
18 made at the local level. We have corrected many of those, as
19 I am sure you are aware.
20 Mr. Clay. Oh, yes. I was involved in St. Louis in
21 eliminating some of the racial barriers in the construction
22 industry.
23 Of course you say you are going to take a look at his
24 testimony and answer it, so maybe I won't follow through
25 on these questions. I will submit some questions to you in

1 writing and ask you to comment to us in writing.

2 Mr. Biemiller. We will be happy to.

3 Mr. Clay. Thank you.

4 Mr. Thompson. Mr. William D. Ford.

5 Mr. Ford. Thank you, Mr. Chairman.

6 Andy, it is always a pleasure to have a chance to get you
7 down there and me up here so that I can do the talking.

8 On this question of the relationship of the contractor
9 with his subcontractors we seem to have a willingness on the
10 part of a good many of the witnesses who have testified so far
11 to engage in the unreal belief that somehow there is a
12 category of people over here who, because on one job there
13 may be a subcontractor though on another job that is smaller
14 he may be a subcontractor working directly with the owner
15 that the magic word subcontractor makes them totally
16 independent, autonomous, functioning, competing companies.

17 My own experience as a practicing lawyer in an area
18 where there is a lot of construction going on is that that
19 was rarely the case, but in fact subcontractors had long-
20 standing arrangements with the primes that they worked that
21 you could bet, for example, that if a particular general
22 contractor was on a job you knew who the electrical
23 contractor was going to be because he did all of that
24 contractor's electrical work, or did all of his plumbing
25 work, or whatever the trade might be.

1 That kind of relationship is well known and well
2 accepted, that there is a whole cluster of people who will
3 always be seen together on the jobs out there. Sometimes it
4 is interrelated. There is money loaned back and forth, and
5 advances of equipment. Beyond that there is, even without
6 that kind of intimacy, a practice of the general contractor
7 actually involving himself in what would normally be a wholly
8 unacceptable interference with the internal operation of a
9 subcontractor's so called independent business.
10 I have had submitted to me by Mr. Dan Monday some
11 letters written by individuals recounting specific cases
12 where they have either witnessed, themselves, or they have,
13 themselves, been directed by a general contractor to take
14 such action as firing a particular man, transferring him off
15 the job, replacing a foreman, that sort of thing, where the
16 decision to do that was a unilateral decision made by the
17 general contractor who felt that he had the right to dictate
18 that kind of specific action to the subcontractor.
19 Mr. Chairman, I would like to ask unanimous consent to
20 include in the record at this point five such statements, all
21 signed by the individual making the statement, recounting
22 instances of direct orders for personnel action such as the
23 hiring, firing, transfer, and promotion of employees of a
24 subcontractor, those orders coming from the general
25 contractor or his representative.

1 Mr. Thompson. Without objection, "Senator", they will
2 be admitted at this point.
3 (The letters referred to follow:)
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1 Mr. Ford. The Secretary of Labor had a suggestion
2 yesterday. Every Secretary of Labor who has been for this
3 legislation has a different set of suggestions. That may
4 be a secret why the bill does not get passed.

5 We have already asked for a response from a good many of
6 the unions within the AFL-CIO in the construction trades,
7 building and construction trades. We would like you to be
8 aware that we have requested a formal kind of reaction to
9 the proposals, particularly that there be a 10-day notice
10 strike requirement unlike that found anyplace else except
11 the notice that we put in the hospital workers bill because
12 of the patients in the acute hospitals, and also a 30-day
13 duration provision.

14 He suggests that a strike on a building site should be
15 limited to 30-day duration. We would like to have as
16 complete and as well documented kind of reaction to those two
17 suggestions as possible because in the hearings the other
18 day we raised a number of questions that come to one's mind
19 about how these two provisions might, rather than bringing
20 about more peace and tranquility, actually vitiate the
21 effect of HR 5900 and perhaps make it more troublesome
22 than the situation which now exists.

23 The 30-day provision, for example, becoming an
24 encouragement to just not do anything about good faith in
25 bargaining.

1 He suggests not only that there be a 10-day strike
2 notice but that during that 10 days the local union contem-
3 plating the strike would have to submit its plans to its
4 national or international union and get a reaction. He did
5 not make it too clear how that reaction had to be.
6 Counsel points out it would require permission from the
7 national or international union to engage in on-site
8 picketing, a kind of great centralization scheme by government
9 fiat. So that makes three specific areas of concern for the
10 statutory reconstruction of the relationship between you as
11 the parent body and individual unions, and then within those
12 individual unions the local and the two time periods.
13 We would hope that you would have your staff work on it.
14 If you would like to comment on them now I would like to
15 hear it.
16 Mr. Biemiller. We will be happy to file a document
17 with you on those suggestions of the Secretary of Labor.
18 The only comment I want to make at the moment today is
19 that the 30-day provision strikes us as being an absurd one.
20 If you are going to eliminate the right to strike all the
21 employer has to do is sit it out. That is very simple. It
22 negates the very concept of the reason for striking. But the
23 overall provisions we will be glad to discuss in a document
24 we will file with your subcommittee.
25 Mr. Ford. Thank you very much.

1 Mr. Thompson. I might comment with respect to the
2 30 days that I made a similar observation to the Secretary
3 and it is analogous to the dock strikes. They go on and on
4 and on. There under the Act they have a 90-day period during
5 which the employer has a history of doing absolutely no
6 negotiating, and then asking the Congress to bail them out,
7 something which was done once after the strike was settled.
8 Mr. Nixon was in Peking, and very appropriately signed that
9 legislation in that free society.
10 Mr. Clay.
11 Mr. Clay. No questions, Mr. Chairman.
12 Mr. Thompson. Mr. Biaggi.
13 Mr. Biaggi. I have no questions. I would like to make
14 an observation, one similar to that which I made in the
15 early portion of the hearing.
16 I would like to welcome Mr. Biemiller and his
17 associates.
18 It simply astounds me when you hear the witnesses and
19 the opponents to this bill of which I am a co-sponsor
20 advocate the notion that these are separate and distinct
21 individuals. They must feel that Members of Congress live
22 in a vacuum because it is the most assinine assertion I have
23 ever heard in my life.
24 There is an interdependency. There is no question that
25 the general contractor has a supervisory interest and role.

1 It defies reality. I just don't understand the argument
2 and position.
3 It has reached the point where it offends one's
4 intelligence.
5 I want to assure you that Members of Congress, Members
6 of this Committee, most of us at least, have the same
7 evaluation of the situation.
8 I am hoping that the legislation will be enacted this
9 time. Why it was not enacted in the past, we have various
10 reasons. It is overdue, necessary, and meritorious.
11 For the record, I would like the Chairman and the
12 Committee to observe that Mr. Meany is a former constituent
13 of mine, Mr. Chairman. We still have his house in my
14 district, and give it special attention, although the plumbing
15 needs some assistance. I am sure if he comes back he will
16 take care of it.
17 Mr. Thompson. You are going to make it a national
18 historical monument.
19 Mr. Biaggi. Why not? We have made it for less worthy
20 structures.
21 Mr. Thompson. Our ranking Member is the "Reverend"
22 representative Quie this morning.
23 Mr. Quie. Thank you, "Father Thompson".
24 One question I would like to ask you, Mr. Biemiller.
25 Secretary Dunlop indicated that he thought we would have

1 greater stability at our construction sites if all the
2 contractors were all union or all non-union. What do you
3 think of that statement? I believe Mr. Ashbrook asked him
4 the question, do you think it would be better if everybody
5 on the construction site was all union or all non-union.
6 He said, Yes, there would be more stability.

7 What is your reaction?

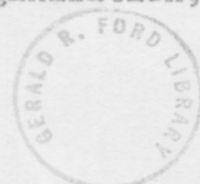
8 Mr. Biemiller. In the first place we obviously think
9 the ideal situation is for all contractors to be union
10 contractors. It would bring peace to the industry, and the
11 best kind of cooperation and production.

12 Let me turn your question around. On the question of
13 the site being semi-union, so to speak, some union people,
14 I think you will find that is a great rarety. You would not
15 find too many such situations because union members don't like
16 to work with non-union members. That is a cardinal principle
17 of the labor movement.

18 I think that is the important thing to note there. We
19 certainly want to make every effort to make sure that every
20 job in America is a union job. That is what we are out for,
21 and that is what we intend to try to do, by persuasion, by
22 performing as we always insist, that union workmen produce
23 better work than non-union workmen.

24 Mr. Quie. Maybe my assumption is wrong, and maybe I
25 ought to check that, but I understand there is a growing

1 tendency to write into contracts a no strike arbitration
2 clause providing for voluntary arbitration. Is that correct
3 that that seems to be a growing phenomenon?
4 Mr. Biemiller. That has been a long time policy of the
5 labor movement. The problem in the past has been to get the
6 employers to accept it. I think there is a tendency now to
7 accepting those clauses that any disputes of the contract
8 shall be arbitrated.
9 Mr. Quie. What do you think that going to common situs
10 picketing will do to that tendency? Have no effect, tend to
11 increase or tend to decrease it?
12 Mr. Biemiller. You mean the tendency toward ---
13 Mr. Quie. To include voluntary arbitration.
14 Mr. Biemiller. It would certainly enhance it.
15 Mr. Quie. The last question. Can you tell me how
16 effective the National Collective Bargaining Committee on
17 Construction has been to help resolve labor disputes in the
18 construction industry? And, secondly, if it would be any
19 value if before a strike was called that a notification was
20 given to them?
21 Mr. Biemiller. I just agreed in a colloquy with
22 Mr. Ford that we will give you written comments on that
23 part of the question.
24 Mr. Quie. I thought his only applied to notifying the
25 national union. I wanted to add to that this organization,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1 National Collective Bargaining Committee on Construction.
2 Will you respond to that as well?
3 Mr. Biemiller. We will.
4 Mr. Quie. Thank you very much.
5 Mr. Thompson. You know, were we to accept the advice
6 of Secretary Dunlop, and I doubt that we will, but it would
7 follow logically that the employer organization would have
8 to be considerably changed to be under the same constraints as
9 are organized labor unions under Landrum-Griffin. They
10 should have an employer's bill of rights. The members should
11 be able to vote on the dues, and all of the other restraints
12 imposed on labor unions by the Taft-Hartley Act logically
13 should apply.
14 Now the contractor would face quite a dilemma. He
15 would have to get the acquiescence of some employers unit, such
16 as if the lathers wanted to strike under the Secretary's
17 suggestion they would have to get the acquiescence of their
18 international. The contractor if he wanted to lock out or
19 take some other action would have to go to the NAM if he
20 belonged to that, the Chamber, the Association of General
21 Contractors, SMAGMU, or any of a great number of employer
22 organizations, and if that is to be the case, then they must
23 have the same sort of bill of rights logically as the
24 Landrum-Griffin Act has for the employees. Wouldn't you
25 agree?

1 Mr. Biemiller. I don't think there is any question on
2 that score.
3 While you are on that sort of thing I might add that I
4 think one of the parts of Landrum-Griffin that has been very
5 poorly enforced is the restrictions that are placed in there
6 on certain kinds of advisers to employers also.
7 Mr. Thompson. The whole body of Landrum-Griffin in
8 order to implement the Secretary's suggestion in my judgment
9 would have to be changed in that way.
10 Mr. Miller?
11 Mr. Miller. No questions, Mr. Chairman.
12 Mr. Thompson. Mr. Ashbrook has a quick question.
13 Mr. Ashbrook. First of all, I ought to note, Mr. Chairman,
14 that Secretary Dunlop suffered quite a bit in these hearings.
15 He started out as Mr. Secretary. Then he went to Professor.
16 The next thing he was Doctor. Now I see him referred to as a
17 leading student. I don't know what we are going to call him
18 next week.
19 Mr. Thompson. I kind of felt when I sat here as if I
20 were a student who had not read his latest book.
21 Mr. Ashbrook. I sometimes felt a little bit like in the
22 old story when you ask somebody what time it is and they tell
23 you how to make a watch.
24 One serious question. Yesterday I think one of the
25 chief points that was raised, Mr. Biemiller, by the AGC, the

1 so-called non-union or independent shops they felt that
2 their segment was becoming stable, was growing because of
3 two basic reasons. One, the product boycott which they
4 felt in their testimony was such that trade unions resisted
5 technological change, the pre-cut, pre-fabs, pre-assembled
6 unit, and secondly, what they felt to be the restrictive
7 work rules of the trade.

8 Now you were very adamant in saying that you didn't
9 think there was any discrimination. As far as restrictive
10 trade practice, or union practice that might add to cost,
11 can you be as precise on that?

12 Mr. Biemiller. Let me point out one illustration of
13 that old canard that keeps popping up all the time. The
14 bricklayer's international union has had a standing offer of
15 a rather considerable reward to anyone who can prove
16 restrictive practice that come from the bricklayer's union.
17 Nobody has ever claimed that reward. I think you will find
18 that most of the talk about restrictive practices is not based
19 on fact. Certainly it is perfectly obvious that if there is
20 any such problem that it can be settled a lot easier by
21 collective bargaining than it can by unilateral action on the
22 part of an employer.

23 Mr. Ashbrook. Would you say the same thing on the
24 so-called product boycott? There is very definitely a union
25 position on that. You have your view and others have a view

1 as to whether it adds to the cost or not.
2 Mr. Biemiller. Counsel?
3 Mr. Gold. On the product boycott the courts have
4 addressed that issue and at the present time the law is that
5 there are certain types of actions which are taken which are
6 job preservation actions which are lawful. I would think,
7 adding to what Mr. Biemiller said, that in situations where
8 there is a legitimate concern by people that they are going
9 to lose their jobs, the best way of handling the problem is
10 the present way, which is that the employer and the union try
11 to bargain that out and arrive at some solution which takes
12 into account the fair interest of people who may have put in
13 a lifetime learning a skill in the interest of the employer.
14 Mr. Ashbrook. What is the fair interst of the
15 person? Mr. Biemiller's word is canard. What one might
16 call job protection another might call cost increases.
17 Mr. Gold. Again this is a subject I think you touched
18 on with Mr. Clayman, or at least somebody did. Every fair
19 concern of employees translates into a cost. To simply
20 override those concerns without allowing the collective
21 bargaining process to work would be a very serious matter.
22 Mr. Ashbrook. Thank you.
23 Mr. Biemiller. May I state on that one point, don't
24 forget there are in some areas building codes that prohibit
25 the use of certain materials and so on that are enforced by

1 local government agencies.

2 Mr. Thompson. The subcommittee will recess for a

3 period of about 10 to 12 minutes to answer the quorum call.

4 We thank you, Mr. Biemiller.

5 I think there are no more questions of you. We have

6 three International Presidents to succeed you. We will be

7 back as soon as we can.

8 (Recess)

9 Mr. Thompson. The subcommittee will be in order.

10 I might inform you gentlemen that following this quorum

11 the House is considering further the Energy Bill. Yesterday

12 we succeeded in a matter of about seven hours of disposing

13 of the first four of 150 amendments. It is possible at any

14 given moment for there to be a roll call on an amendment,

15 in which case I doubt much that we would get a quorum back

16 here.

17 So, with your indulgence I will ask unanimous consent

18 that the prepared statements of each of you be made a part of

19 the record. It is a highly unusual situation -- we have the

20 honor of having three International Presidents -- to have to do

21 it this way, but I know you understand.

22 So, without objection, your statements will be made a

23 part of the record at this point.

24 You can summarize, beginning with Mr. Joseph P. Power,

25 who is the General President of the Operative Plasterers and

Cement Mason's International.

He will be followed by Mr. Thomas F. Murphy, President of the Bricklayers, Masons & Plasterers' International, and then by Mr. J. C. Turner, the Secretary-Treasurer of the International Union of Operating Engineers, all old and valued friends.

(The statements referred to follow:)

1 Mr. Power.

2 STATEMENT OF JOSEPH P. POWER, GENERAL PRESIDENT,

XXXXX 3 OPERATIVE PLASTERERS & CEMENT MASONS' INTERNATIONAL

4 ASSOCIATION

5 Mr. Power. I am very grateful for this opportunity to
6 express my views in support of HR 5900, introduced by
7 Congressman Frank Thompson, and also in support of related
8 bills on which your subcommittee is now holding hearings.

9 These bills have the common purpose of correcting a
10 long standing inequity of the Taft-Hartley Act, contained in
11 Section 8(b)(4) of the National Labor Relations Act, as
12 amended. Among other things, this section prohibits
13 building tradesmen from respecting a picket established at a
14 construction job site advising them that non-union workers
15 are being employed by others on the same job. The specific
16 purpose is to repeal this prohibition, thereby overruling an
17 unfortunate decision of the National Labor Relations Board,
18 affirmed by the Supreme Court of the United States in what is
19 known as the case of Denver Building and Construction Trades
20 Council (341 U.S. 675 (1951)). First, I would like to
21 explain some of the background and the realities of the
22 construction industry.

23 Buildings or projects are rarely designed and built
24 by one firm or company. Instead they are usually the
25 products of the combined efforts of many firms or builders who

1 may or may not have a direct contractual relationship with
2 each other. Each one of these building firms undertakes
3 a special part of the construction.

4 For example, there may be one contractor for excavation
5 and for concrete work, or a general contractor for erecting
6 the basic foundation and frame of the construction. Brick,
7 tile, siding, or masonry may be separately contracted or
8 subcontracted. So is all plumbing, heating, and air
9 conditioning. Sprinkler systems are installed by another
10 group of contractors. Frequently lathing, plastering,
11 roofing, painting, sheet metal work and other similar
12 functions, contributing to the completed project, may be
13 performed by separate contractors.

14 All of these contractors must work together as a team.
15 Careful coordination is essential to success. Either the
16 owner or architect-engineer or the general contractor must
17 weld these contractors and their workers together into one
18 unified group. These circumstances create a close relationship
19 between contractors. Indeed, it is advisable for each
20 contractor to know as much as possible about the other
21 contractors who may be chosen to perform some other phase of
22 the work on the same construction project, because each can
23 effect the ability of the other to perform. It is important,
24 for example, for each contractor to be familiar with the
25 methods of operation of the other contractors, including their

1 ability to perform, their financial solvency, the nature and
2 efficiency of their workmen and the source of their labor
3 supply. Where a general contractor and a subcontracting
4 system are used, it also becomes important for the owner or
5 the architect-engineer to know in advance the identity of
6 each subcontractor whom the general or prime contractor is
7 going to use. Frequently the owner or architect-engineer
8 requires the general contractor to list his subcontractors
9 when he submits his bid. Frequently it is specified that the
10 contractor cannot change subcontractors without approval.

11 For these various reasons it cannot be truthfully said
12 that the contractors on the same construction project are
13 strangers to each other or are "neutral" or "innocent" third
14 parties so far as labor policies and industrial relations are
15 concerned. To the contrary, it is crucially important for
16 every contractor to know whether or not the other
17 contractors on the job secure their workmen pursuant to and in
18 accordance with a collective bargaining agreement between the
19 contractor and a building trades union. The existence or
20 absence of such an agreement may make all the difference
21 between harmonious and stormy industrial relations in the
22 course of contract performance. It is the contractor's
23 business, therefore, to ascertain the nature of working
24 conditions which will prevail at the job site and the risk
25 of misestimating these working conditions is one of the normal

and accepted business risks of the construction industry.

Despite the very close relationships between contractors and between workers on construction projects, nevertheless, the recognized legal differences persist. Each contractor is a separate and independent entity. Each is a separate and independent employer of his own labor. Workmen jointly engaged on the same project at the same time may be employed by as many as a dozen separate and distinct but functionally closely related employers. These are, as Mr. Justice William O. Douglas so aptly describes them in his dissent in the Denver case, supra, "fortuitous business arrangements that have no significance so far as the evils of the secondary boycott are concerned."

Yet they do have significance so far as Section 8(b)(4)(B) of the National Labor Relations Act, is concerned. This section makes it an unfair labor practice for a labor union to induce employees to refuse to work with an object of forcing one contractor or employer to cease doing business with another. A strike against a union contractor which protests employment of non-union men by another contractor on the job would, according to the Denver case, violate Section 8(b)(4)(B).

As pointed out in the dissent in the Denver case, "the picketing would undoubtedly have been legal if there had been no subcontractor involved. The presence of the

1 subcontractor does not alter one whit the realities of the
2 situation; the protest of the union is precisely the same."
3 Thus construction workers do not enjoy the same rights
4 and privileges conferred upon factory workers. Due to
5 technical contractual relationships on the construction job
6 site, given express recognition in the Denver case, these
7 workers are effectively denied the right to strike to secure
8 union conditions even though this right is effectively
9 preserved for factory workers.
10 HR 5900 would, in effect, overrule the Denver case by
11 providing an exception to Section 8(b)(4)(B) for construction
12 work at a common situs. The amendment legalizes any strike
13 or refusal to work directed toward any of the contractors
14 engaged in operations at the construction site wherever a
15 labor dispute on working conditions exists and the terms of
16 an applicable collective bargaining agreement are not being
17 violated.
18 The simple purpose of this amendment has met with
19 general approval. In fact the exact terms of this bill have
20 been endorsed by the leadership on both sides of the aisle
21 in both Houses of Congress. The White House has repeatedly
22 requested this amendment, and early action this session has
23 been promised by those who are in a position to make good on
24 their promises. All of these facts have been very ably
25 presented to this subcommittee in great detail. They form a

1 vital part of the record in these hearings and it would
2 serve no useful purpose for me to review them once more
3 in detail at this time.

4 In requesting this subcommittee to act promptly and
5 favorably on this measure, I wish to make one closing
6 observation on the Denver case, as viewed by the dissenting
7 justices. They declared, quite rightly in that case, that
8 "the employment of union and non-union men on the same job
9 is a basic protest in trade union history. That was the
10 protest here. The union was not out to destroy the contractor
11 because of his anti-union attitude. The union was not
12 pursuing the contractor to other jobs. All the union asked
13 was that union men not be compelled to work alongside non-union
14 men on the same job."

15 I respectfully submit that we should permanently restore
16 this traditional right of building tradesmen by passing
17 HR 5900 at the earliest possible date. To this end, it is
18 my hope that the subcommittee will speed this bill on its
19 way to the floor of the House for a vote.

20 Mr. Thompson. Thank you very much, Mr. Power.

21 I think we will delay questioning in order that we can
22 be sure that we have the statements of your colleagues.
23 To that end we will now hear from Mr. Murphy.
24
25

1 STATEMENT OF THOMAS F. MURPHY, PRESIDENT, BRICKLAYERS,
XXXX 2 MASONS & PLASTERERS' INTERNATIONAL UNION OF AMERICA
3 Mr. Murphy. Thank you, Mr. Chairman.
4 I am Thomas F. Murphy, President, Bricklayers, Masons
5 & Plasterers' International Union of America.
6 I too am a former resident of Mr. Biaggi's district.
7 I wish to get equal treatment on that national act of
8 restoring my apartment in that area.
9 Mr. Biaggi. We don't have you registered, Tom. Let us
10 see if the building is still there, or whether or not the
11 arsonists have burned it down. If it is still there we will
12 try to give you equal treatment. Has your family voted for
13 me lately?
14 Mr. Thompson. Does it have a brick or dirt floor?
15 Mr. Murphy. Charley Butler was the ideal of the Bronx
16 at that time. Mario has taken over after him, a great man.
17 Mr. Chairman and members of the committee, I am delighted
18 to have the opportunity to appear here this afternoon and to
19 testify on behalf of HR 5900, a bill to amend Section 8(b)(4)
20 of the National Labor Relations Act with respect to strikes
21 at the site of construction projects.
22 It is referred to as the Equal Treatment of Craft and
23 Industrial Workers bill.
24 My International Union has long been in support of this
25 proposal to restore the economic rights of the building and

1 construction trades unions. I have been repeatedly
2 disappointed because this legislation has never reached the
3 House floor for a vote. It has been before the Congress for
4 many years, and it has had bipartisan support from both the
5 Congress and the executive branch. Presidents Truman,
6 Eisenhower, Kennedy, Johnson, as does President Ford,
7 supported it.

8 The bill is designed to correct an inequity in
9 existing law, whereby peaceful -- I emphasize peaceful
10 picketing -- picketing by building trades at construction
11 sites is prohibited, while similar picketing at plants or
12 factories is always and has been protected. It would simply
13 give the building trades unions rights all other unions
14 enjoy. I say "possess". I correct that also.

15 The main argument against the proposal is that a general
16 contractor has no control over a subcontractor who may become
17 involved in a labor dispute. I believe he does have control.
18 He has control over the quality of the work, the time schedule,
19 the quality of material.

20 Buildings or construction projects are usually the
21 products of the combined efforts of many firms working side
22 by side at the site of construction. While they may not
23 have technical contractual relationship with each other, all
24 these contractors do work together as a team and co-ordinate
25 operations.

1 Whatever label might be used to describe the relation-
2 ships there is still a direct connection between the various
3 contractors.

4 Because of the relationships on the construction job,
5 it cannot be said that the contractors are neutral or
6 innocent third parties as far as labor and industrial relations
7 are concerned.

8 A recent report of the Committee for Economic Development
9 stated:

10 It is difficult if not impossible to picket one
11 subcontractor with whom a legitimate dispute exists without
12 affecting the work of the primary or other subcontractors.
13 Insofar as these effects are limited to a prime contractor
14 and the subcontractors responsible to him, they should not
15 lead to a classification of the primary dispute as a secondary
16 boycott. The law should be changed to correct this inequity.
17 The employees of a factory can engage in peaceful picketing
18 in a labor dispute, but construction workers are denied this
19 freedom because of a technicality in which the law has failed
20 to take into account the nature of the building and
21 construction industry where, instead of one employer with
22 different departments for different kinds of work, there are
23 numerous contractors on the job site doing different kinds of
24 jobs. Electrical contractors, bricklayers, carpenters, et
25 cetera.

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If, for instance, the electrician's union pickets the job site because of a dispute with the electrical contractor and the carpenters and bricklayers and other trades do not cross the picket line, it is held that the electrical union is causing a secondary boycott in violation of Section 8(b)(4) of the Taft-Hartley Act. Yet it is legal for industrial unions representing employees of a factory to picket the factory site even though employees represented by other unions in the factory refuse to cross the picket line.

Since a union representing employees in a plant may in a labor dispute with the plant management, picket the entire plant, and with all its departments, the building trades unions, when engaged in a lawful labor dispute at a construction site, should enjoy the equal right to picket the entire site. This is prevented, however, by the Denver Building Trades case, which treats all contractors as strangers to each other.

HR 5900 would reverse the Denver Building Trades ruling. It would restore to the building trades the right of peaceful picketing on the site of jobs.

Going back, briefly, to the Denver case, I recall that Judge Fahy, former NLRB General Counsel, who wrote the unanimous opinion of the U.S. Court of Appeals for the District of Columbia, concluded that picketing at the site of

1 construction was not a true secondary boycott. And I quote
2 Judge Fahy as follows:
3 The usual secondary boycott or strike is against one
4 who is not a party to the original dispute. It is designed
5 to cause a neutral to cease doing business with or to bring
6 pressure upon the one with whom labor has a dispute. It seeks
7 to enlist this outside influence to force an employer to make
8 peace with the employees or labor organizations contesting
9 them.
10 Judge Fahy said the situation in the Denver case was
11 not of this character and pointed out why it was not. In
12 1961, the Supreme Court reversed the decision of the court
13 of appeals and applied the secondary boycott clause to the
14 labor dispute in the Denver case.
15 I believe this decision constituted an unfair
16 restriction of the economic activities of the building and
17 construction unions. A strong dissenting opinion said that
18 the ruling virtually eliminated a trade union's right to
19 strike on a construction job, a right guaranteed to all
20 labor by Section 13 of the Taft-Hartley Act.
21 President Eisenhower, in his 1954 message to Congress,
22 said:
23 The true secondary boycott is indefensible and must not
24 be permitted. The Act must not, however, prohibit legitimate
25

1 concerted activities against others than interested parties.
2 I recommend that the Act be clarified by making it explicit
3 that concerted action against an employer on a construction
4 project, who, together with other employees, is engaged in
5 work on the site of the project, will not be treated as a
6 secondary boycott.

7 Mr. Chairman and members of the subcommittee, I
8 urgently ask you for approval of HR 5900. I feel the
9 passage of this proposal is necessary to preserve standards
10 in the building and construction industry for the protection
11 of fair employers from the unfair competitive disadvantage
12 of substandard employers and in the interest of justice.

13 I might add apropos what Mr. Biemiller said about the
14 Brickmakers that offer still stands. If there is any
15 restriction as far as the union is concerned they can claim
16 the thousand dollars. Woe betide the contractor I have
17 seen who has held back bricks around the corner on a job and
18 he has told the bricklayers, use up the brick by three o'clock
19 in the afternoon, and as soon as the bricklayer goes mad
20 trying to use up the few bricks he sees on the ground, the last
21 load of bricks gets on the elevator, what do you think comes
22 around the corner? A brand new load of brick. The contractor
23 says, "I never knew it was there, fellows. It is one of those
24 things." So there are tricks to all trades.

25

1 The idea is that a general contractor does have control
2 over a subcontractor, and he had better have control or else
3 there would be chaos.
4 The other comment regards union and non-union jobs.
5 Why should not everybody be all Republicans or all
6 Democrats? Let us make it even.
7 Mr. Thompson. I don't agree with that. There ought to
8 be more Democrats.
9 Mr. Murphy. This is just a suggestion here. We ought
10 to have all union or non-union jobs separate. It does not
11 make sense.
12 Thank you, Mr. Chairman.
13 Mr. Thompson. Thank you.
14 The Circuit Court unanimously concluded that picketing
15 at the site of construction was not a secondary boycott.
16 Judge Fahy, who was the first NLRB General Counsel, wrote
17 that unanimous decision which was reversed above.
18 Thank you very much.
19 Now we will hear from Mr. Turner of the Operating
20 Engineers.
21 STATEMENT OF J. C. TURNER, SECRETARY-TREASURER,
XXXX 22 INTERNATIONAL UNION OF OPERATING ENGINEERS
23 Mr. Turner. Mr. Chairman, I am appearing here today
24 in place of our General President, Hunter P. Wharton, who
25 could not be present.

1 separate employer, employing his own labor. Thus, under the
2 decision in the Denver case these contractors, legally
3 distinct, but in reality working closely together with the
4 general contractor, have been considered "neutral" with
5 regard to each other. This legal neutrality is a myth and
6 hardly reflects the real-life relationship in a building
7 project. The various subcontractors under one general
8 contractor are well aware of the situation they are entering
9 when they agree to work on the site of construction. As
10 Secretary of Labor Wirtz has said before this committee
11 concerning subcontractors entering into agreement with
12 another subcontractor who employs non-union labor:

13 No one can be taken by surprise in these situations.
14 No one can claim damage without advance warning. No one is
15 neutral. No one is an innocent bystander. Everyone is well
16 aware of the probable consequences of his own course of
17 action.

18 In a factory situation, when a dispute arises regarding
19 a certain group of employees, a peaceful picket line could be
20 formed to influence other unions in their relationship to the
21 plant. But this is not the case in the construction industry.
22 A general contractor may hire a non-union subcontractor
23 with non-union employees to work there, but union workers at
24 the construction site are not allowed to picket. Such
25 picketing, which induces refusals to cross picket lines at

1 construction sites, does not constitute a true secondary
2 boycott. The nature of the relationship among employers
3 engaged at such sites is such that no one of them can truly
4 be said to be an innocent third party. They are, in such a
5 situation, more like units in an industrial plant, rather than
6 separate business entities.

7 HR 5900 and the other bills would add a proviso to the
8 existing law to exempt strikes at a construction site against
9 those who are in the relationship of contractors and
10 subcontractors from the application of Section 8(b)(4)(B).
11 Adoption of this proviso would constitute a recognition
12 of the realities of the relationships at construction sites.
13 It would remove an inequity against building trades unions
14 which has existed since the Supreme Court decision in 1951.

15 I hasten to point out that since the bill is in the
16 form of a proviso, it would not disturb existing law
17 respecting true secondary boycotts in the construction
18 industry. For example, if a union working on a construction
19 site peacefully pickets on the particular site to protest
20 the substandard conditions maintained by one construction
21 contractor of the same building project, this would be legal
22 if HR 5900 becomes law. If, however, this union undertakes
23 to picket a contractor at some other location, this is still
24 a true secondary boycott, and would be a violation of the law.
25

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1 My union has long supported this measure and feels
2 very strongly that there should be no delay in the passage
3 of this bill. This distinguished committee has done an
4 excellent job of examining this issue and the answer to the
5 problem has been clearly set out. I urge the full committee
6 to pass favorable judgment on this bill, so that Members of
7 Congress in the House and Senate will finally be given the
8 opportunity to record their full support of this laudable
9 and long-overdue legislation.
10 I am very encouraged by Secretary Dunlop's statement
11 the other day and his response to questions that were asked
12 him. It looks as though we may possibly get some support from
13 the Administration on this legislation. If that is the case
14 we might have a very good chance. I think we have an excellent
15 chance of putting it through this year with your help.
16 Mr. Thompson. Thank you very much, all three of you.
17 I don't have a specific question. I have a comment or two
18 about the question of product boycotts. Very clearly there
19 is a misunderstanding or a misinterpretation of this
20 legislation. Product boycott, whether it be a prefabricated
21 door, a sash, or a boiler, or anything else, would not and
22 could not under this legislation lead to a strike since the
23 legislation is limited to collective bargaining contracts
24 relating to wages, hours, and working conditions, and that
25 is the limitation, as Counsel points out, at the site.

1 So, that fear is one which one need not have.

2 I would certainly think that by the time this bill is
3 reported and the report accompanying it will make very clear
4 what it does and what it does not do, in that way we may be
5 able to help some of those who oppose it on grounds which
6 are not in fact existing.

7 I might point out that Mr. Biaggi to whom I will yield
8 next, was not on the original HR 5900 because we were looking
9 for that particular number and at that moment he was
10 otherwise engaged, otherwise his name would have been on it.
11 He has an identical bill which he is sponsoring on behalf of
12 himself and several other Members. I think that we are up
13 to about 70 or so co-sponsors, thanks largely to Mr. George
14 Meany's letter to the Members.

15 Mr. Biaggi.

16 Mr. Biaggi. I have no questions.

17 I would just like to make the observation that there
18 seems to be unanimity as far as the concept is concerned and
19 the position that they are interdependent, the subcontractors
20 and the contractors. To belabor it at that point any longer
21 I think would be an exercise of not much merit.

22 I would like to congratulate each one of you for your
23 statements. With special reference to Mr. Power's statement
24 which went on to detail in very simple, plain language the
25 implementation, the activity of the subcontractor as he

1 relates to the contractor. Anyone reading that, even if he
2 lived in that ivory tower far away from reality, would have
3 to get the message loud and clear. I will suggest that
4 anyone in opposition to this legislation get down to reality,
5 get involved with the building trades, understand what it is
6 about.

7 I think a very superficial and quick tour of building
8 sites would have to lead to the inescapable conclusion that
9 they are interdependent. Those of us who are familiar with
10 the building trades I am sure were frustrated when we
11 listened to some of the arguments in contravention of this
12 position.

13 As I said earlier, I am familiar with the genesis.
14 To begin with, we only had contractors at the very beginning.
15 There weren't subcontractors. Then sophisticated business
16 practices came into play and they subdivided. The net result
17 is that it is all under the supervision of one individual.

18 I am confident that most of the members of this
19 subcommittee will vote in the affirmative. Hopefully in the
20 light of the support of the Secretary, and hopefully of the
21 Administration, and the past support we have seen from other
22 Administrations that this bill will be enacted into law.

23 Thank you very much.

24 Mr. Thompson. Thank you, Mr. Biaggi.

25 Mr. Miller.

1 Mr. Miller. I also have no questions.

2 Let me also make an observation. First of all I wish
3 to thank you gentlemen for making your testimony available
4 to the committee. A great deal has been said here this
5 morning about how long this fight has gone on. I would just
6 like to say that much of what you are saying is new
7 information to me.

8 When the Denver Building Trades case took place I was
9 six years old. I am in at the 15th round, so to speak. I
10 hope we do in fact have a knockout.

11 I too would like to join in the remarks of Mr. Biaggi
12 that anybody who has been involved in the building trades or
13 in construction knows of the interdependence of the
14 organizations.

15 I just went through a strike in a district that I
16 represent where the steamfitters were on strike. They were
17 working on an expansion by Standard Oil of California. I
18 dare say that was the most closely managed construction job
19 in the country just because of the sheer logistics of
20 trying to put together the hardware. To say that somehow
21 they all operated separately!

22 I had the opportunity to go out on a grievance with the
23 people of the carpenter's union. When we got done we were
24 dealing with all the unions and subcontractors and Bechtel
25 who was doing the overall management. They spoke with one

1 voice at least. I don't know what their interests are.

2 I think it is very clear from your testimony and others

3 that the time has come to recognize that economic fact because

4 I must say I as a former member of the Operating Engineers

5 found it rather dismal to be standing alongside of a plant

6 gate and watching people go into the other when I thought

7 we had a justified issue. I would hope that those friends and

8 constituents of mine who unfortunately have to engage in

9 strikes from time to time would be able to put the bargaining

10 on the same level by the use of this law should it pass.

11 Thank you.

12 Mr. Biaggi. May I make one comment with special

13 tribute to the building trades. I am sure to a large extent

14 it applies to the other international unions.

15 My intimacy with the building trades unions and their

16 leadership has been advantageous to me in the sense that I

17 have learned over the years that they are very responsible,

18 which belies the allegation of the contractor's association

19 which offers the notion and it is a palatable notion if you

20 are not informed, that one union can hold up an entire job.

21 That applies elsewhere too. But the likelihood of that

22 happening when you are dealing with reasonable men, responsible

23 men, concerned with the welfare of their individuals and

24 members, and the only way you can be concerned is to see that

25 they work instead of having job interruptions, kind of belies

1 that allegation.

2 Again, I reiterate it is a tribute to the building

3 trades because they have demonstrated that sense of

4 responsibility and have restored a great degree of stability

5 in the labor-management relationships over the years.

6 Mr. Turner. Mr. Chairman, may I say that we are very

7 happy to know that Congressman Miller is a former member of

8 the Operating Engineers. I didn't know it. We are going to

9 have to do something about that in our magazine. I think he

10 is the only second one I can remember.

11 Mr. Thompson. You really ought to give him a lifetime

12 card. He will have it for many, many years according to

13 his recitation here.

14 Mr. Turner. We will have to have something appropriate.

15 Mr. Miller. Since we can't strike, maybe I will go back

16 to it.

17 Mr. Thompson. I wonder what doors they will allow us

18 to picket.

19 Mr. Biaggi struck on something which I think is worthy

20 to comment. One would think in listening to opposition

21 witnesses that the first thing any building tradesman has on

22 his mind is to look for some opportunity to hit the bricks.

23 That is perfectly absurd.

24 When they are striking their income is reduced very

25 radically. Many years ago I worked as an ironworker until we

1 got to the sixth floor of the building, and then I decided to
2 switch. Since I have gotten here I have been the legislative
3 equivalent of a hod carrier. I want to promise Mr. Miller
4 that it is not my intention, his longevity prospect being
5 so much greater than mine, to turn the hod over to a former
6 operating engineer.

7 I can't help but remark also on the dispassionate nature
8 of the statements of all of you, Mr. Georgine and others
9 testifying for this. Secretary Dunlop called for a calm,
10 dispassionate, objective review of this legislation. I am
11 moderately surprised, knowing how deeply you feel, particularly
12 Mr. Murphy, having known him for many years, that the height
13 of his boiling point normally is much below that which he
14 exhibited today.

15 That does not mean that he does not feel very strongly
16 about this matter, and some of the testimony relating to it.

17 With that, and with the assurance that the committee
18 will expedite consideration of this as soon after the 4th of July
19 recess as possible, the Chair will announce that we will
20 adjourn for the day, to meet tomorrow at 9:30 a.m., for a
21 last day of hearing, in room 2261.

22 Thank you all very much.

23 (Whereupon, at 12 noon, the subcommittee recessed, to
24 reconvene at 9:30 a.m., Thursday, June 12, 1975, the next day)
25