The original documents are located in Box 38, folder "1/2/76 HR5900 Common Situs Picketing Bill (vetoed) (3)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

H. R. 5900

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PROTECTION OF ECONOMIC RIGHTS OF LABOR IN THE CONSTRUCTION INDUSTRY

SEC. 101. (a) Section 8(b)(4) of the National Labor Relations Act, as amended, is amended by inserting before the semicolon at the end thereof ": *Provided further*, That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any employer primarily engaged in the construction industry on the site to strike or refuse to perform services at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site: *Provided further*, That nothing in the above proviso shall be construed to permit a strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services in furtherance of a labor dispute, unlawful under this Act or in violation of an existing collective bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers, and the issues in dispute involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry: *Provided further*, Except as provided in the above provisos nothing herein shall be construed to permit any act or conduct which was or may have been an unfair labor practice under this subsection: *Provided further*, That nothing in the above provisos, shall be construed to prohibit any act which was not an unfair labor practice under the provisions of this subsection existing prior to the enactment of such provisos: *Provided further*, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of sex, race, creed, color, or national origin or because of the membership or nonmembership of any employee in any labor organization: *Provided further*, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is to cause or attempt to cause an employer to discriminate against any employee, or to discriminate against an employee with respect to whom membership in a labor organization has been denied or terminated on

some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership, or to exclude any labor organization on the ground that such labor organization is not affiliated with a national or international labor organization which represents employees of an employer at the common site: *Provided further*, That nothing in the above provisos shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization presently prohibited by paragraph (7) of subsection (b): *Provided further*, That if a labor organization engages in picketing for an object described in paragraph (7) of subsection (b) and there has been filed a petition under subsection (c) of section 9, and a charge under subsection (b) of section 10, the Board shall conduct an election and certify the results thereof within fourteen calendar days from the filing of the later of the petition and the charge: *Provided further*, That nothing in the above provisos shall be construed to permit any picketing of a common situs by a labor organization to force, require, or persuade any person to cease or refrain from using, selling, purchasing, handling, transporting, specifying, installing, or otherwise dealing in the products or systems of any other producer, processor, or manufacturer. In determining whether several employers who are in the construction industry are jointly engaged as joint venturers at any site, ownership or control of such site by a single person shall not be controlling".

(b) Section 8 of such Act is amended by adding at the end thereof the following new subsections:

"(h) Notwithstanding the provisions of this or any other Act, where a State law requires separate bids and direct awards to employers for construction, the various contractors awarded contracts in accordance with such applicable State law shall not for the purposes of the third proviso at the end of paragraph (4) of subsection (b) of this section, be considered joint venturers or in the relationship of contractors and subcontractors with each other or with the State or local authority awarding such contracts at the common site of the construction.

"(i) Notwithstanding the provisions of this or any other Act, any employer at a common construction site may bring an action for injunctive relief under section 301 of the Labor Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective-bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final settlement of disputes as provided in the agreement.

"(j) The provisions of the third proviso at the end of paragraph (4) of subsection (b) of this section shall not apply at the site of the construction, alteration, painting, or repair of a building, structure, or other work involving residential structures of three residential levels or less constructed by an employer who in the last taxable year immediately preceding the year in which the determination under this subsection is made had, in his own capacity or with or through any other person, a gross volume of construction business of $9,500,000 or less, adjusted annually as determined by the Secretary of Labor, based upon the revisions of the Price Index for New One Family Houses prepared by the Bureau of the Census, if the employer within 10 days of being served with the notice required by subsection (g)(2)(A) of this section notifies each labor organization which served that notice in an affidavit that he satisfies the requirements set forth in this subsection.".

(c) Section 8(g) of such Act is amended by redesignating the present section 8(g) as section 8(g)(1), and adding at the end thereof the following:

"(2)(A) A labor organization before engaging in activity permitted by the third proviso at the end of paragraph (4) of subsection (b) of this section shall provide prior written notice of intent to strike or to refuse to perform services of not less than ten days to all unions and the employers and the general contractor at the site and to any national or international labor organization of which the labor organization involved is an affiliate and to the Construction Industry Collective Bargaining Committee: *Provided*, That at any time after the expiration of ten days from transmittal of such notice, the labor organization may engage in activities permitted by the third proviso at the end of paragraph (4) of subsection (b) of this section if the national or international labor organization of which the labor organization involved is an affiliate gives notice in writing authorizing such action: *Provided further*, That authorization of such action by the national or international labor organization shall not render it subject to criminal or civil liability arising from activities, notice of which was given pursuant to this subparagraph, unless such authorization is given with actual knowledge that the picketing is to be willfully used to achieve an unlawful purpose.

"(B) In the case of any such site which is located at any military facility or installation of the Army, Navy, or Air Force, or which is located at a facility or installation of any other department or agency of the Government if a major purpose of such facility or installation is or will be the development, production, testing, firing or launching of munitions, weapons, missiles, or space vehicles, prior written notice of intent to strike or to refuse to perform services, of not less than ten days shall be given by the labor organization involved to the Federal Mediation and Conciliation Service, to any State or territorial agency established to mediate and conciliate disputes within the State or territory where such site is located, to the several employers who are jointly engaged at such site, to the Army, Navy, or Air Force or other department or agency of the Government concerned with the particular facility or installation, and to any national or international labor organization of which the labor organization involved is an affiliate.

"(C) The notice requirements of subparagraphs (A) and (B) above are in addition to and not in lieu of the notice requirements prescribed by section 8(d) of the Act.".

SEC. 102. The amendments made by this title shall take effect 90 days after the date of enactment of this title except (1) with respect to all construction work having a gross value of $5,000,000 or less which was contracted for and on which work had actually started on November 15, 1975, the amendments made by this title shall take effect one year after such effective date, and (2) with respect to all construction work having a gross value of more than $5,000,000 which was contracted for and on which work had actually started on November 15, 1975, the amendments made by this title shall take effect two years after such effective date.

TITLE II—CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING

SHORT TITLE

SEC. 201. This title may be cited as the "Construction Industry Collective Bargaining Act of 1975".

VETOED
STATEMENT PUT OUT 12/22/75

FINDINGS AND PURPOSES

SEC. 202. (a) The Congress finds and declares that the legal framework for collective bargaining in the construction industry is in need of revision; and that an enhanced role for national labor organizations and national contractor associations working as a group is needed to minimize instability, conflict, and distortions, to assure that problems of collective-bargaining structure, productivity and manpower development are constructively approached by contractors and unions themselves, and at the same time to permit the flexibility and variations that appropriately exist among localities, crafts, and branches of the industry.

(b) It is therefore the purpose of this title to establish a more viable and practical structure for collective bargaining in the construction industry by establishing procedures for negotiations with a minimum of governmental interference in the free collective-bargaining process.

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING COMMITTEE

SEC. 203. (a) There is hereby established in the Department of Labor a Construction Industry Collective Bargaining Committee. The Committee members shall be appointed as follows:

(1) Ten members shall be appointed by the President from among individuals qualified by experience and affiliation to represent the viewpoint of employers engaged in collective bargaining in the construction industry.

(2) Ten members shall be appointed by the President from among individuals qualified by experience and affiliation to represent the viewpoint of the standard national labor organizations in the construction industry.

(3) Up to three members shall be appointed by the President from among individuals qualified by training and experience to represent the public interest, one of whom shall be designated by him to serve as Chairman.

(4) The Secretary of Labor, ex officio.

(5) The Director of the Federal Mediation and Conciliation Service, ex officio.

The employer, labor, and public members shall be appointed by the President after consultation with representative labor and management organizations in the industry whose members are engaged in collective bargaining. Any alternate members who may be appointed shall be appointed in the same manner as regular members. An organizational meeting of the Committee shall be held at the call of the Chairman at which there shall be in attendance at least five members qualified to represent the viewpoint of employers, five members qualified to represent the viewpoint of labor organizations, and one member qualified to represent the public interest. All actions of the Committee shall be taken by the Chairman or the Executive Director on behalf of the Committee.

(b) The Secretary of Labor may appoint such staff as is appropriate to carry out the Committee's functions under this title and with the approval of the Committee, may appoint an Executive Director.

(c) The Committee may, without regard to the provisions of section 553 of title 5, United States Code, promulgate such rules and regulations as may be necessary or appropriate to carry out the purposes of this title including the designation of "standard national construction labor organizations" and "national construction contractor asso-

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ciations" qualified to participate in the procedures set forth in this title.

NOTICE REQUIREMENTS

SEC. 204. (a) In addition to the requirements of any other law, including section 8(d) of the National Labor Relations Act, as amended, where there is in effect a collective bargaining agreement covering employees in the construction industry between a local construction labor organization or other subordinate body affiliated with a standard national construction labor organization, or between a standard national construction labor organization directly, and an employer or association of employers in the construction industry, neither party shall terminate or modify such agreement or the terms or conditions thereof without serving a written notice of the proposed termination or modification in the form and manner prescribed by the Committee effective sixty days prior to the expiration date thereof, or in the event such collective bargaining agreement contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification. The notice required by this subsection shall be served as follows:

(1) A local construction labor organization or other subordinate body affiliated with a standard national construction labor organization shall serve such notice upon such national organization.

(2) An employer or local association of employers shall serve such notice upon all national construction contractor associations with which the employer or association is affiliated. An employer or local association of employers, which is not affiliated with any national construction contractor association shall serve such notice upon the Committee.

(3) Standard national construction labor organizations and national construction contractor associations shall serve such notice upon the Committee with respect to termination or modification of agreements to which they are directly parties.

The parties shall continue in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing collective bargaining agreement for a period of sixty days after the notice required by this subsection is given or until the expiration of such collective bargaining agreement, whichever occurs later.

(b) Standard national construction labor organizations and national construction contractor associations shall furnish forthwith to the Committee copies of all notices served upon them as provided by subsection (a) of this section.

(c) The Committee may prescribe the form and manner and other requirements relating to the submission of the notices required by this section.

ROLE OF THE COMMITTEE AND NATIONAL LABOR AND EMPLOYER ORGANIZATIONS IN COLLECTIVE BARGAINING

SEC. 205. (a) Whenever the committee has received notice pursuant to section 204 it may take jurisdiction of the matter, with or without the suggestion of any interested party, by transmitting written notice to the signatory labor organization or organizations and the association or associations of employers directly party to the collective bargaining agreement, during the ninety-day period which includes and immediately precedes the later of: (1) the ninetieth day following the giving of notice under section 204(a); or (2) whichever is applicable, (A) the thirtieth day following the expiration of the collective bar-

gaining agreement, or (B) the thirtieth day following the date proposed for termination or modification of such agreement.

(b) The Committee shall decide whether to take such jurisdiction in accordance with the standards set forth in section 206. When the Committee has taken jurisdiction under this section, it may in order to facilitate a peaceful voluntary resolution of the matter and the avoidance of future disputes: (1) refer such matter to voluntary national craft or branch boards or other appropriate organizations established in accordance with section 207; (2) meet with interested parties and take other appropriate action to assist the parties; or (3) take the action provided for in both preceding clauses (1) and (2) of this subsection. At any time after the taking of jurisdiction, the Committee may continue to meet with interested parties as provided herein.

(c) When the Committee has taken jurisdiction within the ninety-day period specified in this section over a matter relating to the negotiation of the terms or conditions of any collective bargaining agreement involving construction work between: (1) any standard national construction labor organization, or any local construction labor organization or other subordinate body affiliated with any standard national construction labor organization, and (2) any employer or association of employers, notwithstanding any other law, no such party may, at any time prior to the expiration of the ninety-day period specified in this subsection, engage in any strike or lockout, or the continuing thereof, unless the Committee sooner releases its jurisdiction.

(d) When the Committee receives any notice required by section 204 it is authorized to request in writing at any time during the ninety-day period specified in subsection (a) of this section participation in the negotiations by the standard national construction labor organizations with which the local construction labor organizations or other subordinate bodies are affiliated and the national construction contractor associations with which the employers or local employer associations are affiliated.

(e) In any matters as to which the Committee takes jurisdiction under subsection (a) of this section and makes a referral authorized by subsection (d) of this section, no new collective bargaining agreement or revision of any existing collective bargaining agreement between a local construction labor organization or other subordinate body affiliated with the standard national construction labor organization, and an employer or employer association shall be of any force or effect unless such new agreement or revision is approved in writing by the standard national construction labor organization with which the local labor organization or other subordinate body is affiliated. Prior to such approval the parties shall make no change in the terms or conditions of employment. The Committee may at any time suspend or terminate the operation of this subsection as to any matter previously referred pursuant to subsection (d) of this section.

(f) No standard national construction labor organization or national construction contractor association shall incur any criminal or civil liability, directly or indirectly, for actions or omissions pursuant to a request by the Committee for its participation in collective bargaining negotiations, or the approval or refusal to approve a collective bargaining agreement under this title: *Provided*, That this immunity shall not insulate from civil or criminal liability a standard national construction labor organization or national construction contractor association when it performs an act under this statute to willfully achieve a purpose which it knows to be unlawful: *Provided further*,

That a standard labor organization shall not by virtue of the performance of its duties under this Act be deemed the representative of any affected employees within the meaning of section 9(a) of the National Labor Relations Act or become a party to or bear any liability under any agreement it approves pursuant to its responsibilities under this Act.

(g) Nothing in this title shall be deemed to authorize the Committee to modify any existing or proposed collective bargaining agreement.

STANDARDS FOR COMMITTEE ACTION

SEC. 206. The Committee shall take action under section 205 only if it determines that such action will—

(1) facilitate collective bargaining in the construction industry, improvements in the structure of such bargaining, agreements covering more appropriate geographical areas, or agreements more accurately reflecting the condition of various branches of the industry;

(2) promote stability of employment and economic growth in the construction industry;

(3) encourage collective bargaining agreements embodying appropriate expiration dates;

(4) promote practices consistent with appropriate apprenticeship training and skill level differentials among the various crafts or branches;

(5) promote voluntary procedures for dispute settlement; or

(6) otherwise be consistent with the purposes of this title.

OTHER FUNCTIONS OF THE COMMITTEE

SEC. 207. (a) The Committee may promote and assist in the formation of voluntary national craft or branch boards or other appropriate organizations composed of representatives of one or more standard national construction labor organizations and one or more national construction contractor associations for the purpose of attempting to seek resolution of local labor disputes and review collective-bargaining policies and developments in the particular craft or branch of the construction industry involved. Such boards, or other appropriate organizations, may engage in such other activities relating to collective bargaining as their members shall mutually determine to be appropriate.

(b) The Committee may, from time to time, make such recommendations as it deems appropriate, including those intended to assist in the negotiations of collective-bargaining agreements in the construction industry; to facilitate area bargaining structures; to improve productivity, manpower development, and training; to promote stability of employment and appropriate differentials among branches of the industry; to improve dispute settlement procedures; and to provide for the equitable determination of wages and benefits. The Committee may make other suggestions, as it deems appropriate, relating to collective bargaining in the construction industry.

MISCELLANEOUS PROVISIONS

SEC. 208. (a) This title shall apply only to activities affecting commerce as defined in sections 2(6) and 2(7) of the National Labor Relations Act, as amended.

(b) Nothing in this title shall be construed to require an individual employee to render labor or services without the employee's consent, nor shall anything in this title be construed to make the quitting of labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or services, without the employee's consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this title.

(c) The failure or refusal to fulfill any obligation imposed by this title on any labor organization, employer, or association of employers shall be remediable only by a civil action for equitable relief brought by the Committee in a district court of the United States, according to the procedures set forth in subsection (d) of this section.

(d) The Committee may direct that the appropriate district court of the United States having jurisdiction of the parties be petitioned to enforce any provision of this title. No court shall issue any order under section 205(c) prohibiting any strike, lockout, or the continuing thereof, for any period beyond the ninety-day period specified in section 205(a).

(e) The findings, decisions, and actions of the Committee pursuant to this title may be held unlawful and set aside only where they are found to be arbitrary or capricious, in excess of its delegated powers, or contrary to a specific requirement of this title.

(f) Service of members or alternate members of the Committee may be utilized without regard to section 665(b) of title 31, United States Code. Such individuals shall be deemed to be special Government employees on days in which they perform services for the Committee.

(g) In granting appropriate relief under this title the jurisdiction of United States courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101).

(h) The Committee may make studies and gather data with respect to matters which may aid in carrying out the provisions of this title.

(i) Notwithstanding anything in subchapter II of chapter 5 of title 5, United States Code, in carrying out any of its functions under this title, the Committee shall not be required to conduct any hearings. Any hearings conducted by the Committee shall be conducted without regard to the provisions of subchapter II of chapter 5 of title 5, United States Code.

(j) Except as provided herein, nothing in this title shall be deemed to supersede or modify any other provision of law.

(k) In all civil actions under this title, attorneys appointed by the Secretary may represent the Committee (except as provided in section 518(a) of title 28, United States Code), but all such litigation shall be subject to the direction and control of the Attorney General.

COORDINATION

SEC. 209. (a) At the request of the Committee, the other agencies and departments of the Government shall provide, to the extent permitted by law, information deemed necessary by the Committee to carry out the purposes of this title.

(b) The Committee and the Federal Mediation and Conciliation Service shall regularly consult and coordinate their activities to promote the purposes of this title.

(c) Other agencies and departments of the Federal Government shall cooperate with the Committee and the Federal Mediation and Conciliation Service in order to promote the purposes of this title.

DEFINITIONS

SEC. 210. (a) The terms "labor dispute", "employer", "employee", "labor organization", "person", "construction", "lockout", and "strike" shall have the same meaning as when used in the Labor-Management Relations Act, 1947, as amended.

(b) As used in this title the term "Committee" means the Construction Industry Collective Bargaining Committee established by section 203 of this title.

SEPARABILITY

SEC. 211. If any provision of this title or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 212. There are authorized to be appropriated such sums as may be necessary to carry out this title.

EXPIRATION DATE AND REPORTS

SEC. 213. (a) This title shall expire on December 31, 1980.

(b) No later than one year following the date of enactment of this title and at one-year intervals thereafter, the Committee shall transmit to the President and to the Congress a full report of its activities under this title during the preceding year.

(c) No later than June 30, 1980, the Committee shall transmit to the President and to the Congress a full report on the operation of this title together with recommendations, including a recommendation as to whether this title should be extended beyond the expiration date specified in subsection (a) of this section, and any other recommendations for legislation as the Committee deems appropriate.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-371

PROTECTING ECONOMIC RIGHTS OF LABOR

JULY 18, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

SUPPLEMENTAL AND MINORITY VIEWS

[To accompany H.R. 5900]

The Committee on Education and Labor, to whom was referred the bill (H.R. 5900) to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in italic type in the reported bill.

A CHRONOLOGY OF H.R. 5900

H.R. 5900 was introduced on April 10, 1975 by Mr. Thompson for himself and for Mr. Perkins, Mr. Dent, Mr. Dominick V. Daniels, Mr. Brademas, Mr. Ford of Michigan, Mr. Phillip Burton, Mr. Annunzio, Mr. John L. Burton, Mr. Beard of Rhode Island, Mr. Karth, and Mr. Rooney. Thereafter, at least 14 identical bills were introduced with over 106 cosponsors.

Hearings were held on June 5th, 10th, 11th, and 12th.

Favorable witnesses included Secretary of Labor John T. Dunlop; George Meany, President of the AFL–CIO (his statement was presented by Andrew Biemiller), Robert A. Georgine, President of the Building and Construction Trades Department of the AFL–CIO; I. W. Abel, President of the United Steelworkers of America and President of the Industrial Union Department of the AFL–CIO; Thomas F. Murphy, President of the Bricklayers, Masons & Plasterers' Union; Joseph P. Power, President of the Operative Plasterers & Cement

Masons Union; J. C. Turner, General Secretary of the Union of Operating Engineers; and Robert J. Connerton, General Counsel of the Laborers' International Union. Written statements supporting the Bill were received from President Leonard Woodcock of the United Auto Workers, from President Charles H. Pillard of the International Brotherhood of Electrical Workers; from the Presidents or chief executive officers of at least 15 additional international unions, and from literally hundreds of local or regional labor organizations and private citizens.

Witnesses in opposition included James D. McClary for the Associated General Contractors of America, Michael Markowitz for the National Association of Manufacturers, Robert T. Thompson for the Chamber of Commerce, Philip Abrams for the Associated Builders and Contractors, Joseph Debro for the Contractors Organized to Lobby (CONTROL) and John Noble of the American Retail Federation. Written statements were received from many local and regional contractors' associations, and letters from private citizens.

On June 26 the Subcommittee on Labor-Management Relations adopted several amendments to H.R. 5900 and reported the amended bill by a roll call vote of eight in favor, one against, and one voting "present."

On July 10 the Committee on Education and Labor adopted several amendments, and voted to report the amended bill by a roll call vote of 31 in favor and 7 opposed.

The Essence of H.R. 5900: Neither the Contractor Nor the Subcontractor in the Construction Industry Is "Wholly Unconcerned" in the Labor Disputes of the Other

The essence of H.R. 5900 is very simple. The so-called "secondary boycott" provisions of the Taft-Hartley amendments to the National Labor Relations Act were designed, in the words of the late Senator Taft, to protect a third person "who is wholly unconcerned in the disagreement between an employer and his employees". President Eisenhower elaborated on this theme when he wrote Congress that the secondary boycott prohibitions "are designed to protect innocent third parties from being injured in labor disputes that are not their concern."

H.R. 5900 has no quarrel with the secondary boycott provisions of Taft-Hartley insofar as they are applied to protect the "innocent neutral" from embroilment in a labor dispute in which he is "wholly unconcerned." Indeed, it reaffirms the primary-secondary dichotomy which is at the heart of §§ 8(b)(4)(B) and 8(e). See e.g. *NLRB* v. *Operating Engineers*, 400 U.S. 297, 302–303. The purpose of H.R. 5900 is to apply this dichotomy to the construction industry in a realistic manner, by treating the general contractor and his subcontractors as a single person for purposes of the secondary boycott provision of the law. This approach reflects the economic realities in the building and construction industry where the contractor and all the subcontractors are engaged in a common venture and each is performing tasks closely related to the normal operations of all the others. None are "innocent" or "unconcerned" in the labor disputes involving any other. The construction of a building is a single, coordinated and integrated economic

enterprise. The contractor can perform the total job, or subcontract various parts thereof. If he decides to subcontract, he chooses the subcontractors with care; and exercises overall supervision. If he chooses to subcontract to a non-union subcontractor who pays less than the prevailing union wage and wins the bid for that reason, the contractor cannot claim "neutrality" when the unions protest by picketing the job site. This view of "non-neutrality" underlies H.R. 5900 and is its essence.

The Reason for H.R. 5900: The Need To Overrule the Denver Building Trades Council Case

H.R. 5900 is necessary to overrule the *Denver Building Trades Council* decision.

The facts of that case are as follows. A General Contractor in Denver named Doose and Lintner had a contract with the Denver Building Trades Council covering the employes of Doose and Lintner. On a particular job, the contractor decided to subcontract the electrical work to Gould and Preisner. Gould and Preisner hired non-union workers, and paid them 42 cents an hour less than the union scale. When the non-union electricians reported to work, the Denver Building Trades Council picketed the job site, and the union men employed by the general contractor honored the picket line by refusing to work. The object of the picket line was to force the non-union subcontractor off the job; and the contractor did in fact terminate his contract with the electrical subcontractor.

Gould and Preisner, the subcontractor, then filed a charge with the Labor Board alleging a violation of the newly enacted 8(b)(4)(B) of the Taft-Hartley amendments. Section 8(b)(4)(B), in essence, makes it unlawful for a union to strike or picket when an object of the strike or picket line is "forcing or requiring *any person* to cease . . . doing business *with any other person*". (Emphasis supplied.)

The Labor Board held that the Denver Buildings Trades Council was in violation of Section 8(b)(4)(B). The Taft-Hartley amendments were enacted in 1947, the Board decision was in 1949. The Board at that time had almost no experience in assessing Labor Act violations by unions in the construction industry, and determined that because they are separate legal entities the general contractor and his subcontractors are all "other persons" with respect to each other.

The Trades Council appealed to the Court of Appeals for the District of Columbia, and that Court unanimously reversed. Judge Fahy followed the spirit, rather than the literal language of the Act, and wrote as follows:

> The usual secondary boycott or strike is against one who is *not a party* to the original dispute. It is designed to cause a *neutral* to cease doing business with . . . the one with whom labor has the dispute. It seeks to enlist this *outside influence* to force an employer to make peace with the employees or labor organization contesting with him. The situation before us is not of this character. (Emphasis supplied.)

The Labor Board then appealed to the Supreme Court, which reversed the Court of Appeals and upheld the Labor Board decision ad-

verse to the Denver Buildings Trades Council. The Supreme Court placed heavy emphasis in its decision on the general proposition that the interpretation of a statute by an implementing agency is entitled to great weight. It said in this regard:

> Not only are the findings of the Board conclusive with respect to questions of fact in this field . . . but the Board's interpretation of the act and the Board's application of it to doubtful cases are entitled to weight.

The majority of the Court then ruled that because the contractor and subcontractor were separate legal entities, the union picketing was designed, in the words of the statute, to force "any person" (the contractor) to cease doing business with "any other person" (the subcontractor).

In the dissenting opinion, Mr. Justice Douglas wrote:

> The picketing would undoubtedly have been legal if there had been no subcontractor involved—if the general contractor had put nonunion men on the job. The presence of a subcontractor does not alter one whit the realities of the situation; the protest of the union is precisely the same. In each the union was trying to protect the job on which union men were employed. If that is forbidden, the Taft-Hartley Act makes the right to strike, guaranteed by § 13, dependent on fortuitious business arrangements that have no significance so far as the evils of the secondary boycott are concerned. I would give scope to both § 8(b)(4) and § 13 by reading the restrictions of § 8(b)(4) to reach the case where an industrial dispute spreads from the job to another front. (341 U.S. 693).

H.R. 5900 is designed to conform the law "to the realities of the situation"; it overrules *Denver Building*, its spirit and its progeny.

CONTINUING BIPARTISAN EFFORTS TO OVERRULE THE DENVER BUILDING TRADES COUNCIL CASE WERE INITIATED BY PRESIDENT TRUMAN AND CONTINUED BY EACH SUCCESSIVE ADMINISTRATION

Presidents Truman, Eisenhower, Kennedy, Johnson, Nixon and Ford have differed on many issues, but they all agree on the need for legislative overrule of the *Denver Building Trades Council* case.

President Harry Truman initiated the effort to overrule *Denver* in 1949 when the Labor Board handed down its decision. In his State of the Union Message, the President requested a number of reforms in the National Labor Relations Act, including the reversal of the *Denver* case. An omnibus bill, H.R. 2030, was introduced by Chairman John Lesinski and approved by the Committee on Education and Labor. When it reached the floor, there was opposition to other provisions in the omnibus bill, and the total bill was recommitted to the Committee without vote on the *Denver* provisions.

President Eisenhower was the second President to attempt repeal of the *Denver* case. In 1954 he submitted a message to Congress which included the following recommendation:

> The prohibitions in the Act against secondary boycotts are designed to protect innocent third parties from being injured in labor disputes that are not their concern. The true secondary boycott is indefensible and must not be permitted. The act must not, however, prohibit legitimate concerted activities against other than innocent parties. I recommend that the Act be clarified by making it explicit that concerted action against an employer on a construction project who, together with other employers, is engaged in work on the site of the project, will not be treated as a secondary boycott. (President's labor-management relations message, H. Doc. No. 291, Jan. 11, 1954.)

Thereafter, Republican Senator Alexander Smith of New Jersey, Chairman of the Senate Committee on Labor and Public Welfare, introduced a bill and after extensive hearings the bill was favorably reported (S. Rept. No. 1211, 83rd Cong. 2d Session). When the bill reached the Senate floor a number of anti-union amendments were adopted. Upon motion of Senator Hill, the bill was recommitted because, as the Democratic opponents alleged, as amended on the floor it was "packed with confusion and subterfuges."

President Eisenhower repeated his efforts to overrule *Denver* in 1956 and again in 1959. In 1959 the enactment of such a proposal was almost achieved. Mr. Thompson and Mr. Kearns in the House, Senator John F. Kennedy and Senator Goldwater in the Senate, introduced identical bills to overrule *Denver*. They became part of the omnibus Landrum-Griffin reform amendments of that year. The conference committee recommended that the *Denver* bill be made law, but was then informed by the Parliamentarian of the House that it would not be "germane". Efforts on its behalf were then suspended, with the promise to bring it up again in the next Congress.

In 1960 Senator Kennedy and Mr. Thompson introduced identical bills, S. 2643 and H.R. 9070. There were hearings, but no further action.

In 1961, Mr. Thompson introduced another bill (H.R. 2955) which included the text of the bills introduced in the previous session of Congress. Hearings were held and the bill was supported by President Kennedy. Secretary of Labor Arthur J. Goldberg testified on behalf of the Administration as follows:

> I am grateful for this opportunity to appear before you and urge prompt and favorable consideration of this legislation. This is a simple bill with a laudable purpose. That purpose is to do equity—to restore to unions in the building and construction industry the right to engage in peaceful activity at a common construction site to protest sub-standard conditions maintained by any one of the construction contractors working at the very same site.

Despite this Administration endorsement, the Committee took no further action.

One of the then major difficulties to the passage of a bill to reverse the *Denver* ruling was the lack of unity within organized labor to agree on the proper wording of proposed amendments to section 8(b)(4)(B). The unions in the Industrial Union Department of the AFL–CIO had feared that under the wording of earlier versions of the bill they might be picketed by AFL–CIO Building and Construction Trades Department affiliates if the former performed work ordinarily

considered work within the jurisdiction of the latter. An example of this would be a construction expansion project undertaken at, say, a division of the Ford Company where the work is done by Ford employees who are members of unions affiliated with the Industrial Union Department. Members of the "construction craft" unions affiliated with the AFL–CIO Building and Construction Trades Department by picketing the primary employer (the Ford Co.) as being unfair to the construction unions could close down the entire Ford plant.

This "inter-organization" squabble was resolved in February 1965 with the announcement on the 26th by the two departments that they had reached an agreement on the language for a situs-picketing measure to be presented to Congress. The language finally agreed upon added "engaged primarily" but with another accompanying addition, "and the dispute does not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry." After the announcement of this agreement, indicating unity which heretofore was lacking within organized labor, Representative Thompson introduced H.R. 6363 on March 16, 1965.

Identical bills were introduced by other members of the House, including H.R. 6411, by Representative Carlton Sickles. The House Special Subcommittee on Labor held hearings on H.R. 6411, and related bills, in the latter part of June 1965. These bills were supported by the administration of President Johnson. Secretary of Labor W. Willard Wirtz testified in part as follows:

> Finally, Mr. Chairman, in addition to pointing out what these bills are and their fairness, I want to make clear what they are not.
>
> The proposed legislation will not legalize any activity otherwise unlawful under the National Labor Relations Act or in violation of bargaining agreements. It will not require that a man join a union in order to get a job. Two provisions in the Taft-Hartley Act, Section 8(a)(3) and 8(b)(2), outlaw any such requirement. This legislation will not affect product boycotts. It will not legalize jurisdictional strikes. These will remain barred by Section 8(b)(4)(D) of the Taft-Hartley Act.
>
> It will not legalize otherwise unlawful recognition or organizational picketing.
>
> It will not extend beyond the project site, and will not have any effect outside the construction industry. I urge the prompt enactment by the Congress of this legislation.

At the conclusion of hearings, the House Labor Committee met in Executive Session on September 21, 1965, and favorably reported the legislation. Subsequently, a rule was granted on March 14, 1966. Speaker John McCormack then scheduled the bill for floor action on May 12, 1966. However, on May 11th the bill was withdrawn from the Agenda, in a completely unprecedented move, at the request of the then Chairman of the House Education and Labor Committee. (Adam Clayton Powell).

In 1967 Mr. Thompson introduced H.R. 100, and Senator Morse of Oregon introduced a similar bill, S. 1487 in the Senate. Hearings

were held in the House and the Committee on Education and Labor favorably reported H.R. 100, with amendments, on May 4, 1967. The House Rules Committee held hearings on H.R. 100, completing them on September 26, 1967. The House leadership then polled the House members, asking in part: "Would you prefer the Senate or the House to act first". When the response was in favor of the Senate acting first, the House Rules Committee adopted a motion to defer final action pending Senate action on the legislation.

During the 91st Congress, Mr. Thompson again introduced legislation to repeal the *Denver* case, with the support of the administration of President Richard Nixon. Secretary of Labor George P. Shultz testified in part as follows:

> I am here today to indicate my support for legislation to legalize common situs picketing, if that legislation is carefully designed to incorporate appropriate and essential safeguards.

The Secretary requested time to submit his recommendations to the committee. The Labor Department never did submit its recommendations, and the bill died in committee.

In the 92d and 93d Congresses, Mr. Thompson and Mr. Perkins introduced bills to overrule *Denver*. No action was taken.

On April 10, 1975, in the 94th Congress, Mr. Thompson, Mr. Perkins and others introduced H.R. 5900 to overrule *Denver*. Hearings were held in early June, and the bill was supported by the Ford administration. Secretary of Labor John T. Dunlop testified in part as follows:

> For my part, in the words of former Secretary of Labor George P. Shultz, "I am here today to indicate my support for legislation to legalize common situs picketing."

Secretary Dunlop testified that the reservations earlier held by Secretary Shultz "have been met by the present bill, or have been the subject of subsequent development in case law, or can be dealt with by appropriate legislative history". Secretary Dunlop then advanced two concerns of his own. He was requested to submit written proposals, which he did. These proposals were then adopted by the Committee; and the administration of President Ford is now in full support of the bill.

LEGISLATIVE RELIEF WAS GRANTED TO THE COMPARABLE APPAREL INDUSTRY IN THE 1959 LANDRUM-GRIFFIN AMENDMENTS

The practice of subcontracting the work on a portion of the total economic product is not limited to the construction industry. In the apparel and clothing industry it is quite common to subcontract a portion of the work in the manufacture of a dress, a coat, or other article of clothing.

Under the rationale of the *Denver Building Trades Council* case, unions in the apparel and clothing industry could not protest by picketing if a clothing manufacturer "subcontracted" a portion of the work to a "sweat shop" operator. The manufacturer was "a person", the sweat shop operator was an "any other person", and section 8(b)(4)(B) made it unlawful for a union to force "a person" to cease doing business with "any other person".

The inequities of this situation were recognized by Congress in the 1959 Landrum-Griffin Amendments. A new section 8(e) was added to the Act. It provides in pertinent part as follows:

> For the purposes of . . . section 8(b)(4)(B) the terms "any person" when used in relation to the terms . . . "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry.

What Congress has determined to be appropriate in the integrated process of production in the apparel and clothing industry is equally appropriate in the integrated process of production in the construction industry. In neither situation is the contractor, or the subcontractor doing a portion of the work in the integrated process of production, "wholly unconcerned" in the labor disputes of the other. Under H.R. 5900 the law pertaining to secondary boycotts in the construction industry will be the same as the law in the apparel and clothing industry with the single exception that a union in the construction industry would not be permitted to strike to enforce an agreement which is lawful only because of the construction industry's proviso to § 8(e).

JUDICIAL RELIEF WAS GRANTED TO THE COMPARABLE SITUATION IN MANUFACTURING IN THE 1961 "G. E. RESERVED GATE" CASE

The practice of subcontracting work to be done on a common situs is not peculiar to the construction industry. In manufacturing, a company quite often subcontracts the maintenance or other work to outside independent legal entities.

Following the *Denver Building Trades Council* Case, the Labor Board held that it was unlawful for a union with a primary dispute against the manufacturer to picket the workers of the subcontractor, as this was forcing "a person" to cease doing business with "any other person." The Supreme Court cried halt to this Labor Board practice in the 1961 decision of *Local 761, International Union of Electrical, Radio & Machine Workers, AFL–CIO* v. *Labor Board*, 366 U.S. 667. (The G. E. Reserved Gate case).

That case arose out of a strike by the G.E. employees at the G.E. Appliance Park in Louisville, Ky. G.E. utilized independent contractors for a great variety of purposes. Some did construction work on new buildings. Some installed and repaired ventilation and heating equipment. Some engaged in retooling and rearranging operations necessary to the manufacture of new models. Some did "general maintenance work." G.E. "reserved" a gate for the exclusive use of the employees of these subcontractors.

During the strike by the production workers, this "reserved gate" was picketed. The Board held that this picketing was unlawful, as its object was "to enmesh these employees of the neutral employers in its dispute with the Company."

The Supreme Court reversed. It held that "The key to the problem is found in the type of work that is being performed by those who use the separate gate." On the one hand, "where the independent workers were performing tasks *unconnected to the normal operations* of the struck employer—usually construction work on his buildings," it would be unlawful for the manufacturer's striking employees to picket a gate reserved for the exclusive use of these independent workers. On the other hand, "if a separate gate were devised for regular plant deliveries, the barring of picketing at that location would make a clear invasion on traditional primary activity of appealing to neutral employees *whose tasks aid the employer's everyday operations.*" (emphasis supplied)

The Court concluded that for the picketing to be unlawful:

> There must be a separate gate, marked and set apart from other gates; the work done by the men who use the gate must be unrelated to the normal operations of the employer, and the work must be of a kind that would not, if done when the plant was engaged in its regular operations, necessitate curtailing those operations.

The Court then remanded the case to the Labor Board for further proceedings, as the Board had failed to take into account that if the reserved gate "was in fact used by employees of independent contractors who performed conventional maintenance work *necessary to the normal operations of General Electric*, the use of the gate would have been a mingled one outside the bar" of the secondary boycott prohibitions. (emphasis supplied).

The short of the matter is that *in manufacturing* an independent subcontractor *is not* immunized from the labor dispute between the manufacturer and his employees if the work performed by the subcontractor is integrated into the normal operations of the manufacturer. On the other hand, *in the construction industry*, the identical independent subcontractor who performs work integrated into the normal process in the construction industry *is* immunized from the labor dispute between the prime contractor and his employees. There seems no practical justification for this distinction.

IN 1959 CONGRESS RECOGNIZED THE PECULIAR NATURE OF THE CONSTRUCTION INDUSTRY BY EXEMPTING THAT INDUSTRY FROM THE SO-CALLED HOT CARGO PROHIBITIONS CONTAINED IN THE LANDRUM-GRIFFIN AMENDMENTS. IT THEN PROMISED TO, BUT FAILED TO ENACT LEGISLATION TO OVERRULE THE DENVER CASE.

In the 1959 Landrum-Griffin amendments to the Labor Act, Congress recognized the integrated nature of the work performed in the construction industry, and exempted the construction industry from the additional unfair labor practice prohibitions added to the Act in that year.

Specifically the new section 8(e) makes it an unfair labor practice for any labor organization and any employer to enter into any contract or agreement whereby the employer agrees to cease doing business with any other person. Its purpose was to eliminate "the legal radiations" of hot cargo clauses (*Carpenter's Union* v. *Labor Board* (*Sand Door*) 357 U.S. 93, 108) and thus to close a loophole in the law of secondary boycotts. (*Woodwork Manufacturers* v. *NLRB*, 386 U.S. 612, 634).

The construction industry was exempted from this broad prohibition. A proviso in the law expressly provides that—

> Nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work.

The Congress distinguished the construction (and the apparel) industry from all other industries because of the integrated nature of the work performed at the construction site (and in the manufacture of clothing). All agreements whereby the contractor agrees to refrain from or cease doing business with nonunion subcontractors on the job site are permissible. As Senator John F. Kennedy, the Chairman of the Senate Conferees, advised his colleagues, in reporting on the 1959 conference agreement:

> Agreements by which a contractor in the construction industry promises not to subcontract work on a construction site to a nonunion contractor appear to be legal today. They will not be unlawful under section 8(e). The proviso is also applicable to all other agreements involving undertakings not to do work on a construction project site with other contractors or subcontractors regardless of the precise relation between them.

In sum, *Denver Building* made it necessary for Congress to add the construction industry proviso to § 8(e) in order to prevent the invalidation of agreements between unions and contractors forbidding subcontracting of work on job sites to nonunion employers. For, *Denver Building* stands for the proposition that all of the contractors are "secondary" with respect to each other. The construction industry proviso was enacted to assure that, notwithstanding *Denver*, contractors would all be regarded as primary with respect to each other for the purposes of the new § 8(e). Nevertheless, the Supreme Court in *Connell Co.* v. *Plumbers & Steamfitters* (June 2, 1975) held that agreements between a general contractor and a union which does not represent any employees directly employed by the general contractor governing the subcontracting of work could be outside the construction industry proviso and forbidden by § 8(e). The court reached this result, which was concededly contrary to the language of the proviso, because it regarded requiring union men to work along side nonunion men to be the only special problem created by *Denver Building*. H.R. 5900, however, makes clear that the problem of the *Denver Building* case is whether the relationship of the contractors is that of neutrals or whether they are to be regarded as a single person for the purposes of the secondary boycott provisions of the Act.

Due to a parliamentary obstacle, *Denver Building* was not overruled in 1959. This prompted Senator Dirksen to make the following statement on the floor of the Senate:

> I believe the chairman of the conference will agree with me when I say that we have not completed the necessary action, in the sense that something remains to be done in connection with the construction field; certainly the majority leader has given his word and the chairman of the conference committee has given his word, and the distinguished junior Senator from Arizona—Mr. Goldwater—concurs, and I concur, that when we come back here in January, if there is something to be done in that field, we will do it, so that nobody will feel aggrieved or feel that he has been forgotten in the process.

On the same day Senator Goldwater remarked on the Senate floor about the inadequacy of the construction-industry exemption from the prohibitions of section 8(e):

> All the members of the Labor and Public Welfare Committee have given their word that they would take this whole subject of the construction industry up at the next session, and give it their full attention. This (referring to the section 8(f) exception) in no way solves the problems of the construction industry.

These assurances of Senators Dirksen and Goldwater to take the next logical step are now at long last being implemented.

A Comment on the Court of Appeals Decision in Markwell & Hartz v. NLRB

The facts and the import of *Markwell & Hartz* v. *NLRB*, 387 F.2d 70 (5th Circuit 1967) are as follows.

Markwell & Hartz had a contract for the expansion of a filtration plant at the East Jefferson Water Works in Louisiana. Markwell & Hartz also had a contract with District 50 of the United Mine Workers covering its employees. District 50 is a rival of the AFL–CIO unions in the construction industry. Markwell & Hartz subcontracted the pile-driving work to Binnings, and the electrical work to Barnes. Employees of both Binnings and Barnes were members of unions which in turn were members of the local AFL–CIO Building Trades Council.

When work commenced on the project, a dispute arose between Markwell & Hartz (the general contractor) and the AFL–CIO Building Trades Council. The AFL–CIO began to picket the project.

Markwell & Hart thereupon established four separate gates: one for the exclusive use of its own employees (members of District 50); the other three for the exclusive use of the subcontractors, the employees of the subcontractors, and suppliers. The AFL–CIO picketed all four gates, and the employees of Binnings and Barnes (the subcontractors) refused to cross the picket line.

The Labor Board then sought and obtained an injunction against the AFL–CIO picketing at the three gates reserved for the exclusive use of the employees employed by the two subcontractors. The theory was that the picketing was designed to cause the two subcontractors to cease doing business with Markwell & Hartz. After the injunction was isued the AFL–CIO was restricted to picketing the gate reserved exclusively for members of the rival District 50.

So much for the facts of the case. But the law of the case is far more significant. The AFL–CIO Trades Council argued on appeal

that the 1961 *G.E. Gate* case had overruled the 1951 *Denver Building Trades Council* case. Had the AFL–CIO won on this contention, we would not be here today on H.R. 5900.

The decision by the three judge court of appeals is ambiguous; because each judge wrote a separate opinion.

District Judge Connally agreed with the basic AFL–CIO contention that if the work of the two subcontractors was "related to the normal operations" of Markwell & Hartz, *Denver* would not apply and the picketing at the reserved gates would be "primary" picketing protected by the *G.E. Reserved Gate* decision. However, Judge Connally disagreed with the AFL on the facts, and ruled that the work of the two subcontractors "was of the unrelated variety." Accordingly, he voted to uphold the injunction against the picketing at the gates reserved for the employees of the two subcontractors.

Circuit Judge Rives concurred with this result, but not with the reasoning. Judge Rives concluded factually that the "work of the subcontractors Binnings and Barnes was 'related to the normal operation' of the general contractor"; but as a matter of law concluded that this was immaterial. He reasoned that *General Electric* did not overrule *Denver*, that there was no inconsistency between the two; because "*Denver* relates to common situs picketing, *General Electric* involves illegal picketing at the premises of a struck manufacturer."

Circuit Judge Wisdom dissented from the issuance of the injunction. He agreed with the AFL and Judge Connally as a matter of law that the conclusions of *Denver* "must be considered as modified" by the "relatedness of work" standard "*set down in General Electric.*" Since the Labor Board had failed to apply this standard, he voted to remand for further consideration.

In short, on the law Judges Connally and Wisdom ruled that the *G.E.* "work relatedness" test had supplanted the *Denver* "separate entities" test; while Judge Rives ruled that it had not, that one test applied in construction, a different test applied in manufacturing. Judge Connally ruled on the facts that the work of the subcontractors was not "related." Judge Wisdom ruled that the application of the test should first be made by the Labor Board, and Judge Rives ruled that the test need not be applied at all.

The culmination of these three opinions resulted in the affirmation of the injunction issued in favor of Markwell & Hartz against the AFL picketing at the gates reserved for the exclusive use of the subcontractors and their AFL employees—and some confusion of the law.

A Comment on the Moore Drydock Doctrine

Under *Moore Drydock*, unions may picket the common construction site under limited circumstances; but *Moore Drydock* relates to an entirely different situation from *Denver*, and in no way concerns the basic issue of H.R. 5900 that the contractor and subcontractor in the construction industry are not "neutrals" or "wholly unconcerned" in the labor disputes of the other.

Moore Drydock relates to the situation when two employers share a common work situs, but each in fact is "wholly unconcerned" with the labor disputes of the other. The facts of the case illustrate the point.

A maritime union represented the employees on a ship owned by Alcoa. Alcoa discharged the American crew, and hired foreigners. The ship then was sent to the Moore Drydock to be repaired, and the American maritime union picketed the premises of Moore Drydock, the only place where picketing could take place against the ship. The employees of Moore Drydock refused to cross the picket line, and Moore Drydock filed "secondary boycott" charges against the picketing union.

In this situation the relationship of Moore Drydock to Alcoa was that of supplier of services to a consumer of those services. Each was truly neutral concerning the labor disputes of the other. Nonetheless, the Labor Board concluded that when the situs (ship) of the primary employer (Alcoa) was ambulatory, there must be a balance between the union's right to picket, and the interest of the secondary employer (Moore Drydock) in being free from picketing. It set out four standards for picketing, which, if met, are presumptive of valid primary and lawful picketing:

> (1) the picketing must be limited to times when the situs of dispute (the ship) was located on the secondary (Moore Drydock) premises;
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> (2) the primary employer (Alcoa) must be engaged in his normal business at the situs;
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> (3) the picketing must take place reasonably close to the situs; and
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> (4) the picketing must clearly disclose that the dispute is only with the primary employer (Alcoa).

The *Moore Drydock* accommodation of conflicting rights and interests protects the right of the union to publicize its dispute against the primary employer, and minimizes the adverse consequences against the "innocent" secondary employer. It thus effectuates the "dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of *shielding unoffending employers* and others from pressures *in controversies not their own*". (emphasis supplied). But *Moore Drydock* has no applicability when the employers are not "unoffending," and when the labor controversies are not "not of their own"; i.e., in the construction industry when contractors subcontract part of their normal operation to others.

H.R. 5900 is consistent with the national commitment to encourage the practices and procedures of collective bargaining

Enactment of H.R. 5900 might generate a transitional wave of picket lines designed to achieve collective bargaining agreements that all the work on the construction site be performed under union contracts. If such is the consequence, it would be consistent with the national commitment to encourage the practices and procedures of collective bargaining.

Forty years ago in the Wagner Act, Congress declared it to be the public "policy of the United States" to encourage "the practice and procedure of collective bargaining"; and thereby to encourage "the friendly adjustment of industrial disputes arising out of differences

as to wages, hours, or other working conditions", by restoring "equality of bargaining powers between employers and employees".

This national commitment of forty years ago was restated in the 1947 Taft-Hartley amendments to the basic labor law, and again in the 1959 Landrum-Griffin amendments to that same law.

Moreover, Congress has consistently recognized that the road to collective bargaining might be uneven, and even hard-won. With this in mind, Congress wrote a provision into section 7 of the Act guaranteeing to employees the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection"; and expressly stated in section 13 that "nothing in this Act, except as specifically provided for herein, shall be construed as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right".

A picket line, thus, is an essential ingredient of our national commitment to collective bargaining, not to be feared, impeded, or diminished.

A Legal Analysis of H.R. 5900 (What It Does and Does Not Do)

It is helpful to emphasis that H.R. 5900 is narrowly conceived and narrowly drawn. No implication is to be drawn by the National Labor Relations Board or by the courts that because Congress has chosen to overrule *Denver* and its progeny that it approves violations of law found elsewhere in the National Labor Relations Act.

H.R. 5900 is emphatic that it is not intended to alter labor-relations law in any respect other than to permit strikes and picketing in the construction industry against any of several employers "jointly engaged" in the construction, alteration, painting or repair of a building, structure or other work. It does this in several ways. First, it provides that the strike must not be "unlawful under this Act." Second, it provides that nothing in H.R. 5900, except as provided "shall be construed to permit any act or conduct which was or may have been an unfair labor practice. Third, it provides that it is not to be construed "to prohibit any act which was not an unfair labor practice under the provisions of this subsection existing prior to the enactment of such proviso."

In short, H.R. 5900 leaves all other labor-management relations law exactly as it was prior to its enactment.

H.R. 5900 does not permit a union to picket in a *jurisdictional* dispute against some other union lawfully recognized.

H.R. 5900 does not permit a union to picket to enforce an illegal product boycott.

H.R. 5900, in terms, does not permit a union to picket to drive employees off a job because of their sex, race, color, creed, or national origin.

H.R. 5900 does not permit a union to picket to deny workers employment opportunities because of their lack of union membership. This is now prohibited by section 8(a)(3) and 8(b)(2) and H.R. 5900 is not intended to alter these provisions at all.

H.R. 5900 does not permit a union to strike in breach of a collective bargaining agreement and all provisions therein requiring mediation, fact-finding, arbitration of disputes, and so on. Nor does it permit a union to "induce" any other union to strike in breach of a collective bargaining agreement.

H.R. 5900 is limited to individuals employed by persons in the construction industry, and permits strikes only against any of several employers in the construction industry who are "jointly engaged as joint venturers or in the relationship of contractors and subcontractors." Employers are "jointly engaged" as joint ventures when the work each contracts to perform is directly related to the work contracted for by the other as part of an integrated building, structure or other work; and the employees of one perform work related to the other.

H.R. 5900 is limited to strikes at "the site" of labor disputes, that is, at the geographical physical location where several employers are jointly engaged in the construction, alteration, painting or repair of a building, structure, or other work at such location, and where the employees of such employers, contractors and subcontractors are engaged in interrelated work toward a common objective in geographic proximity to each other. H.R. 5900 recognizes that at Government and other installations and facilities there may be a multiplicity of construction sites within a given enclave at any one time. For example, the Government enclave at Cape Canaveral includes both NASA's Kennedy Space Center and Patrick Air Force Base. At almost all times there are a variety of large and small construction jobs being performed. Under H.R. 5900, depending upon the circumstances, each could be treated as a separate construction site, and lawful picketing could be directed only at any of several employers "jointly engaged" at any one of the separate construction projects at any given site. Similarly, if an entrepreneur builds a factory on one side of a highway, and a parking lot to service the factory on the other, with competitive bids let to each of two general contractors, each construction site would be separate and independent of the other for purposes of H.R. 5900.

H.R. 5900 recognizes the economic reality that construction work on one part of a building, structure or other work is interrelated to construction work on other parts of a building, structure, or other work; and permits the union representing employees in one phase of the work to strike or picket at the construction site against any of several employers in the construction industry who are jointly engaged as joint venturers or in the relationship of contractor and subcontractor when the strike arises over wages, hours, and other working conditions in the legitimate collective bargaining context.

The Amendments in Committee

At the meeting of the Subcommittee on Labor-Management Relations on June 26, and again at the meeting of the Committee on Education and Labor on July 10, a number of amendments to H.R. 5900 were proposed and considered. These amendments, both those approved and those rejected provide insight into the intent of H.R. 5900.

A. The amendments which were adopted

Four amendments were proposed and adopted, either by the Subcommittee or by the Committee.

1. The 10-Day Notice and Written Approval Amendments.—These amendments resulted from recommendations made by Secretary of Labor John T. Dunlop during his testimony, and subsequently refined during continuing discussions by interested parties. Secretary Dunlop recommended during his testimony a four-fold series of amendments. *First* was a proposal that "common situs picketing" (as contrasted with "Moore-Drydock," "area-standards," and other types of picketing) be delayed for 10 days during which period the parties to the dispute give notice to various interested persons. *Second* was a proposal that the written authorization of a parent organization (when there was one) be required as a condition of picketing or lock-out. *Third* was a proposal that there be a durational limitation of 30 days on "common situs picketing" (again in contrast with "Moore-Drydock," "area standards" or other types of picketing). *Fourth* was the suggestion that any concerned party be permitted to demand a tripartite arbitration at the national level of the local labor dispute.

Mr. Esch submitted an amendment to the Subcommittee on June 26th which incorporated the first (10 day notice), third (30 days duration on picketing), fourth (tripartite arbitration), but not the second (approval of the parent organization) suggestions of Secretary Dunlop. This proposed amendment was defeated; in part because of the language, in part because of the substance of the proposed amendment.

Mr. Esch submitted an amendment to the Committee on Education and Labor on July 10th which incorporated, in revised language, Mr. Dunlop's first and second proposals. This amendment was adopted without objection.

It requires a 10 day advance notice of intent before engaging in common-situs picketing activity (but not "Moore Drydock," "area standards" or other kinds of picketing) to other unions at the site, to the employer immediately involved and to the general contractor, to the parent organization if there is one, and to the Collective Bargaining Committee in Construction. It further requires that the parent organization give notice in writing authorizing such action. Such notice will go to the persons who received the original notice from the local union. The written authority by the parent will neither expand nor contract the criminal or civil liability which might or might not otherwise exist because of the relationship between the local and parent organizations.

2. The Sex Amendment.—Mr. Thompson introduced an amendment at the Subcommittee meeting on June 26 which provided that H.R. 5900 was not intended to authorize picketing an employer where an object was the removal or exclusion of any employees from the site because of "sex." Prior to this amendment, H.R. 5900 provided that it would not authorize picketing where an object was the removal of employees from the site because of "race, creed, color, or national origin." This amendment was approved.

3. The Independent Union Amendment.—Messrs. Esch and Quie proposed an amendment at the Subcommittee meeting on June 26, which made it clear that H.R. 5900 was not to be "construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the representative of his employees". This amendment was designed to prevent "common situs" picketing as a means of driving out the so-called "independent unions" which were not affiliated with the AFL–CIO. This amendment was adopted.

4. The "Other Unfair Labor Practices" Amendment.—H.R. 5900 authorized "common situs" picketing only when the labor dispute was "not unlawful" under the Labor Act. Mr. Esch introduced a clarifying amendment at the Committee meeting on July 10th provide that nothing in the section shall be construed to permit any act or conduct which was or may have been an unfair labor practice under the provisions of this subsection existing prior to the enactment of such proviso except for those activities permitted by the first proviso added by H.R. 5900. This amendment was agreed to.

B. THE AMENDMENTS WHICH WERE REJECTED

1. The Non-Union Employer Amendment.—Mr. Ashbrook introduced an amendment at the Subcommittee meeting on June 26, which would make it clear that H.R. 5900 would not be construed to permit picketing when it "is directed at forcing a non-union employer off the job site". This was defeated as being directly opposed to the purpose of H.R. 5900.

2. The Non-Union Employee Amendment.—Mr. Esch introduced an amendment at the Subcommittee meeting on June 26, providing that H.R. 5900 would not "be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with another labor organization". This was defeated because opponents to the amendment said it would "negate the right of a labor organization to go out and to assist in the recognition of another labor organization when the workers are uncovered, don't belong to a union".

3. The Public Works Amendment.—Mr. Esch introduced an amendment at the Committee meeting on July 10, to provide that nothing in H.R. 5900 "shall be construed to permit any picketing of a common situs by a labor organization where a public or governmental body or agency owns or controls such site and directly awards a contract to an employer in conformity with the requirements of applicable law, and such governmental body or agency and employer are not to be considered joint ventures, contractors or subcontractors in relationship with each other or with any other employer at the common situs".

This amendment was rejected. H.R. 5900 was interpreted so as not to apply when *state law* requires separate bids, as the separate contractors would not be "jointly engaged as joint venturers or in the relationship of contractors and subcontractors". But the amendment by Mr. Esch would extend this rationale to any "public or governmental body or agency" awarding bids "in conformity with the requirements of applicable law", which might be at the local village level. This, the majority thought, was going too far.

4. The Products Boycott Amendment.—Mr. Esch introduced an amendment at the Committee meeting of July 10 providing that nothing in 5900 "shall be construed to permit any picketing of a common situs by a labor organization to force, require or persuade any person to cease or refrain from using, selling, purchasing, handling, transporting, specifying, installing, or otherwise dealing in the products or systems of any other producer, processor or manufacturer." This

amendment was defeated on the theory that the law of "product boycotts" should not be touched one way or the other in this particular legislation.

5. The Religious Freedom Amendment.—Mr. Erlenborn introduced an amendment at the Committee meeting of July 10 to make the provisions of Section 19 of the National Labor Relations Act (the right to contribute the equivalent of union dues to an agreed upon charitable organization for reasons of religious belief) applicable to employees other than those in the health care industry. This was ruled out of order as not germane to H.R. 5900.

Questions and Answers on H.R. 5900

Many questions have been raised about the purpose and effect of H.R. 5900. Twenty of the most commonly asked questions (with answers) are set forth below.

1. SECONDARY BOYCOTTS

Question. Does H.R. 5900 legalize secondary boycotts?

Answer. No. H.R. 5900 does not alter the law one whit as it affects the true or traditional secondary boycott, i.e., when the "secondary" employer is an innocent neutral enmeshed against his will in a labor dispute over which he has no control: the employer, described by the late Senator Taft, as "not in cahoots with" the employer primarily at odds with the striking union.

It is the premise of H.R. 5900 that there is no "secondary boycott" when construction workers strike in protest when a general contractor subcontracts part of his total job obligation to a non-union employer, and thereby undermines union wage scales. Such a strike is "primary", not "secondary".

In contrast, a "secondary boycott" occurs when the striking employees leave the scene of the dispute to pressure innocent third parties. Thus, it is unlawful "secondary" activity when the strikers at a saw mill picket a lumber camp to pressure the supplier to cease sending lumber to the saw mill. Similarly, it is unlawful "secondary" activity for the striking employees at a plant producing printing presses to picket a newspaper because it has ordered a machine produced at the "struck" manufacturing plant.

Every reference to "secondary boycotts" during the Taft-Hartley debates involved plant and retail situations of this sort. Not a single proponent of the bill talked about common situs picketing on construction jobs—presumably because no one in Congress thought that a strike by construction workers at the site of construction was anything other than a traditional, lawful, primary strike.

2. PICKETING TO PROTEST THE EMPLOYMENT OF NON-UNION EMPLOYEES ON A CONSTRUCTION SITE

Question. Suppose a contractor brings onto a job a subcontractor who employs non-union labor. Would H.R. 5900 permit the building trades council to picket the job as unfair?

Answer. Yes. These are the facts of the *Denver Building Trades* case. Section 8(b)(4)(B) of the Taft-Hartley amendments makes it

an unfair labor practice for a union to force "any person" to cease doing business "with any other person." Read literally, this would prohibit any strike where a picket line turns away any supplier or customer. Obviously this was not the intent of Congress. The purpose was to protect the "innocent neutral." Yet in the 1949 *Denver* case the Labor Board ignored Congressional intent and held that it was a violation of section 8(b)(4)(B) for a union to picket the contractor when he brought a non-union subcontractor onto the job site. The Supreme Court affirmed this decision in 1951, primarily because of the "expertise" of the Labor Board.

It generally has been recognized ever since that the decision does not reflect the economic realities in the building and construction industry where the contractor and all the sub-contractors are engaged in a common venture and each is performing tasks closely related to the normal operations of all the others. None are "innocent," or "unconcerned" in the labor disputes involving any other. It is the purpose of H.R. 5900 to reverse *Denver*, its spirit and its progeny.

H.R. 5900 permits a union to strike or picket at a construction site against "any of several employers" in the construction industry, when they are "jointly engaged" on a common site as "joint venturers or in the relationship of contractors and subcontractors."

3. THE ANALOGY TO THE APPAREL AND CLOTHING INDUSTRY

Question. Has Congress ever before exempted any industry from the "secondary boycott" provisions of section 8(b)(4)(B)?

Answer. Yes. Like the construction industry, the clothing and apparel industry is marked by the subcontracting of various parts of the total job. In 1959 Congress amended the labor act (section 8(e)) to provide that the "secondary boycott" provisions would not apply to persons "in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production, in the apparel or clothing industry." Under H.R. 5900 the law pertaining to secondary boycotts in the construction industry will be the same as the law in the apparel and clothing industry with the single exception that a union in the construction industry would not be permitted to strike to enforce an agreement which is lawful only because of the construction industry's proviso to § 8(e).

4. THE ANALOGY TO WORKERS EMPLOYED IN MANUFACTURING

Question. Would the enactment of H.R. 5900 give workers in the construction industry "special treatment"?

Answer. No. In 1961 the Supreme Court held in the *G. E. Reserve Gate* case (Local 761, International Union of Electrical Workers v. Labor Board, 366 U.S. 667) that it was lawful for striking employees of a manufacturing concern to picket the gates used exclusively by employees of contractors and sub-contractors if the work tasks performed by them "aid the employer's everyday operations" and are not "unrelated to the normal operations of the employer."

Like the work of many contractors employed for special tasks by manufacturing industries, the work of the subcontractors employed in

construction is also "related" to the "normal operations" of the other contractors engaged in the project. Rather than giving "special favors," H.R. 5900 simply puts the construction worker on a par with the worker in the apparel industry and in manufacturing.

5. PICKETING TO PROTEST THE EMPLOYMENT OF MINORITY WORKERS

Question. Does H.R. 5900 authorize a union to picket when the purpose is to force a subcontractor off the job site because he employs blacks, women, or other minority workers?

Answer. No. While H.R. 5900 permits picketing to remove a non-union contractor because he is non-union it does not permit picketing to remove or exclude employees because of their sex, race, color or national origin.

6. PICKETING TO PROTEST THE EMPLOYMENT OF EMPLOYEES WHO ARE RELIGIOUSLY OPPOSED TO UNION MEMBERSHIP

Question. Suppose a contractor or a subcontractor hires employees who are members of a religious body which historically has held conscientious objection to joining or financially supporting labor organizations. Would H.R. 5900 permit a union to picket when the purpose is to force these employees from the job because of their religious beliefs and resulting refusal to join a union?

Answer. No. While H.R. 5900 permits picketing to remove a non-union contractor because he is non-union it does not permit picketing to remove or exclude employees because of their creed.

7. PICKETING TO PROTEST ON-SITE EMPLOYMENT OF MEMBERS OF INDEPENDENT CRAFT UNIONS

Question. Suppose a subcontractor has a lawful contract with an independent union. Would H.R. 5900 permit the AFL–CIO building trades unions to strike or picket when an object is to force the subcontractor off the job for this reason?

Answer. No. H.R. 5900 expressly provides that nothing therein shall "be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the representative of his employees".

On the other hand, the law of "area standards" picketing would not be changed one way or the other by enactment of H.R. 5900.

8. PICKETING TO PROTEST THE USE OF INDUSTRIAL WORKERS TO INSTALL MANUFACTURING EQUIPMENT ON THE CONSTRUCTION SITE

Question. Suppose Westinghouse, General Electric or some other employer is engaged by the contractor to install some specialized equipment as part of the construction project, and the company utilizes its regular employees for this installation. Would H.R. 5900 permit the building trades unions to picket if an object is to secure this work for themselves?

Answer. No. H.R. 5900 expressly provides that the picketing by the trade unions is not lawful if "the issues in the dispute" involve a labor organization (such as the International Association of Machinists) which is representing the employees of an employer at the site (such as Westinghouse) "who is not engaged primarily in the construction industry".

9. PICKETING TO PROTEST THE USE OF INDUSTRIAL WORKERS FOR PLANT EXPANSION OR SIMILAR WORK

Question. Suppose the Ford Motor Company decides to expand its plant facilities and utilizes its own regular employees (members of the United Auto Workers) for these purposes. Would H.R. 5900 permit the building trades unions to picket this work?

Answer. No. Again, we have the situation similar to that wherein Westinghouse installs its own products with its own regular employees. H.R. 5900 does not permit picketing when the issues in the dispute involve a labor organization which represents employees of an employer who is not engaged primarily in the construction industry. As the Ford Motor Company is "not engaged primarily in the construction industry," and as the employees of the Ford Motor Company are represented by the United Auto Workers, H.R. 5900 would not apply.

On the other hand, if the Ford Motor Company retains a general contractor "primarily in the construction industry" and a labor dispute arises out of issues at the construction site involving that contractor, H.R. 5900 would permit the building trades unions to picket at the site of the construction under "G. E. Gate" principles.

10. PICKETING AT SITE "B" WHEN THE LABOR DISPUTE INVOLVES CONDITIONS AT SITE "A"

Question. Many contractors are engaged simultaneously in several construction projects. If the building trades unions have a dispute with Contractor X at construction site "A," would H.R. 5900 permit the unions to picket the same Contractor X at construction site "B"?

Answer. The answer to this question depends on the nature of the dispute. H.R. 5900 permits strikes or picketing "*at the site* of construction" against any of several employers in the construction industry who are jointly engaged in such construction, but only when there is a lawful labor dispute "relating to the wages, hours or other working conditions of employees employed *at such site.*" (emphasis added). Thus, if the dispute is limited to conditions at site "A," this bill would not increase the union's right to picket elsewhere. However, where a dispute with a contractor, for example, the general contractor, affects his operations at more than one construction site, H.R. 5900 permits common situs picketing at every one of the affected sites.

11. PICKETING WHEN SEVERAL GENERAL CONTRACTORS ARE EMPLOYED IN CLOSE PROXIMITY IN THE SAME GENERAL AREA

Question. What is meant by the phrase "at the site of construction"? Suppose several different prime contractors are employed in a large general area (such as Cape Kennedy) or in a smaller general area (such as a projected shopping center) with Contractor "A" building a gas station at one end, and Contractor "B" a retail food store at

the other. Would H.R. 5900 permit general picketing of the entire area if there was a labor dispute against only one of these contractors?

Answer. No. H.R. 5900 only applies when several employers in the construction industry are "jointly engaged" at the "site of construction, alteration, painting, or repair of *a* building, structure, or other work". In addition, it provides that "in determining" whether or not several employers are in fact "jointly engaged" at any site, "ownership or control of such site by a single person shall not be controlling". These employers would not be "jointly engaged", nor would they be at the same "site".

12. PICKETING AGAINST ONE OF SEVERAL PRIME CONTRACTORS REQUIRED UNDER STATE LAW

Question. Ten States have laws requiring that the political subdivisions put out four separate bids on public construction jobs: (1) for general construction, (2) for heating, ventilating and air conditioning, (3) for plumbing work, and (4) for electrical work. Each of these contracts must be let to the lowest responsible bidder in each category. Would H.R. 5900 permit a union in dispute with one of these contractors to picket the other contractors?

Answer. No. H.R. 5900 only applies when the employers are "jointly engaged as joint venturers or in the relationship of contractors and subcontractors". When State law requires separate bids and separate contracts, the various contractors would not be "jointly engaged" within the meaning of H.R. 5900. Picketing against any one contractor would have to conform to *Moore Drydock* standards.

13. PICKETING FOR THE PURPOSE OF RECOGNITION

Question. In 1959 Congress added Section 8(b)(7) to the law regulating organizational and recognition picketing. Will H.R. 5900 permit building and construction unions to engage in conduct which would violate Section 8(b)(7)?

Answer. No. Such picketing would be "otherwise unlawful under the Act", and therefore would not be permitted by H.R. 5900.

14. PICKETING TO ENFORCE A PRODUCT BOYCOTT

Question. Would H.R. 5900 validate secondary boycotts against "pre-cut doors" or similar products?

Answer. No. H.R. 5900 does not permit picketing unless there is a labor dispute "not unlawful under this Act". To the extent that such boycotts are now forbidden by law, they continue to be so under H.R. 5900.

15. PICKETING TO CLOSE DOWN THE ALASKA PIPELINE IN BREACH OF CONTRACT

Question. Opponents of H.R. 5900 suggest that its enactment would result in strikes at the Alaska Pipeline. Is there any truth to these allegations?

Answer. No. It is unlawful under H.R. 5900 to strike "in violation of an existing collective-bargaining contract". The unions working

on the Alaska Pipeline have a firm "no strike" clause in their contracts, and require 24-hour arbitration of all disputes. The unions have bound themselves against any strikes arising out of their own disputes; they have bound themselves against any sympathy strikes on behalf of other unions.

16. PICKETING TO OBTAIN AN AGREEMENT UNDER SEC. 8(e) THAT THE CONTRACTOR WILL SUBCONTRACT ONLY TO UNION EMPLOYERS

Question. Section 8(e) of the Act authorizes labor organizations and employers in the contruction industry to enter into contracts whereby the employer agrees to subcontract only to subcontractors who hire union employees. The Courts and the Labor Board have held that it is lawful for a union to picket to obtain such agreements. Will H.R. 5900 change this law?

Answer. No. H.R. 5900 is not to be construed to prohibit any act which is not an unfair labor practice under existing law .

17. PICKETING TO PROTEST THE LOWERING OF "AREA STANDARDS"

Question. The law now permits a union to picket a construction site to protest the employment of employees at wage scales and working conditions below the "area standards". Will H.R. 5900 change this law in any way?

Answer. No. H.R. 5900 is not to be construed to prohibit any act which is not an unfair labor practice under existing law.

18. PICKETING AT "RESERVED GATES"

Question. Under *Moore Drydock*, *Markwell & Hartz* and related cases, the law now permits a union to picket a construction site to publicize its grievances with an employer engaged at that site, but only at gates reserved for the exclusive use of employees employed by the employer who is the target of the dispute. Will H.R. 5900 change this law in any way?

Answer. Yes. The premise of *Moore Drydock* is similar to the premise of the *Denver* case, i.e., that the contractor and subcontractors on a construction site are not related allies. H.R. 5900 holds then when several employees in the construction industry are "jointly engaged" as joint venturers or "in the relationship of contractors and subcontractors", the unions are free to picket any gate used by any of the employees of the related employers.

19. THE NEED FOR H.R. 5900

Question. Is H.R. 5900 really necessary? Are not the building trades unions sufficiently strong and well organized to hold their own without legislative help?

Answer. The testimony received at the hearings on H.R. 5900—from both management and labor—indicates that since the *Denver* decision and those which followed it, the number of so-called open shops and "merit shops" "have grown by leaps and bounds" over the past years while the number of "union shops" have decreased proportionately. *Denver* and related decisions have encouraged contractors

to employ non-union subcontractors whose wages and conditions are substantially below those applicable to the general contractor's employees. Without the right to peacefully picket, the building trades unions are denied any effective means of protest.

20. NATIONAL POLICY

Question. Is H.R. 5900 consistent with our national commitment to encourage the practices and procedures of collective bargaining?

Answer. Yes. Forty years ago in the Wagner Act, Congress declared it to be the public policy of the United States to encourage "the practice and procedure of collective bargaining"; and thereby to encourage "the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions". Recognizing the inequality of the bargaining power when unions lack the power to picket or strike, Congress then guaranteed the right of employees to engage in "concerted activities" including the right to strike. H.R. 5900, thus, is an essential ingredient of our long time national commitment to collective bargaining.

Requirements of Rule XI

With respect to the matters covered by the bill, the Committee on Government Operations has not submitted oversight findings or recommendations to the Committee on Education and Labor and other than this report and the hearings previously described herein, there have been no oversight findings or recommendations made by the Education and Labor Committee.

The legislation does not authorize the appropriation of any Federal funds nor does it provide any new or increased budget authority or increased tax expenditure. Therefore, the requirements of five-year cost estimates and the Congressional Budget Office comparison are not applicable to this bill. Further, due to the fact that the bill does not authorize the expenditure of any Federal funds, the Committee feels that there is no direct impact on the operation of the national economy and there will be no inflationary impact on prices and costs.

Clauses 2(l)(3)(B) and (C) and clause 2(l)(4) of Rule XI of the Rules of the House of Representatives apply only to legislation that authorizes the appropriation of Federal funds, increases tax expenditures, or provides for new or increased budget authority and, therefore, these provisions are not applicable to H.R. 5900 for the above-stated reasons.

Section-by-Section Analysis

Section 1. This section adds a number of provisos to section 8(b)(4)(B) of the National Labor Relations Act. The first proviso in effect states that nothing in section 8(b)(4)(B) shall be construed to prohibit any strike at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction at such site.

The purpose of the first proviso is to amend section 8(b)(4)(B) of the Labor Act to make it clear that the terms "any person" and "any other person" shall not include employers in the construction industry who are jointly engaged as joint venturers or in the relationship of contractors and subcontractors at the site of construction, alteration, painting or repair of a building, structure or other work. It would thereby reverse *Labor Board* v. *Denver Bldg. & Construction Trades Council*, 341 U.S. 675 (1951), *Markwell & Hartz* v. *NLRB*, 387 F. 2d 70 (5th Cir. 1967), *Moore Drydock*, and related cases which hold that the contractor and the subcontractor doing related work on a construction site are separate legal entities, and consequently, a strike against the contractor to protest his hire of a non-union subcontractor has the illegal object of forcing "any person" (the contractor) to cease doing business with "any other person" (the subcontractor).

A second and third proviso make it clear first, the amendment to section 8(b)(4)(B) does not permit any act or conduct, except that permitted by the first proviso added by the bill, which was or may have been an unfair labor practice under the subsection and, second, the first and second proviso do not prohibit any act which was not an unfair labor practice under the provisions of the subsection existing prior to the enactment of such provisos.

A fourth proviso makes it clear that the preceding provisos can not be construed to permit activities where the object is the removal or exclusion from the site of any employee on the ground of sex, race, creed, color, or national origin.

A fifth proviso states that none of the preceding provisos may be interpreted to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the representative of his employees.

A sixth proviso requires a labor organization to give not less than ten days' prior written notice of intent to strike or to refuse to perform services before engaging in activities permitted by the provisos, such notice to be extended to all unions and the employer and the general contractor at the site as well as to any national or international labor organization of which the labor organization involved is an affiliate and to the Collective Bargaining Committee in Construction.

A seventh proviso authorizes the labor organization to engage in activities permitted by the above provisos at the expiration of ten days from the transmittal of the notice required in the previous proviso if the national or international labor organization of which the labor organization involved is an affiliate gives written notice authorizing such action.

An eighth proviso in effect states that the authorization by the national or international labor organization required in the seventh proviso shall not render it subject to any criminal or civil liability arising from activities for which notice was given consistent with the sixth and seventh provisos.

A ninth proviso deals with sites located at any military facility or installation of the Army, Navy, or Air Force, or at a facility or installation of any other department or agency of the Government if a major purpose of such facility is or will be the development, production, testing, firing, or launching of munitions, weapons, missiles, or space vehicles. With respect to such sites the labor organization involved must give not less than 10 days' prior written notice of any intention

to strike or to refuse to perform services to the Federal Mediation and Conciliation Service, and to any State or territorial agency established to mediate and conciliate disputes within the State or territory where such site is located as well as to the several employers who are jointly engaged at such site, to the Army, Navy, or Air Force or other department or agency of the Government concerned with the installation and to any national or international labor organization of which the labor organization involved is an affiliate. The notice requirements of this proviso are in addition to the notice requirements prescribed by section 8(d).

Section 1 of the bill also provides that in determining whether several employers who are in the construction industry are jointly engaged as joint ventures at any site, ownership or control of such site by a single person shall not be controlling.

Section 2. This section of the bill provides that amendments made to the act shall take effect 90 days after the enactment of the legislation.

Changes in Existing Law Made by the Bill as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Section 8(b)(4) of the National Labor Relations Act provides:

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization had been certified as the representative of such employees under the provisions of section 9,

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided further, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer) if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any good, or not to perform any services, at the establishment of the employer engaged in such distribution: *Provided further, That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint ventures or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site, and there is a labor dispute, not unlawful under this Act or in violation of an existing collective-bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry: Provided further, Except as provided in the above proviso nothing herein shall be construed to permit any act or conduct which was or may have been an unfair labor practice under this subsection: Provided further, That nothing in the above provisos shall be construed to prohibit any act which was not an unfair labor practice under the provisions of this subsection existing prior to the enactment of such provisos: Provided further, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of sex, race, creed, color, or national origin: Provided further, That nothing in the above provisos shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the representative of his employees: Provided further, That*

a labor organization before engaging in activity permitted by the above provisos shall provide prior written notice of intent to strike or to refuse to perform services, of not less than ten days to all unions and the employer and the general contractor at the site and to any national or international labor organization of which the labor organization involved is an affiliate and to the Collective Bargaining Committee in Construction: Provided further, That at any time after the expiration of ten days from the transmittal of such notice, the labor organization may engage in activities permitted by the above provisos if the national or international labor organization of which the labor organization involved is an affiliate gives notice in writing authorizing such action: Provided further, That authorization of such action by the national or international labor organization shall not render it subject to any criminal or civil liability arising from activities notice of which was given pursuant to the above provisos: Provided further, That in the case of any such site which is located at any military facility or installation of the Army, Navy, or Air Force, or which is located at a facility or installation of any other department or agency of the Government if a major purpose of such facility or installation is or will be, the development, production, testing, firing, or launching of munitions, weapons, missiles, or space vehicles, prior written notice of intent to strike or to refuse to perform services, of not less than ten days shall be given by the labor organization involved to the Federal Mediation and Conciliation Service, to any State or territorial agency established to mediate and conciliate disputes within the State or territory where such site is located, to the several employers who are jointly engaged at such site, to the Army, Navy, or Air Force or other department or agency of the Government concerned with the particular facility or installation, and to any national or international labor organization of which the labor organization involved is an affiliate. The notice requirements of the preceding proviso are in addition to, and not in lieu of the notice requirements prescribed by section 8(d) of the Act. In determining whether several employers who are in the construction industry are jointly engaged as joint venturers at any site, ownership or control of such site by a single person shall not be controlling".

SUPPLEMENTAL VIEWS OF MARVIN ESCH

Although I am sympathetic to some of the views expressed in the minority report, I voted to report H.R. 5900 after the Committee agreed to accept amendments recommended by the Secretary of Labor. I remain concerned about the real meaning of specific language in the bill and its intent. I introduced four formal amendments in the Committee, two of which were accepted and two rejected.

(1) One of my rejected amendments was to assure that where a public or governmental body or agency owns or controls the site where the labor dispute is taking place, and where that governmental body or agency awards a contract to an employer in conformity with requirements of either state or applicable law, because that governmental body has no choice as to whom the contract should be awarded common situs picketing should not be allowed in that situation. There are now at least ten States where State law requires public agencies to advertise for bids for each specific type of work to be done in the construction of a public facility and the contracts to be awarded in each case to the lowest, responsible bidder. The successful contractors clearly are not in a contractor-subcontractor of joint venturer relationship and have no power to resolve disputes between unions and other contractors on the job. Secretary of Labor Dunlop endorsed former Secretary of Labor Shultz' statement that common situs picketing should not be permitted where State laws require direct and separate contracts on State or municipal projects. My amendment specifically provided that such contractors are not to be regarded as joint venturers with each other or with the public agency which awarded the contracts.

As the minority views indicate, the inclusion of the word "person" in H.R. 5900 would allow unions to engage in common situs picketing to induce employees of State governments to withhold their services on State or municipal projects, and may consider contractors who bid on such State or municipal projects as joint venturers. My amendment is designed to protect those public employees and unrelated contractors from disputes with which they should not be connected.

(2) Another amendment which I introduced would clarify H.R. 5900 to make sure it is not construed to allow picketing of a common situs by a labor organization to force, require or persuade any person to cease or refrain from using, selling, purchasing, handling, transporting, specifying, installing, or otherwise dealing in products or systems of any other producer, processor or manufacturer. This amendment was also rejected by the Committee without much discussion, so let me briefly explain.

The proponents of H.R. 5900 have repeatedly stated that the bill would not permit activities intended to cause the boycotting of supplies or other products or materials shipped or otherwise transported to or delivered on a job site. They explain that "to the extent that such boycotts are now forbidden by law, they continue to be so under H.R.

5900." However, the product boycott is allowed under the rationale of the Supreme Court decision in *National Woodwork* case. In *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612, the Supreme Court upheld the right of trade unions to boycott the use of prefabricated products when the use of those prefabricated products deprives the union members of work traditionally performed by them. H.R. 5900 would then, in effect, allow a trade union, which is boycotting the use of prefabricated products, the right to picket the whole project in the dispute that union has with its employer over those products.

Since it is not the intention of the proponents of H.R. 5900 to deal with this product/boycott situation by amending Section 8(b)(4)(B) of the Act, my amendment only attempts to clarify that intent. My amendment would leave the law where it is now: it would allow the product boycott where use of the prefabricated product deprives the union members of work traditionally performed by them, but it would not allow that boycott to be extended to employers other than the employer involved.

This is a simple amendment that leaves this complicated area of the law where we find it and is not outside the intent of the supporters of H.R. 5900. It is my feeling that H.R. 5900 could be greatly improved by legislative language in this regard. This type amendment would also tend to alleviate the fears of many who are opposed to any extension of the product boycott.

(3) Another most important consideration in H.R. 5900 which should be clarified either through amendment or through legislative history is the inherent right of individuals not to join a labor union.

It should also be made very clear that it is not the intent of H.R. 5900 to in any way derogate the right of an *individual* not to join a labor union. The right not to join is as sacrosanct as the right to join a labor union and H.R. 5900 does not address itself to this issue.

(4) I also feel that certain technical amendments to H.R. 5900 should be made to further clarify the exact meaning of this piece of legislation. The only intent of H.R. 5900 is to allow for common situs picketing under the given circumstances that are set forth in the bill. It is not the intention to affect "any individual employed by any person" as the bill presently states, but only to affect any individual employed by any employer engaged in the construction industry.

In the months ahead I am hopeful that the Congress will address itself to an even more fundamental question and that is the relationship between the bargaining units to determine if a more effective collective bargaining system can be developed that can minimize the great uncertainty that exists for contractors and tradesmen alike, and that would provide both price and labor stability in the construction industry at this crucial time when this country is moving out of a recession.

MARVIN L. ESCH.

MINORITY VIEWS

We are opposed to H.R. 5900 as reported from the Committee.

The purpose of this bill is to create an exception for the building and construction trades unions from the secondary boycott prohibitions of the National Labor Relations Act (NLRA). Stated another way, this bill would legalize secondary boycotts at construction sites, an abuse made illegal since the passage of the Taft-Hartley Act in 1947 and an abuse which Congress found necessary to more stringently restrict in 1959.

Not only are we opposed to this bill in principle, we are opposed to the bill because of its purpose; its imprecision and ambiguity; its possible consequences; and because we believe the technical legal and historical arguments for the need for the bill have been incorrectly stated.

PRINCIPLE

Section 8(b)(4)(B) of the NLRA, the popularly entitled "secondary boycott" provision, provides it shall be an unfair labor practice for a labor organization "to engage in, or to induce or encourage any *individual employed* by any *person*... to engage in a strike or a refusal in the course of his employment, to use . . . process . . . or otherwise handle or work any goods,... or to perform services; or (ii) to threaten, coerce or restrain *any person* engaged in commerce . . . where in either case an *object* thereof is:... (B) forcing or requiring *any person* . . . to cease doing business with any other person . . ." (emphasis supplied).

At the time this section was written and enacted in the Landrum-Griffin amendments of 1959, a prohibition on "secondary boycotts" already existed in the NLRA as amended in 1947. However, labor organizations had found ways to avoid the 1947 prohibitions, which did not preclude labor organizations from inducing or encouraging workers excluded from the Act's coverage (hence, the inclusion of the word "person" in the 1959 amendments), or coercing secondary employers directly, or appealing to employees of a secondary employer individually. Those so-called "loop-holes" were, consequently, closed by the 1959 amendments. Thus, it is clear that Congress desires to protect all neutrals, whether employees or employers, who are not parties to a labor dispute. Congress intended to confine, as near as possible, the labor conflict to the employer, employees and area in which the dispute actually existed. Congress did not intend that a labor dispute could be extended to independent enterprises which do business with each other.

However, the most important aspect of the "secondary boycott" provision to note in view of the majority's claim of inequality is that it applies to all labor organizations alike, and to all employers alike. There is no distinction in the law of Section 8(b)(4)(B) between a

labor organization in the building and construction trades and a labor organization in the industrial sector.

This bill would, however, create a distinction; this bill would allow conduct on a construction site which is not lawful, and would continue to be unlawful, everywhere else the NLRA applies.

We oppose the creation of an exception to the secondary boycott prohibitions. As Senator Taft said, in 1947 when he was chairman of the Senate Committee on Labor and Public Welfare and cosponsor of the amendment to outlaw secondary boycotts:

> . . . It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between types of secondary boycotts. [83d Congressional Record 4198]

Hearings over the years since Senator Taft's statement have not yet convinced us that there is a distinction in types of secondary boycotts.

Proponents of H.R. 5900 contend the prohibitions against secondary boycotts should not apply to the construction industry where two or more employers are engaged in operations on the site. They contend that such employers are neither "innocent" nor "neutral", nor "wholly unconcerned" in a labor dispute one construction employer has with its employees, but are, in effect, "interrelated allies", or "joint venturers", or "in the integrated process of production in the construction industry".

These arguments are legally and realistically unsound and incorrect. The Supreme Court in *NLRB* v. *Denver Building and Construction Trades Council et. al*, 341 U.S. 675, 71 Sup. Ct. 843, June 1951, recognized that contractors and subcontractors engaged in work on the same construction project "did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other." 341 U.S. at 689, 690. The Court, in attempting to balance the "dual Congressional objectives of preserving the right of unions to bring pressure to bear on an offending employer in primary labor disputes and of shielding unoffending employers and others from pressure not their own" ruled that the trade union having a dispute with one employer must conduct its picketing so as to avoid enmeshing the innocent others.

Contractors and subcontractors on a construction project do not agree to place their money, effects, labor and skill, or some or all of them, in business with an understanding of a proportional sharing of profit or loss between them as is required to find a lawful partnership or joint venture. Usually, the exact opposite is true, as contractors and subcontractors are constantly bidding against each other for available jobs in a highly competitive business. The basic divergency of economic interest is obvious where so often a subcontractor must pursue a contractor for payment; and subcontractor claims against others of responsibility for job delays and imposition of delay penalties. Furthermore, to carry the "joint venture" theory to its logical conclusion would justify secondary boycotts against any employer, who, like a subcontractor, contributes to the creation of a single product.

It is clear, as a matter of fact and law, that contractors in construction are not joint venturers but, instead, are independent contractors,

and a dispute between a labor organization and one of them cannot be said to be a dispute with all of them. As the Hon. Graham A. Barden, Chairman of the Education and Labor Committee stated in 1960:

> To make it legal, as would [H.R. 5900], for a union having a dispute with one of such contractors or subcontractors to harass and exert economic pressure against all other contractors and subcontractors on the same construction project, would do violence to a basic principle that innocent employers and their employees should not be harassed and subjected to economic pressures by a union in regard to a labor dispute in which they are not involved and over which they have no control. [86th Cong. 2d sess. Rept. No. 1665, pages 11 and 12.]

The principle of not enmeshing innocents in the dispute of others is not the only principle protected by the Act. The most important principle set forth in the Act is that employees should freely be able to select, or not to select, by majority rule, the union or bargaining agent of their choice. Under the law, as it now stands, the employees are not to be coerced by either an employer or a union. A form of coercion that would obviously interfere with that freee choice is the now illegal secondary boycott.

We choose to endorse the principles of free choice and protection of innocent neutrals, which are designed to insure labor peace. We do not endorse the concepts behind H.R. 5900, which would both deny fundamental principles and contribute to labor instability.

Purpose

The stated purpose of those witnesses who supported enactment of H.R. 5900 was that it would assist labor organizations in organizing. One union witness, in answering questions on the necessity for the bill, readily admitted that without enactment of H.R. 5900, organization by unions is and has been inhibited. Most employer witnesses, who opposed enactment of H.R. 5900, feared that passage would cause all contractors and subcontractors to be subjected to secondary organizational picketing and consequently, unionization, without free choice by employees. The witness speaking for the President of the AFL–CIO stated that the purpose was "to see every job in America a union job—that's what we're out for."

Admittedly, a union purpose to organize all workers is not illegal. However, the concept of using what would otherwise be unlawful picketing (without passage of H.R. 5900) to coerce nonunion contractors to use only union labor, or union subcontractors, or to force nonunion working men and women into working only for employers who have contracts with labor organizations in order to work at construction, is a purpose and concept we cannot support.

We agree that the NLRA encourages collective bargaining. One of its main purposes is to do so. However, that main purpose is based on the free choice of the majority of employees of an appropriate unit. That "free choice' should not be interfered with by picketing by labor organizations strangers to that employer or to the employees in the appropriate unit. As we previously stated, but wish to reemphasize, the purposes and policies of the NLRA is to protect the freedom of

choice of individual employees, set forth in Sections 7, 8, and 9 of the Act. We wish to make the point very clear, that to legalize secondary boycotts in the construction industry would invite the destruction of that free choice.

Parenthetically, we may point out that although the stated objective of enactment of H.R. 5900 is to assist in organizational efforts by dictating that a construction site is an integrated whole, the building trades organizations would not want destroyed the present unit concept of representation. In our opinion, the one necessitates the other.

Imprecision and Ambiguity

Labor-management relations problems which have long plagued the building trades unions and the construction unions will not be resolved by passage of H.R. 5900. In actuality, H.R. 5900 is a labor attorney's delight in that it will foster litigation for years to come.

The "secondary boycott" provisions of the NLRA as it has read since 1959 is still in a state of interpretation. Only days before the Committee considered H.R. 5900, the United States Court of Appeals for the District of Columbia Circuit by a 5–4 decision rejected the National Labor Relations Board's "right to control" test in interpreting Section 8(b)(4)(B) situations involving work traditionally performed on the construction site. The Board has ruled that a union violated Section 8(b)(4)(B) when its members refused to comply with their employer's instructions to install prefabricated air conditioning units, reasoning that the union was exerting secondary pressure on the employer with an object of forcing the general contractor to cease doing business with the manufacturer of those climate control units or of forcing the employer to terminate its subcontract with the general contractor. The Board determined that the general contractor was the object of the union's activity and that the general contractor was the only party with the power to comply with the union demand.

The divided District of Columbia Circuit Court, however, found that the collective bargaining contract between the union and the employer contained a valid work preservation clause which the union was lawfully enforcing. Both the majority and dissenting opinions in that case were lengthy and complicated. *Pipefitters Local 1638* v. *NLRB*, CADC, No. 73–1764, July 1, 1975.

Not only are the courts having difficulty interpreting the present section 8(b)(4)(B), but the Board itself continues its quest in attempting to distinguish lawful from unlawful conduct in a "common situs" situation. In *Wire Service Guild, Local 222 The Newspaper Guild AFL–CIO–CLC (The Miami Herald Publishing Company)*, 218 NLRB No. 186, a case decided July 3, 1975, the Board divided 3–2 in finding that the Union's conduct was not unlawful where it picketed the outside entrances of an office building when it had a dispute with an employer located inside that building, although the building management "authorized and requested" that the picketing be confined to the corridor in front of the employer's premises. The majority found that the *Moore Dry Dock* standard of limiting the picketing to "places reasonably close to the situs of the dispute" had been met. The minority felt that standard had been violated and, therefore, an object of the union's picketing was to embroil neutrals in its dispute.

It appears that the present problems raised by interpretation of Section 8(b)(4)(B) would be further complicated by enactment of H.R. 5900, which does nothing to clarify the present law.

Exactly what H.R. 5900 does and does not do has not adequately been explained. The proponents of H.R. 5900 have given us 20 questions and answers regarding their interpretation of the bill. We are attaching as an addendum to our statement our views regarding those questions. We believe that some of those questions have even been unfairly phrased. Our interpretations differ substantially from the proponents of the bill.

We have studied the testimony of all the witnesses, and the witnesses do not agree among themselves as to the meaning of this bill. Most employer witnesses stated that the bill would allow picketing of industrial or manufacturing plants by building trades unions when any construction or repair was taking place. Another view of the employer witnesses was that industrial unions could picket a manufacturer to take away jobs of the building trades who are performing alterations or repairs. Union witnesses claimed that protections to industrial unions and other protections are offered in the bill. However it is clear that industrial employees who are not protected by labor organizations are not protected from secondary pressures by H.R. 5900. Although the Committee was assured that a non-discrimination clause in the bill prevented picketing for racial reasons, a minority contractor testified it was a "racist" bill and would only perpetuate the inability of minority contractors from engaging in construction or getting a fair start in the construction industry.

The above are but many of the examples of the problems raised by attempts to interpret H.R. 5900. Other examples would include attempts to define what is a "common site" or "common situs"; the use of the word "person" in view of the legislative history of Section 8(b)(4)(B); the definition of "employers who are in the construction industry" and "an employer at the site who is not engaged primarily in the construction industry"; and the meaning of the phrase "jointly engaged as joint venturers". We would further appreciate an explanation of the proviso that reads "That nothing in the above provisos shall be construed to prohibit any act which was not an unfair labor practice under the provisions of this subsection existing prior to the enactment of such proviso", since, to us, that would prohibit a finding of an unfair labor practice which had not previously been adjudged an unfair labor practice and thereby prohibits a ban on any new abuses.

A simple reading of the present law along with a reading of H.R. 5900 raises so many legal problems that not even clarifying amendments would allow it to become meaningful.

We insist that legislation written by the Congress in which we serve should not leave the public at a loss to know what we mean and should not be the basis of fostering litigation and further confusion.

Possible Consequences

The AFL–CIO and other union witnesses felt that passage of H.R. 5900 would assist them in organizing. Other witnesses, although in a

minority, believed more "open" or "merit" shops would develop. The Secretary of Labor was unsure whether enactment of H.R. 5900 would increase or decrease unionization in the construction industry. We, personally, do not feel that the AFL–CIO and its Building Trades Union Department are supporting their own demise and expect, like the unions, that passage will considerably assist in rapid and complete unionization of all construction employees and employers.

Although we tend to agree with witnesses that predicted dim consequences—such as increased costs of construction, more union power, escalation of minor disputes into major problems over which most involved have no voice, contractors to be subjected to additional risks, reduced efficiency, and the creation of instability and controversy—we do not wish to dwell upon such speculations. Instead, we tend to fear that passage of H.R. 5900 may result in a fundamental change in the construction industry. Although no testimony adequately supports or documents our thesis, there is a possibility that the construction industry will, over the long run, become concentrated in larger businesses either union or non-union, with large industries doing much of their own construction work. As a consequence, the smaller contractors may tend to disappear, a result neither we, nor do we believe the proponents of the bill seek.

This point seems an appropriate time to comment that the construction industry is suffering severe economic consequences. It has been reported that in some urban areas, over 50% of construction employees are unemployed. We are assured that these present economic problems are temporary, but we find it anomalous that we are concentrating on a matter that only excites and inflames emotions, rather than on the overall problems facing the construction industry. Numerous witnesses, including the Secretary of Labor, suggested we look at the broader "legal framework of collective bargaining in the construction industry" which the Secretary felt was "in need of serious review." Whether we agree with his view that a "vastly enhanced role for national associations is essential" is unimportant, but we do endorse his suggestion that our Committee should be giving attention to the "serious range of problems after the parties on each side had the opportunity to consider the issues more thoroughly."

No one can accurately predict the future consequences if this bill does become law; hence, we support a more thorough study of the eventual results, so that there will be some consensus for, at least, an educated guess.

Legal and Historical Precedent

A. Major Legal Precedent Correctly Stated—Denver Building Trades and Moore Dry Dock Cases

Allegedly, the stated objective of H.R. 5900, and similar bills in past years, is "to correct a literal and inequitable interpretation" of section 8(b)(4)(B) of the NLRA made by the NLRB and the Supreme Court of the United States in 1951 in the *Denver Building Trades* case, supra. Proponents claim that H.R. 5900 will place construction unions on an equal basis with industrial unions. In support of that claim, they point out that, if a union at a manufacturing plant

has a dispute with the employer, it can picket the whole plant and that its picket line can lawfully be honored by other unions and the whole plant closed down. They state that present law limiting picketing at a construction site to the primary employer is unfair, since a union at a construction site cannot shut the whole site down.

Proponents of this bill very conveniently ignore the fact that there is a real and fundamental difference between the situation of an industrial employer and his unions and that of contractors and subcontractors on construction sites. Actually, the different situations could be a logical reason for different rules concerning picketing, but, as we shall see, the rules for picketing are identical for both under present law.

An industrial manufacturer is a single employer doing business at one site. The same employer, although it may deal with different unions, has complete control over its own labor policies with all the unions which are at that location permanently.

A construction project, or common situs, is a place where any number of employers, or independent contractors, and their employees are located on a more temporary basis. There is no single employer which determines or has control over the labor policies of another.

Unions which have a lawful dispute with an employer which employs their members may strike and picket that employer. They may do so in an industrial setting or they may do so at a construction site. Similarly, unions are prohibited from striking or picketing secondary employers, either in an industrial situation or at a construction site. Where neutral deliverymen use gates in an industrial situation, the union may picket those gates when the work done by employees of the secondary employers is related to the normal operation of the primary employer. Unions at a construction site may also picket their primary employer, and if other gates are being used by secondary employers whose work is related to the normal operations of the primary employer or who is delivering to the primary employer, the unions may picket those gates as well.

However, proponents of H.R. 5900 claim the building trades unions are limited by the rules set forth in the *Moore Dry Dock* case, (*Moore Dry Dock, Sailors Union of the Pacific*), 92 NLRB 547. Those rules, which allow picketing of a common situs, are: (1) picketing signs must clearly indicate the employer with whom the dispute exists; (2) picketing must be carried on only when the primary employer or his employers are engaged in their normal business at the situs; (3) picketing must be limited to times the situs or physical site of the dispute is located at the secondary employer's premises; and (4) picketing must be limited to places reasonably close to the situs.

To meet the alleged inequality claims of the building trades union created by *Moore Dry Dock*, we wish to note two very important points:

(1) *Moore Dry Dock* applies to all situations in which there is a common situs—in fact, it arose in the maritime industry—and not just to building and construction sites;

(2) The rules of *Moore Dry Dock* have been substantially relaxed for all, including the building trades unions. For instance, in *Plauche Electric, Inc.*, 135 NLRB, the Board stated that the *Moore Dry Dock*

standards would not be applied on an indiscriminate "*per se*" basis, but would be regarded only as aids in determining the question of a statutory violation. This policy was soon thereafter effectuated when, in *New Power Wire & Electric Corp.*, 144 NLRB, 1089, aff'd 340 F2d 71 (C.A.2), the Board found no violation of the Act even where the primary employer's employees were not on the site for substantial periods of time—up to two months—while the picketing continued. The *Miami Herald Publishing Company* case, supra, has just this month relaxed the rule requiring picketing to be limited to places reasonably close to the situs.

Certainly rules that are applied in a relaxed fashion to all unions cannot be unfair only to some unions unless they are unfair to all.

One final comment on *Moore Dry Dock*, even if we were to agree that all work done on a construction site by different employers on that site was related to the normal operations of the general contractor and that a union should be free to picket all employers because of the offending general contractors operations, we must note that H.R. 5900 does not distinguish between offending general contractors and unoffending general contractors; neither would it protect an unoffending subcontractor, whose contract with the general contractor would, in all probability, be unrelated to a contract an offending subcontractor has with the general contractor.

B. OTHER LEGAL PRECEDENT

The popular misconception fostered by the building trades unions that under present law they are seriously curtailed in the efforts to establish picket lines is just that—a misconception. Let's examine some of the facts regarding judicial precedent and special provisions of the NLRA giving them special privileges.

(1) *Case law*

Under current law a union can accomplish the same result sought in *Denver Building Trades* without violating the Act. Avenues readily available to the unions with the blessing of the NLRB and the courts include (a) area standards picketing; (b) recognition picketing; and (c) picketing under the "ally" doctrine.

Briefly:

(a) "area standards," which is picketing ostensibly undertaken to publicize an employer's failure to meet area standards in terms and conditions of employment, has been given broad protection by the Board and Courts, even though one of the union's purposes is organizational. See, *Claude Everett Construction*, 136 NLRB 321; Calumet *Contractors Association*, 133 NLRB 512; *Texarkana Construction*, 138 NLRB 102. Accordingly, where the union pickets to induce a company to raise its wage scale, even though the union is not recognized as the representative of that company's employees, a secondary boycott will not be found if the union establishes the defense of "area standards" picketing.

Just such an incident happened to a contractor witness who testified before the Committee. This witness, an open shop contractor, awarded 90% of the subcontracts to union subcontractors on a job in *Tennessee*. Pickets from *Virginia* appeared protesting the failure to follow area

standards. After two days, when separate gates were installed, the project was able to continue. However, it is clear that with enactment of H.R. 5900, such a project would be completely closed down until the "offending" subcontractor capitulated to pickets from another State.

(b) Recognitional picketing is regulated by section 8(b)(7), which is, as we have seen, less effective than envisioned because of the invention by the Board of the "area standards" defense. However that may be, recognitional picketing is banned only after 30 days without the filing of a petition for an election (or where a valid election has been held in the preceding 12 months—an unsual occurence in the construction industry; or where another union has been certified). Thirty days picketing of a complete construction site can be quite effective, and even then picketing can continue if a petition is filed. If a petition is filed and an unfair labor practice charge is also filed, the Board will not determine the representative status until the unfair practice is resolved. Therefore, continued picketing without relief is the result. *C. A. Blinne Construction Co.*, 135 NLRB 153.

(c) If any employer allies itself with a struck employer that employer loses protections it would otherwise have under the secondary boycott prohibitions. This "ally" doctrine applies equally to industrial plants and to construction employers, i.e., see *Douds* v. *Metropolitan Federation of Architects*, 75 F. Supp, 672 (S.D.N.Y. 1948).

(2) *Special provisions of NLRA*

The "inequity" claim of the building trades unions is completely destroyed by two provisions in the Act designed especially for the bulding and construction trades unions. Taking them in the order found, the first is section 8(e)—the so-called "hot cargo" clause. Section 8(e) prohibits contracts between unions and employers where the employer ceases or agrees to cease doing business with another employer. However, a proviso to section 8(e) reads that subsection (e) shall *not* apply to an agreement entered into in the construction industry relating to contracting or subcontracting of work to be done at the site.

Section 8(b)(4)(A) prohibits a union from picketing to force an employer to enter into an 8(e) contract, but since the provisions of section 8(e) exempts the construction industry, the Board and Courts have not recently found unlawful picketing at a construction site to obtain a subcontractor clause. *Centilevre Village Apts.*, 148 NLRB No. 93; *Orange Belt District Council of Painters, No. 48* v. *NLRB*, 328F 2d 534, C.A.D.C..

Supposedly, once such an 8(e) contract is obtained a union cannot picket to enforce the clause, see footnote 6 of recent NLRB case *Los Angeles Building and Construction Trades Counsel (Nobel Electric)* 217 NLRB No. 139. However, recently the Circuit Court for the District of Columbia Circuit has relaxed even that rule and allows picketing to enforce such a contract, *Carpenters Local 433* v. *NLRB (Lippert Brick Contracting Co.,)* CADC, No. 73-1348, Nov. 22, 1974, 87 LRRM 2886, citing the *National Woodwork* case. In *National Woodwork Manufacturing Association* v. *NLRB*, 386 U.S. 612, the Supreme Court upheld the right of trade unions to boycott the use of prefabricated

products when the use of such products deprives union members of work traditionally performed by them, and when there is a clause in a contract to protect that work, picketing to enforce that clause is legal under 8(e).

This "product boycott" picketing is not available to industrial unions, but is now available to construction trades unions, under these Court interpretations of 8(e) and 8(b)(4). However, this exception to 8(e) should not be extended to all construction employees and employers on a jobsite through the exception H.R. 5900 will make to the secondary boycott prohibitions.

In actuality then, construction unions stand in exactly the same position, at least in the D.C. Circuit, as those in the garment or "needle" trades under section 8(e), although there was originally a congressional intent to separate the two because of the "sweat shop" conditions existing in the garmet trades.

Giving the building trades unions even more leverage and an additional economic weapon over and above what other unions have is in no way necessary at this time in view of their present equality of bargaining power and their elevated economic status.

The second special provision in the NLRA for building trades unions is section 8(f), which allows "pre-hire" contracts in the building and construction industry. The building trades unions have argued that since their employment is temporary, they have little chance to have elections at construction sites. However, the claimed necessity of elections is of no validity when section 8(f) permits unions and employers in construction to enter into agreements even before employees are hired and to require those employees to become union members (after the 7th day of employment) when the union has not yet established it represents a majority of the employees.

The building trades unions argument of inequality of the difficulty of holding elections in the construction industry seems to be adequately rebutted by the provisions of section 8(f) providing for prehire contracts.

For the building and construction trades unions to achieve equality of treatment with craft and industrial workers, it would logically and legally appear that these special judicial precedents and provisions of the NLRA should be eliminated, rather than passage of H.R. 5900, which will give them additional powers.

ADDENDUM

QUESTIONS AND ANSWERS ON H.R. 5900 (A MINORITY VIEW)

1. *Q. Does H.R. 5900 legalize secondary boycotts?*

A. Yes, in the construction industry, since a secondary boycott is union pressure to force one employer to cease doing business with another employer. As pointed out in the minority views; legal precedent makes clear that picketing all or neutral employers on a construction site is a secondary boycott. H.R. 5900 would change that law. To constitute a secondary boycott, striking employees do not necessarily have to "leave the scene" of a dispute, particularly when the dispute is at a common site.

The secondary effects of H.R. 5900 arise in several situations. By a total shutdown of the jobsite, union pickets hope to be able to influence the particular subcontractor with whom they have a dispute by applying pressure to general contractors and other subcontractors on the site through a total stoppage of all work. In point of fact, neither general contractors nor other subcontractors are likely to have any direct control over the labor relations policies of the employer with the dispute. Thus, common situs picketing is clearly a secondary boycott situation, and could arise either from picketing against employment of a non-union subcontractor on the job or from a labor dispute with union subcontractors on the job. In both cases, in the words of Taft-Hartley, "an object thereof" would be "forcing or requiring any person to . . . cease doing business with any other person."

2. *Q. Would H.R. 5900 permit picketing a whole site where only one subcontractor employs non-union labor?*

A. Yes. Under present law, "area standards" picketing is confined to that one employer and could not be extended to all employers at the site. H.R. 5900 allows that picketing to be extended to all employers at the site, not just for the purpose of preserving "area standards", but for the specific purpose of removing that non-union subcontractor. With the context of the rights and duties under the NLRA, it seems that unless the selection of a subcontractor is related to the contractor's collective bargaining commitments, any interference with that selection by organized labor is necessarily outside of its legitimate interests of wages and working conditions. Furthermore, if the concept of "related allies" of H.R. 5900 is extended to contractual relationships on a construction site, it would seem that any contractual relationship could establish the signatures as "related allies."

3. *Q. Has Congress ever before exempted any industry from the "secondary boycott" provisions of section 8(b)(4)(B)?*

A. Yes, the clothing and apparel or "needle" industry was exempted from section 8(e) and 8(b)(4)(B). But, there are two reasons not to extend that precedent any further: (1) The conditions of the building

trades unions are not comparable to the "sweatshop" conditions that existed in the "needle" industry; and (2) further eroding of the secondary boycott prohibitions is unwarranted, and would only create more precedent for further undermining those prohibitions.

4. *Q. Would enactment of H.R. 5900 give workers in the construction industry "special treatment"?*

A. Yes, they would be able to enmesh innocent neutrals in labor disputes over which the neutral has no control. No other labor organizations have the right to picket other than the employer with whom they have a dispute, except in an "ally" situation. Construction unions can now picket at a common site, to the extent allowed by law, the same as industrial unions can now picket at the common situs of a dispute.

Furthermore, the Majority's contention that the *General Electric* case creates a separate test and more relaxed rules for industrial picketing is a fallacy and taken out of context. The industrial union was permitted to picket the reserved gate in that case because it was "a mingled gate", used by those performing work involved in the strike as well as by neutral firms. The rule is universal that any union, industrial or construction, is permitted to picket a reserved gate that is "a mingled gate" of that kind. On the other hand, if that reserved gate in the *General Electric* case had not been "a mingled gate", the industrial union could not have lawfully picketed it, and would continue to be unable to lawfully picket it if H.R. 5900 passes. Note, however, the building trades unions will have a "special" right to do so under the bill.

5. *Q. Does H.R. 5900 authorize a union to picket where an object is to force the subcontractor off the job because he employs minorities?*

A. Yes and no. The bill prohibits picketing to remove an employee for discrimination reasons. However, minority contractors are of necessity non-union and the building trades unions could use the fiction of "area standards" picketing to force those minority contractors from the site.

H.R. 5900 provides no protection against discrimination of minority enterprises which are small businesses, generally tending to be non-union. Moreover, due to past discrimination by building trades unions in refusing to admit minorities or females to apprentice programs or hiring halls, the only opportunities in the construction trades for minorities and females for years were the non-union contractors who did not rely on unions for their workers. These contractors, and their minority employees would be greatly harmed by H.R. 5900.

6. *Q. Would H.R. 5900 permit a union to picket when the object is to force employees off the job for their religious beliefs and resulting refusal to join a union?*

A. Yes and No. No, because "creed" is mentioned in the non-discrimination proviso of H.R. 5900. Yes, because that proviso does not take into account that a union and an employer may enter into a union security clause under Section 8(a)(3) (or 8(f)) and 8(b)(2). Instead of forcing an individual off the job for his religious belief, the unions could picket to enforce the union security clause, i.e., the individual's failure to join the union.

7. *Q. Would H.R. 5900 permit the AFL–CIO to picket when an object is to force off the job a subcontractor who has a contract with an independent union?*

A. Yes and No. No, because an amendment offered by Mr. Esch prohibts this. Yes, however, because the AFL–CIO trades union could still engage in "area standards" picketing, and could now picket the whole jobsite and not just the employer involved.

8. *Q. Would H.R. 5900 permit the building trades unions to picket if the object is to secure the work of a manufacturer who is installing specialized equipment on the jobsite?*

A. The question as stated by the Majority is unfairly worded since these employers mentioned have unions representing their employees. Where unions are representing the manufacturer's employees the answer is No. However, if that manufacturer's employees are not represented by a labor organization, H.R. 5900 would allow the whole site to be picketed. There is no adequate way to explain this disparity.

9. *Q. If an industrial plant wished to use its own employees to expand its premises, would H.R. 5900 permit the building trades to picket the work?*

A. Again the question stated by the Majority is unfairly stated. The answer would be No, if the industrial plant's employees are represented by a labor organization. However if the employees of that plant do not choose to have a labor organization represent them, then picketing could take place—at the whole industrial plant site, unless H.R. 5900 can be interpreted to require that the industrial plant was not engaged in construction. There is no adequate way to explain the disparity in H.R. 5900 between an organized industrial plant and an unorganized industrial plant, especially since H.R. 5900 is supposed to deal only with employers engaged primarily in construction.

10. *Q. If building trades have a dispute with Contractor X at one site, would H.R. 5900 permit unions to picket the same contractor at another site?*

A. There is nothing in H.R. 5900 to prohibt such picketing. According to established NLRB policy, the "situs of the dispute" travels with the employer primarily involved. It would appear that if Contractor X has a dispute with a labor organization representing its employees, the dispute would extend to all sites where that contractor is working, which might apply nationwide in large companies. As now written into H.R. 5900, the union would have to give separate 10-day notices to engage in common situs picketing at each site.

11. *Q. Would H.R. 5900 permit general picketing of the entire area when several general contractors are employed in close proximity in the same general area?*

A. The Majority's answer is "no", based on certain interpretations of the bill. However, there is no definition of "site" in the bill, any numerous instances of different contracting arrangements could take place, and since ownership may be in a private person or a large governmental tract of land, there is possibly no way to limit picketing at all gates to the "site", whatever it may be. So the Minority answer would have to be "yes", since site usually encompasses the entire four corners of the outer limits of construction. See, i.e., the Department of Labor's interpretation under the Davis-Bacon Act.

12. *Q. Would H.R. 5900 permit a union to picket against contractors who bid under State law and are awarded contracts by the State?*

A. The Majority says "no" because the contractors would not be "jointly" engaged as joint venturers within the meaning of H.R. 5900.

But H.R. 5900 permits picketing and inducement of any individual employed by any *person* to strike or refuse to perform services at the site of construction, and the picketing can be directed at any of several employers in the relationship of contractors and subcontractors. Since the word person is used, and the fact the State could be considered the contractor, there is nothing to prohibit this kind of picketing or inducement. As a matter of fact, the Full Committee rejected an amendment by Mr. Esch to prohibit common situs picketing when State or local governments required separate bids. Accordingly, the Minority respectively disagrees with the interpretation of the Majority.

13. *Q. Would H.R. 5900 permit building and construction unions to engage in conduct which would violate 8(b)(7)—the law regulating recognitional and organizational picketing?*

A. Picketing "otherwise unlawful" would continue to be unlawful, but, again picketing could occur for the ficticious objective of maintaining "area standards." Furthermore, H.R. 5900 permits the whole site to be picketed, so, for at least 30 days, picketing would be permissive.

One further point to mention: 8(b)(7) does not appear to prohibit one labor organization from picketing to force an employer to recognize another labor organization. Therefore, for example, the Teamsters could picket to force an employer to recognize another labor organization, say the plumbers, without violating 8(b)(7).

14. *Q. Would H.R. 5900 validate boycotts against "pre-cut doors" or similar products?*

A. Yes. Under present law, the *National Woodworkers* case, the Supreme Court held that a union could boycott an employer where the employer attempted to use prefabricated material which deprived union members of work traditionally performed by them. H.R. 5900 would expand that boycott of a single employer to the whole construction project. Of course, where such boycotts are presently forbidden, they would continue to be forbidden, but most building trades unions are now locking employers into contracts where the employer cannot use prefabricated materials. Even under current law unions can picket to enforce those contracts.

The Full Committee rejected an amendment by Mr. Esch which would have limited the "product boycott" to the employer involved and would have left this complicated area of the law in the position it was in prior to H.R. 5900.

15. *Q. Is there any truth to the suggestion that enactment of H.R. 5900 could result in strikes at the Alaska Pipeline?*

A. Strikes could occur with or without H.R. 5900, but assumedly, we are talking of the whole site involved in picketing. H.R. 5900 has nothing to do with an alleged bar against an Alaska Pipeline strike—that bar is found in the "project" agreement. H.R. 5900 could result in shutting down whole jobs such as the Pipeline, even though the general contractor has a no-strike contract (including a no-sympathy strike clause) with the unions. Without such a firm clause, which is unusual, sympathy strikes could occur. But, even though the Alaska Pipeline has a tightly-bound contract, that contract does not affect non-parties to the contract, nor does it affect the numerous off-site operations.

Admittedly, the Alaska Pipeline contract was designed to be tightly drawn, but few contracts so restrict unions or their members.

16. *Q. Will H.R. 5900 change the law which permits labor organizations in construction to picket employers to have them enter into contracts whereby the employer agrees to subcontract only to subcontractors who hire union employees?*

A. No, except to the extent that it may now involve picketing a whole site where other subcontractors are working.

17. *Q. The law now permits picketing an employer at a construction site to protest employment of employees at wage scales and conditions below "area standards." Will H.R. 5900 change this law in any way?*

A. Note, the Majority's question says the law permits picketing a construction site and is incorrect legally according to present law. The answer is "yes"—H.R. 5900 will now allow the whole site to be picketed where formerly only the employer involved could be picketed.

18. *Q. Will H.R. 5900 permit picketing other than at reserved gates?*

A. Yes. The building trades unions concede that one of the principal purposes of H.R. 5900 is to enable them to picket gates reserved for contractors and subcontractors who are not involved in the dispute. Presently, such picketing is secondary. The system of picketing established by the *Moore Dry Dock* case was designed to provide fairness by allowing those in the dispute to air their grievances, and to keep those not involved from being enmeshed in a dispute not their own. H.R. 5900 would eliminate this system of fair picketing.

The reference in the Majority's question to the *Markwell and Hartz* case no longer has any meaning since the bill was amended to prohibit picketing which is to require an employer to recognize or bargain with a labor organization if another labor organization is lawfully recognized as the representative of his employees.

19. *Q. Is H.R. 5900 really necessary?*

A. No, the building trades unions are adequately protected by present law and Board and Court decisions. Also, the building trades unions have wages and fringe benefits substantially above their counterparts in manufacturing. Although testimony showed that "merit" shops are now getting a greater percentage of the work, there was no testimony that union membership was declining. Certainly, union shops would be better able to increase their percentage of the work if some of the unproductive and inefficient practices by union shops were eliminated. Possibly, the open or merit shops provide healthy competition and motivation for union shops to improve their own competitive position.

20. *Q. Is H.R. 5900 consistent with our national commitment to encourage the practices and procedures of collective bargaining?*

A. No. H.R. 5900 is contrary to national policy in two respects: (a) it ignores the principle of employees freely choosing or rejecting a union; and (b) it is diametrically opposed to the principle of not involving neutrals in labor disputes.

Summary

1. H.R. 5900 would legalize secondary boycotts only in the construction industry, which is presently against labor policy.

2. H.R. 5900 would assist in denying employees "free choice", which is contrary to the basic principle of the NLRA.

3. H.R. 5900 is advocated simply for the purpose of assisting building trades unions in organization, and is being thrust upon us only at a time that is politically expedient.

4. H.R. 5900 is imprecise and ambiguous, even its supporters are unable to define its meaning adequately, or even the present meaning of section 8(b)(4)(B).

5. H.R. 5900 will, possibly, have untold adverse future consequences.

6. H.R. 5900 is not needed. The building trades unions now have an advantageous bargaining position, in that building trades workers wages are considerably higher than those of industrial workers, and recent settlements show an even more widening gap in their favor.

7. H.R. 5900 is not needed from the standpoint of judicial precedent interpretation or present provisions of the NLRA, which give building trades unions wide latitude to picket and strike, even under certain "fictions" such as "area standards" or "work preservation."

8. H.R. 5900 would allow whole construction projects to be shut down over a dispute of a prefabricated product, thereby completely preventing new ideas and methods in speeding up construction and lowering costs at a time when there is virtually a national crisis in housing and other construction.

9. The amendment added in Committee to provide a 10-day notice and authorization by the National or International union of which the local is an affiliate leaves much to be desired in that (a) discussion has probably taken place for some time before the notice would be given; (b) there is no assurance that a National or International union will act more responsibly than a local; and (c) the provision itself detracts from the purposes of the Landrum-Griffin Act of 1959 of democratizing unions.

10. H.R. 5900 does nothing to clean up the present problems of collective bargaining in the construction industry.

SIGNATURES

JOHN M. ASHBROOK.
JOHN N. ERLENBORN.
EDWIN D. ESHLEMAN.
JOHN BUCHANAN.
BILL GOODLING.
VIRGINIA SMITH.
IKE ANDREWS.

○

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-509

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975

SEPTEMBER 24, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

SUPPLEMENTAL AND MINORITY VIEWS

[To accompany H.R. 9500]

The Committee on Education and Labor, to whom was referred the bill (H.R. 9500) to stabilize labor-management relations in the construction industry, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in italic type in the reported bill.

A CHRONOLOGY OF H.R. 9500

The genesis of H.R. 9500 lies in the testimony of Secretary of Labor John T. Dunlop when testifying on June 5, 1975, before the Subcommittee on Labor-Management Relations on H.R. 5900, a bill relating to an entirely different and very limited problem in the construction industry. At the close of his testimony supporting H.R. 5900 Secretary of Labor Dunlop added the following "general comment":

> I have come to the conclusion over the past decade that the legal framework of collective bargaining in the construction industry is in need of serious review. . . . A vastly enhanced role for national unions and national contractor associations, working as a group, is essential in my view if the whipsawing

> and distortions of the past are to be avoided and if the problems of collective bargaining structure, productivity and manpower development are to be constructively approached by the industry itself, and in cooperation with governmental agencies.

Secretary Dunlop urged the Subcommittee to "give attention to this serious range of problems after the parties on each side have had the opportunity to consider the issues more thoroughly".

Chairman Frank Thompson expressed immediate enthusiasm and promised full cooperation. Thereafter, H.R. 9500 evolved in consultation with management and labor groups within the construction industry, and in cooperation with relevant governmental agencies.

A draft bill was sent by Secretary Dunlop to the Speaker in a message dated September 5, 1975, and introduced by Mr. Thompson, for himself and Mr. Quie.

Hearings were held on September 10 and 11 by the Committee on Education and Labor, and all witnesses who wished at that time to testify were heard.

Secretary Dunlop gave the initial presentation in support of the bill. Robert Georgine, President of the Building and Construction Trades Department of the AFL–CIO, and Robert J. Connerton, General Counsel of the Laborers International Union of North America supported it on behalf of organized labor. Harry P. Taylor, President of the Council of Construction Employers, Inc., and Robert R. Arguilla, Vice President-Treasurer of the National Association of Home Builders supported it on behalf of employers in the construction industry who deal with organized labor. Laurence F. Rooney of the Associated General Contractors quoted President John N. Matich of that organization to the effect that "the legislation appears to be a step forward", but said that his organization could neither support nor oppose it because they had not had time for sufficient discussion with the membership.

The only opposition came from Philip Abrams, President of the Associated Builders and Contractors, Inc., and as almost all of the members of that Association operate on a "merit system", i.e. non-union basis, they are not affected in any way by the bill they oppose.

On September 18, 1975, the Committee on Education and Labor, having amended the bill to include some technical changes recommended by the Department of Labor and two other amendments not inconsistent with the Department's position, ordered the bill reported favorably by a vote of thirty-four to one.

The Need for H.R. 9500

Secretary Dunlop testified concerning the need for H.R. 9500.

The construction industry is large, some half-million contractors employ over 5 percent of the Nation's labor force. The construction industry is fragmented. Two and one half million workers are organized into 18 different international unions and over 10,000 local or subordinate bodies. Bargaining is conducted at the local level by each of the separate trades, with coordination between the unions, or between different locals of the same union, being the exception. In New York, for example, some 720 local unions representing 21 different trades bargain with 160 different employer associations.

Each local and each craft tries to outdo the other. With successive expiration dates the norm, each union examines the wage and fringe package won by the other, and the consequence is known in the industry as "leapfrogging". At a minimum, each local seeks to preserve what it considers the traditional differential with other trades and other localities.

Strikes are numerous (more so than in other industries), long (more so than in other industries), and costly (because of the inherent independence of the work done by each). In Washington, D.C., 21 construction agreements expired in 1975, and the construction industry was hit with a series of strikes. The Roofers were out from April 3 to May 21; the Cement Masons from May 1 until June 12; the Operating Engineers from May 12 to May 20; the Painters from May 19 to May 24; the Teamsters (Dump Truck) and Laborers from June 13 to August 1; the Teamsters (ready-mix) from June 18 to August 1. In September the Plumbers and Pipefitters went on strike. Three additional contracts are about to expire, and more strikes may come. All in all, it was not a busy summer as far as construction in the construction industry was concerned.

The Essence of H.R. 9500

H.R. 9500 is designed to establish a machinery, a process, whereby responsible leaders within the industry can meet on a regular and periodic basis to discuss the over-all problems of the industry, and seek better solutions to the bellwether local conditions.

H.R. 9500 permits, in the words of Secretary Dunlop, "the dynamic processes of interaction between the International union presidents and the national employers association". Its principal force lies in the power of persuasion, and it is considered by those within the industry as "a significant new tool for the parties in the industry at the national level to effect the results of collective bargaining".

This expectation is based on experience of the past five years when leaders on both sides met with public members to discuss and analyze their problems: first under the Construction Industry Collective Bargaining Commission established by Executive Order in 1969, then under the Construction Industry Stabilization Committee established in 1971 under the Economic Stabilization Act of 1970.

The testimony before the Committee was that these two earlier committees were indeed effective. If precedent is needed, precedent is there.

An Analysis of H.R. 9500: What It Does and Does Not Do

H.R. 9500 provides an enhanced role for national labor organizations and national contractor organizations in resolving collective bargaining problems. It creates a Construction Industry Collective Bargaining Committee, comprised of 10 management representatives, 10 labor representatives, and up to 3 neutral members. The Secretary of Labor and the Director of the Federal Mediation and Conciliation Service are members ex officio. The other members are to be appointed by the President after consultation with the relevant national organizations.

Local labor organizations are required to give notice to their parent organizations (if there are such) 60 days prior to the expiration or

reopening date of their local collective bargaining agreements. The employer similarly is required to give notice to his parent organization (if there be one), or directly to the Committee.

The Committee is authorized (but not required) to take jurisdiction over the local disputes under standards fully set forth in section 6 of the Act.

If the Committee takes jurisdiction over any dispute, the parties may neither strike or lockout for thirty days, unless the Committee sooner releases its jurisdiction. The status quo is to be maintained during the period of Committee jurisdiction.

When the Committee takes jurisdiction it has a number of alternatives. It may refer the matter to a national craft or branch board or other appropriate organization to be established under this Act. It may meet with the parties itself. It may direct the parent labor organization (but not the parent employer organization) to participate in the negotiations. If the parent labor organization is directed by the Committee to participate in the negotiations, no new agreement is of any force or effect unless and until it is approved by the parent labor organization.

The parent labor organization, when directed to participate in the negotiations, is relieved from all criminal and civil liabilities arising out of the direction. The national organizations are in effect being conscripted to perform a function that furthers the national labor policy. Their functions often will be to restrain the subordinate bodies and their members. The actions taken might well be politically unpopular. It would be wholly inequitable to impose legal liability under these circumstances.

Local labor organizations will continue to be liable for their own illegal acts; and their officer and members, while not individually subject to suit for union activity, will be subject to other sanctions for their own misconduct.

Apart from the resolution of particular labor disputes, the Committee is authorized to promote the formation of voluntary national craft or branch boards; to facilitate area bargaining structures; to improve productivity, manpower development, and training; to improve dispute settlement procedures; and to provide for the equitable determination of wages and benefits.

While creating a mechanism and process desired by the construction industry, H.R. 9500 is limited in many ways.

It is limited in time. It is to expire on February 28, 1981, unless sooner renewed by Congress.

It is limited in scope. Employers who do not recognize or bargain with unions are not affected in any way. Nor is it applicable to employers with "independent" unions.

H.R. 9500 is limited to the situation wherein collective bargaining contracts already exist. It has no applicability when unions and management seek an initial collective bargaining agreement.

The sanctions of H.R. 9500 are limited in time. If the Committee takes jurisdiction, and decides not to refer the matter to the parent labor organization, its jurisdiction ends at the termination of thirty days. Thereafter the parties are free to utilize whatever economic pressure that is lawful.

Participation is essentially voluntary, and the only sanction, a 30-day delay on the right to strike or picket while the status quo is

maintained. There are no unfair practices or prohibitions; and no elaborate enforcement machinery. The few prohibitions are to be enforced by civil action in the federal courts.

H.R. 9500 is intended to operate without interference with the National Labor Relations Act, the Landrum-Griffin Act or the Mediation and Conciliation Service. It is not intended to make lawful anything which is now unlawful, or to make unlawful anything which is now lawful. It is contemplated that all relevant laws will be read together in harmony to give effect to each and all.

Finally, H.R. 9500 does not constitute wage and price control, and is not a form of compulsory arbitration.

Description of How the Bill's Procedures Would Work in Practice

Example A: A contractor and a local union are parties to a collective bargaining agreement which has an expiration date. The local union wishes to negotiate a new agreement to take effect upon the expiration of the current agreement. In addition to giving 60 days' notice to the contractor as required by section 8(d) of the National Labor Relations Act, the union would be required under section 4(a) to give 60 days' notice to the national or international union with which it is affiliated. Under section 4(b) the national or international union would, in turn, be required to pass that notice on to the Committee. Assuming that the local union filed its 60-day notice on time, the Committee would be able to take jurisdiction of the matter at any time during the 90-day period which extends forward from the giving of notice to the national or international union up to and including the 90th day following the giving of notice. Similarly, if the notice were filed late, the Committee would have up to 90 days from the date the notice was, in fact, given to take jurisdiction.

If notice were given to the national or international union 80 days before the expiration date of the agreement, indicating an intention to terminate or modify the agreement on the expiration date, the Committee could take jurisdiction of the matter during the identical 90-day period which would be applicable in the case of the first illustration given above. The giving of early notice would not extend the period during which a strike, lockout, or change in terms or conditions of employment was prohibited.

If the Committee did not, in fact, assert jurisdiction until the 70th day of the period in which it was allowed to take jurisdiction, the contractor and the local union would be prohibited from engaging in any strike or lockout only during the remainder of the 90-day period. In this situation, a strike or lockout already in progress would be stopped.

Regardless of when the Committee decided to take jurisdiction over the matter within the 90-day period, once jurisdiction is taken, the Committee could decide to refer the matter to the appropriate craft board, if one has been established voluntarily for the relevant craft or branch of the industry under section 7(a). The craft board would work with the parties to try and bring about a responsible agreement. The Committee could also decide to work with the parties itself. In addition, the Committee could take both of the above courses either concurrently, or in any sequence desired.

As stated previously, the Committee could decide to ask for participation of the national or international union and the national contractor association, if any. If the Committee took jurisdiction and made a written request for national participation, no new collective bargaining agreement could become effective between the local union and the contractor until the national or international union involved had approved of the agreement. Where the Committee has made its request for national or international participation in a timely manner, the authority of the national or international union to approve or to withhold approval of a new agreement is not limited to the period in which the Committee has jurisdiction.

In deciding whether to take jurisdiction or request national participation under sections 5(a) and 5(b) the Committee would be guided by the standards established in section 6.

Example B: If the collective bargaining agreement in Example A had no expiration date, the procedures would be the same as described in Example A, except that the Committee could take jurisdiction during the 90-day period up to and including the 90th day following the giving of notice or the 30th day after the date the termination or modification is proposed to take effect, whichever is the later.

Example C: Section 5(c) provides that where national union approval is required, the parties may not, prior to such approval, make any changes in the terms and conditions of employment. The terms and conditions to which the subsection refers are those of the previous collective bargaining agreement.

An example of the way this provision would operate is as follows: The Committee has taken jurisdiction and requested national organization participation as provided in section 5(b). The existing agreement expires. The parties to the former agreement may not agree or consent, either formally or tacitly to any changes in the terms or conditions of employment differing from the old agreement prior to national union approval of a new collective bargaining agreement, whenever it may occur. Neither party may unilaterally impose new terms and conditions of employment, except to the extent otherwise authorized by law, prior to the approval of the new agreement.

Requirements of Rule XI

With respect to the matters covered by the bill, the Committee on Government Operations has not submitted oversight findings or recommendations to the Committee on Education and Labor, and other than this report and the hearings previously described herein, there have been no oversight findings or recommendations made by the Education and Labor Committee.

Cost Estimates

The bill authorizes the appropriation of such sums as may be necessary to carry out the purposes of the Act. The Department of Labor estimates that the first year costs will be $538,840, and that the full costs over a five-year period should not exceed $2,457,600. The Committee would concur in these estimates. An authorization of this size, so small in relation to the total national budget, the Committee feels will have no measurable impact on the operation of the national economy and no inflationary impact on prices and costs.

The Congressional Budget Office has informed the committee that it has no independent estimate at this time of the cost of this bill.

Section-by-Section Analysis

Section 1 states that this Act may be cited as the Construction Industry Collective Bargaining Act of 1975.

Section 2 contains findings and conclusions about the nature of the construction industry, and the need for an enhanced role for the national labor organizations and national contractor associations, working as a group, to assure that the problems of bargaining structure, productivity, manpower development and so on are constructively approached by the parties themselves.

Section 3(a) establishes a Construction Industry Collective Bargaining Committee, consisting of ten members representing the viewpoint of employers, ten members representing the viewpoint of the standard national labor organizations, and up to three public members representing the public. The Secretary of Labor and the Director of the Federal Mediation and Conciliation Service are members ex officio.

Section 3(b) authorizes the appointment of staff.

Section 3(c) authorizes the Committee to promulgate rules and regulations without regard to the requirements of the Administrative Procedure Act.

Section 4 requires that local labor organizations and local employers give sixty day notice to their parent organizations (when there be such) for transmission to the Committee. If the employer is not a member of an organization, he shall serve the notice directly upon the Committee.

Section 5 authorizes the Committee to assume jurisdiction of the dispute for a period not to exceed thirty days. During this period the Committee may participate directly in the negotiations; it may refer the matter to an appropriate national craft or branch board; or it may direct the parent labor organization to participate in the negotiations. In the last event, no contract is of any force or effect unless approved by the parent organization. The parent organization is not exposed to any criminal or civil liability arising out of a request by the Committee for its participation in collective bargaining.

Section 6 sets forth the standards for the assumption of Committee jurisdiction, i.e., to facilitate collective bargaining; to improve the structure of bargaining; to promote practices consistent with appropriate apprenticeship, training and skill level differentials among the various crafts; to promote voluntary procedures for dispute settlement; and so on.

Section 7 invests the Committee with additional functions: to promote and assist in the formation of voluntary national craft or branch boards; to make recommendations as deemed appropriate to facilitate area bargaining structures; to improve productivity; to promote stability of employment; to improve dispute settlement procedures, and so forth.

Section 8 provides for remedial action in the form of civil action brought by the Committee in a district court of the United States to enforce any provisions of the Act.

Section 9 authorizes other agencies and departments of the Government to provide information deemed necessary by the Committee, and directs the Committee and the Federal Mediation and Conciliation Service to consult and coordinate their activities.

Section 10 defines the terms in the Act by incorporating the definitions set forth in the Labor-Management Relations Act, 1947.

Section 11 is a separability clause.

Section 12 authorizes necessary appropriations.

Section 13 provides that the Act shall take effect on the date of its enactment and shall expire on February 28, 1981. It also requires annual reports.

Changes in Existing Law Made by the Bill as Reported

H.R. 9500 makes no changes in existing law.

SUPPLEMENTAL VIEWS

I support the thrust of H.R. 9500 and voted to report the bill to the full House. However, while the legislation is an important first step in giving more predictability to collective bargaining in the construction industry, one would be well advised to recognize the limitations of the legislation.

One limitation of H.R. 9500 is that it emphasizes a pragmatic approach to the problem, utilizing communication instead of compulsory arbitration, and relying on persuasion instead of government regulation. The success of this new approach to collective bargaining in the construction industry depends to a great extent on how active a role the Secretary of Labor and the Committee on Collective Bargaining chooses to play in the collective bargaining process. This legislation should not be regarded as a solution to all of the problems in the industry.

As has been pointed out by Secretary of Labor Dunlop, the construction industry is highly fragmented. Bargaining is often uncoordinated among the various trades and the local unions within a single trade. This has oftentimes lead to whipsawing negotiations, increased work stoppages, and leap-frogging settlements.

It should also be pointed out that by utilizing a nationally constituted bargaining committee and by requiring a national labor organization to approve a collective bargaining agreement, the trend over the past several years, of placing more authority in the hands of the local unions, is reversed by this legislation. Unfortunately, as no local union representatives presented testimony at the hearings, it is unclear whether they support this apparent trend reversal as necessary in an attempt to achieve increased economic stability in the construction industry.

Through the intensive efforts of the Secretary of Labor, the subject of collective bargaining in the construction industry was discussed in some circles before the bill was introduced. However, the short time period between introduction and the full committee mark-up clearly precluded an in-depth analysis by the Committee of other areas of concern in the collective bargaining process. H.R. 9500 was introduced on September 9, 1975. Hearings were held on September 10th and 11th, and the bill was voted out of committee on September 18th, 1975. Undoubtedly, many groups who did or could have testified at the hearings could have utilized a long time period to prepare their comments and suggestions regarding the bill. Additional reflection on the subject of collective bargaining, both by various interest groups and the Education and Labor Committee itself would have been beneficial, and may have provided a more comprehensive approach to this subject.

During the full committee mark-up, I introduced two amendments. One amendment was of a technical nature. The other amendment stated: "[P]rovided that nothing herein shall be construed to impose a

collective bargaining relationship on any construction employer unless such relationship is established by consent or through the election process set forth in the National Labor Relations Act, as amended."

This second amendment is directed at the so-called, "double-breasted" contractors who operate two companies, one union and the other non-union. It wa my intention to insure that an international union would not predicate its approval of a collective bargaining contract involving a, "double-breasted" contractor, by requiring the elimination of that contractor's non-union operation.

It was stated that this union activity was already prohibited by H.R. 9500 and the previously accepted amendments. My amendment was withdrawn with the understanding that there would be clarifying language in the committee report. The committee report states: "It [H.R. 9500] is limited in scope. Employers who do not recognize or bargain with unions are not affected in any way. Nor is it applicable to employers with "independent unions." I do reserve my right to re-introduce an amendment regarding "double-breasted" contracts if further clarification is necessary.

MARVIN L. ESCH.

MINORITY VIEWS

I am opposed to H.R. 9500 as reported by this Committee.

H.R. 9500 is an Administration proposal whose alleged purpose is to achieve a more viable and practical structure for collective bargaining in the construction industry by establishing procedures for negotiations with a minimum of governmental interference in the free collective bargaining process. There is no doubt that the bill achieves its goal of minimum government interference, but it sadly lacks the creation of any totally different legal framework to restructure bargaining in the construction industry. It is, in my opinion, plain and simply, the long-anticipated companion bill to H.R. 5900 designed to insure the President's signature on that "common situs picketing" bills, little more than a charade, a well prepared position to which the Administration and Republicans may retreat.

Collective bargaining reform in the construction industry is long overdue, and the Secretary of Labor has urged that reform for some time. However, as evidenced by the Secretary's statement to this Committee, and statements of other supporters of this bill, reform in construction industry bargaining is no simple thing despite the fact that the majority of this Committee can find a solution after only two days of hearings on a bill introduced only a few days before those limited hearings began. Through the month of August, after the Secretary's suggestion for a major reform bill and after the common situs picketing bill cleared the House, we anxiously awaited the bill that would provide that major overhaul and major reform. It is very possible that this reform bill, the results of our anticipation, deserved only two days of hearings.

PRINCIPAL OBJECTION

To make the record absolutely clear, I am not opposed to reform in bargaining in the construction industry. I do have doubts about the long- and short-range effectiveness of this bill. When asked about the merits of this bill, about all Secretary Dunlap could suggest was that "dynamic interaction" combined with the "power of persuasion" would bring the panacea sought but not spelled out in H.R. 9500.

The principal problem with the bill and its foreseen premature enactment is that it will preclude this Congress from taking an in-depth look at the problems of collective bargaining in construction. The manner in which this legislation is being handled gives this Committee, which has legislative responsibility to devise the best solution possible, and this Congress, little opportunity for a thoughtful, deliberate analysis of the problems in construction industry bargaining and possibly a better resolution of those problems than this bill presents. Moreover, the manner in which this bill is being handled gives credibility to the charge that it is a "trade off" for the "common situs" picketing legislation, a charge that is presently impossible to repudiate, although it would be desirable to do so.

It is my opinion that the complex problems of the issues of collective bargaining in the construction industry deserve more than a cursory, superficial review. They deserve thoughtful, thorough study and consideration.

SECONDARY OBJECTIONS

1. The purpose of the bill is to revise the structure of collective bargaining in the construction industry by providing an enhanced role for national unions and national contractor associations. However, any enhancement of the role of the national contractor association is . ot evident and there is really no need for the type of enhancement of the role of national labor organizations that this bill allegedly creates.

The role for national contractor associations apparently lies in the dynamic interaction and the power of persuasion theory, as they appear to be mere participant observers at the national level. As for international building trades unions, they now have the power to intervene in local disputes and to veto local settlements usually through their constitutional prerogatives. The fact that the international building trades unions do not exercise this power is possibly dictated by internal political pressures, which this bill does nothing to remove. Accordingly, H.R. 9500 provides no additional benefits in this regard and nothing that is not already present.

(2) The majority claims that this bill is designed to establish a machinery whereby responsible leaders can meet on a regular basis to discuss the over-all problems of the industry. This function of the Committee is expected to bring stability on the basis of persuasion. The expectation of success is based principally on the experience of the Construction Industry Stabilization Committee established in 1971 under the Economic Stabilization Act of 1970.

The fault with this argument and this expectation of success is that the Construction Industry Stabilization Committee had the power to approve or disapprove wage settlements. That Committee had power beyond dynamic interaction and persuasion, and consequently, was successful: this Committee does not, and its success may be based on the personalities of the principal participants.

(3) The jurisdiction of the Committee is limited. It may only assert jurisdiction in instances where termination or modification of contracts are taking place. The Committee has no power to act in initial bargaining disputes, and in many other areas where labor disputes in the construction industry arise. For instance, the bill will have no effect in solving those union-management problems where there is no collective bargaining agreement in existence. This would include not only nonunion employers and employers who bargain with independent unions, but also the situation in New York City where the Electricians do not have a contract and have not had one for some time. Furthermore, the Committee does not have to assert jurisdiction over a dispute, and even when it does, its jurisdiction is established for only 90 days. Accordingly, I believe the bill is too limited in scope to deserve the support of this Congress as a means of solving the construction industry labor-management problems.

(4) The theoretical concept behind this bill is that it will stabilize bargaining in the construction industry. Implicit in that concept is that wage settlements and other demands of unions will become more

reasonable and acceptable. However, there is no guarantee in the bill that stability will be achieved, and there is certainly no guarantee that international unions will act in a responsible manner to lessen the inflationary trend of wage demands or other cost-producing requests.

By giving the international unions power to approve or disapprove a contract—a power that extends beyond the jurisdiction of the Committee—the bill is also giving those international unions power to insist on certain provisions in local collective bargaining agreements. This is certainly an escalation of authority to the international unions, very possibly to the detriment of a local contractor, for once a local contractor has offered a contract to a local union, it would be almost impossible for him to rescind some or any of those offers and again put them on the bargaining table.

The balance of the bargaining situation is no longer maintained by this bill by giving an international union veto power over a local contract. I believe the present balance in construction industry bargaining is more weighted on the union side, and I cannot accept a principle in legislation that swings the pendulum even further in the union's favor.

(5) The support for this bill is not as wide or wholehearted as the majority views indicate. The Associated General Contractors could not support the bill in its present form. They suggested that the bill be given some "teeth." Opposition was also raised by the Associated Builders and Contractors, Inc., as well as by the Sheet Metal and Air Conditioning Contractors' National Association and the Chamber of Commerce. The Chamber did not present their views to us at hearings, simply because they did not have time to review the bill adequately. No local labor organization appeared, so we know only that the national building trade unions support the bill, but we are not sure they represent the views of the locals.

None of the employer groups who did endorse the bill endorsed it wholeheartedly. Each had suggestions for amendments, which suggestions have not been thoroughly explored. Accordingly, although witnesses and I have found it hard to approve a bill which may accomplish little, we have also found the concept difficult to oppose since it is, at least, a "step in the right direction." However, from the complex problems including fragmented units, whipsawing, leapfrogging, and inflationary settlements, that step should not only be in the right direction, but also have some meaningful, substantive, and permanent purpose. I believe the step proposed in this bill is too small.

(6) In 1957 the hearings of the McClellan Committee took place. After those hearings, Congress determined that excessive power in the hands of international unions was so dangerous that the Labor Management Reporting and Disclosure Act of 1959 resulted. That Act limited the power of international unions, contained a Bill of Rights for union members, and strengthened the provisions of the National Labor Relations Act to provide for unfair labor practices for newly-found union abuses. H.R. 9500 reverses this trend, and gives the international building trades unions more power. Will they again so abuse it that the pendulum will swing in the other direction? Does this Congress on this cursory record want to reverse the direction of the Labor Management Reporting and Disclosure Act of 1959 which took years

of consideration? At this point, and on this record, I, for one, do not, and urge my colleagues to give careful consideration to this effect of H.R. 9500.

SUMMARY

The basic problems of construction industry bargaining will not be rectified by passage of H.R. 9500, and the bill should not be enacted with that expectation. Instead of H.R. 9500, I urge this Congress to take a considered and thoughtful look at the construction industry with all its problems, including bargaining, and propose meaningful legislation to solve those problems. Instead of rushing this bill through this Congress for the purpose of having it reach the President's desk at the same time as the "common situs picketing" bill, I urge this Congress to take a more comprehensive look at labor-management relations in the construction industry and, then, enact meaningful legislation.

JOHN M. ASHBROOK.

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-697

ECONOMIC RIGHTS OF LABOR IN THE CONSTRUCTION INDUSTRY

DECEMBER 8, 1975.—Ordered to be printed

Mr. PERKINS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 5900]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5900) to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I—PROTECTION OF ECONOMIC RIGHTS OF LABOR IN THE CONSTRUCTION INDUSTRY

SEC. 101. (a) Section 8(b)(4) of the National Labor Relations Act, as amended, is amended by inserting before the semicolon at the end thereof ": Provided further, That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any employer primarily engaged in the construction industry on the site to strike or refuse to perform services at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site: Provided further, That nothing in the above proviso shall be construed to permit a strike or refusal to perform services or any

inducement of any individual employed by any person to strike or refuse to perform services in furtherance of a labor dispute, unlawful under this Act or in violation of an existing collective bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers, and the issues in dispute involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry: Provided further, Except as provided in the above provisos nothing herein shall be construed to permit any act or conduct which was or may have been an unfair labor practice under this subsection: Provided further, That nothing in the above provisos, shall be construed to prohibit any act which was not an unfair labor practice under the provisions of this subsection existing prior to the enactment of such provisos: Provided further, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of sex, race, creed, color, or national origin or because of the membership or nonmembership of any employee in any labor organization: Provided further, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is to cause or attempt to cause an employer to discriminate against any employee, or to discriminate against an employee with respect to whom membership in a labor organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership, or to exclude any labor organization on the ground that such labor organization is not affiliated with a national or international labor organization which represents employees of an employer at the common site: Provided Further, That nothing in the above provisos shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization presently prohibited by paragraph (7) of subsection (b): Provided further, That if a labor organization engages in picketing for an object described in paragraph (7) of subsection (b) and there has been filed a petition under subsection (c) of section 9, and a charge under subsection (b) of section 10, the Board shall conduct an election and certify the results thereof within fourteen calendar days from the filing of the later of the petition and the charge: Provided further, That nothing in the above provisos shall be construed to permit any picketing of a common situs by a labor organization to force, require, or persuade any person to cease or refrain from using, selling, purchasing, handling, transporting, specifying, installing, or otherwise dealing in the products or systems of any other producer, processor, or manufacturer. In determining whether several employers who are in the construction industry are jointly engaged as joint venturers at any site, ownership or control of such site by a single person shall not be controlling".

(b) Section 8 of such Act is amended by adding at the end thereof the following new subsections:

"(h) Notwithstanding the provisions of this or any other Act, where a State law requires separate bids and direct awards to employers for construction, the various contractors awarded contracts in accordance with such applicable State law shall not for the purposes of the third proviso at the end of paragraph (4) of subsection (b) of this section, be considered joint venturers or in the relationship of contractors and subcontractors with each other or with the State or local authority awarding such contracts at the common site of the construction.

"(i) Notwithstanding the provisions of this or any other Act, any employer at a common construction site may bring an action or injunctive relief under section 301 of the Labor Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective-bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final settlement of disputes as provided in the agreement.

"(j) The provisions of the third proviso at the end of paragraph (4) of subsection (b) of this section shall not apply at the site of the construction, alteration, painting, or repair of a building, structure, or other work involving residential structures of three residential levels or less constructed by an employer who in the last taxable year immediately preceding the ear in which the determination under this subsection is made had, in his own capacity or with or through any other person, a gross volume of construction business of $9,500,000 or less, adjusted annually as determined by the Secretary of Labor, based upon the revisions of the Price Index for New One Family Houses prepared by the Bureau of the Census, if the employer within 10 days of being served with the notice required by subsection (g) (2) (A) of this section notifies each labor organization which served that notice in an affidavit that he satisfies the requirements set forth in this subsection.".

(c) Section 8(g) of such Act is amended by redesignating the present section 8(g) as section 8(g) (1), and adding at the end thereof the following:

"(2) (A) A labor organization before engaging in activity permitted by the third proviso at the end of paragraph (4) of subsection (b) of this section shall provide prior written notice of intent to strike or to refuse to perform services of not less than ten days to all unions and the employers and the general contractor at the site and to any national or international labor organization of which the labor organization involved is an affiliate and to the Construction Industry Collective Bargaining Committee: Provided, That at any time after the expiration of ten days from transmittal of such notice, the labor organization may engage in activities permitted by the third proviso at the end of paragraph (4) of subsection (b) of this section if the national or international labor organization of which the labor organization involved is an affiliate gives notice in writing authorizing such action: Provided further, That authorization of such action by the national or international labor organization shall not render it subject to criminal or civil liability arising from activities, notice of which was given pursuant to this subparagraph, unless such authorization is given with

actual knowledge that the picketing is to be willfully used to achieve an unlawful purpose.

"(B) In the case of any such site which is located at any military facility or installation of the Army, Navy, or Air Force, or which is located at a facility or installation of any other department or agency of the Government if a major purpose of such facility or installation is or will be the development, production, testing, firing or launching of munitions, weapons, missiles, or space vehicles, prior written notice of intent to strike or to refuse to perform services, of not less than ten days shall be given by the labor organization involved to the Federal Mediation and Conciliation Service, to any State or territorial agency established to mediate and conciliate disputes within the State or territory where such site is located, to the several employers who are jointly engaged at such site, to the Army, Navy, or Air Force or other department or agency of the Government concerned with the particular facility or installation, and to any national or international labor organization of which the labor organization involved is an affiliate.

"(C) The notice requirements of subparagraphs (A) and (B) above are in addition to, and not in lieu of the notice requirements prescribed by section 8(d) of the Act.".

SEC. 102. The amendments made by this title shall take effect 90 days after the date of enactment of this title except (1) with respect to all construction work having a gross value of $5,000,000 or less which was constracted for and on which work had actually started on November 15, 1975, the amendments made by this title shall take effect one year after such effective date, and (2) with respect to all construction work having a gross value of more than $5,000,000 which was contracted for and on which work had actually started on November 15, 1975, the amendments made by this title shall take effect two years after such effective date.

TITLE II—CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING

SHORT TITLE

SEC. 201. This title may be cited as the "Construction Industry Collective Bargaining Act of 1975".

FINDINGS AND PURPOSES

SEC. 202. (a) The Congress finds and declares that the legal framework for collective bargaining in the construction industry is in need of revision; and that an enhanced role for national labor organizations and national contractor associations working as a group is needed to minimize instability, conflict, and distortions, to assure that problems of collective-bargaining structure, productivity and manpower development are constructively approached by contractors and unions themselves, and at the same time to permit the flexibility and variations that appropriately exist among localities, crafts, and branches of the industry.

(b) It is therefore the purpose of this title to establish a more viable and practical structure for collective bargaining in the construction industry by establishing procedures for negotiations with a minimum of governmental interference in the free collective-bargaining process.

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING COMMITTEE

SEC. 203. (a) There is hereby established in the Department of Labor a Construction Industry Collective Bargaining Committee. The Committee members shall be appointed as follows:

(1) Ten members shall be appointed by the President from among individuals qualified by experience and affiliation to represent the viewpoint of employers engaged in collective bargaining in the construction industry.

(2) Ten members shall be appointed by the President from among individuals qualified by experience and affiliation to represent the viewpoint of the standard national labor organizations in the construction industry.

(3) Up to three members shall be appointed by the President from among individuals qualified by training and experience to represent the public interest, one of whom shall be designated by him to serve as Chairman.

(4) The Secretary of Labor, ex officio.

(5) The Director of the Federal Mediation and Conciliation Service, ex officio.

The employer, labor, and public members shall be appointed by the President after consultation with representative labor and management organizations in the industry whose members are engaged in collective bargaining. Any alternate members who may be appointed shall be appointed in the same manner as regular members. An organizational meeting of the Committee shall be held at the call of the Chairman at which there shall be in attendance at least five members qualified to represent the viewpoint of employers, five members qualified to represent the viewpoint of labor organizations, and one member qualified to represent the public interest. All actions of the Committee shall be taken by the Chairman or the Executive Director on behalf of the Committee.

(b) The Secretary of Labor may appoint such staff as is appropriate to carry out the Committee's functions under this title and with the approval of the Committee, may appoint an Executive Director.

(c) The Committee may, without regard to the provisions of section 553 of title 5, United States Code, promulgate such rules and regulations as may be necessary or appropriate to carry out the purposes of this title including the designation of "standard national construction labor organizations" and "national construction contractor associations" qualified to participate in the procedures set forth in this title.

NOTICE REQUIREMENTS

SEC. 204. (a) In addition to the requirements of any other law, including section 8(d) of the National Labor Relations Act, as amended, where there is in effect a collective bargaining agreement

covering employees in the construction industry between a local construction labor organization or other subordinate body affiliated with a standard national construction labor organization, or between a standard national construction labor organization directly, and an employer or association of employers in the construction industry, neither party shall terminate or modify such agreement or the terms or conditions thereof without serving a written notice of the proposed termination or modification in the form and manner prescribed by the Committee effective sixty days prior to the expiration date thereof, or in the event such collective bargaining agreement contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification. The notice required by this subsection shall be served as follows:

(1) A local construction labor organization or other subordinate body affiliated with a standard national construction labor organization shall serve such notice upon such national organization.

(2) An employer or local association of employers shall serve such notice upon all national construction contractor associations with which the employer or association is affiliated. An employer or local association of employers, which is not affiliated with any national construction contractor association shall serve such notice upon the Committee.

(3) Standard national construction labor organizations and national construction contractor associations shall serve such notice upon the Committee with respect to termination or modification of agreements to which they are directly parties.

The parties shall continue in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing collective bargaining agreement for a period of sixty days after the notice required by this subsection is given or until the expiration of such collective bargaining agreement, whichever occurs later.

(b) Standard national construction labor organizations and national construction contractor associations shall furnish forthwith to the Committee copies of all notices served upon them as provided by subsection (a) of this section.

(c) The Committee may prescribe the form and manner and other requirements relating to the submission of the notices required by this section.

ROLE OF THE COMMITTEE AND NATIONAL LABOR AND EMPLOYER ORGANIZATIONS IN COLLECTIVE BARGAINING

SEC. 205. (a) Whenever the committee has received notice pursuant to section 204 it may take jurisdiction of the matter, with or without the suggestion of any interested party, by transmitting written notice to the signatory labor organization or organizations and the association or associations of employers directly party to the collective bargaining agreement, during the ninety-day period which includes and immediately precedes the later of: (1) the ninetieth day following the giving of notice under section 204(a); or (2) whichever is applicable, (A) the thirtieth day following the expiration of the collective bargaining agreement, or (B) the thirtieth day following the date proposed for termination or modification of such agreement.

(b) The Committee shall decide whether to take such jurisdiction in accordance with the standards set forth in section 206. When the Committee has taken jurisdiction under this section, it may in order to facilitate a peaceful voluntary resolution of the matter and the avoidance of future disputes: (1) refer such matter to voluntary national craft or branch boards or other appropriate organizations established in accordance with section 207; (2) meet with interested parties and take other appropriate action to assist the parties; or (3) take the action provided for in both preceding clauses (1) and (2) of this subsection. At any time after the taking of jurisdiction, the Committee may continue to meet with interested parties as provided herein.

(c) When the Committee has taken jurisdiction within the ninety-day period specified in this section over a matter relating to the negotiation of the terms or conditions of any collective bargaining agreement involving construction work between: (1) any standard national construction labor organization, or any local construction labor organization or other subordinate body affiliated with any standard national construction labor organization, and (2) any employer or association of employers, notwithstanding any other law, no such party may, at any time prior to the expiration of the ninety-day period specified in this subsection, engage in any strike or lockout, or the continuing thereof, unless the Committee sooner releases its jurisdiction.

(d) When the Committee receives any notice required by section 204 it is authorized to request in writing at any time during the ninety-day period specified in subsection (a) of this section participation in the negotiations by the standard national construction labor organizations with which the local construction labor organizations or other subordinate bodies are affiliated and the national construction contractor associations with which the employers or local employer associations are affiliated.

(e) In any matters as to which the Committee takes jurisdiction under subsection (a) of this section and makes a referral authorized by subsection (d) of this section, no new collective bargaining agreement or revision of any existing collective bargaining agreement between a local construction labor organization or other subordinate body affiliated with the standard national construction labor organization, and an employer or employer association shall be of any force or effect unless such new agreement or revision is approved in writing by the standard national construction labor organization with which the local labor organization or other subordinate body is affiliated. Prior to such approval the parties shall make no change in the terms or conditions of employment. The Committee may at any time suspend or terminate the operation of this subsection as to any matter previously referred pursuant to subsection (d) of this section.

(f) No standard national construction labor organization or national construction contractor association shall incur any criminal or civil liability, directly or indirectly, for actions or omissions pursuant to a request by the Committee for its participation in collective bargaining negotiations, or the approval or refusal to approve a collective bargaining agreement under this title: Provided, That this immunity shall not insulate from civil or criminal liability a standard national

construction labor organization or national construction contractor association when it performs an act under this statute to willfully achieve a purpose which it knows to be unlawful: Provided further, That a standard labor organization shall not by virtue of the performance of its duties under this Act be deemed the representative of any affected employees within the meaning of section 9(a) of the National Labor Relations Act or become a party to or bear any liability under any agreement it approves pursuant to its responsibilities under this Act.

(g) Nothing in this title shall be deemed to authorize the Committee to modify any existing or proposed collective bargaining agreement.

STANDARDS FOR COMMITTEE ACTION

SEC. 206. The Committee shall take action under section 205 only if it determines that such action will—

(1) facilitate collective bargaining in the construction industry, improvements in the structure of such bargaining, agreements covering more appropriate geographical areas, or agreements more accurately reflecting the condition of various branches of the industry;

(2) promote stability of employment and economic growth in the construction industry;

(3) encourage collective bargaining agreements embodying appropriate expiration dates;

(4) promote practices consistent with appropriate apprenticeship training and skill level differentials among the various crafts or branches;

(5) promote voluntary procedures for dispute settlement; or

(6) otherwise be consistent with the purposes of this title.

OTHER FUNCTIONS OF THE COMMITTEE

SEC. 207. (a) The Committee may promote and assist in the formation of voluntary national craft or branch boards or other appropriate organizations composed of representatives of one or more standard national construction labor organizations and one or more national construction contractor associations for the purpose of attempting to seek resolution of local labor disputes and review collective-bargaining policies and developments in the particular craft or branch of the construction industry involved. Such boards, or other appropriate organizations, may engage in such other activities relating to collective bargaining as their members shall mutually determine to be appropriate.

(b) The Committee may, from time to time, make such recommendations as it deems appropriate, including those intended to assist in the negotiations of collective-bargaining agreements in the construction industry; to facilitate area bargaining structures; to improve productivity, manpower development, and training; to promote stability of employment and appropriate differentials among branches of the industry; to improve dispute settlement procedures; and to provide for the equitable determination of wages and benefits. The

Committee may make other suggestions, as it deems appropriate, relating to collective bargaining in the construction industry.

MISCELLANEOUS PROVISIONS

SEC. 208. (a) This title shall apply only to activities affecting commerce as defined in sections 2(6) and 2(7) of the National Labor Relations Act, as amended.

(b) Nothing in this title shall be construed to require an individual employee to render labor or services without the employee's consent, nor shall anything in this title be construed to make the quitting of labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or services, without the employee's consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this title.

(c) The failure or refusal to fulfill any obligation imposed by this title on any labor organization, employer, or association of employers shall be remediable only by a civil action for equitable relief brought by the Committee in a district court of the United States, according to the procedures set forth in subsection (d) of this section.

(d) The Committee may direct that the appropriate district court of the United States having jurisdiction of the parties be petitioned to enforce any provision of this title. No court shall issue any order under section 205(c) prohibiting any strike, lockout, or the continuing thereof, for any period beyond the ninety-day period specified in section 205(a).

(e) The findings, decisions and actions of the Committee, pursuant to this title may be held unlawful and set aside only where they are found to be arbitrary or capricious, in excess of its delegated powers, or contrary to a specific requirement of this title.

(f) Service of members or alternate members of the Committee may be utilized without regard to section 665(b) of title 31, United States Code. Such individuals shall be deemed to be special Government employees on days in which they perform services for the Committee.

(g) In granting appropriate relief under this title the jurisdiction of United States courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101).

(h) The Committee may make studies and gather data with respect to matters which may aid in carrying out the provisions of this title.

(i) Notwithstanding anything in subchapter II of chapter 5 of title 5, United States Code, in carrying out any of its functions under this title, the Committee shall not be required to conduct any hearings. Any hearings conducted by the Committee shall be conducted without regard to the provisions of subchapter II of chapter 5 of title 5, United States Code.

(j) Except as provided herein, nothing in this title shall be deemed to supersede or modify any other provision of law.

(k) In all civil actions under this title, attorneys appointed by the Secretary may represent the Committee (except as provided in section 518(a) of title 28, United States Code), but all such litigation shall be subject to the direction and control of the Attorney General.

COORDINATION

SEC. 209. (a) At the request of the Committee, the other agencies and departments of the Government shall provide, to the extent permitted by law, information deemed necessary by the Committee to carry out the purposes of this title.

(b) The Committee and the Federal Mediation and Conciliation Service shall regularly consult and coordinate their activities to promote the purposes of this title.

(c) Other agencies and departments of the Federal Government shall cooperate with the Committee and the Federal Mediation and Conciliation Service in order to promote the purposes of this title.

DEFINITIONS

SEC. 210. (a) The terms "labor dispute", "employer", "employee", "labor organization", "person", "construction", "lockout", and "strike" shall have the same meaning as when used in the Labor-Management Relations Act, 1947, as amended.

(b) As used in this title the term "Committee" means the Construction Industry Collective Bargaining Committee established by section 203 of this title.

SEPARABILITY

SEC. 211. If any provision of this title or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 212. There are authorized to be appropriated such sums as may be necessary to carry out this title.

EXPIRATION DATE AND REPORTS

SEC. 213. (a) This title shall expire on December 31, 1980.

(b) No later than one year following the date of enactment of this title and at one-year intervals thereafter, the Committee shall transmit to the President and to the Congress a full report of its activities under this title during the preceding year.

(c) No later than June 30, 1980, the Committee shall transmit to the President and to the Congress a full report on the operation of this title together with recommendations, including a recommendation as to whether this title should be extended beyond the expiration date specified in subsection (a) of this section, and any other recommendations for legislation as the Committee deems appropriate.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

CARL D. PERKINS,
FRANK THOMPSON, JR.,
JOHN BRADEMAS,
WILLIAM D. FORD,
WILLIAM CLAY,
MARIO BIAGGI,
GEO MILLER,
ALBERT H. QUIE,
Managers on the Part of the House.

HARRISON A. WILLIAMS,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
W. D. HATHAWAY,
WALTER F. MONDALE,
JOHN A. DURKIN,
JACOB K. JAVITS,
RICHARD S. SCHWEIKER,
ROBERT TAFT, JR.,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

JOINT EXPANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference of the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5900) to protect the economic rights of labor in the building and construction industry by providing equal treatment of craft and industrial workers, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting clarifying changes.

The House bill's title is "To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers." The Senate amendment modifies the title as "An Act to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes."

In addition, the Senate amendment establishes a Title I containing the substance of the House bill, and a Title II adding the text of the "Construction Industry Collective Bargaining Act of 1975" containing the substance of H.R. 9500. The House recedes.

I. Protection of Economic Rights of Labor in the Construction Industry

Both the House bill and the Senate amendment modify section 8(b)(4) of the National Labor Relations Act to permit picketing at the common site of a construction project, overruling the case of *NLRB* v. *Denver Building Trades Council*, 342 U.S. 675 (1951).

Employers in the Construction Industry

The House bill confines the right to engage in common situs picketing, with respect to the inducement of employees at a construction site to strike or refuse to perform services, to "any individual employed by any employer primarily engaged in the construction industry."

The Senate amendment permits inducements of "any individual employed by any person." The Senate recedes with an amendment per-

mitting the "inducement of any individual employed by any employer primarily engaged in the construction industry on the site."

Utility companies, manufacturers, department stores, petroleum companies, transit companies, and so on are not *primarily engaged* in the construction industry, although they do a lot of construction both within their own premises and elsewhere.

The intent of the Conference Amendment is to make it clear that if the employer is primarily engaged in the construction industry on the site of the construction, H.R. 5900 is applicable. The following examples make this clear.

1. If an employer, primarily engaged in the utility, merchandising, manufacturing, or other business elsewhere engages in the construction of a new facility, he is primarily engaged in the construction industry on the site and the construction project is within the terms of H.R. 5900.

2. If the same employer uses his own employees to paint or make alterations or repairs in his existing structures, he is not primarily engaged in the construction industry on the site of construction; rather, he is primarily engaged in his regular business, whatever it may be, and H.R. 5900 would not apply in this situation.

3. If the same employer engages an outside general contractor, or utilizes a corporate subsidiary, for the construction project the general contractor, or corporate subsidiary is primarily engaged in the construction industry and H.R. 5900 would apply at the construction gates.

4. If the same employer extends his existing facilities within his general premises acting as his own general contractor and using his own employees, he is not primarily engaged in the construction industry on the site, and H.R. 5900 would not apply.

5. The Conference amendment is not intended to preclude a union at a construction site from exercising its right to primary picket or otherwise induce the employees of employers not in the construction industry when making deliveries, etc., to the construction employer or employers with whom the union has a primary dispute.

6. The Conference amendment does not prohibit separate gates, but does prohibit common situs picketing of employees of employers not in the construction industry when making deliveries, etc., to the construction employer or employers with whom the union does not have a primary dispute.

Residential Construction

The Senate amendment exempts construction of residential structures of three stories or less without an elevator. The House bill contains no such exemption. The conferees agree to an amendment that provides for a new section (8)(j) exempting the construction of residential structures of up to three residential levels by employers who, alone or with others, in the preceding year engaged in construction activity at a gross volume of up to $9.5 million, adjusted annually to reflect changes in housing construction costs.

Unlawful Labor Disputes

The House bill contains the following language: "and there is a labor dispute, not unlawful under this Act or in violation of an existing collective-bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry:" The Senate amendment recasts this provision in the form of a second proviso to the bill. The House recedes.

Discrimination

The House bill contains a proviso stating "That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is to cause or attempt to cause an employer to discriminate against any employee, or to discriminate against an employee with respect to whom membership in a labor organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership:" The Senate amendment contains a provision stating that the right to engage in common situs picketing does not apply "where an object thereof is the removal or exclusion from the site of any employee on the ground of . . . membership or non-membership of any employee in any labor organization:" The conferees agreed to include the language of both the House bill and Senate amendment with the understanding that the House provision is to be given the meaning as expressed by the House and the Senate provision is to be given the meaning as expressed by the Senate.

Organizational Picketing

The House bill prohibits picketing for organizational purposes where another labor organization is already lawfully recognized. The Senate amendment prohibits picketing for organizational purposes as provided by section 8(b)(7) of the Act, and adds a proviso requiring an expedited election and certification by the National Labor Relations Board within 14 days of the filing of a petition and an unfair labor practice charge. The House recedes.

It is the understanding and intention of the conferees that within the mandatory 14-day period prescribed by this proviso the Board will follow insofar as possible its present procedure for expedited elections under the first proviso to section 8(b)(7)(C). The conferees emphasize that in every case the regional director, within the 14-day period, must investigate any charge that picketing for an object described in section 8(b)(7) is taking place and must, within 14 days, make a finding, based upon a preponderance of the evidence, as to whether or not there has been a violation as charged. In all such situations, this process of investigation, and of an election and certification (where appropriate) must take place within 14 days.

State Separate Bidding Statutes

The House bill prohibits common situs picketing directed against multiple employers at a public construction site who are required by State laws to bid separately for certain categories of work. The Senate amendment contains a similar provision protecting the employer or employers who are required by State laws to bid separately for certain categories of work. The House recedes.

Notice Requirements

The House bill establishes special notice requirements applicable to the right to engage in common situs picketing. The Senate amendment contains the same requirements in the form of a new section 8(g)(2)(A), (B) and (C) of the Act. The House recedes, with the understanding that the present section 8(g) is not affected.

Liability

The House bill provides certain limitations on the liability of national labor organizations with respect to common situs picketing. The Senate amendment contains a comparable provision, amended to conform to a similar provision in H.R. 9500 (Title II of the Senate amendment). The House recedes.

Injunctions

The Senate amendment adds a new section 8(i) which provides that "Notwithstanding the provisions of this or any other Act, any employer at a common construction site may bring an action for injunctive relief under section 301 of the Labor Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective-bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final settlement of disputes as provided in the agreement." The House bill contains no comparable provision. The House recedes.

Effective Date

The Senate amendment adds a proviso exempting construction work on which work had actually started on November 15, 1975. The House bill contains no comparable provision. The House recedes with an amendment delaying the effective date for one year for construction projects valued at $5 million or less on which work had actually started on November 15, 1975, and delays the effective date for two years with respect to such projects valued at more than $5 million.

II. Construction Industry Collective Bargaining

The House bill and the Senate amendments establish in the Department of Labor a Construction Industry Collective Bargaining Committee (CICBC) to be comprised of 23 members appointed by the President. 10 members to represent the viewpoint of labor organizations in the construction industry, 10 members to represent construction employers, and up to three members qualified to represent the public interest. The Secretary of Labor and the Director of the Federal Mediation and Conciliation Service (FMCS) shall serve as ex-officio members.

Quorum

The House bill provides that the Committee must have a quorum of five members. The Senate amendment has no such quorum requirement. The Senate recedes to the House with an amendment that, at the first organizational meeting, the quorum shall be at least five members representing the viewpoint of the labor organizations, five representing employers, and one member qualified to represent the public interest.

Administrative Procedures Act

The House bill and the Senate amendments provide that the Committee may promulgate such rules and regulations as may be necessary and appropriate to carry out the provisions of this law, the "Construction Industry Collective Bargaining Act of 1975". The House bill provides that the Committee may promulgate such rules and regulations without regard to the provisions of the Administrative Procedures Act contained in Title 5, U.S. Code, Section 553. The Senate amendment was silent on this point. The Senate recedes to the House with the understanding that the other provisions of that Act would apply as appropriate (e.g. the freedom of information provisions contained in Title 5, U.S. Code, Section 552).

Rules and Regulations

The Senate amendments also contain additional provisions that authorize the Committee to promulgate rules and regulations, including the authority to designate the "standard national construction labor organizations" and "national construction contractors associations" qualified to participate under this title. The House bill has no such provision. The House recedes.

Notice Requirements

The House bill and the Senate amendments establish special notice requirements in collective bargaining in the construction industry. The House bill provides that such notices must be given *at least* 60 days prior to the termination or modification of the collective bargaining agreement. The Senate amendments have similar provisions, but omit the term "at least" in order to eliminate any ambiguity as to the 90-day jurisdictional period of the CICBC. The House recedes with the understanding that, although the required notice may be given more than 60 days in advance, such advance notice does not alter the timing of the 90-day jurisdictional period of the Committee.

Role of the Committee

The House bill and the Senate amendments both provide that, after receiving notice of an intention to terminate or modify the terms or conditions of a collective bargaining agreement, the Committee may assume jurisdiction over the pending issue within a certain 90-day period. The Senate amendments provide an additional phrase stating that the Committee can assume jurisdiction with or without the suggestion of any interested party. The House recedes.

The House bill and the Senate amendments include provisions directing the Committee to facilitate the peaceful resolution of disputes by referring matters to appropriate voluntary national craft or branch boards, by meeting with interested parties, and by taking other actions that would be appropriate to assist the parties in their negotiations. The Senate amendments also provide that, at any time after taking jurisdiction, the Committee can continue to meet with interested parties. The House recedes.

The House bill and the Senate amendments establish a procedure whereby once the Committee has assumed jurisdiction, and has referred the matter to the national organizations with which the parties are affiliated, no new collective bargaining agreement or revision of any existing collective bargaining agreement shall become effective unless approved in writing by the national construction labor organization. The Senate amendments add an additional procedure by which the Committee may, in its discretion, suspend or terminate this approval requirement. The House recedes.

Scope of Judicial Review

The House bill contains language in Section 8(c) which provides that the decisions of the Committee concerning its jurisdiction, or its actions arising out of the exercise of jurisdiction may not be examined by the Federal courts, unless such decisions are in excess of its delegated powers and contrary to a specific prohibition in the Act. The House bill also contains language in Section 8(d) which provides that the factual determinations of the Committee shall be conclusive unless arbitrary or capricious. The Senate amendments add a new subsection which places all of the judicial review provisions in one subsection. The House recedes with an amendment adding that the findings, decisions and actions of the Committee are subject to the judicial review provisions of the Senate amendments.

Responsibility for Litigation

The Senate amendments add a new section, 8(k), which provides that, except for Supreme Court litigation under this title, attorneys from the Department of Labor may represent the Committee in court, subject to the direction and control of the Attorney General. The House recedes.

Cooperation with Other Agencies

The House bill establishes a requirement that other agencies and departments of the Federal Government cooperate with the Committee and the Federal Mediation and Conciliation Service. The Senate recedes.

Effect on Other Laws

The House bill and the Senate amendments contain provisions as to the effect of this Title on existing law. The House bill states that nothing in this Title shall be construed to supersede or affect the provisions of the National Labor Relations Act, Labor Management Reporting and Disclosure Act of 1959, or the Labor Management Relations Act of 1947. The Senate amendments provide that, except as provided, nothing in this Title shall be deemed to supersede or modify any other law. The House recedes.

Expiration Date and Reports

The House bill provides that this title shall expire on February 28, 1981. The Senate amendments provide for its expiration on December 31, 1980. The House recedes.

The House bill provides that no later than September 1, 1980, the Committee shall report to the President and the Congress on its operations, together with recommendations. The Senate amendment provides that the Committee shall make such a report no later than June 30, 1980. The House recedes.

CARL D. PERKINS,
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JOHN BRADEMAS,
WILLIAM D. FORD,
WILLIAM CLAY,
MARIO BIAGGI,
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Managers on the Part of the House.

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RICHARD S. SCHWEIKER,
ROBERT TAFT, Jr.
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

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Calendar No. 424

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94–438

EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

OCTOBER 29, 1975.—Ordered to be printed

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT
together with
SUPPLEMENTAL AND MINORITY VIEWS

[To accompany S. 1479]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 1479) to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

INTRODUCTION

A. *A Chronology of S. 1479*

S. 1479 was introduced on April 18, 1975, by Senator Williams for himself and Senators Javits and Cranston. Subsequent to the introduction of the bill, Senators Kennedy, Schweiker, Ribicoff, Hartke, Bayh, McGovern, Tunney, Case, Packwood, Metcalf, Proxmire, Humphrey, Magnuson, and Stevenson have been added as cosponsors of S. 1479.

Hearings were held on July 10th, 11th, and 15th by the Subcommittee on Labor.

Witnesses in favor of the proposed legislation included Secretary of Labor John T. Dunlop who spoke for the Administration. The Secretary outlined an historical account of past administration support for common situs picketing and equal treatment of craft and industrial workers, and presented to the committee his proposals for improving the structure of collective bargaining in the construction industry.

Director of Legislation for the AFL–CIO, Andrew J. Biemiller, advised the Committee of the full support of the labor movement for the bill. Mr. Biemiller also recounted the legislative and judicial events that led up to the need for legislation such as S. 1479. Robert Georgine, President of the Building and Construction Trades Department of the AFL–CIO presented additional background on the development of labor relations in the construction industry, and explained the practical effect of S. 1479 on that industry.

Other witnesses in favor of the bill were: Jacob Clayman representing I. W. Abel, President of the Industrial Union Department of the AFL–CIO; Senator Robert Packwood from the State of Oregon; and Robert Connerton, General Counsel of the Laborers' International Union of North America.

Witnesses in opposition included: Paul Bell of the Associated General Contractors of America; Philip Abrams, President of the Associated Builders and Contractors, Inc.; Paul King of the National Association of Minority Contractors; Michael Markowitz of the National Association of Manufacturers; Harry P. Taylor, President of the Council of Construction Employers; and Vincent J. Apruzzese of the Chamber of Commerce of the United States.

Additional statements were submitted for the record, including statements from: The American Institute of Architects, the American Road Builders' Association, the American Retail Federation, the Bricklayers, Masons and Plasterers International Union of America, the Crane and Rigging Association, the International Association of Heat and Frost Insulators, the International Brotherhood of Electrical Workers, the International Brotherhood of Painters and Allied Trades, the International Union of Operating Engineers, the National Association of Home Builders, the National Electrical Contractors Association, Inc., the National Labor-Management Foundation, the National Lumber and Building Material Dealers Association, the National Sand and Gravel Association and the National Ready Mix Concrete Association, the National Society of Professional Engineers, the Operative Plasterers' and Cement Masons' International Association, the United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, the International Brotherhood of Carpenters and Joiners of America, the U.S. Industrial Council and the American Farm Bureau Federation.

The Committee also received over thirty resolutions and letters of support from several international unions and from locals and building trades councils throughout the country. These statements urging adoption of S. 1479 were received from:

Amalgamated Meat Cutters and Butcher Workmen of North America, Baltimore Building and Construction Trades Council, AFL–CIO, Boston Building and Construction Trades Council, Brotherhood of Railway Carmen of U.S. and Canada, Building and Construction Trades Council of Orange County, Building and Construction Trades Council of San Mateo County, Columbia-Pacific Building and Construction Trades Council, AFL–CIO, Communications Workers of America, Dayton Building Trades Council, Houston-Gulf Coast Building and Construction Trades Council, Idaho Building and Construction Trades Council, International Printing and Graphic Communications Union, Kalmath Building and Construction Trades Council, Kane County Building and Construction Trades Council, Lane-Coos-Curry-Douglas Counties Building and Construction Trades Council, Louisiana State Association of Elks I.B.P.O.E.W., Metal Trades Department, Michigan State Building and Construction Trades Council, Morris County Building and Construction Trades Council, Northwestern Indiana Building and Construction Trades Council, North Central Building and Construction Trades Council, Office and Professional Employee International Union, Pittsburgh Building and Construction Trades Council, Sacramento-Sierra's Building and Construction Trades Council, Santa Barbara Building and Construction Trades Council, Seattle Building and Construction Trades Council, Sheet Metal Workers International, Southeast Louisiana Building and Construction Trades Council, Streator Building Trades Council, Streator Laborers Local Number 82, Retail, Wholesale and Department Store Union, United Mine Workers of America, United Paperworkers International Union, Building and Construction Trades Council of Marin County, the Transport Workers of America, the Northwestern Indiana Building and Construction Trades Council, Building and Construction Trades Council of Delaware, and the San Antonio Building and Construction Trades Council.

B. *Background*

The basic issue which S. 1479 addresses is the relationship between several employers at a common construction site, and the bill effects a redefinition of what constitutes primary and secondary activity in labor disputes in the construction industry. This legislation is necessary because the National Labor Relations Board, and the Supreme Court, pursuant to the decision in *NLRB* v. *Denver Building Trades Council*, 341 U.S. 675 (1951), have held that contractors and subcontractors on a common construction site are separate legal entities for the purposes of what constitutes illegal secondary union activity under the Taft-Hartley and Landrum-Griffin amendments to the National Labor Relations Act (NLRA).

The effect of the ruling in the *Denver Building Trades* case has been to outlaw common situs picketing at a construction site where an object of that picketing is to protest the terms and conditions of employment of either the general contractor or one of several subcontractors. The present law ignores the economic reality of the integral relationship between contractors and subcontractors in construction, and imposes greater restrictions on the union right of concerted action in the construction industry than in other areas of employment.

S. 1479 is designed to overturn the *Denver Building Trades* decision and subsequent cases applying its rationale through legislation and to grant construction workers the same rights under the NLRA as are enjoyed by other workers.

ACTION IN THE COMMITTEE

S. 1479 was considered and reported favorably, with amendments, by the Subcommittee on Labor in executive session on July 22, 1975. The full Committee on Labor and Public Welfare met on July 30 and 31, 1975, in executive session to consider S. 1479 as reported by the Subcommittee. The Committee ordered the bill, as amended, reported favorably to the Senate by a rollcall vote of 13 to 1.

A. Amendments Adopted in Subcommittee

At the July 22 meeting of the Subcommittee on Labor, four amendments were considered and agreed to by unanimous voice vote:

(1) *An Amendment Requiring a 10-Day Notice before Engaging in Common Situs Picketing and Requiring Written Approval of Such Activity by the National Union.*—This amendment incorporates a recommendation made by Secretary of Labor John T. Dunlop during his testimony that common situs picketing be delayed for 10 days during which period the parties to the dispute give notice to various interested persons and that written authorization of a parent organization (when there is one) be required as a condition of such picketing.

The amendment, as incorporated in the Committee bill, requires that before engaging in common situs picketing as authorized by this bill a union must give at least 10 days advance notice of its intent to other unions at the site, to the employers immediately involved, to the general contractor, to the parent union organization if there is one, and to the Construction Industry Collective Bargaining Committee. It further requires that the parent organization give notice in writing authorizing such action. Such notice will go to the persons who received the original notice from the local union. The granting or withholding of written authority by the parent under this bill will not be a basis for criminal or civil liability.

(2) *An Amendment Prohibiting Sex Discrimination.*—The amendment, as incorporated in the Committee bill, provides that picketing an employer in order to exclude an employee from a construction site on the grounds of sex, already unlawful under other provisions of law (other than § 8(b)(4)(B)) is not hereby made lawful.

(3) *An Amendment Restricting Organizational Picketing.*—This amendment makes it clear that S. 1479 is not to be "construed to permit" organizational picketing presently prohibited by the Act.

(4) *An Amendment Preserving Existing Unfair Labor Practices.*—This amendment makes it clear that nothing in this bill shall be construed to authorize any act or conduct which was or may have been an unfair labor practice by reasons of provisions other than the secondary boycott provisions of the prior law.

These four amendments were adopted unanimously by the Labor Subcommittee and incorporated in the bill reported to the full Committee.

B. Amendments Adopted by the Full Committee

Seven amendments were proposed in the Committee, of which three were adopted and incorporated into the bill as reported.

(1) An amendment was offered by Senator Taft to provide that for the purposes of section 8(b)(4)(B), where State law requires separate bids and direct awards to employers on public project construction sites, such employers are not to be considered as joint venturers or in the relationship of contractors and subcontractors with each other or with the public authority awarding the contracts. Under the terms of this amendment, contractors awarded separate contracts for those portions of the construction project specified under the law of the State would be exempted from the application of the common situs doctrine established in this bill. This amendment was adopted by unanimous vote.

(2) An amendment was offered by Senator Taft adding a new subsection (i) to section 8 of the Taft-Hartley amendments to permit the Federal courts to grant injunctive relief where picketing is instituted at a common situs in breach of a "no-strike" clause of a collective bargaining agreement. This amendment would have the effect of codifying, in the industry covered by the bill, the Supreme Court's decision in *The Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. 235 (1970), insofar as it authorizes the District Courts to grant injunctions for strikes (or lockouts) over a grievance which both parties are contractually bound to arbitrate notwithstanding § 4 of the Norris-LaGuardia Act, as well as the limitations and preconditions on the granting of such injunctions declared in *Boys Markets*. This amendment was adopted by unanimous vote.

(3) Senator Taft offered an amendment to continue the bar on common situs activity: (i) to exclude an employee on the basis of membership or nonmembership in a labor organization which is not affiliated with any other labor organization or (ii) to exclude from the common situs another union that is not affiliated with a national or international labor organization.

A substitute amendment offered by Senator Javits was adopted, by a roll call vote of 11 in favor to 3 opposed, to make it clear that, under the proposed amendment, picketing which truthfully informs the public that an employer is paying substandard wages ("area standards" picketing) is permitted under S. 1479.

(Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following tabulation of the vote on this Committee amendment is provided.)

YEAS—11

Mr. Williams
Mr. Randolph
Mr. Pell
Mr. Kennedy
Mr. Nelson
Mr Mondale
Mr. Eagleton
Mr. Cranston
Mr. Javits
Mr. Schweiker
Mr. Stafford

NAYS—3

Mr. Taft
Mr. Beall
Mr. Laxalt

C. Other Amendments Considered by the Full Committee

(1) Senator Taft offered a clarifying amendment which would have had the effect of stating that the National Labor Relations Board would determine if a labor dispute were in violation of an existing collective bargaining agreement. It is the understanding of the Committee that the NLRB is presently authorized and required to make such determinations where relevant to the exercise of its jurisdiction under §§ 9 and 10 of the National Labor Relations Act. See, e.g., *NLRB* v. *Strong*, 393 U.S. 357 (1969). It was, therefore, agreed that with this understanding Senator Taft's proposed language would not be added to the bill.

(2) Senator Taft offered an amendment to delete the word "person" on page 2, line 3, and to insert in its place "employer primarily engaged in the construction industry" and to add the words "engaged primarily" between the words "are" and "in" on page 2, line 6. This amendment would have had the effect of preventing picketing directed at certain groups of employees on a construction site contrary to the rule of the *Carrier* case, 376 U.S. 492, 499 (1964), and would therefore have retained in part the ruling of the *Denver Building Trades* case.

Senator Taft's amendment was defeated by a roll call vote of 4 in favor to 10 opposed. (Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following tabulation of votes on this Committee amendment is provided.)

YEAS—4

Mr. Randolph
Mr. Taft
Mr. Beall
Mr. Laxalt

NAYS—10

Mr. Williams
Mr. Pell
Mr. Kennedy
Mr. Nelson
Mr. Mondale
Mr. Eagleton
Mr. Cranston
Mr. Javits
Mr. Schweiker
Mr. Stafford

(3) Senator Beall offered an amendment exempting residential structures of three stories or less without an elevator from the provisions of this bill. After debate, the amendment was defeated by a voice vote.

(4) Senator Laxalt offered an amendment exempting the 19 right-to-work states from the provisions of this bill. Under § 14(b) of the Act, the States retain the right to forbid union security agreements which, pursuant to a proviso to § 8(a)(3) of the National Labor Relations Act, permit "discrimination" which would otherwise be unlawful under § 8(a)(3). In states which outlaw such agreements (the so-called "right-to-work" states) it is a violation of §§ 8(b)(1)(A) and 8(b)(2) for a union to picket to obtain a union security clause and it is also unlawful for a union to picket for the discharge of an employee pursuant to such an unlawful clause. See *Retail Clerks* v. *Schermerhorn*, 375 U.S. 96 (1963).

Neither the bill, nor the rejection of Senator Laxalt's amendment is intended to make such conduct lawful. However, the amendment was rejected because it would have provided that common situs picketing for a purpose unlawful under a state right-to-work law would be a violation of § 8(b)(4). This is contrary to the intent of the Committee that picketing for the purpose of achieving objectives which are unlawful under some other provision of law is to be remedied only under such other provision. The amendment was rejected for the additional reason that it would have retained the *Denver Building Trades* rule in the nineteen "right-to-work" states regardless of the object of the picketing.

In a roll call vote of 3 in favor to 11 opposed, this amendment was rejected. (Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following tabulation of votes on this Committee amendment is provided.)

YEAS—3

Mr. Taft
Mr. Beall
Mr. Laxalt

NAYS—11

Mr. Williams
Mr. Randolph
Mr. Pell
Mr. Kennedy
Mr. Nelson
Mr. Mondale
Mr. Eagleton
Mr. Cranston
Mr. Javits
Mr. Schweiker
Mr. Stafford

(5) Mr. Laxalt offered an amendment exempting product boycotts from the provisions of this bill. This amendment was defeated as inconsistent with the basic thrust of the bill to allow unions to engage in primary strike activity in order to achieve primary objectives. The Supreme Court in the *National Woodwork* case (*Woodwork Manufacturers* v. *NLRB*, 386 U.S. 612 (1967)) held that economic

activity by a union, an object which is the preservation of bargaining unit work traditionally performed by unit employees of a construction site employer is primary and therefore not prohibited by §§ 8(b)(4)(B) and 8(e) of the Act, and protected by §§ 7 and 13. The Committee regarded it as paradoxical in a bill which is designed to eliminate artificial "neutrality" under the secondary boycott provision to introduce a new artificial restriction on the right of unions to engage in conduct which is primary in character. Of course, picketing in support of a product boycott which is secondary because it is "tactically calculated to satisfy union objectives elsewhere" (*National Woodwork*, 386 U.S. at 644) would not be made lawful by S. 1479.

This amendment was defeated in a roll call vote of 4 in favor to 10 opposed. (Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following tabulation of votes on this Committee amendment is provided.)

YEAS—4

Mr. Randolph	Mr. Taft
	Mr. Beall
	Mr. Laxalt

NAYS—10

Mr. Williams	Mr. Javits
Mr. Pell	Mr. Schweiker
Mr. Kennedy	Mr. Stafford
Mr. Nelson	
Mr. Mondale	
Mr. Eagleton	
Mr. Cranston	

D. Committee Vote on S. 1479

Senator Javits moved that the bill be reported favorably with amendments. This motion was agreed to by a roll call vote of 13 in favor to 1 opposed. (Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following tabulation of votes on this Committee motion is provided.)

YEAS—13

Mr. Williams	Mr. Javits
Mr. Randolph	Mr. Schweiker
Mr. Pell	Mr. Taft
Mr. Kennedy	Mr. Beall
Mr. Nelson	Mr. Stafford
Mr. Mondale	
Mr. Eagleton	
Mr. Cranston	

NAYS—1

Mr. Laxalt

DEVELOPMENT OF PRIMARY SITUS PICKETING AND THE SECONDARY BOYCOTT DOCTRINE

S. 1479 addresses the law of secondary boycotts. A brief survey of the prior evolution of this body of law will place the present bill in its proper historical perspective.

A. The Developments Prior to 1947

Secondary boycotts were first regulated under Federal law through the anti-trust laws. In *Duplex Printing Press Company* v. *Deering*, 254 U.S. 443 (1921), the Supreme Court held that the exclusion of labor union activities from the prohibition of the anti-trust laws effected by section 20 of the Clayton Act was restricted to an immediate employer-employees relationship. Under that view, economic action by a union against an employer whose employees it did not represent, or whose wages and working conditions were not the subject of the dispute, was regarded as an unprivileged restraint of trade and a violation of the Sherman Act.

Duplex was decided over the vigorous dissents of Mr. Justice Brandeis who was joined by Justices Holmes and Clarke. It was one of a series of opinions which led to strong public reaction against the class bias of the Federal courts in labor disputes and culminated in the enactment of the Norris-LaGuardia Act. In *U.S.* v. *Hutcheson*, 312 U.S. 219 (1941), the Court held that the Sherman Act, Sec. 20 of the Clayton Act, and the Norris-LaGuardia Act must be read as "a harmonizing text of outlawry of labor conduct" (*id.* at 233) and held that the rule of the *Duplex* case could not survive enactment of the Norris-LaGuardia Act. Similarly, the Court held that secondary boycotts were not regulated by the anti-trust laws. Shortly thereafter, in an opinion written by Judge Learned Hand, the Court of Appeals for the Second Circuit held that secondary conduct was fully protected by the Wagner Act. *NLRB* v. *Peter Cailler Kohler Swiss Chocolates Co.*, 130 F. 2d 503 (1942). See generally Mr. Justice Brennan's discussion in *Woodwork Manufacturers* v. *NLRB*, 386 U.S. 612, 620–623 (1967), and that of Mr. Justice Harlan in *Railroad Trainmen* v. *Terminal Co.*, 394 U.S. 369, 387 (1969).

B. The Enactment of the Taft-Hartley Act (1947) and Subsequent Developments

In response to labor unrest at the end of the Second World War, and the use of secondary boycotts, particularly in support of jurisdictional strikes, Congress sought to limit the use of that economic weapon, not by reintroducing the anti-trust laws, but by adding §§ 8(b)(4)(A) (now § 8(b)(4)(B)) and 303(a) to the corpus of Federal labor law. The purpose of these sections, in the words of the late Senator Taft, is to protect a third person "who is wholly unconcerned in the disagreement between an employer and his employees". (93 Cong. Rec. 4198).

Senator Taft also emphasized the need to "recognize freedom to strike when the question involved is the improvement of wages, hours, and working conditions, and when a contract has expired and neither side is bound by a contract. We recognize that right in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right." (93

Cong. Rec. 3935) Accordingly, Congress retained §§7 and 13 of the Act insofar as they preserved the right to strike "except as specifically provided for herein" (See *Labor Board* v. *Drivers Local Union*, 362 U.S. 274, 281–282 (1960)). Finally, in his explanation of the bill, Senator Taft made clear that the regulation of secondary boycotts effected by the addition of section 8(b)(4) to the NLRA did not entail a return to the regulation of labor's economic weapons under the Sherman Act.

The Supreme Court has therefore recognized, in its holding in *NLRB* v. *Operating Engineers*, 400 U.S. 297, 300 (1971), that the secondary boycott provisions not only focus on protecting a third party who has no concern with the ongoing labor dispute, but that they also reflect—

> "a concern with protecting labor organizations right to exert legitimate pressure aimed at the employer with whom there is a primary dispute. This primary activity is protected even though it may seriously affect neutral third parties.
>
> Thus there are two threads to § 8(b)(4)(B) that require disputed conduct to be classified as either 'primary' or 'secondary'."

The particular problem of secondary boycott law dealt with by S. 1479 was created by the Supreme Court's decision in *Labor Board* v. *Denver Building Trades Council*, 341 U.S. 675 (1951), one of the Court's first decisions construing section 8(b)(4).

The facts of the case are as follows. The general contractor on a construction project subcontracted certain electrical work to a non-union subcontractor who paid its workers 42 cents an hour less than the union scale. When the non-union electricians reported to work, the Denver Building Trades Council picketed the entire job site, and the union workers employed by the general contractor honored the picket line by refusing to enter the project. The object of the picket line was to force the non-union subcontractor off the job, and the contractor did in fact terminate his contract with the electrical subcontractor.

The Supreme Court, in its decision, affirmed a ruling of the NLRB which had held that because the general contractor and subcontractors on a building site were separate businesses, they were to be treated as neutrals with respect to each other's labor controversies. Accordingly, a union having a controversy with one subcontractor could not picket the other contractors and subcontractors at the job site without engaging in a secondary boycott under section 8(b)(4).

The better view, and the one adopted in S. 1479, was expressed by Justice Douglas in his dissenting opinion:

> "The picketing would undoubtedly have been legal if there had been no subcontractor involved—if the general contractor had put non-union men on the job. The presence of a subcontractor does not alter one whit the realities of the situation; the protest of the union is precisely the same. In each the union was trying to protect the job on which union men were employed. If that is forbidden, the Taft-Hartley Act makes the right to strike, guaranteed by § 13, dependent on fortuitous business arrangements that have no significance so far as the evils of the secondary boycott are concerned. I would give scope to both § 8(b)(4) and § 13 by reading the restrictions of § 8(b)(4) to reach the case where an industrial dispute spreads from the job to another front." (341 at U.S. 694)

S. 1479 is designed to conform the law "to the realities of the situation" as noted by Justice Douglas; it overrules *Denver*, its spirit and its progeny.

C. The Enactment of the Landrum Griffin Act and Subsequent Developments

In 1959 Congress amended the Act to eliminate what it regarded as certain "loopholes" in the 1947 prohibition against secondary boycotts. These amendments took the form of enlarging the means and objects prohibited under § 8(b)(4), and creating a prohibition (in a new § 8(e)) of agreements which were thought to facilitate secondary boycotts. (Violations of § 8(b)(4) as amended, but not of § 8(e) were made subject to suits for actual damages under § 303.)

Section 8(e) makes it an unfair labor practice for any labor organization and any employer to enter into any contract or agreement whereby the employer agrees to cease doing business with any other person. Section 8(e)'s purpose was to eliminate the "legal radiations" of hot cargo clauses recognized in *Carpenter's Union* v. *Labor Board*, 357 U.S. 93, 107 (1958) (Sand Door). The Court had there held that employer-union agreements not to handle non-union goods could not be enforced by a strike, but held also that "if an employer does intend to observe the contract, and does truly support the boycott, there is no violation of § 8(b)(4)(A)" by virtue of the existence of the agreement itself. At the same time, however, Congress approved the primary-secondary dichotomy by the device of a proviso to § 8(b)(4)(B) explicitly protecting primary strikes and picketing.

While Congress did not overrule the *Denver Building Trades* decision, it did recognize the economic realities of the construction industry to the extent of adopting a proviso that "nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting or repair of a building structure or other work". The effect of this proviso was explained by Senator John F. Kennedy in reporting to the Senate on the Conference Agreement as follows:

> "Agreements by which a contractor in the construction industry promises not to subcontract work on a construction site to a nonunion contractor appear to be legal today. They will not be unlawful under section 8(e). The proviso is also applicable to all other agreements involving undertakings not to do work on a construction project site with other contractors or subcontractors regardless of the precise relation between them. Since the proviso does not relate to section 8(b)(4) strikes and picketing to enforce the contracts excepted by the proviso will continue to be illegal under section 8(b)(4) whenever the *Sand Door* case (357 U.S. 93) is applicable.

> "It is not intended to change the law with respect to the judicial enforcement of these contracts, or with respect to the legality of a strike to obtain such contract."

Nevertheless, the Supreme Court in *Connell Co.* v. *Plumbers and Steamfitters*, 421 U.S. 616 (June 2, 1975), held that agreements between a general contractor and a union which does not represent any employees directly employed by the general contractor governing the subcontracting of work could be outside the construction industry proviso and forbidden by § 8(e). The Court, in reaching this result, which was concededly contrary to the language of the proviso, suggested that the Congress in 1959 understood the problem raised by *Denver Building Trades* to be that "of picketing a single nonunion subcontractor on a multiemployer building project" or, alternatively, of "alleviat[ing] the frictions that may arise when union men work continuously alongside nonunion men on the same construction," (citing as support for the latter characterization Mr. Justice Douglas' dissent in *Denver Building Trades*). The dissent by Justice Douglas in *Denver* (quoted above), however, makes clear that the problem of that case is whether the relationship of the contractors is that of neutrals or whether they are to be regarded as a single person for the purposes of the secondary boycott provisions of the Act. Moreover, Senator Kennedy's statement quoted above demonstrates that the purpose of the construction industry proviso to § 8(e) was to retain the *Sand Door* rule in that industry. Under *Sand Door* agreements between unions and general contractors restricting the subcontracting of work had been lawful.

A second decision which provides the framework for this legislation is *Electrical Workers* v. *Labor Board* 366 U.S. 667 (1961) (*General Electric*); its significance is that the Court there refused to apply the principles of the *Denver* decision to an industrial site. The case arose out of a strike by the G.E. employees at the G.E. Appliance Park in Louisville, Kentucky. The company utilized independent contractors for construction work on new buildings at its facility; for installation and repair of ventilation and heating equipment; for retooling and rearranging operations necessary to the manufacture of new models; and for "general maintenance work."

To insulate G.E. employees from frequent labor disputes involving outside contractors, the company had set aside a separate gate for employees of such contractors. The union representing the manufacturing plant employees called a strike against the company and picketed all gates, including the separate gate. As a result of the picketing, almost all of the employees of the independent contractors refused to enter the company's premises. The sole issue presented to the Supreme Court was whether the decision to picket the "reserved gate" for independent contractors was conduct proscribed by section 8(b)(4). The Board had held the picketing unlawful and had been upheld by the Federal appeals court.

The Supreme Court reversed. Justice Frankfurter stated that "The key to the problem is found in the type of work being performed by those who use the separate gate." On the one hand, "where the independent workers were performing tasks unconnected to the normal operations of the struck employer—usually construction work on his buildings," it would be unlawful for the manufacturer's striking em-

ployees to picket a gate reserved for the exclusive use of these independent workers. On the other hand, "if a separate gate were devised for regular plant deliveries, the barring of picketing at that location would make a clear invasion on traditional primary activity of appealing to neutral employees whose tasks aid the employer's everyday operations." This concept of *unrelatedness* was at the heart of the decision. In viewing the picketing at G.E., the Court stated that "the key to the problem is found in the type of work that is being performed by those who use the separate gate."

The Court then remanded the case to the Labor Board for further proceedings, as the Board had failed to take into account that if the reserved gate "was in fact used by employees of independent contractors who performed conventional maintenance work necessary to the normal operations of General Electric, the use of the gate would have been a mingled one outside the bar" of the secondary boycott prohibitions.

Thus in manufacturing an independent subcontractor is not immunized from the labor dispute between the manufacturer and his employees if the work performed by the subcontractor is integrated into the normal operations of the manufacturer. On the other hand, in the construction industry, the identical independent subcontractor who performs work integrated into the normal process in the construction industry is immunized from the labor dispute between the prime contractor and his employees. There seems no practical justification for this distinction.

Given the principle stated in *General Electric*, one would have expected that the establishment of separate gates for the general contractor and various subcontractors on a construction site would be treated by the Labor Board as a futile gesture because the general contractor and the subcontractor are all engaged in their normal work at the construction site. Nevertheless, the Board held that the establishment of such gates would prevent a union which was having a dispute with the general contractor from picketing the gates reserved for the subcontractors employees. This view was sustained by the Court of Appeals over what they felt to be the compulsion of the *Denver Building Trades* case. (*Markwell and Hartz* v. *NLRB*, 387 F. 2d 70 (5th Cir. 1967) and *Nashville Building and Construction Trades Council* v. *NLRB*, 383 F. 2d 562 (6th Cir. 1967)).

S. 1479 embodies and gives proper scope to the "connected work" test stated in *General Electric*. The purpose of the legislation is to apply the primary-secondary dichotomy recognized in that case (and since reaffirmed and implemented in, e.g., *Steelworkers* v. *Labor Board*, 376 U.S. 492 (1964) (*Carrier*) and *Woodwork Manufacturers* v. *NLRB*, 386 U.S. 612 (1967) (*National Woodwork*)), to the construction industry in a realistic manner, by treating the general contractor and his subcontractors as a single person for purposes of the secondary boycott provision of the law. This approach reflects the economic realities in the building and construction industry where the contractor and all the subcontractors are engaged in a common venture and each is performing tasks closely related to the normal operations of all the others. The construction of a building is a single, coordinated and integrated economic enterprise. The contractor can perform the total job, or subcontract various parts thereof. If he decides to

subcontract, he chooses the subcontractors with care; and exercises overall supervision. If he chooses to subcontract to a nonunion subcontratcor who pays less than the prevailing union wage and wins the bid for that reason, the contractor cannot claim "neutrality" when the unions protest by picketing the job site. This view of "non-neutrality" underlies S. 1479 and is its essence. S. 1479 thus conforms the law to what should be the proper application of the primary picketing doctrine to the construction industry and thereby specifically overrules the decision in the *Denver Building Trades* case.

LEGISLATIVE HISTORY: COMMON SITUS PICKETING

In 1949, the same year that the National Labor Relations Board decided the *Denver Building Trades* case, legislation to authorize common situs picketing was introduced in the Senate and House [1] as part of omnibus legislation to amend the Taft-Hartley Act proposed by the Truman Administration. The omnibus legislation did not clear that Congress.

In 1954, President Eisenhower asked the Congress to approve common situs picketing, reiterating the suggestions of President Truman regarding the modifications of the secondary boycott provisions by stating:

> "The prohibitions in the Act against secondary boycotts are designed to protect innocent third parties from being injured in labor disputes that are not their concern. The true secondary boycott is indefensible and must not be permitted. The Act must not, however, prohibit legitimate concerted activities against other than innocent parties. I recommend that the Act be clarified by making it explicit that concerted action against an employer on a construction project who, together with other employers, is engaged in work on the site of the project, will not be treated as a secondary boycott." (President's labor-management relations message. H. Doc. No. 291, Jan. 11, 1954)

These amendments were included in an omnibus reform bill in the Senate.[2] However, again the omnibus legislation did not receive Congressional approval.

The Eisenhower Administration made subsequent attempts to have legislation enacted to authorize situs picketing in 1956, 1958,[3] and 1959.[4]

In 1959 the situs picketing proviso was incorporated in S. 1555 which eventually became part of the Landrum-Griffin amendments. The bill was brought to conference with the House and the common situs provision was deleted as a result of a point of order declaring it not "germane". On September 3, 1959, the day the Senate approved the Conference Report on the Landrum-Griffin amendments, Senator Kennedy introduced S. 2643, specifically to deal with the common situs situation. An identical bill, H.R. 9070, was introduced by Mr. Thompson in the House.

[1] S. 249, 81st Cong., 1st Sess. (Senator Thomas) and H.R. 2030, 81st Cong., 1st Sess. (Congressman Lesinski)
[2] S. 2650, 83rd Cong., 2d Sess. (Senator Smith, N.J.)
[3] S. 3099, 85th Cong., 2d Sess. (Senator Smith, N.J.)
[4] S. 505, 86th Cong., 1st Sess. (Senator Kennedy)

In 1961, legislation concerning common situs picketing was again introduced in the Congress.[5] No action was taken on these bills by the Labor and Public Welfare Committee. In the House, Congressman Thompson introduced H.R. 2955, which included the text of the bills introduced in the previous session of Congress. Hearings were held and the bill was supported by President Kennedy. Secretary of Labor Arthur J. Goldberg testified on behalf of the Administration:

> "This is a simple bill with a laudable purpose. That purpose is to do equity—to restore to unions in the building and construction industry the right to engage in peaceful activity at a common construction site to protest substandard conditions maintained by any one of the construction contractors working at the very same site."

No action was taken in the Congress and the bills were reintroduced in 1965.[6] These bills were supported by the Johnson Administration. Secretary of Labor W. Willard Wirtz testifying in support:

> "Finally, Mr. Chairman, in addition to pointing out what what these bills are and their fairness, I want to make clear what they are not.
>
> "The proposed legislation will not legalize any activity otherwise unlawful under the National Labor Relations Act or in violation of bargaining agreements. It will not require that a man join a union in order to get a job. Two provisions in the Taft-Hartley Act, Section 8(a)(3) and 8(b)(2), outlaw any such requirement. This legislation will not affect product boycotts. It will not legalize jurisdictional strikes. These will remain barred by Section 8(b)(4)(D) of the Taft-Hartley Act.
>
> "It will not legalize otherwise unlawful recognition or organizational picketing.
>
> "It will not extend beyond the project site, and will not have any effect outside the construction industry. I urge the prompt enactment by the Congress of this legislation."

The House Labor Committee favorably reported the legislation but no action was taken by the House.

Since 1965, several attempts have been made in both the House and Senate to amend the Taft-Hartley Act for the purpose of legalizing common situs picketing in the construction industry.[7]

During the 91st Congress, 92d and 93d Congress bills were again introduced and hearings were held.[8]

THE OPERATION AND EFFECT OF S. 1479

1. The Basic Purpose of S. 1479

S. 1479 establishes rights for construction workers which are comparable to those already existing in the industrial sector. The basic purpose of the bill is to treat the general contractor and the sub-

[5] S. 640, 87th Cong., 1st Sess. (Senator McNamara) and S. 1387, 87th Cong., 1st Sess. (Senator Morse).
[6] H.R. 6363, 89th Cong., 1st Sess. (Congressman Thompson, N.J.) and H.R. 6411, 89th Cong., 1st Sess. (Congressman Sickles).
[7] S. 1487, 90th Cong., 1st Sess. (Senator Morse) and H.R. 100, 90th Cong., 1st Sess. (Congressman Thompson, N.J.); S. 1365, 91st Cong., 1st Sess. (Senator Williams) and S. 1371, 91st Cong., 1st Sess. (Senator Goodell)
[8] S. 1238, 93d Cong., 2d Sess. (Senator Williams.)

contractors who are engaged at a construction site as a single person for purposes of the secondary boycott provisions of the National Labor Relations Act. Where there is a labor dispute with a general contractor at a construction site, unions will be empowered to direct strike activity, including picketing, not only at the general contractor but at all the subcontractors at that site as well. Likewise, where there is a labor dispute with a subcontractor at a construction site, unions will be empowered to direct strike activity including picketing not only against that subcontractor but against the general contractor and the other subcontractors.

This result follows from the teachings of Mr. Justice White writing for a unanimous Supreme Court in *Steelworkers* v. *Labor Board*, 376 U.S. 492, 499 (1964) (*Carrier*):

> "The primary strike, which is protected by the proviso, is aimed at applying economic pressure by halting the day-to-day operations of the struck employer. . . . Picketing has traditionally been a major weapon to implement the goals of a strike and has characteristically been aimed at all those approaching the situs whose mission is selling, delivering or otherwise contributing to the operations which the strike is endeavoring to halt."

Thus under S. 1479, where there is a labor dispute with the general contractor or one subcontractor, lawful economic pressure may be applied to halting the day-to-day operations of the general and all the subcontractors. This approach reflects the economic realities in the building and construction industry because the contractor and his subcontractors are engaged in a common venture, and each is performing tasks closely related to the normal operations of all the others. The construction of a building or any other such project is a single, coordinated and integrated economic enterprise, even though its successful completion may require the application of a large number of separate and identifiable tasks requiring highly specialized skills.

2. Effect on Existing Law

As noted, S. 1479 is a legislative disavowal of the Supreme Court's decision in the *Denver Building Trades* case which resulted in more limited picketing rights for construction employees than for other workers. The *Denver Building Trades* result was due to the Court's refusal to acknowledge the economic unity of contractors and subcontractors at a construction site. Its characterization of each subcontractor as a "neutral" party for purposes of a labor dispute meant that any union attempting to picket a construction site would be exerting pressure on "neutral" employers, thereby violating the secondary boycott provisions of the Act. S. 1479 adds several provisos to the present language of section 8(b)(4) which clarify the economic interrelationship of contractors and subcontractors on a construction site.

The relevant portions of section 8(b)(4) currently provide:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * * * *
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
>
> (B) forcing or requiring any person to cease doing business with any other person, . . . *Provided* that nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;"

* * * * * * *

The heart of the problem with which S. 1479 deals is the proper application of the "primary-secondary" dichotomy which is also embodied in §§ 7, 8(e) and 13:

> "7. Employees shall have the right to . . . engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .
>
> * * * * * * *
>
> "(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employers, or to cease doing business with any other person, and any contract or agreement entered into hertofore or hereafter containing such an agreement shall be in such extent unenforceable and void: *Provided*, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting, of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work:
>
> * * * * * * *
>
> "13. Nothing in this Act except as specifically provided for herein shall be construed so as either to interfere or impede or diminish in any way the right to strike, or to affect the limitations or qualifications of that right."

The clarifying language added by S. 1479 is intended to overrule the Supreme Court's application of the "primary-secondary" dichotomy in the *Denver Building Trades* case. The bill will therefore have two effects. First, it will overturn the secondary boycott case law which rests on *Denver's* rationale. Second, even where it does not change prior legal doctrine it will have an impact on the practical significance of that doctrine. For example, at present, when an employer breaches a "union only" no subcontracting clause permitted by the construction industry proviso to § 8(e) by having a non-union subcontractor do certain work, the only recourse of the union signatory to that agreement is to sue in court. S. 1479 does not change that rule. However,

the overriding purpose of the bill is to permit common situs picketing by a union having a dispute with such a substandard subcontractor. Accordingly, S. 1479 is intended to permit common situs picketing by the union having the dispute with such subcontractor, and that right shall not be limited or affected in the guise of prohibiting common situs picketing to protest the breach of a Sec. 8(e) no subcontracting clause.

"The tapestry that has been woven" in elaborating the secondary boycott provisions "is among the Labor Law's most intricate." *NLRB* v. *Operating Engineers* 400 U.S. 293, 303 (1971). No implication to be drawn from the fact that S. 1479 overrules *Denver Building Trades* that the Committee has canvassed all of the complexities of the § 8(b)(4) law and has determined that the remaining decisions of the NLRB and the court's finding secondary boycotts are sound.

3. The Effect of S. 1479

A. Section-by-Section Legal Analysis.—In order to facilitate a complete understanding of the effect that the main proviso added a section 8(b)(4)(B) by S. 1479 will have in permitting picketing and strike activity at the common situs of a construction project, it is helpful to examine the clauses of that proviso independently. The entire proviso states:

> "*Provided further*, That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site, and there is a labor dispute, not unlawful under this Act or in violation of an existing collective bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry."

(a) The phrase "*Provided further, That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services*" is intended to reach all the means set forth in §§ 8(b)(4)(i) and (ii) of the Act.

(b) The phrase "*at the site of the construction, alteration, painting, or repair of building, structure, or other work and directed at any of several employers*" adopts the language used in the construction proviso to section 8(e) of the Act which was added in 1959. Here, as there, this language is used only to distinguish work at construction sites from all other types of work, as for example, at an industrial plant. The language does not confine the activity permitted by the bill to a particular construction situs or require picketing on a situs-

to-situs basis; in that sense too it is identical to what was intended by the construction proviso to section 8(e). The limitation of common situs picketing to the particular construction situs at which the dispute arises is created by other language, discussed in paragraph 3(d) of this analysis and is not present in the construction industry proviso.

(c) The phrase "*and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site*" describes those who will be treated as a single person by virtue of the bill.

The phrase "*in the construction industry*" is also adopted from the construction industry proviso to section 8(e). The remainder of this clause makes clear that it is those who are jointly engaged as "*joint venturers*" or as "*contractors and subcontractors*" in the construction, etc., at such site, who are to be treated as a single person. Where the construction site is at an industrial plant (for example, an addition to a manufacturing facility), the owner of the plant will not be treated as a single person with the general contractor who is engaged to perform such construction work, or any of that general contractor's joint venturers or subcontractors. In that situation, when the dispute is with the owner of the plant and the owner establishes a separate gate for the construction workers, picketing in support of that dispute against the owner of the facility can be conducted at that gate if and only if the contractors and their employees are engaged in tasks which aid the owner's every day operations. See the *General Electric* case, *supra*, 366 U.S. at 681. Likewise, if the dispute is with the general contractor or one of the subcontractors, the owner of the industrial facility may, by establishing a separate gate for the construction employees confine the picketing to that gate and thereby insulate his own employees from that picketing.

A special problem of application will arise in situations involving the development of a large, multi-faceted construction project such as a shopping center complex, an urban renewal project or a government facility such as Cape Canaveral which includes both NASA's Kennedy Space Center and Patrick Air Force Base. In these situations it is not unusual for several general contractors, each using one of several subcontractors, to be employed in closely related work and in the same general location. Each of these contractors, however, may be engaged in building a totally separate facility within the parameters of the entire project.

If more than one general contractor is working on a multifaceted development involving distinct and unrelated projects then common situs picketing is not permitted under S. 1479 except with respect to the single general contractor involved in the dispute and all of its subcontractors. If, however, separate general contractors are responsible for completion of an interrelated structure and the site can be considered one project then common situs picketing is permitted by S. 1479 with respect to all general contractors and their subcontractors.

Pursuant to the provisions of S. 1479, picketing may not be used to close down the entire site or project merely on the basis of a labor dispute with one of the contractors or subcontractors. The applicable

test to determine whether the entire site may be closed down pursuant to the principles under S. 1479 is to identify whether the contractors or several employers in the construction industry are "jointly engaged" at the "site of construction, alteration, painting, or repair of a building, structure, or other work". In addition, the bill provides that "in determining" whether or not several employers are in fact "jointly engaged" at any site, "ownership or control of such site by a single person shall not be controlling."

Employers are engaged as joint venturers when the work each contracts to perform is related to the work contracted for by the other as part of an integrated building, structure, or other work; and the employees of one perform work related to the other. The "site" of any such work is at the geographical physical location where several employers are jointly engaged in the construction, alteration, painting or repair of a building, structure, or other work at such location, and where the employees of such employers, contractors, and subcontractors are engaged in interrelated work toward a common objective in geographical proximity to each other. This is in accord with the settled principle that the situs of a dispute with an employer is wherever he performs his day-to-day operations, be it an industrial plant, a fleet of trucks or one or more construction sites.

S. 1479 recognizes the economic reality that construction work on one part of a building, structure or other work is interrelated to work on other parts of a building, structure or other work. It therefore permits the union representing employees in one phase of the work to strike or picket at the construction site against several employers at that site who are jointly engaged as joint venturers or in the relationship of contractor and subcontractor when the strike raises over wages, hours, and other working conditions.

(d) In the phrase "*and there is a labor dispute, not unlawful under this Act or in violation of an existing collective bargaining contract, relating to the wages, hours or other working conditions of employees employed at such site by any of such employers*" the starting point is the term "labor dispute", which was deliberately chosen to track the broad language of section 2(9) of the Act [9], which in turn was adopted from section 13 of the Norris-LaGuardia Act, 29 U.S.C. section 113, and covers all disputes "relating to the wages, hours, or other working conditions."

The qualifying phrase "*not unlawful under this Act or in violation of an existing collective bargaining contract,*" is included to assure that the bill is not construed to permit conduct which is presently unlawful under other subsections of section 8(b) or section 301(a) of the Act.

The second qualifying phrase is "*of employees employed at such site by any of such employers*". It is intended to preserve the *Denver* rule in a single narrow situation: where there is a dispute with a subcontractor which relates only to a single site, the union will not be permitted to treat that subcontractor as the same person as the general contractor and the other subcontractors at other sites. For

[9] A labor dispute, as defined by section 2(9) of the Act includes: "any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relationship of employer and employee."

example, if a subcontractor is under contract with the union at several sites, but fails at one site to pay the wages due the workers, or fails at that site to adhere to some other provision of the contract, the union may engage in common situs picketing only at the site. At other sites, the subcontractor will be treated as a different person from the general contractor and the other subcontractors and *Denver Building Trades* will continue to apply.

The subcontractor will still be subject to strikes and picketing at the other sites which was lawful even under *Denver Building Trades*, for example, picketing which complies with the standards declared in *Sailor's Union of the Pacific*, 92 NLRB 547 (*Moore Dry Dock*). But for this phrase the bill would have granted the right normally enjoyed by all unions to apply economic pressure against an employer with whom they have a dispute wherever he may be found, in order to halt his day-to-day operations. However, it was decided to restrict that right to engage in a primary strike as just described. Since section 13 declares that the Act shall not be construed "to interfere with or impede or diminish in any way" the right to strike as it was understood in 1947 "except as specifically provided" this limitation is stated explicitly. This decision represents a compromise designed to confine the picketing permitted in the bill to the situs at which the labor dispute arises in the one narrow situation in which it can be said that the dispute has a specific point of origin. Earlier provisions of the Act have taken account of the special conditions in the construction industry (see sections 8(e) and (f)). This is the first in which the protections granted are limited in any way to a particular job site.

As its language should make clear, the qualification contained in the phrase "*of employees employed at such site by any of such employers,*" of course, does not affect the right granted in the bill to picket at all job sites at which a struck employer may be found where the origins of the dispute are not so confined. Thus, where there is a dispute between a union or group of unions and a general contractor over an agreement to apply at more than one site or on future jobs it will be lawful to treat that general contractor and his subcontractors as a single person wherever they are engaged in construction activity. The same rule will apply where there is such a dispute with a subcontractor.

(e) The phrase in the proviso "*and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry*" is to exclude from the protection of S. 1479 those disputes which involve a union which represents employees of an employer at the site who is not *engaged primarily* in the construction industry but who *is engaged in construction* in furtherance of his main business, such as the building of an addition to an industrial facility. Here again the purpose is to write into S. 1479 a narrow restriction on the basic right to engage in primary picketing. And, in this instance as the prior one, the sponsors of the bill have agreed to a compromise designed to give recognition to a carefully defined competing interest. The logic of the overruling of *Denver Building Trades* would allow picketing to appeal to organized industrial employees at or approaching a construction site. However, in promoting the stability of estab-

lished collective bargaining relationships with industrial employers and protecting the integrity of the "no-raiding" agreements that have been entered into by many unions, the most encompassing of which is contained in Article XX of the AFL–CIO Constitution, the Committee, with the support of the labor movement, determined not to write the bill in a manner that extends common situs picketing to its full extent.

Two examples will describe both the function and the limitations of this phrase: if an employer is engaged by a contractor to install some specialized equipment as part of the construction project (for example, electrical or refrigeration equipment) and that employer utilizes his own regular employees who are represented by a labor organization for this installation, S. 1479 would permit the use of a separate gate for those employees that the construction union could not picket. Similarly, if a manufacturer decides to expand its facility and utilizes its own regular employees who are represented by a labor organization for these purposes, the picketing by the building trades unions of a separate gate reserved for industrial employees would not be permitted.

Of course if that same employer, however retains a general contractor who is "primarily engaged in the construction industry" for the job, picketing would be allowed under the *General Electric* principles described *supra*. The employer could, thereby, set up a separate gate for the construction workers and isolate his own employees from picketing.

In sum, subject to the foregoing limitations, where the employer is engaged in the construction industry, and in another industry, and the union has a dispute with him at the site where he is performing construction work, he would be considered to be "engaged primarily in the construction industry" at the site. S. 1479 would apply to permit common situs picketing at the site. On the other hand, where the employer is not engaged in the construction industry at all and an industrial union has a dispute with him at his facility, where separate gates are established, S. 1479 would not permit the industrial unions to picket the construction contractors performing work at the site. Rather, the traditional concepts of *General Electric* would apply to such picketing. And, as explained earlier, where the industrial employer is not acting as a construction contractor and a construction union has a dispute with one of several construction employers performing work at the site, as, for example, an expansion of the plant facility, S. 1479 would permit picketing of all of the construction contractors and subcontractors but not the industrial employer.

Finally, where an industrial employer is acting as its own general contractor on a project for itself, is subcontracting out all of the construction work, and is retaining some minimum control over the construction process (e.g. through its own construction foreman), such an employer is "engaged in the construction industry" but is not "primarily engaged in the construction industry." Accordingly, under the bill, if the union has a dispute with one of the subcontractors (who is "primarily engaged in the construction industry") the union could picket all of the subcontractors *and the industrial employer* at the site of construction since the industrial employer is "engaged in the construction industry" at the site. However, if the industrial employer

is not acting as its own general contractor and is not otherwise involved in the construction processes, he would not be "engaged in the construction industry" and S. 1479 would not apply to picketing of him.

(f) Four of the other provisos added by S. 1479 can be usefully discussed together because of their close relationship to each other:

> "*Provided further*, Except as provided in the above proviso nothing herein shall be construed to permit any act or conduct which was or may have been an unfair labor practice under this subsection: *Provided further*, That nothing in the above provisos shall be construed to prohibit any act which was not an unfair labor practice under the provisions of this subsection existing prior to the enactment of such provisos: *Provided further*, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of sex, race, creed, color, or national origin, or because of the membership of any employee in any labor organization." *Provided further*, That nothing in the above proviso shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the representative of his employees or to permit the exclusion of any such labor organization on the ground that such labor organization is not affiliated with a national or international labor organization which represents employees of an employer at the common site.

As Mr. Justice Frankfurter observed in connection with the Taft-Hartley Act, labor-management legislation is "the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the nation and the appropriate balance to be struck between the uncontrolled power of management and labor to further their respective interests." *Carpenters' Union* v. *Labor Board*, 357 U.S. 93, 99–100 (1958).

Consequently, three of these four provisos have been inserted to assure that the enactment of the bill does not "authorize" or "permit", that is, make lawful, conduct which previously would have been regarded as unlawful under this Act but for the principles of *Denver Building Trades*.

That such provisos add nothing to the law and are in that sense redundant was understood during the House consideration of identical legislation in H.R. 5900. In urging the adoption of a similar amendment he had proposed, Mr. Esch, said:

> "Mr. Chairman, I will say, if the gentleman from Michigan will yield, that it is because of the inherent sloppiness of the method of developing legislation that I think this amendment, even though some may think it is redundant will help clarify it so that H.R. 5900 very clearly states that in no way does it go beyond the intent of sections 8(a)(3) and 8(b)(2) and thus protect the individual employee in this regard."

This amendment, which was agreed to, added the following:

> "*Provided further*, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket or causing to be picketed any employer where an object thereof is to cause or attempt to cause an employer to discriminate against any employee, or to discriminate against an employee with respect to whom membership in a labor organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees informally required as a condition of acquiring or retaining membership."

The third of the provisos in S. 1479 is a stylistic revision of the Esch amendment, in which that amendment is shortened and combined with another related proviso which was in both the House bill and S. 1479 as introduced. To join these terms grammatically is appropriate because the function of this proviso is to state that nothing in the bill will authorize or legitimatize picketing (or a threat to picket) an employer in order to remove or exclude an employee on a ground forbidden by another provision of law. Because this proviso preserves those present laws intact, it was thought unnecessary to spell out the details of section 8(a)(3) and 8(b)(2).

The purpose of the first portion of the fourth proviso is to make clear that the bill does not relieve unions of the limitations which section 8(b)(7) places on recognitional and organizational (as opposed to "area standards") picketing. (See *Dallas Building Trades* v. *NLRB*, 396 F. 2d 677, 682 (1968).) The second portion of that proviso dealing with unaffiliated local labor organizations is related. It is designed to assure that the bill does not legitimatize any otherwise unlawful exclusion of an unaffiliated labor organization *because* ("on the ground that") it is unaffiliated.

Finally, the representatives of labor were concerned lest the reform to be accomplished by this bill be transferred by some process of negative implication into a prohibition of some conduct which has previously been regarded as lawful. That is the reason for the second of the provisos discussed in this paragraph of the analysis.

(g) *Special Notice Requirements and the Role of National Unions*

S. 1479 also adds a further proviso which establishes special notice provisions with respect to strikes or picketing arising under the terms of this bill, and to the role that national or international unions will play in this process:

> "*Provided further*, That a labor organization before engaging in activity permitted by the above proviso shall provide prior written notice of intent to strike or to refuse to perform services of not less than ten days to all unions and the employers and the general contractor at the site and to any national or international labor organization of which the labor organization involved is an affiliate and to the Collective Bargaining Committee in Construction: *Provided further*, That at any time after the expiration of ten days from the transmittal of such notice, the labor organization may engage in activities permitted by the above provisos if

> the national or international labor organization of which the labor organization involved is an affiliate gives notice in writing authorizing such action: *Provided further*, That authorization of such action by the national or international labor organization shall not render it subject to any criminal or civil liability arising from activities notice of which was given pursuant to the above proviso."

S. 1479 requires that not less than ten days prior to engaging in any primary activity as contemplated under the bill, the labor organization which seeks to engage in a strike, or a concerted refusal to perform services, must file a notice thereof before undertaking the activity to the following persons:

(1) to all unions representing employees employed at the site;

(2) to all employers engaged at the site and the general contractor at the site;

(3) to any national or international labor organization with which the movant union is affiliated; and

(4) to the Construction Industry Collective Bargaining Committee.

S. 1479 requires further that in order for the picketing to be undertaken, the national or international union with which the local union is affiliated must give notice, in writing, approving the proposed action by the local. Thus, in order for strike activity which is presently forbidden by the *Denver* ruling to be lawful, the union engaging in that activity must both provide written notice as outlined above and, if the union is affiliated with a national or international union, receive authorization in writing.

These provisions are designed to enhance the possibility of settling the dispute without a work stoppage. The requirement for authorization by the union's parent organization is to bring into play the mediating influence of the parent and to prevent strike activity entirely if the parent organization disapproves. There is also included a proviso which safeguards the parent union against civil or criminal liability for granting such authorization to assure that it will not be held liable for exercising a function which the national labor policy regards as desirable. It furthers the principle of section 2(13) and section 301(e) of the Act that a labor organization—like an employer—is subject to liability for illegal activity which it has not committed only if that action is authorized or ratified according to the common law doctrine of agency, and recognizes that an affiliated local union is not an agent of its parent union by virtue of that relationship or the parent's reservation of control over the activities of the local. See, e.g. *Franklin Electric Co.*, 121 NLRB 143 (1958). While the proviso is phrased in terms of an immunity from liability because the parent has authorized the strike activity by the local, it is not to be inferred that it is subject to liability where it does not authorize such activity. To allow a local union or its members to sue the international for withholding approval of a strike on some extension of the duty of fair representation or the international's obligations to its locals under their constitution or on any other basis would defeat the objective of requiring notice to an approval by the international.

In sum, this proviso limits civil and criminal liability of national and international construction labor organizations which might be

imputed to them by way of their authorization of common situs picketing. It is the intent of this provision that civil and criminal liability should not be imposed on these organizations because, as contemplated by the Act, they have authorized or refused to authorize common situs picketing.

It is intended that the notice provisions contained in this proviso are in addition to the other notice provisions contained in the Act.

(h) *Special Provisions Governing Primary Activity at certain military facilities.* S. 1479 contains an additional proviso which establishes special provisions for construction which takes place on a military facility:

> "*Provided further*, That in the case of any such site which is located at any military facility or installation of the Army, Navy, or Air Force, or which is located at a facility or installation of any other department or agency of the Government if a major purpose of such facility or installation is or will be, the development, production, testing, firing, or launching of munitions, weapons, missiles, or space vehicles, prior written notice of intent to strike or to refuse to perform services, of not less than ten days shall be given by the labor organization involved to the Federal Mediation and Conciliation Service, to any State or territorial agency established to mediate and conciliate disputes within the State or territory where such site is located, to the several employers who are jointly engaged at such site, to the Army, Navy, or Air Force or other department or agency of the Government concerned with the particular facility or installation, and to any national or international labor organization involved is an affiliate. The notice requirements of the preceding proviso are in addition to, and not in lieu of the notice requirements prescribed by section 8(d) of the Act. In determining whether several employers who are in the construction industry are jointly engaged as joint venturers at any site, ownership or control of such site by a single person shall not be controlling."

When a site of construction is located on any military facility of any other facility which has as a major purpose—present or future—the development, production, testing, firing, or launching of munitions, weapons, missiles, or space vehicles S. 1479 establishes special conditions which must be met by any labor organization which undertakes primary activity under this amendment. These conditions require:

(1) prior written notice of intent to strike of not less than 10 days;

(2) prior written notice of intent to refuse to perform services of not less than 10 days.

The written notice of intent to undertake primary activity at any such site or installation must be given to all the parties enumerated in the proviso. In addition all the requirements for notice in section 8(d) of the Act, as amended, governing parties to a collective bargaining agreement in situations involving termination or modification of an existing collective bargaining agreement must be met. Section 8(d) provides that a party seeking to terminate or modify the agreement

must serve: (1) 60 days written notice of proposed termination or modification, or 60 days notice prior to the contract termination; (2) offers to meet to discuss modification or a new contract; (3) notice to the Federal Mediation and Conciliation Service and simultaneously to any state or territorial agency established to mediate disputes 30 days after serving notice to the parties if no agreement has been reached by that time; (4) the contract must continue in full force and effect until it expires or until 60 days after notice to parties is served without resort to strikes or lockouts.

Thus, in order for strike activity at a military installation or missile site, now forbidden by the *Denver* decision, to be lawful, the union engaging in that activity must comply with written notice requirements set out above.

Since it is the theory of S. 1479 that the relationship between the general contractor and subcontractors in construction is primary, the "military facility" proviso does add specific limits on the right to engage in a primary strike at this particular type of site. This, nevertheless, reflects a proper exercise by the Congress of its role to declare a national labor policy to achieve the most effective labor relations. The Supreme Court has recognized the Congressional role in this regard in *Labor Board* v. *Erie Resistor Corp.*, 373 U.S. 221, 234 (1963):

> "While Congress has from time to time revamped and redirected national labor policy, its concern for the integrity of the strike weapon has remained constant. Thus, when Congress chose to qualify the use of the strike it did so by prescribing the limits and conditions of the abridgement in exacting detail, e.g. 338(b)(4), 8(d), by indicating the precise procedures to be followed in effecting the interference, e.g. section 10(j), (K), (l); sections 206–210, Labor Management Relations Act, and by preserving the positive command of section 13 that the right to strike is to be given a generous interpretation within the scope of the Labor Act."

To the extent that the right to engage in strike activity is restricted in specified situations under S. 1479, the bill represents a continuation of congressional policies of setting only narrow qualifications on the use of the strike.

4. New Sections 8(h) & (i)

(a) *Special Rules Governing Contracts Under State "Separate-Bid" Statutes.*—S. 1479 adds a new subsection (h) to section 8 of the National Labor Relations Act providing for special procedures for determining contractor and subcontractor relationships under those State Laws containing "separate-bid" requirements. Section 8(h) provides:

> "(h) Notwithstanding the provisions of this or any other Act, where a State law requires separate bids and direct awards to employers for construction, the various contractors awarded contracts in accordance with such applicable State law shall not, for the purposes of the third proviso at the end of paragraph (4) of subsection (b) of this section, be considered joint venturers or in the relationship of con-

> tractors with each other or with the State or local authority awarding such contracts at the common site of the construction."

The laws of eight states [10] require separate bids to be let to the lowest responsive bidders for certain categories of work on public construction jobs as follows: (1) for general construction; (2) for heating, ventilating and air conditioning; (3) for plumbing work; and (4) for electrical work.

S. 1479 provides that when construction jobs are contracted under authority of such laws those contractors shall not be considered as joint venturers or in the relationship of contractor and subcontractor. Additionally, S. 1479 provides that the state or local subdivision shall not be viewed as a joint venturer or contractor for the purposes of this Act. This is also supported by the requirement of that such employers must be in the construction industry.

The sole effect of Section 8(h) is to continue the rule of the *Denver Building Trades* case to govern picketing at a construction situs, where the employers have been awarded separate contracts pursuant to the requirements of State bidding laws. However, picketing which was lawful even under *Denver*, for example, as picketing which satisfies the standards set forth in *Sailors Union of the Pacific* (*Moore Dry Dock*), 92 NLRB 547, will remain lawful.

This narrow retention of the *Denver* rule was added by the Committee as an accommodation to state procurement policies. Eight states require separate bidding and direct awards by the general and subcontractors to guarantee the integrity of the expenditure of public moneys. These laws have nothing to do with labor-management relations, and make it impossible for the contractors "by design or otherwise" (*Carrier*, *supra*, 376 U.S. at 501) to arrange their affairs so as to insulate themselves from disputes in which they are economically concerned. State laws which have a labor management relations objective or which permit such manipulation are not within section 8(h). For, it is not intended to destroy uniformity in the national labor policy which favors the use of peaceful primary economic weapons as part and parcel of the process of collective bargaining (*Labor Board* v. *Insurance Agents*, 361 U.S. 477, or to permit employers to arrange their affairs so as to define or limit the scope of primary activity; *see also*, *Carrier*, 376 U.S. at 501.).

(*b*) *Special Provision Governing Labor Injunctions.*—S. 1479 adds a new subsection (i) to section 8 of the National Labor Relations Act. The new subsection 8(i) provides as follows:

> "(i) Notwithstanding the provisions of this or any other Act, any employer at a common construction site may bring an action for injunctive relief under section 301 of the Labor-Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final settlement of disputes as provided in the agreement."

[10] Florida, Illinois, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Wisconsin.

The purpose of this provision is to codify with respect to strikes and picketing at a common situs the accommodation established in *The Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. 235 (1970) between the Norris-LaGuardia Act, 29 U.S.C. 101, *et seq.* and sections 203(d) and 301 of the Labor Management Relations Act (29 U.S.C. 141, *et seq.*). Here again, the placement of this section should not be construed to create a new unfair labor practice.

Thus where the parties to a collective bargaining agreement have provided for a method of "final adjustment" for the settlement of grievance disputes arising thereunder as to the application or interpretation of an existing collective bargaining agreement (See section 203(d)), the Courts may, notwithstanding the provisions of section 4 of the Norris-Laguardia Act, in a suit under section 301 issue an injunction enjoining a work stoppage at a common situs. Such injunctive relief is available only where the stoppage is over a grievance which "both parties are contractually bound to arbitrate and provided also that the other conditions declared in *Boys Markets* are satisfied, and provided further that the procedural and equitable requirements of the Norris-LaGuardia Act are satisfied. See *Boys Market*, 398 U.S. at 253–254 and *Emery Air Freight Corporation* v. *Local Union 295*, 449 F. 2d, 586, 588–589 (2d Cir. 1971).

Cost Estimates of S. 1479

Pursuant to section 252(a) of the Legislative Reorganization Act, the Committee has examined the possible additional costs that would be incurred in carrying out the provisions of S. 1479, and believes that increased costs for the Government will not be substantial. Accordingly, the legislation does not authorize the appropriation of any Federal funds, nor does it provide any new or increased budget authority.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter printed in italic):

LABOR MANAGEMENT RELATIONS ACT, 1947 (TAFT-HARTLEY)*

As amended by Public Law 86–257, 1959

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended [1] to read as follows:

FINDINGS AND POLICIES

SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or

[1] Amended through Public Law 93-360, July 26, 1974.

*Section 201(d) and (e) of the Labor-Management Relations and Disclosure Act of 1959 which repealed Section 9(f), (g), and (h) of the Labor Management Relations Act, 1947 and Section 505 amending Section 302(a), (b), and (c) of the Labor Management Relations Act, 1947, took effect upon enactment of Public Law 86–257, September 14,

(Continued)

operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any

(Continued)

1959. As to the other amendments of the Labor Management Relations Act, 1947, Section 707 of the Labor-Management Reporting and Disclosure Act provides:

"The amendments made by this title shall take effect sixty days after the date of the enactment of this Act and no provision of this title shall be deemed to make an unfair labor practice, any act which is performed prior to such effective date which did not constitute an unfair labor practice prior thereto."

Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act.

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) The National Labor Relations Board (hereinafter called the "Board") created by this Act prior to its amendment by the Labor Management Relations Act, 1974, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of

section 9 and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment *sine die* of the session of the Senate in which such nomination was submitted.

SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of $12,000 [1] a year, shall be eligible for reappointment, and shall not engage in any other business, vocation or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as

[1] Pursuant to Public Law 90-206, 90th Congress, 81 Stat. 644, approved December 16, 1967, and in accordance with Section 225(f)(ii) thereof, effective in 1969, the salary of the Chairman of the Board shall be $40,000 per year and the salaries of the General Counsel and each Board member shall be $38,000 per year.

may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by

any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, co-

erce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary [picketing;] *picketing:*

Provided further, That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site, and there is a labor dispute, not unlawful under this Act or in violation of an existing collective-bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry: Provided further, Except as provided in the above proviso nothing herein shall be construed to permit any act or conduct which was or may have been an unfair labor practice under this subsection: Provided further, That nothing in the above provisos shall be construed to prohibit any act which was not an unfair labor practice under the provisions of this subsection existing prior to the enactment of such provisos: Provided further, That nothing in the above provisos shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of sex, race, creed, color, or national origin, or because of the membership or nonmembership of any employee in any labor organization: Provided further, That nothing in the above proviso shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization if another labor organization is lawfully recognized as the

representative of his employees or to exclude any such labor organization on the ground that such labor organization is not affiliated with a national or international labor organization which represents employees of an employer at the common site: Provided further, That a labor organization before engaging in activity permitted by the above proviso shall provide prior written notice of intent to strike or to refuse to perform services of not less than ten days to all unions and the employers and the general contractor at the site and to any rational or international labor organization of which the labor organization involved is an affiliate and to the Construction Industry Collective Bargaining Committee: Provided further, That at any time after the expiration of ten days from transmittal of such notice, the labor organization may engage in activities permitted by the above provisos if the national or international labor organization of which the labor organization involved is an affiliate gives notice in writing authorizing such action: Provided further, That authorization of such action by the national or international labor organization shall not render it subject to criminal or civil liability arising from activities notice of which was given pursuant to the above proviso: Provided further, That in the case of any such site which is located at any military facility or installation of the Army, Navy, or Air Force, or which is located at a facility or installation of any other department or agency of the Government if a major purpose of such facility or installation is or will be, the development, production, testing, firing, or launching of munitions, weapons, missiles or space vehicles, prior written notice of intent to strike or to refuse to perform services, of not less than ten days shall be given by the labor organization involved to the Federal Mediation and Conciliation Service, to any State or territorial agency established to mediate and conciliate disputes within the State or territory where such site is located, to the several employers who are jointly engaged at such site, to the Army, Navy, or Air Force or other department or agency of the Government concerned with the particular facility or installation, and to any national or international labor organization of which the labor organization involved is an affiliate. The notice requirements of the preceding proviso are in addition to, and not in lieu of the notice requirements prescribed by section 8(d) of the Act. In determining whether several employers who are in the construction industry are jointly engaged as joint venturers at any site, overship or control of such site by a single person shall not be controlling.

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a

particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition

has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if an when he is reemployed by such employer. When the collective bargining involves employees of a health care institution, the provisions of this section 8(d) shall be modified as follows:

(A) The notice of section 8(d)(1) shall be ninety days; the notice of section 8(d)(3) shall be sixty days; and the contract period of section 8(d)(4) shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in section 8(d)(3).

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection (e) and section 8(b)(4)(B) the terms "any employer", "any person engaged in commerce or in industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of

production in the apparel and clothing industry: *Provided further*, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.

(f) It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e).[1]

(g) A labor organization before engaging any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

(h) Notwithstanding the provisions of this or any other Act, where a State law requires separate bids and direct awards to employers for construction, the various contractors awarded contracts in accordance with such applicable State law shall not, for the purposes of the third proviso at the end of paragraph (4) of subsection (b) of this section, be considered joint venturers or in the relationship of contractors and subcontractors with each other or with the State or local authority awarding such contracts at the common site of the construction.

(i) Notwithstanding the provisions of this or any other Act, any

[1] Section 8(f) is inserted in the Act by subsection (a) of Section 705 of Public Law 86-257. Section 705(b) provides:
"Nothing contained in the amendment made by subsection (a) shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

employer at a common construction site may bring an action for injunctive relief under section 301 of the Labor Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective-bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final settlement of disputes as provided in the agreement.

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes or collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c)(1) Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individualr or labor organization, which has been certified or is being curently recognized by their employer as the bargaining representative, is no longer a represensitive as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c).

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

(d) Whenever an order of the Board made pursuant to section 10(c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e)(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a)(3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U.S.C., title 28, secs. 723–B, 723–C).

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice,

then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

(d) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings

of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board and thereupon the aggrieved party shall file in the court the record in the proceeding certified by the Board as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preilminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an oppor-

tunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organizations a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D).

(m) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (1).

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpena requiring the attendance and testimony of witnesses or the productions of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is called on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter

under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3)[1]

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board,

[1] Section 11(3) is repealed by Sec. 234, Public Law 91-452, 91st Congress, S. 30, 84 Stat. 926, October 15, 1970. See Title 18, U.S.C. Sec. 6001, et seq.

the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

SEC. 15. Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U.S.C., title 11, sec. 672), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 16. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 17. This Act may be cited as the "National Labor Relations Act."

SEC. 18. No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 9 of the National Labor Relations Act, as amended, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 9(f), (g), or (h) of the aforesaid Act prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 9(f), (g), or (h) of the aforesaid Act prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this Act upon any person for failure to honor any election or certificate referred to above, prior to the effective date of this amendment: *Provided, however*, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under section 10(e) or (f) and which have become final.

INDIVIDUALS WITH RELIGIOUS CONVICTIONS

SEC. 19. Any employee of a health care institution who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required, in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious charitable fund exempt from taxation under section 501(c)(3) of the Internal

Revenue Code, chosen by such employee from a list of at least three such funds, designated in a contract between such institution and a labor organization, or if the contract fails to designate such funds, then to any such fund chosen by the employee.

EFFECTIVE DATE OF CERTAIN CHANGES [1]

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not consitute an unfair labor practice prior thereto, and the provisions of section 8(a)(3) and section 8(b)(2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8(3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage em-

[1] The effective date referred to in Sections 102, 103, and 104 is August 22, 1947. For effective dates of 1959 amendments, see footnote on first page of this text.

ployers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their empooyees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service," except that for sixty days after the date of enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of $12,000 [1] per annum. The Director shall not engage in any other business vocation or employment.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

[1] Pursuant to Public Law 90-206, 90th Congress, 81 Stat. 644, approved December 16, 1967, and in accordance with Sec. 225(f)(ii) thereof, effective in 1969, the salary of the Director shall be $40,000 per year.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor," approved March 4, 1913 (U.S.C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

FUNCTIONS OF THE SERVICE

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Sec. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions,

including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

SEC. 205. (a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

NATIONAL EMERGENCIES

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperial the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within wuch time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce: and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 339 and 240 of the Judicial Code, as amended (U.S.C., title 29, secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperial or threaten to imperial the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which has been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney

General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE-BARGAINING AGREEMENTS, ETC.

SEC. 211. (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective-bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

SEC. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

CONCILIATION OF LABOR DISPUTES IN THE HEALTH CARE INDUSTRY

SEC. 213. (a) If, in the opinion of the Director of the Federal Mediation and Conciliation Service a threatened or actual strike or lockout affecting a health care institution will, if permitted to occur or to continue, substantially interrupt the delivery of health care in the locality concerned, the Director may further assist in the resolution of the impasse by establishing within 30 days after the notice to the Federal Mediation and Conciliation Service under clause (A) of the last sentence of section 8(d) (which is required by clause (3) of such section 8(d)), or within 10 days after the notice under clause (B), an impartial Board of Inquiry to investigate the issues involved in the dispute and to make a written report thereon to the parties within fifteen (15) days after the establishment of such a Board. The written report shall contain the findings of fact together with the Board's recommendations for settling the dispute, with the objective of achieving a prompt, peaceful and just settlement of the dispute. Each such Board shall be composed of such number of individuals as the Director may deem desirable. No member appointed under this section shall have any interest or involvement in the health care institutions or the employee organizations involved in the dispute.

(b)(1) Members of any board established under this section who are otherwise employed by the Federal Government shall serve without compensation but shall be reimbursed for travel, subsistence, and

other necessary expenses incurred by them in carrying out its duties under this section.

(2) Members of any board established under this section who are not subject to paragraph (1) shall receive compensation at a rate prescribed by the Director but not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of title 5, United States Code, including travel for each day they are engaged in the performance of their duties under this section and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(c) After the establishment of a board under subsection (a) of this section and for 15 days after any such board has issued its report, no change in the status quo in effect prior to the expiration of the contract in the case of negotiations for a contract renewal, or in effect prior to the time of the impasse in the case of an initial bargaining negotiation, except by agreement, shall be made by the parties to the controversy.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE III

SUITS BY AND AGAINST LABOR ORGANIZATIONS

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

SEC. 302. (a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or the connection with the unloading, of the cargo of such vehicle: *Provided*, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of

fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income of both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training program: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other things of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: *Provided*, That no labor organization or employer shall be required to bargain on the establishment of any such

trust fund, and refusal to do so shall not constitute an unfair labor practice: *Provided further*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds;[1] or (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: *Provided further*, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

(d) An person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U.S.C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U.S.C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., title 29, secs. 101–115).

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c)(5)(B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor

[1] Section 302(c)(7) has been added by Public Law 91-86, 91st Congress, S. 2068, 83 Stat. 133, approved October 14, 1969.

organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act, as amended.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

RESTRICTION ON POLITICAL CONTRIBUTIONS

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U.S.C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution probibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

TITLE IV

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

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TITLE V

DEFINITIONS

SEC. 501. When used in this Act—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute

would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

(3) The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

SAVING PROVISION

SEC. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

SEPARABILITY

SEC. 503. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SUPPLEMENTAL VIEWS OF SENATOR TAFT

This Situs Picketing legislation will grant additional picketing rights to the Building Trades unions, which, I for one, believe by and large will not be disruptive and are justified to put construction workers on a par with other workers in the exercise of their rights. However, given the complexities of construction sites, the additional rights granted to Building Trades unions, should be addressed to extraordinary problems which the picketing construction union has, and not used in an arbitrary, capricious or unreasonable manner.

With these views, I offered two substantial amendments which were adopted by unanimous consent during the full Committee mark-up session.

The first amendment provides that for the purposes of section 8(b)(4)(B) (the secondary boycott provisions of the National Labor Relations Act, as amended), where State law requires separate bids and direct awards to employers on public project construction sites, such employers are not to be considered as joint venturers or in the relationship of contractors and subcontractors with each other or with the public authority awarding the contracts.

In some eight states, when a public agency decides that a public facility should be constructed, that agency must conform to State law provisions that require the agency to advertise for separate bids from competing contractors for certain types of work that go into the completion of that facility. These laws leave the agency no real choice in selecting the subcontractor who will perform the specific piece of work and no control over the labor relations policies of the successful bidders.

Accordingly, my amendment exempts contractors awarded separate contracts under State law from the application of common situs picketing because they are not "joint venturers or in the relationship of contractor and subcontractors" within the meaning and intent of this bill.

The second amendment accepted by the Committee, pertains to the authority of an employer to seek an injunction for breach of a no-strike clause which is contained in its collective bargaining agreement. It is, in essence a legislation codification of the holding in *The Boys Market, Inc.* v. *Retail Clerks Union*, 398 U.S. 235 (1970) but somewhat broader to encompass, within its scope, certain contractual "final adjustment" provisions which exist in the construction industry and which fall short of agreements empowering a neutral arbitrator to render a final and binding decision.

It is my view that the no-strike violation injunction is an important alternative in encouraging industrial peace. No-strike clauses provide alternatives to the acrimony and destruction involved in strikes, lockouts, and other self-help measures. Accordingly, it is appropriate that

this provision be embodied in the National Labor Relations Act and thereby receive the express sanction of Congress.

My amendment goes beyond the perimeters of *Boys Markets* in that it provides for injunctive relief if the construction agreement contained a "method of final settlements of disputes" which is not arbitration. This kind of provision is particularly prevalent in certain localities where the construction industry parties, by collective bargaining agreement, establish a Joint Labor-Management board consisting of management representatives and labor representatives which is authorized by the parties to adjust contractual grievances and render final and binding decisions on contract disputes.

Yet, because there is a mechanism in the contract for resolving this dispute, it is within the spirit of the *Boys Markets* rationale to require the parties to resort to their contractual problem-solving methods in order to settle a particular dispute before self-help procedures are envoked. My amendment is designed to accomplish this objective.

While I voted to report this bill favorably to the full Senate, I believe that two amendments offered by me and Senator Beall, but not adopted during the Committee's consideration of the bill, could add measurably to this proposal and help to make it a more sound and workable legislative solution to a most complex problem. Accordingly, I take this opportunity to reassert my support for these amendments and to explain the application of each.

I offered a two-part amendment which would have protected a worker already on a common situs job site from being excluded or removed from that job because of his membership or non-membership in a labor organization which is not affiliated with any national or international labor organization (independent unions). The second portion of the amendment would have also prevented the use of common situs picketing for the purpose of excluding for any reason a lawfully recognized independent labor organization already working on a common site and representing employees thereat which is not affiliated with any national or international labor organization.

Senator Javits offered a substitute amendment which was adopted by the Committee. While the substitute preserves the first part of my amendment dealing with the protection of the individual employee on the job site, it only prohibits the exclusion of a lawfully recognized labor organization on the narrow ground that it is not affiliated with any national or international labor organization.

I am not in complete agreement with the substitute amendment. I believe that this bill's protection afforded independent labor organizations *may* be further strengthened. In reaching this conclusion, I am mindful that the bill provides some protections such as prohibiting union common situs picketing which has recognitional or organizational objectives. However, sufficient protections are not afforded in situations where a competing union does not have these objectives, but seeks to picket an independent union protesting what it feels are substandard pay or conditions on the job or for other reasons not necessary to be specified.

It is clear that area standard picketing is permitted under S. 1479. Most of the witnesses who testified before the Committee on this subject

stated that picketing could be used for this purpose. For example, Mr. Gold, special counsel to the AFL–CIO, stated:

> I do not see any reason why any employer who has a convenient union at hand which agrees to a wage rate, a half or two-thirds of union rates, should be a different situation than a non-union employer who is paying the same rates.

The Common Situs Bill states as its purpose the protection of the economic rights of labor in the building and construction industry by providing equal treatment of craft and industrial workers. As I understand it, one of the primary reasons organized labor wants this bill is to insure that its members will not be required to work on the same job site with unorganized workers. This is true of an industrial site today as to non-construction workers.

In my experience, many independent unions may be as much devoted to the precepts of organization as are affiliated unions. They often have the same hopes, aspirations, goals, and obligations with respect to representing employees. I do not believe that it is the function of Congress to judge which unions are best—those that will work for the highest wages and optimum working conditions and those which will settle for something less. I believe that a healthy spirit of competition between labor organizations is in the best interests of what is unquestionably one of the hardest hit industries in our current economic slump.

Accordingly, it is my view that the interests of collective bargaining in this troubled industry and the promotion of stable labor relations mandates that genuine independent unions be permitted to remain on a job site without any unwarranted interference by any other labor organization seeking to exclude it from the site.

Senator Beall offered an amendment which would have exempted residential structures of three stories or less without an elevator from the coverage of this Act because the state of the home building industry is precarious. While the sharp declines in residential construction activity seems to have leveled off, or perhaps even turned slightly upward, it would not take much to unbalance the situation and restart the decline with all its serious consequences to the industry and its employees. Unfortunately, it is my belief that S. 1479 might have this effect in some areas.

Most housing built in this country could be typified as light residential construction. It predominantly consists of single family homes either attached or detached, or low-rise garden apartments not exceeding three stories in height. Most of this housing is built by small businessmen-developers who build on an average of 25 units per year, or less. The majority of the construction workers who build this housing today are not unionized. Since most of the non-unionized construction workers are involved in light residential construction, it is expected that the great bulk of the activity authorized by S. 1479 would be aimed at residential construction sites.

It seems that one of the principal reasons that building trades unions are seeking enactment of S. 1479 is to give them greater leverage to encourage unionization of those construction workers who do not now belong to their unions. However, the housing needs of the

nation are too important to be so threatened at this time. If we are to have any significant economy recovery in the near future, housing must recover first. It will not be able to recover if to all its other problems are added massive strikes around the country aimed at unionizing its work force.

The affiliated unions should also consider that in many areas a possible effect of this bill without this amendment might be to eliminate from certain residential construction some affiliated union members now working on such construction to avoid the common situs picketing threat.

Adoption of the amendments outlined above, would help make the bill a balanced and sound piece of legislation that will have long-term beneficial effects on construction, in the public interest. This is not to say, however, that these are the only amendments which I may offer or support to strengthen this bill if in my view additional amendments are warranted.

ROBERT TAFT, JR.

MINORITY VIEWS OF SENATOR PAUL LAXALT

I am strongly opposed to S. 1479 as reported because in my view, it unnecessarily increases the power of the building trades unions, who already enjoy economic advantages in excess of those possessed by non-construction workers. It makes an already depressed construction industry even worse off, while hindering general economic recovery. It is at direct variance with the primary purpose of the National Labor Relations Act, which seeks to promote "orderly and peaceful procedures" for resolving labor disputes. It unfairly involves neutral employers and employees in disputes not of their own making and beyond their power to rectify. And to my great personal dismay, S. 1479 gives construction unions a powerful mechanism for undermining state right-to-work laws.

An unnecessary increase in power

A basic premise of the legislative process is that the burden of proof is on whomever proposes to change existing laws. This is not to say that our laws should not be changed, only that they should not be altered without good and compelling reasons, which the proponents of S. 1479 have failed to provide.

S. 1479 is supposedly necessary to give construction workers equality with manufacturing workers. Yet, one measure of the existing bargaining rights of the building trades unions must be the degree of their success in extracting concessions from management and the facts show that construction workers enjoy many benefits denied to other workers.

In strict monetary terms, the construction worker makes far more than other workers. What is more, Department of Labor figures for the last seven years indicate that the gap is widening. Hourly construction wages increased from $3.70 an hour in 1965 to $7.17 an hour in 1975 while the increase for manufacturing wages was only from $2.61 in 1965 to $4.76 in 1975. In addition, other industries are equally behind construction workers in monetary terms. The 1975 average hourly wage in mining was $5.20; in transportation, $5.40; in finance, $3.81; in services, $3.74; and in wholesale and retail trade, $3.47.

HOURLY WAGE RATES MANUFACTURING VERSUS CONTRACT CONSTRUCTION

Year	Manufacturing	Contract construction
1965	2.61	3.70
1966	2.72	3.89
1967	2.83	4.11
1968	3.01	4.41
1969	3.19	4.79
1970	3.36	5.24
1971	3.57	5.69
1972	3.81	6.03
1973	4.07	6.38
1974	4.40	6.76
1975	4.76	7.17

Source: "Monthly Labor Review," Bureau of Labor Statistics August 1975.

In addition, the building trades unions have many non-monetary privileges not enjoyed by other unions. Among these are the right to pre-hire agreements, exclusive hiring hall agreements and exemption from the ban on "hot cargo" agreements. While it is true that the seasonal nature of construction work in some parts of the country can narrow the monetary gap, recent technological innovations such as polyethylene enclosures and membrance structures have rendered construction an increasingly annual activity nationwide. Accordingly, it is clear that the construction unions are not the second class citizens of the labor movement portrayed by those who propose to alter existing secondary boycott laws in their favor.

Unfair involvement of neutrals

In order to bolster their case for permitting secondary boycotts in the construction industry, proponents of S. 1479 have been compelled to argue that relationship among employers at a construction site is virtually identical with that at a manufacturing site. This has proven necessary because the legislative history surrounding the passage of the Taft-Hartley Amendments in 1947 as well as previous Supreme Court and National Labor Relations Board decisions have all dictated that employers and employees ought not to be harmed by labor disputes not of their own making and beyond their power to rectify.

To be sure, there is a delicate balance here. Workers certainly have the right to strike and to publicize their grievances with their employers. However, neutral employers and employees have an equally valid right to avoid being harmed by such disputes.

Yet, proponents of S. 1479 by emphasizing only one side of this balance threaten the valid rights of innocent neutrals. For example, by begging the question and asserting that primary activity is protected irrespective of serious harm to neurtal third patries, the majority bids fair to restore the very abuses of the secondary boycott power and the disastrous effects on neutrals which figured prominently in the passage of the Taft-Hartley Amendments in 1947.

But their principal tactic to avoid the dilemma of harming or even involving innocent neutrals is to contend that there are no such persons at a construction site. They argue that where two or more employers are engaged in operations at a construction site, the employers are engaged in a "joint venture," similar if not identical to the manufacturing employer and, therefore, are neither innocent nor neutral. While this argument may have some superficial appeal, it is fundamentally bankrupt in logic and fact.

In deciding whether or not contractors and subcontractors are true joint ventures, the determining factor must be the nature of the contractual relationship, more specifically, the degree of control one can exercise over the labor relations of any of the others. Contractors and subcontractors negotiate and maintain independent labor policies, therefore, no one can be expected to exert any measure of control over the labor relations of the employees of the others. This clearly indicates that one cannot be held responsible for the shortcomings or misfortunes of the others. That a contractor or subcontractor may be aware of the labor policies of the others in no way detracts from the overriding significance of the above condition.

Accordingly, while it is true that various types of construction employees of different subcontractors share the same site, the similarity to an industrial manufacturer ends there. In this situation, for one subcontractor and his employees to be subject to the costs and delays accompanying that dispute is totally unreasonable.

The general contractor, who is usually incapable of performing all of the various subcontractors' tasks, must employ their services and in that sense coordinates their activities from above. However, the distinction in this case is that the contractor has no direct contractual relationship with the employees of the subcontractors, and therefore, cannot be held accountable for their labor relations. In light of their independent activities, most especially in arriving at separate labor agreements, the decision in *Denver Building Trades* (*NLRB* v. *Denver Building and Construction Trades Council* § 41 U.S. 675) was fair and correct.

> The fact that the contractor and the subcontractor were engaged on the same construction project, and the contractor has some supervision over the subcontractor's work, did not eliminate the status of each as an independent contractor or make the employees of one of the employees of another.

If enacted, S. 1479 would enable one union, however small its numbers and involvement in the construction job, which engaged in a labor dispute with its employer to deny the right to work to all other unions and their members. Because of their non-involvement in the labor policies of the struck employer, the neutral employers and their employees would have but two choices. They might either sit idly at the sidelines and suffer the incumbent monetary and non-monetary losses. Or, in order to minimize their losses, they could attempt to pressure the struck employer to cede to the demands, whatever their justification, of the striking employees. The distorted reasoning of the proponents of S. 1479 would tend to eliminate the status of each employer as an independent contractor, and thus make the employees of one contractor the employees of all the contractors.

At this point, proponents of S. 1479 tend to retreat to the argument that even if the configuration of labor and management relationships at a construction site are not completely identical to those of a manufacturer, then surely the various crafts perform related work and ought to come under the relatedness concept as ennunciated in the *General Electric* case (*Electrical Workers Local 761* v. *NLRB*, 366 U.S. 667). In that case, the Supreme Court held that if a manufacturer has established a separate gate for other workers operating on its premises, a union representing that manufacturer's employees may picket that gate if the work done by the men using the gate is related to the normal operations of the employer.

Yet, in common situs or typical construction cases, the courts and the National Labor Relations Board have consistently refused to apply GE-type relatedness tests. Instead, they have accepted the unrelatedness of employers on a construction site and have found no need to inquire further into the nature of the work performed by the construction industry. Although the proponents of S. 1479 seek to overturn these rulings, in hearings and floor debate extending over some

25 years, there has been a conspicuous failure to demonstrate why this should be done.

Worsening labor relations

In my opinion, S. 1479 will seriously exacerbate labor relations in the construction industry. An increase both in the total number of strikes and in the extent of damage caused by each strike is to be fully anticipated as a result of this bill's conferral of secondary boycott power on the unions.

If AFL–CIO testimony in the House is to be taken seriously, which I am sure it is, then the secondary boycott power is being sought primarily to organize the construction industry. As a spokesman for George Meany put it in the House hearings, the purpose of common situs is "to see every job in America a union job". Such an extensive organizing campaign is not illegal, but is also not likely to be accomplished in an industry 40 percent open shop by gross volume, without a substantial escalation of strike activity.

Against this avowed declaration from the highest level of the labor movement to make maximum use of situs picketing as an organizational tool, the majority's assertion that the bill's ten-day notice requirements are designed to increase the chances of settling disputes without work stoppages pales in comparison.

Needless to say, now is not the time to worsen labor relations in the construction industry. Always characterized by boom or bust situations, construction has been hit especially hard by the current recession. According to the Department of Labor, employment in all contract construction has dropped from 4,058,000 in May, 1974, to 3,465,000 in May, 1975. Unemployment in the construction industry was 21.8 percent in June, 1975, as opposed to 10.4 percent in June, 1974. And, the value of all construction put in place on a seasonally adjusted annual rate was $121.2 billion in June, 1975, as compared to $134.8 billion in 1974.

Of course, the industry has long been chracterized by a number of uncontrollable external variables which can throw even the best planned and executed job into considerable disarray. But the adoption of S. 1479 would unnecessarily add serious new labor problems to this already risk-ladden enterprise. Unions, armed with new power to close down entire projects, could cause substantial cost increases and delays in competition. Contractors, subcontractors and union members who have good labor relations could be harmed in a common situs strike even if they were not involved in the immediate dispute.

As bad as S. 1479 will be in increasing the number of construction strikes, it is perhaps worse that it will also increase the cost of each individual strike. Entire projects whether factories, mines, or energy facilities which previously could have continued to operate during strikes which involved fewer than a half dozen workers, could now be shut down by the exercise of the secondary boycott power. Testimony taken by the House Education and Labor Committee revealed three examples of kinds of strikes, now matters between a single contractor or subcontractor and his employees, which if S. 1479 is approved, could shut down entire sites: These were strikes:

1. To force a non-building trades union employer off the job.

2. To prohibit the use of prefabricated or other materials on the job sit.

3. To force an employer to accept a union's interpretation of the contract where the contract does not have a no-strike clause.

Construction is clearly the largest industry in the nation. At $135 billion-a-year total output, it accounts for about 10 percent of the GNP, according to the Department of Commerce, and employs about one out of seven employed Americans. Accordingly, in the aftermath of our worst recession since World War II, when the country needs immediate and massive new infusions of construction activity to lift us out of the recession, S. 1479 is particularly untimely because it would have the opposite effect of spawning costly disputes and lengthy delays in the nation's largest industry and thus delay general economic recovery.

The important role of the construction industry in promoting overall economic recovery has been recognized by the 94th Congress in several important pieces of legislation. The housing tax credit in the Tax Reduction Act of 1975, the Emergency Housing Act of 1975 and other measures have been aimed directly at promoting economic recovery by stimulating the construction industry. While I have had problems with some of these measures for other reasons, surely with the economy just beginning to show hopeful signs of recovery, now is not the time to stalemate that recovery by voting to worsen labor relations in our nation's largest industry.

Right to work

Another major shortcoming of S. 1479 is that it would permit picketing and other activities by construction unions which would tend to undermine state right-to-work laws, enacted pursuant to Section 14(b) of the National Labor Relations Act. Nineteen states have enacted such laws in order to preserve a worker's freedom of choice with respect to joining a union. But in my opinion, S. 1479 would encourage unionized employees, who have long objected to the presence of non-union workers on construction sites, to strike and to ask other union workers to strike to protest the presence of non-union workers.

It may be true, as the majority argues, that nothing in the bill would directly allow a union to common situs picket for purposes of obtaining a union security clause in a right to work state or to picket for the discharge of an employee pursuant to such an unlawful clause. But as a practical matter, S. 1479 nonetheless undermines the spirit if not necessarily the letter of our right to work laws, because it would encourage all-union shops, notwithstanding state right to work laws to the contrary. As the *Washington Star* noted in a recent editorial:

> If this bill becomes law it will coerce general contractors into using only union subcontractors. It will mean less competition, higher construction costs and yet another restriction on freedom of choice for employers and workers.

The proponents of S. 1479 openly admit the likelihood of unionized construction workers picketing job sites to exclude non-union workers. The majority views in the committee report on H.R. 5900, the House of Representatives counterpart to S. 1479, state:

> Enactment of H.R. 5900 might generate a transitional wave of picket lines designed to achieve collective bargaining agreements that all the work on the construction site be performed under union contracts. If such is the consequence, it would be consistent with the national commitment to encourage the practices and procedures of collective bargaining.

I submit that there is no such wide-sweeping national commitment that all workers on construction sites be forced to join unions or seek work elsewhere. A fundamental premise of our labor laws has long been to protect the rights of workers to join unions or to refrain from doing so—not to guarantee the power of unions to coerce union membership. Section 14(b) of the National Labor Relations Act and statutory provisions of 19 states were enacted with this in mind.

My State has been a leader in providing work opportunities for its people, largely as a result of its "right-to-work" laws. If Federal bills negating these principles are passed, such opportunities will be grievously impaired. Also, because such a large percentage of the gross volume of construction work done nationwide is accomplished through "merit" shop or "open shop" contractors, their elimination as envisioned by the proponents of S. 1479 would result in a serious reduction in competition for labor and, subsequently, productivity—to the serious detriment of the Nation.

Summary

Congress has had ample opportunity to consider common situs over the last twenty-five years and has refused each time to confer secondary boycott power on the building trades unions. Over this long period, the only change made in the pertinent section of the National Labor Relations Act (§ 8(b)(4)(B) was in 1959; it removed several loopholes which had rendered this section less effective.

The political composition of both Houses has varied tremendously over this period. But whether liberal or conservative, the Congress has until now refused to tolerate a pointless increase in the bargaining power of the already strong building trades unions. I see no reason to change this long standing policy especially since the result will be to make an already depressed construction industry even worse off; to victimize neutral employers and employees in disputes not of their own making and beyond their ability to rectify; and to undermine state right-to-work laws. In short, I see no reason at present to support passage of S. 1479.

PAUL LAXALT.

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94TH CONGRESS, 1st Session | SENATE | REPORT No. 94-439

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT

OCTOBER 29, 1975.—Ordered to be printed

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 2305]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 2305) to establish a national framework for collective bargaining in the construction industry, and for other related purposes having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CHRONOLOGY OF S. 2305

In testimony presented on July 10, 1975, before the Subcommittee on Labor on S. 1479, a separate bill concerning labor relations in the construction industry, Secretary of Labor John T. Dunlop offered the observation that the legal framework of collective bargaining in the construction industry was in need of serious review. In the words of Secretary Dunlop:

> A vastly enhanced role for national unions and national contractor associations, working as a group, is essential in my view if the whipsawing and distortions of the past are to be avoided and if the problems of collective bargaining structure, productivity and manpower development are to be constructively approached by the industry itself, and in cooperation with governmental agencies.

On September 5, 1975, the Secretary of Labor transmitted the proposed "Construction Industry Collective Bargaining Act of 1975"

to the Congress. The legislation (S. 2305) was introduced on September 9, 1975, and is cosponsored by the Chairman, Senator Williams, and Senators Javits, Taft, Ribicoff, Burdick, Hartke, Gravel, Beall, Tunney, Stafford, Kennedy, Randolph and Hart (Michigan).

Hearings were held on September 16th and 17th, 1975, by the Labor Subcommittee in Washington, D.C.

Secretary Dunlop testified in support of S. 2305, and supplied the Subcommittee with information on the history, nature and structure of bargaining in the construction industry, emphasizing the need for governmental assistance in bringing about voluntary improvements in the process and structure of collective bargaining for this sector of the economy.

The other witness testifying on the legislation were:

Robert Georgine, President of the Building and Construction Trades Department of the AFL–CIO, who supported S. 2305 on behalf of his Department.

Harry P. Taylor, President of the Council of Construction Employers Inc., who supported it on behalf of employers in the construction industry who engage in collective bargaining.

The Council represents the Associated General Contractors of America, Inc.; Ceilings and Interior Systems Contractors Association; Gypsum Drywall Contractors International; Mason Contractors Association of America; Mechanical Contractors Association of America, Inc.; National Association of Home Builders; National Association of Plumbing-Heating-Cooling Contractors; National Electrical Contractors Association; National Roofing Contractors of America; Painting and Decorating Contractors of America; and Sheet Metal and Air Conditioning Contractors National Association, Inc. The Associated General Contractors of America, Inc. presented its own separate position on S. 2305, and the Sheet Metal and Air Conditioning Contractors National Association, Inc., is opposed to it.

Laurence F. Rooney of the Associated General Contractors of America, Inc., who stated that the AGC could not support the bill in its present form.

Robert T. Thompson, Chairman of the Labor Relation Committee of the Chamber of Commerce United States, who opposed the bill.

Philip Abrams, President of Associated Builders and Contractors, Inc. (an association comprised primarily of contractors who do not engage in collective bargaining), who opposed the legislation.

William E. Besl, of the Crane and Rigging Association of the Heavy Specialized Carriers Conference, who characterized S. 2305 as "a step in the right direction" and suggested certain amendments.

On October 7, 1975, the Committee on Labor and Public Welfare, having amended the bill to incorporate certain technical changes, including recommendations of the Department of Labor, and ten other amendments, ordered the bill reported favorably by a unanimous voice vote.

ACTION IN THE COMMITTEE

S. 2305 was ordered reported favorably by the Labor Subcommittee to the full Committee on October 1, 1975. The full Committee on Labor and Public Welfare met in executive session on October 7, 1975, to consider S. 2305, and ordered the bill, as amended, reported favorably to the Senate by a unanimous voice vote.

Pursuant to its consideration of the bill, the Committee adopted the following amendments to S. 2305:

1. An Amendment Clarifying the Participants in the Committee's Actions.—Senator Javits offered an amendment to add an additional clause to section 3(c) of the bill which will allow the Construction Industry Collective Bargaining Committee (CICBC), pursuant to its rulemaking procedures, to designate the appropriate national construction labor organizations and the national construction contractor associations qualified to participate in the procedures established under the bill. The amendment is intended to establish the scope of its activities more clearly and to avoid any possible future confusion over which employer and employee groups would come within its jurisdiction. This amendment was adopted by a unanimous voice vote.

2. An Amendment Clarifying the Time Period of the Committee's Jurisdiction.—Senator Javits offered an amendment to modify the language of section 5(a) relating to the 90-day period during which the CICBC is authorized to assume jurisdiction over a labor matter covered by the bill. The amendment conforms the time requirements for giving notice in this bill with those of section 8(d) of the Taft-Hartley Act. The amendment also clarifies the intention to limit the period in which the CICBC may take jurisdiction over a labor matter to a specific 90 consecutive days in each case. This amendment eliminates the possibility that the 90-day period might be interpreted as open-ended. This amendment was adopted by a unanimous voice vote.

3. An Amendment Allowing the Committee to Continue its Efforts to Achieve Resolution of any Labor Matter after the 90-Day Jurisdictional Period has Expired.—Senator Javits offered an amendment adding a clause to section 5(b) making it clear that the CICBC can continue to assist the parties in a labor matter over which it originally assumes jurisdiction after it refers a labor matter to the national organizations and after its 90-day jurisdictional period expires. The amendment was agreed to by a unanimous voice vote.

4. An Amendment Authorizing the Committee to Suspend or Terminate the Contract Approval Power of a National Labor Organization.—Senator Javits offered an amendment adding a clause to section 5(e) allowing the CICBC, in its discretion, to suspend or terminate the approval power over a collective bargaining agreement which it may grant a national labor organization under the terms of this section. This amendment was considered necessary to allow the CICBC an opportunity to examine the way in which this power to approve a particular pending agreement is being used so that, in those circumstances where the purposes of this Act are not being furthered by its retention, it can revoke the requirement for approval by the national labor organization. This amendment was adopted by a unanimous voice vote.

5. An Amendment Clarifying the Scope of Judicial Review Under this Act.—An amendment was offered by Senator Javits to clarify the review powers of the Federal courts in matters arising under this Act.

The amendment modified existing sections 8(c) and 8(d), and added a new section 8(e) which specifies the degree of judicial review available to any actions or decisions by the CICBC pursuant to the provisions of this Act. As provided by section 8(e), the courts shall have jurisdiction to review the actions of the CICBC only in those cases where they are found to be either arbitrary and capricious, in excess of its delegated powers, or contrary to a specific prohibition of this Act. This amendment was adopted by a unanimous voice vote.

6. An Amendment Clarifying the Application of Certain Administrative Procedures to the Committee's Functions.—An Amendment was offered by Senator Javits adding a new section 8(i) to the Act defining the procedures applicable to any hearings which may be undertaken by the CICBC. This amendment provides that the CICBC need not hold hearings in carrying out its duties, and that, if hearings are held, they need not be governed by the hearing requirements as set forth in the Administrative Procedures Act. The effect of this amendment would be to recognize that the functions of the CICBC, as provided by this Act, are non-adjudicatory, and that its operations require expeditious action and therefore need not maintain the same degree of formality applicable to adjudicatory agencies. This amendment was adopted by a unanimous voice vote.

7. An Amendment Clarifying the Provisions with Respect to the Liability of National Labor Organizations and National Contractor Organizations Participating under the Provisions of this Act.—An amendment was offered by Senator Javits modifying section 5(f) of the Act to clarify the limitation on civil and criminal liability of natonal constructon labor organzatons and natonal constructon contractor associations which might be imputed to them for actions taken under the Act pursuant to a request of the CICBC. The amendment was adopted by unanimous voice vote.

8. An Amendment Clarifying the Effect of S. 2305 on Other Laws.—An amendment was offered by Senator Javits adding a new section 8(j) to the Act to make it clear that, except as provided in the Act, nothing in the proposed legislation will be deemed to modify or supersede existing law regarding the conduct of collective bargaining in the construction industry. The amendment was adopted by unanimous voice vote.

9. An Amendment Defining the Responsibilities for Legal Assistance to the Committee.—An amendment was offered by Senators Williams and Javits adding a new section 8(k) to the Act to specify that the day-to-day legal duties of the CICBC will be performed by lawyers from the Department of Labor, including appropriate appearances in any court of law. All such actions will be coordinated with the Department of Justice. Any action requiring an appearance in the Supreme Court of the United States will, however, be performed by the Solicitor General of the United States. This provision incorporates an assignment of legal responsibilities between the Departments of Labor and Justice which is similar to that included in the Employee Retirement Income Security Act of 1974, and which has been set forth in a memorandum of understanding between the Departments dated February 11, 1975. This amendment was adopted by unanimous voice vote.

10. An Amendment Allowing the Parties to a Dispute to Request that the Committee Assume Jurisdiction.—An amendment was offered by Senator Taft adding a clause to section 5(a) providing that the parties to a labor matter coming within the jurisdictional area of the CICBC, or any other interested party, can request the CICBC to assume jurisdiction over the matter. The Committee considered that this amendment would further the purpose of peaceful resolution of labor matters as contemplated by this Act. The amendment was adopted unanimously by voice vote.

BACKGROUND

The "Construction Industry Collective Bargaining Act" creates a national framework for stabilizing and improving the fragmented and often chaotic conditions of collective bargaining in the construction industry. The causes of these conditions are rooted in the organization and economic circumstances of the industry itself.

The construction industry is a major contributor to the nation's economy. In 1974, it provided more than 3.5 million jobs for construction workers while contributing an estimated $140 billion, approximately 10 percent, to the nation's gross national product. Together with other primary industries which contribute goods and services to the building of highways, buildings, water ways, residential homes, and other construction projects, the construction industry constitutes a major factor in the nation's economic well being. Consequently, a prolonged decline in construction activity results in serious economic dislocation throughout the economy.

The fragmented nature of contract construction distinguishes the industry from most other major business sectors. It consists of a widespread group of enterprises made up of many local isolated firms. Nearly 800,000 were identified during the 1967 census of construction, less than two percent of which earned more than $1 million each. Only one quarter of one percent of all firms reported receipts in excess of $5 million in 1969. The industry's largest construction firm accounted only for 2.3 percent of the industry's annual receipts. The large number of firms is, in part, a reflection of the fact that low capital requirements and overhead facilitate easy entry into the field by small operators who often lack adequate working capital. This in turn affects the ability of these operators to continue in business under adverse conditions and results in a large number of firms constantly entering and leaving the field.

The construction industry is particularly susceptible to inflationary forces. The demand for private nonresidential, and public construction (which accounted for 57 percent of all new construction in 1973), is relatively inelastic and unresponsive to fluctuation in building costs when the economy is expanding. During such periods, cost increases frequently have not immediately affected the level of construction activity. In a period of high construction investment, firms often show little concern for long-run inflationary effects. For example, when faced with costly wage settlements it has been possible for builders to shift the increased costs to the investor or speculator who may be more interested in future returns than upon present costs, particularly when faced with the possibility of a prolonged work stoppage. Moreover,

since each commercial or industrial site has its own unique design, the building process does not lend itself to standardization or mass production techniques comparable to those prevailing in manufacturing. One consequence of this is that a large number of skilled craft workers are required in this industry (nearly two-thirds of total construction employment), making the unionized sector of the industry particularly vulnerable to work stoppages. Crafts not involved in a dispute usually honor a picket line and supervisory personnel cannot continue building activity in the absence of the craft labor force.

Since construction work does not require a fixed work force for an extended period, and since much construction work is affected by weather conditions, total employment in construction can fluctuate as much as 30 percent between the winter low and the summer high. Thus, the average worker obtains less than a full year's work from construction, and in the course of the year is employed in many different locations and by many different employers. The unemployment rate of workers in contract construction is typically double that of the total civilian work force. A study conducted by the Bureau of Labor Statistics of the U.S. Department of Labor for the period of 1966–67 indicates that the average annual hours worked in construction are only three fourths of the standard 2,080 hours of a full work year. For this reason, it is inappropriate to compare the hourly earning of construction workers to the hourly wage rate of a full work year.

The union structure within the construction industry is also highly fragmented. Approximately 2.5 million construction workers are affiliated with national unions organized into more than 10,000 local unions. Seventeen international unions are affiliated with the Building and Construction Trades department of the AFL–CIO. Local unions are also generally affiliated with subordinate bodies such as local and state building trades councils.

Most of the construction unions are confined to an individual craft or group of related crafts, and are confined almost exclusively to the construction industry. Some construction unions, however, such as the Electrical Workers (IBEW) and the Carpenters, have large groups of members outside construction in related manufacturing plants or utility firms. In addition, the International Brotherhood of Teamsters has extensive representation throughout the industry and has been closely involved in collective bargaining with the building trades unions. There is also a very small number of employees affiliated with independent unions in a few localities.

Although in some branches of the industry, such as pipeline and elevator construction, regional or even national bargaining takes place between a particular union or group of unions with leading national contractors, collective bargaining is generally conducted separately in a locality or area by each trade with one or more associations of contractors employing that trade. Bargaining is rarely coordinated among trades, local unions of a single trade, or employer associations, except in some localities where the basic trades and general contractors tend to negotiate together. For the most part, collective bargaining in the industry is carried on only by the local unions themselves. The national unions and their national officers are generally involved only to a limited extent. In a few cases, the constitution of the national union

requires its approval of the local union's collective bargaining agreements.

One result of this localized bargaining has been that labor relations in construction has too often been characterized by numerous work stoppages and rapidly escalating wage rates. The fragmented collective bargaining structure typically leads to comparison of wage and fringe packages among trades in one area and among the same trades in adjacent areas. Attempts to bring about stability in wage levels or uniformity in wage increases have been frustrated as local union groups compete to gain settlements higher than other crafts in the area or higher than other locals of their union in nearby communities.

During the 1950's and early 1960's, wage relationships among various crafts and local areas were comparatively stable. As the prosperous economic period of the late 1960's drew to a close, however, a number of construction industry indicators were recording the disturbing consequences of the economy rapidly approaching its full capacity and full employment ceiling. The costs of financing, machinery, land and building materials were increasing steadily. These trends, combined with the rapidly rising level of consumer prices, placed a severe strain on the collective bargaining process in the building industry as union negotiators sought to maintain and, where possible, increase the buying power of their member's wages.

In these market conditions, the practice of comparing wage and fringe packages, together with the different expiration dates for collective bargaining agreements, resulted in "leapfrogging" settlements. Each trade sought to negotiate a better settlement than the others, or at least to maintain its traditional differential with other trades. As a result, high settlements and high levels of compensation spread among crafts and branches of the industry and across broad geographic areas with interconnected labor markets. Distortions in wages relationships occurred among crafts within and across geographic areas.

By the end of 1970, following an unprecedented number of work stoppages, the upward trend in wage increases was accelerated. As a result of that year's negotiations, nearly 700,000 union construction workers won wage and benefit increases averaging 19.6 percent in the first contract year and 15.6 percent annually during the life of the contract.

The need to improve the industry's collective bargaining performance and stem the tide of rising wage increases led the President to issue Executive Order No. 11482 in 1969, creating the Construction Industry Collective Bargaining Commission to develop voluntary procedures to settle labor disputes in the construction industry. It soon became apparent, however, that more effective means were needed.

Building on the work of the Commission, the President established the Construction Industry Stabilization Committee (CISC) in 1971 by Executive Order No. 11588, under the authority of the Economic Stabilization Act of 1970. The CISC was composed of four general presidents of international unions, four leaders in national contractor associations, and four public members, along with alternate members. The CISC was responsible for reviewing all negotiated agreements to insure that they properly reflected basic criteria for approving pro-

posed wage increases. In the event that a proposed contract failed to meet these criteria, special craft dispute boards, jointly established by the international unions and contractors associations, were employed to determine appropriate contract modifications. The Committee was given authority to approve or deny all wage and benefit increases.

With a view toward achieving long-term stabilization in the industry, the Committee sought to re-establish appropriate historic wage relationships that had become badly distorted in the late 1960's and the early 1970's and to improve the structure of collective bargaining. The Committee itself examined each case individually, and gave special attention to differentiation of rates by crafts among branches of the industry, to the coordination of bargaining among crafts and branches within localities, and to agreements providing for significant changes in the geographic structure of bargaining. The Committee also separately considered changes in working rules, refusing to approve those which would increase costs, and encouraging those which decreased costs and increased productivity.

The Construction Industry Stabilization Committee was highly effective. Under its auspices, the rate of first year wage increase was reduced from 17.6 percent in 1970 to 12.6 percent in 1971, 6.9 in 1972 and 5.0 in 1973. A key factor in its success was the participation of national union presidents and national contractor association representatives in reviewing and working with the local bargaining participants.

The CISC, working through a number of individual craft boards, did not simply aim at reducing the level of wage increases, but sought to reestablish traditional wage relationships that had become badly distorted during the late 1960's and early 1970's. It also attempted in a number of parts of the country to improve the basic structure of collective bargaining itself. One result of the stabilization effort was a major reduction in the number of strikes. In 1973, for example, only 312 strikes in the construction industry occurred over the terms of new agreements compared to over 500 in 1970.

With the expiration of the Economic Stabilization Act on April 30, 1974, the entire wage stabilization effort was brought to an end, including authority for the CISC. Subsequently, construction industry bargaining reverted to its previous condition of increased strikes and higher wage settlements. Secretary of Labor Dunlop characterized this period as one of "uncertainty, tension and disrespect for national leadership." In 1974, for example, there were 437 work stoppages over the terms of new agreements, compared to 312 in the previous year. Similarly, wage and benefits increases in major settlements increased to 10.8 percent, compared to 8.8 percent in manufacturing. In some parts of the country there were wage increases of 15 to 20 percent or more, again distorting the construction industry pattern.

First year wage and benefit settlements reported thus far in 1975 have averaged 9.6 percent. This figure is somewhat deceptive, however, since some parts of country have experienced only modest increases, while much higher settlements have occurred in other areas. For example, one contract in the Pacific Northwest (Seattle) provided for a $2 per hour increase in the first year of the new contract, suggesting

a return to the "leapfrogging" that has made contractors employing union labor less competitive and that has contributed to the unemployment of union craftsmen. By comparison, another local agreement reached in the Southeast (Atlanta) calls for a 15 cent per hour increase this year.

The most recent federal response to these conditions was the creation of the Collective Bargaining Committee in Construction on April 1, 1975, by Executive Order No. 11849. The purposes of the Collective Bargaining Committee in Construction are similar to those of its predecessors in that it is to facilitate the collective bargaining process and encourage improvement in the structure of bargaining.

Based on past experience, the Committee can provide the framework for reforming the collective bargaining structure of the construction industry. It lacks, however, the statutory base and related mechanism needed to achieve its important objectives. This is the basic purpose of the "Construction Industry Collective Bargaining Act of 1975," which the Committee believes is vital if bargaining in the construction industry is to provide adequately for consideration of wider interests in the local bargaining process.

The Committee believes that it is necessary to review and modify the structure of collective bargaining in this vital industry in order to bring about a sharp curtailment in whipsawing distortions of appropriate wage relationships, inefficient manpower utilization and costly strikes. An enhanced role for national unions and national contractor associations, cooperating with each other, is needed to provide leadership in solving the critical problems related to the collective bargaining structure, productivity and manpower utilization in the construction industry. This legislation is designed to establish a mechanism to achieve these objectives through the voluntary collective bargaining process, without resort to wage and price control or other forms of compulsory interference.

EXPLANATION OF THE "CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975"

Purpose

The purpose of S. 2305 is to reform the framework of collective bargaining in the construction industry. It is designed to create a labor relations structure which can reflect and effectively promote the national interest in diminishing inflationary wage settlements, unproductive manpower utilization, and prolonged work stoppages. By creating a new tripartite committee composed of labor, management, and public representatives, the bill establishes a forum for the expression of these national interests and provides for the direct participation of national labor organizations and national contractor organizations in local and regional collective bargaining. At the same time, it preserves the flexibility to consider the variations that necessarily exist among localities, crafts and branches of the industry.

The Construction Industry Collective Bargaining Committee (CICBC) will be responsible for identifying key construction industry collective bargaining situations for their possible pattern-setting impact on bargaining in the industry. Where appropriate, it will intercede before potentially disruptive new settlements are reached by

the parties which are likely to lead to widespread wage distortions and costly work stoppages. It will also promote agreements covering more appropriate geographic areas, encourage voluntary procedures for dispute settlement, and take other steps to remedy the underlying labor relations defects in the construction industry.

The legislation is intended to reform the structure of bargaining and improve the dispute settlement process with a minimum of governmental interference in the collective bargaining process. S. 2305 is experimental in nature, and by its terms will expire in five years. It is, however, an experiment based on the instructive and successful experience of the past several years when representatives of labor and management in the construction industry met with public members to discuss, analyze and resolve their problems. This experience includes the operation of the Construction Industry Collective Bargaining Commission, established by Executive Order in 1969, and the subsequent Construction Industry Stabilization Committee, established in 1971 under the Economic Stabilization Act of 1970. The bill applies solely to national construction industry labor organizations and their affiliates, and to contractors and their associations engaged in collective bargaining with them in this industry. It does not apply to bargaining between contractors or contractor associations and independent unions, or to the non-union sector of the industry.

Construction Industry Collective Bargaining Committee

The focal point of S. 2305 is the establishment of the Construction Industry Collective Bargaining Committee (CICBC). This Committee is to be composed of ten management representatives, ten labor representatives, and up to three neutral members, all appointed by the President after consultation with national labor unions and contractor associations. The Secretary of Labor and the Director of the Federal Mediation and Conciliation Service are to be non-voting ex officio members of the CICBC. The President will appoint one of the neutral members as Chairman. The Committee will be supported administratively by the Department of Labor. The Secretary of Labor is authorized to appoint appropriate staff to the Committee and, with its approval, appoint the Executive Director.

Notice Requirements in Collective Bargaining

Local labor organizations and other subordinate bodies affiliated with national construction labor organizations will be required to give 60 days notice to their national unions before the termination or modification of collective bargaining agreements, including those modifications permitted by any "reopener" provisions in such agreements. Contractors and contractor associations engaged in collective bargaining with such unions are similarly required to notify the national organization with which they are affiliated, or the Committee directly if there is no national affiliation. When national contractor associations or standard national labor organizations receive notice under this bill, they are required to forward such notices promptly to the Committee. It is intended that, when practicable, such notices should generally be forwarded to the CICBC within three days. If a national construction labor or contractor organization is itself a party to an agreement, it must give notice directly to the Committee.

Although the terms of the bill are inapplicable to the unusual situation of negotiations leading to an initial agreement where a previous agreement has not been in effect, it is specifically intended that revised agreements involving changes in bargaining relationships are to be covered fully by the terms of the Act. Collective bargaining in the construction industry is commonly conducted by employer associations on behalf of individual employers. If at any time an employer chooses to withdraw from such a multi-employer arrangement, or new employers join it, such changes will not constitute an initial agreement nor affect obligation of the employer association to comply with the requirements of the bill, which apply to the termination or modification of agreements and to the negotiation of any subsequent agreements. Similarly, an employer seeking to withdraw would also be subject to these requirements.

Under the bill, the Committe is authorized to designate those "standard national construction labor organizations" and "national construction contractor associations" which are qualified to participate in the new procedures. The Committee notes that Secretay of Labor Dunlop, in testimony presented to the Labor Subcommittee, referred to the national labor organizations as the 17 international unions affiliated with the Building and Construction Trades Department of the AFL–CIO, and the International Brotherhood of Teamsters.

Functions of the Committee

After receiving the required notice, the Committee may take jurisdiction over the labor negotiations if it determines that such action will meet one or more of the following criteria: facilitating collective bargaining, promoting construction industry stability, encouraging bargaining agreements with more appropriate expiration dates and geographic coverage, promoting practices consistent with apprentice training skill level differentials, and promoting voluntary procedures for dispute settlement. The CICBC, in its discretion, may take jurisdiction on its own initiative or at the request of an interested party.

Once the Committee has taken jurisdiction, it may assist the parties by referring the labor matter to a national craft board, or to the national dispute procedures established by the appropriate branch of the construction industry. The Committee may also select to meet with the parties and take other appropriate action to assist the parties. Craft boards were established voluntarily pursuant to Executive Order 11588 operating under the Construction Industry Stabilization Committee. Membership was composed of representatives from contractor associations and from the international construction unions. These boards provided a preliminary review of collective bargaining agreements submitted to the CISC by the local parties, and assisted in local negotiations at the request of the CISC. Since such craft and branch boards have performed effectively in the past, the Committee expects that additional boards will be established. It is not intended, however, that the CICBC will delegate to them its principle functions of asserting jurisdiction or referring labor matters to national union and contractor organizations.

The Construction Industry Collective Bargaining Committee may request the national construction labor organizations and the national construction contractor associations whose members are directly

involved to participate in the negotiations. If the Committee, after asserting jurisdiction, makes such a request, any new collective bargaining agreement or revision of an existing agreement must be approved by the standard national construction labor organization with which the local labor organization or other subordinate body is affiliated for the agreement to be of any force or effect.

The Committee considered a possible modification of the bill to impose upon national construction contractor associations a corresponding duty of prior national approval of collective bargaining agreements. However, because of the substantial differences in the relationship between international unions and their subordinate organizations, and between national contractor associations and their employer members, the Committee concluded that this approach is presently unworkable. The Committee also understands that most national contractor associations are opposed to such a requirement, as is the Department of Labor as expressed in testimony by Secretary Dunlop. Of course, nothing in S. 2305 prevents the voluntary formation of multi-employer bargaining units at the national level, as is permitted under present law, under which comparable authority could be exercised. Nevertheless, the Committee expects the CICBC to include this issue among its studies of collective bargaining in the construction industry, and to present its conclusions and recommendations to the Congress.

Jurisdictional Period

In all cases, the CICBC's decision to assert jurisdiction over a construction industry labor matter, and to refer it to the national labor and contractor organizations, is confined to a specific 90-day period consisting of the 60-day required notice period, plus the next 30 days. Accordingly, if timely notice is given 60 days before the termination date of a collective bargaining agreement, the Committee's jurisdictional period will terminate 30 days after the expiration date of the contract. If the serving of the required notice is delayed, the jurisdictional period consists of the 90 days following the actual date of giving notice. If early notice is given (for example, 80 days before the expiration date) to terminate or modify the agreement on the expiration date, the CICBC may take jurisdiction during the same period as if timely 60-day notice had been given. The giving of early notice would not extend the period during which a strike, lockout, or change in terms or conditions of employment is prohibited under this Act. In the case of a collective bargaining agreement which contains a "reopener" provision (permitting negotiations over mid-term modifications of the agreement), or an agreement containing no expiration date, the jurisdictional period runs during the 90 days following the giving of notice, or the 90 days which includes and immediately precedes the 30th day after the proposed effective date of the modification, whichever is later. During the 60-day notice period, the parties are required to continue in full force and effect, without resorting to a strike or lockout, all the terms and conditions of the existing collective bargaining agreement.

Effect of Asserting Jurisdiction

In every case where the Committee has asserted jurisdiction, whether or not it has referred the matter to the appropriate national

organizations, a 30-day "cooling-off" period is imposed. No party to the agreement may initiate or continue any strike or lockout prior to the expiration of the full 90-day period (the 60-day notice period plus the succeeding 30 days), unless the Committee earlier releases its jurisdiction.

When the CICBC has requested the participation of the appropriate national organizations, the national union's approval is required in the case of all agreements entered into or intended to be effective during or after the 90-day jurisdictional period. Moreover, such approval is required whether the new or revised agreement is entered into prior to, or subsequent to, the assertion of jurisdiction by the CICBC. The parties are not permitted to agree or consent, either formally or tacitly, to any changes in the terms or conditions of employment prior to national union approval of the new collective bargaining agreement. Neither party may unilaterally impose new terms and conditions of employment, except to the extent otherwise permitted by law, prior to the approval of the new agreement. If, prior to the assertion of jurisdiction, and the request for national participation, the parties have put into effect a new agreement or revision, the parties must return to the terms and conditions of employment specified in the earlier agreement upon assertion of jurisdiction and the making of such request.

As the Committee may at any time relinquish its jurisdiction, it may also separately suspend or terminate the requirement that the national union must approve any local agreement before it is permitted to take effect. The Committee is expected to scrutinize carefully the progress of the negotiations and the procedures it has invoked, and it is to suspend or terminate the approval power of the international union only when it determines that such action is necessary to facilitate the bargaining or to accomplish other purposes of the Act. It is also intended that the CICBC is authorized to offer its advice and assistance to the parties even when it does not have jurisdiction over a labor matter.

Enforcement

In the event that the procedures required by the Act are not followed by the parties, the CICBC may direct that the appropriate U.S. District Court be petitioned to enforce any provision of the Act, including the issuance of an injunction prohibiting any strike, lockout, or the continuation of the strike or lockout, for the period prohibited under the Act. In granting injunctive relief, the District Courts are not bound by the restrictions on injunctions contained in the Norris-LaGuardia Act of 1932.

It is this Committee's expectation that the membership of the Construction Industry Collective Bargaining Committee will include individuals with a particular familiarity with the construction industry and its labor relations issues. The special expertise and experience of Committee members with regard to these matters is crucial if this legislation is to achieve its intended purposes. Accordingly, in the event that judicial review of the CICBC's actions and decisions is sought, S. 2305 provides that they may be held unlawful and set aside only where they are found to be arbitrary or capricious, in excess of its delegated powers, or contrary to a specific requirement of the Act.

The legislation, in section 8, provides that "except as provided herein, nothing in this Act shall be deemed to supersede or modify any provision of law." The Committee intends that the requirements of this legislation are in addition to the requirements imposed by other laws, and that they will be only minimally affected by it. For example, it is not intended that this bill preempt the jurisdiction of the National Labor Relations Board. The notice provisions of section 8(d) of the NLRA remain in full force and effect, notwithstanding the existence of comparable provisions in this bill. Similarly, the questions with which the NLRB has traditionally dealt, such as issues relating to mandatory or permissive subjects of bargaining, and the legality of contract clauses, will continue to be dealt with by the NLRB in cases filed with it. The additional notice requirements, the requirement of national union approval, and the provisions prohibiting strikes or lockouts, are examples of the limited changes to the requirements of present law contained in the Act.

The bill, in section 5(f) limits the civil and criminal liability of national construction labor organizations and national construction contractor associations which might be imputed to them from the actions they take at the request of the CICBC. It is to be expected that their actions will, at times, include steps to restrain their subordinate bodies in the interest of collective bargaining stability and the reduction of inflationary wage agreements under the guidance of the CICBC. The Committee intends that civil and criminal liability should not be imposed on these organizations because, as contemplated by the Act, they have participated in negotiations, or approved or refused to approve a collective bargaining agreement, pursuant to a request of the CICBC.

This provision recognizes that, under established agency principles, the national organizations should not be held liable under this Act unless they clearly have authorized, participated in or ratified the illegal conduct. Similarly, the national organization does not become a party to or an obligor under a collective bargaining agreement to which its subordinate organization is a party unless it has expressly agreed to do so. Section 5(f) begins from these principles and adds further protections. Accordingly, under section 5(f), when a national organization participates in local negotiations at the request of the CICBC pursuant to the Act, it is not to be held liable, for example, in the event of a wildcat strike, a breach of contract strike, or misconduct by union pickets or employer agents at a picket line.

The Committee provided these protections because it concluded that they are essential if the overall purposes of the legislation are to be achieved, and that there remain countervailing protections for third persons which the bill does not limit in any way. Local organizations, employees and employer agents continue to be liable for their torts, breaches of contract and violations of statutes. The courts also retain the authority to negate any provision in a collective bargaining agreement which is unlawful whether or not the agreement has been reached under the aegis of this bill. Moreover, section 5(f) is not intended to protect actions by a national organization that are not part and parcel of its responsibilities under sections 5(e) and 5(f).

Finally, as an additional safeguard, the Committee has provided that the CICBC has the power to withdraw its authorization for a

national organization to participate in collective bargaining negotiations. It is the Committee's intent that the CICBC should invoke this power to assure that the national organizations utilize the authority granted to them in a manner consistent with the objectives of the bill.

Studies and Recommendations

The Committee is authorized to make broad studies of collective bargaining in the construction industry and to make general recommendations with regard to bargaining structures, improvement of productivity, stability of employment, differentials among branches of the industry, dispute settlement procedures, and other related matters. The CICBC is required to submit annual reports to the Congress, and by June 30, 1980, is to make its final recommendations to the Congress, including a recommendation as to whether the Act should be extended.

Expiration Date

The legislation will take effect upon enactment, and remain in effect for a term of 5 years, expiring on December 31, 1980.

ESTIMATE OF COST

The Committee has determined on the basis of preliminary estimates supplied by the Department of Labor that enactment of this legislation will necessitate the establishment of approximately 22 staff positions. It is therefore estimated that the personnel costs will be about $420,540 annually and $2,102,700 over five years. It is also estimated that the legislation will result in operating costs of about $118,300 annually and $591,500 over five years. Thus, it is estimated that the total cost of the legislation will be about $538,840 annually and $2,694,-200 over five years. To avoid duplication of effort, the Committee intends that maximum use be made of existing Labor Department personnel to perform staff functions. This may reduce the anticipated cost of this legislation.

SECTION-BY-SECTION ANALYSIS

Section 1 states that this Act may be cited as the "Construction Industry Collective Bargaining Act of 1975."

Section 2 contains findings and conclusions about the nature of the construction industry, including the need for an enhanced role for national labor organizations and national contractor associations, working as a group, to assure that such problems as bargaining structure, productivity and manpower development are constructively approached by the parties themselves.

Section 3(a) establishes the Construction Industry Collective Bargaining Committee (CICBC) consisting of ten members representing the viewpoint of employers, ten members representing the viewpoint of national labor organizations, and up to three public members representing the public. The Secretary of Labor and the Director of the Federal Mediation and Conciliation Service are non-voting members ex officio. This section provides that all action of the Committee shall be taken by the Chairman or the Executive Director on behalf of the Committee.

Section 3(b) authorizes the appointment of staff.

Section 3(c) authorizes the Committee to promulgate rules and regulations and to designate those "standard national construction labor organizations" and "national construction contractor associations" qualified to participate in the procedures set forth in the Act.

Section 4 requires that with respect to termination or modification of any collective bargaining agreement covering employees in the construction industry, unions affiliated with any standard national construction labor organization, and any employer or employer association dealing with them, must give notice to their respective national organizations 60 days prior to the expiration date of the agreement. Where the national organization is a party, it must give notice directly to the Committee. If the agreement contains no expiration date, notice must be given 60 days before the date on which a proposed termination or modification is intended by the parties to take effect. It also requires 60 days notice of proposed mid-term modifications in existing agreements. The national organizations are required to transmit promptly the notices they receive to the CICBC. During this 60-day period, which is comparable to the provisions of section 8(d) of the National Labor Relations Act, the parties to the agreement may not change the terms and conditions of the existing agreement or engage in any strike or lockout.

Section 5(a) authorizes the CICBC to take jurisdiction over a labor matter within a specified 90-day period.

Section 5(b) authorizes the CICBC to refer matters to national craft boards (or other similar organizations), and to meet with the parties directly.

Section 5(c) provides that once the Committee takes jurisdiction, strikes and lockouts are prohibited for a period of up to 30 days following the expiration date of the contract.

Section 5(d) authorizes the CICBC to request the participation in negotiations of the national labor and management organizations whose affiliates are parties to the matter.

Section 5(e) provides that when the Committee has taken jurisdiction and has requested participation of the appropriate national organizations, no new contract between the parties shall take effect without approval of the standard national union involved, unless the Committee has suspended or terminated the operation of this approval requirement.

Section 5(f) limits the civil and criminal liability of national labor and contractor organizations which might be imputed to them by virtue of their participation under the Act.

Section 5(g) states that the Act does not allow the CICBC to modify any contract.

Section 6 sets forth the standards for the assumption of Committee jurisdiction: to facilitate collective bargaining; to improve the structure of bargaining; to promote practices consistent with the appropriate apprenticeship training and skill level differentials among the various crafts; to promote voluntary procedures for dispute settlement; or to further the purposes of the Act.

Section 7 authorizes the Committee to promote and assist in the formation of voluntary national craft or branch boards; to make recommendations as deemed appropriate to facilitate area bargaining structures; to improve productivity; to promote stability of employment; to improve dispute settlement procedures; and to make other suggestions, as it deems appropriate, relating to collective bargaining in the construction industry.

Section 8 provides for enforcement action in the form of civil actions for equitable relief brought by the Committee in U.S. District Courts to enforce any provisions of the Act. It sets forth the standard of judicial review of actions and decisions of the Committee, which may be set aside only where they are found to be arbitrary or capricious, in excess of its delegated powers, or contrary to a specific requirement of the Act. Section 8 further provides that nothing in the Act shall be deemed to supersede or modify any other provision of the law except as provided by S. 2305. Section 8 also provides that attorneys of the Department of Labor will represent the CICBC in court, except for the Supreme Court of the United States.

Section 9 authorizes other agencies and departments of the Federal Government to provide information deemed necessary by the Committee, and directs the Committee and the Federal Mediation and Conciliation Service to consult and coordinate their activities.

Section 10 defines the terms in the Act by incorporating certain definitions set forth in the Labor-Management Relations Act of 1947,

Section 11 is a separability clause.

Section 12 authorizes necessary appropriations.

Section 13 provides that the Act shall expire on December 31, 1980. It also requires the CICBC to make annual reports to the President and the Congress on its activities under the Act, and to submit a final report, including its recommendations with respect to extension of the Act, not later than June 30, 1980.

MINORITY VIEWS OF SENATOR PAUL LAXALT

I am opposed to S. 2305 on the grounds that it will impede more than it will promote progress toward true reform in construction industry collective bargaining. Although this bill is largely innocuous, the mere fact of its passage will tend to deter more serious efforts at meaningful reform. Moreover, in those limited respects where there is some substance, the likelihood that more harm than good will result is very real. But, aside from its conspicuous lack of contextual merit, the most serious indictment of S. 2305 is that it is being used as a smoke screen to secure the passage of S. 1479, the bill permitting common situs picketing.

Collective bargaining within the construction industry has long been plagued with serious problems and there is a need for thorough revision. But, it is startling to me that the complex problems of collective bargaining, including: fragmented units, whipsawing, leap frogging and inflationary settlements could be considered alleviated after only two days of hearings on S. 2305. My fear is that by passing this temporary pallative, Congress may be deterred from truly meaningful consideration of some of the more complex problems surrounding construction industry collective bargaining.

Beoynd this immediate criticism there are other more glaring internal weaknesses. Although generally lacking in substance, the bill would have some limited effects, virtually all of which would be negative.

For instance, S. 2305 reverses the hopeful trend toward limiting the power of the building trades unions established by the Taft-Hartley and Landrum-Griffin Amendments to the National Labor Relations Act and by the Supreme Court pursuant to its decision in *NLRB* v. *Denver Building and Construction Trade Council*, 341 U.S. 675 (1951). The excessive power of the internationals may have been only marginally limited by Congress and the Court but to provide them with an additional weapon at this time seems totally unwarranted.

S. 2305 also requires international approval of any local agreement in the event the proposed Collective Bargaining Committee takes jurisdiction and refers a local case to an international. As a result of this veto power and in the absence of any clarification of the proposed Committee's status with respect to the National Labor Relations Act, an international union at least in theory could insist on a subcontracting clause which restricted work opportunities available to open shop contractors. This power could thus serve as a weapon to limit competition in the industry and undermine state right to work laws.

Another serious weakness of this bill is that although it alleges a limited governmental role, in the end, it may have quite the opposite effect. Federal initiatives are almost invariably launched on a relatively small scale, but tend to expand rapidly during later stages.

S. 2305 holds every promise of pursuing the same course. The passage of the bill will invite pleas for additional enforcement powers and, of course, to render the Collective Bargaining Committee permanent. Moreover, it constitutes a major step in the direction of Federal imposition of the terms of collective bargaining and could easily be extended beyond the construction industry.

Because of the extremely limited scope of this bill, my initial reaction was to dismiss it as innocuous if not superfluous legislation. Upon closer examination, I found certain weaknesses which compelled a more adamant stand. But, my most strenuous objection is reserved for the fact that this bill is designed as a kind of protective coloration for the bill permitting common situs picketing, S. 1479.

Despite the cries of innocence in this regard by the bill's defenders, I can only believe that the main purpose of this bill is to secure passage of S. 1479. While the proponents of S. 2305 may be sincere in their belief that the problems of collective bargaining and the issue of common situs are being treated separately as they deserve to be, that belief does not extend to those who admit to the serious ramifications of a common situs bill.

The President has indicated that he would accept a common situs bill, if it contained certain specified safeguards and with one other crucial caveat: that it be accompanied by another bill "that provides that there shall be greater responsibility for both labor and management on strikes and lockouts". This means, in effect, that in anticipation of the problems stemming from common situs, a package deal is offered to make those problems more palatable politically, but certainly no less devastating economically and socially. Those who were previously uncommitted to S. 1479 now have a convenient escape mechanism from the realities of common situs. In seeking to redress the imbalance to be created by one bad bill, a second almost equally bad bill is proposed as a palliative. Personally, I find this to be spurious legislative practice and for those who accept it, an exercise in self-deception.

The problems of collective bargaining in the construction industry deserve to be treated in their own right and not as a sideshow to common situs picketing. When considered on its own merits, S. 2305 does little to treat those problems and may in fact create some new ones. In the headlong rush to face the ignominy of common situs, Congress by virtue of S. 2305 may very well elevate the power of the internationals to new heights from which their domination of locals, contractors and subcontractors and non-union workers will be complete.

PAUL LAXALT.

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Calendar No. 426

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-440

EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

OCTOBER 29, 1975.—Ordered to be printed

MR. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany H.R. 5900]

The Committee on Labor and Public Welfare, to which was referred the bill (H.R. 5900) to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers, having considered the same, reports thereon without recommendation.

57-010

Calendar No. 427

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-441

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT

OCTOBER 29, 1975.—Ordered to be printed

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany H.R. 9500]

The Committee on Labor and Public Welfare, to which was referred the bill (H.R. 9500) to stabilize labor-management relations in the construction industry, and for other purposes having considered the same, reports thereon without recommendation.

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57-010

January 2, 1976

Received from the White House a sealed envelope said to contain H.R. 5900, An Act to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes, and a veto message thereon.

Edmund L. Henshaw Jr
Clerk of the House of Representatives

By Ben Guthrie

8:00 P.M.
Time received

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my approval H.R. 5900, commonly known as the Common Situs Picketing Bill.

The bill before me represents a combination of H.R. 5900, which would overturn the United States Supreme Court's decision in the Denver Building Trades case and the newly proposed Construction Industry Collective Bargaining Bill, S. 2305, as amended. During the development of this legislation, I stipulated that these two related measures should be considered together. The collective bargaining provisions have great merit. It is to the common situs picketing title that I address my objections.

I had hoped that this bill would provide a resolution for the special problems of labor-management relations in the construction industry and would have the support of all parties. My earlier optimism in this regard was unfounded. My reasons for this veto focus primarily on the vigorous controversy surrounding the measure, and the possibility that this bill could lead to greater, not lesser, conflict in the construction industry.

There are intense differences between union and nonunion contractors and labor over the extent to which this bill constitutes a fair and equitable solution to a long-standing issue. I have concluded that neither the building industry nor the Nation can take the risk that the bill, which proposed a permanent change in the law, will lead to loss of jobs and work hours for the construction trades, higher costs for the public, and further slowdown in a basic industry.

Gerald R. Ford

THE WHITE HOUSE,

January 2, 1976.

Delivered to Clerk of House: 1/2/76 (8:00pm)

(Stenciled)

FOR IMMEDIATE RELEASE DECEMBER 22, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am today announcing my intention to veto H. R. 5900, commonly known as the Common Situs Picketing Bill. I and my principal advisors have thoroughly analyzed the proposed legislation and all of its ramifications. The issues involved have become the subject of much controversy, and I believe the matter should be resolved as soon as possible. Therefore, I am taking the action of announcing my decision now.

Actually the bill before me represents a combination of H. R. 5900, which would overturn the United States Supreme Court's decision in the Denver Building Trades case and the newly proposed Construction Industry Collective Bargaining Bill, S. 2305, as amended. During the development of this legislation I stipulated that these two related measures should be considered together. The collective bargaining provisions have great merit and it is to the common situs picketing title that I address my objections.

For many years I have been familiar with the special problems of labor-management relations in the construction industry and sysmpathetic to all good faith efforts to find an equitable solution that would have general acceptance by both union and non-union workers and building contractors.

Because this key industry has been particularly hard hit by the recession and its health is an essential element of our economic recovery, I have been especially hopeful that a solution could be found that was acceptable to all parties and would stimulate building activity and employment, curtail excessive building costs and reduce unnecessary strikes, layoffs and labor-management strife and discord in the construction field.

Therefore, since early this year Secretary of Labor John Dunlop, at my direction, has been working with members of Congress and leaders of organized labor and management, to try to obtain comprehensive legislation in this field that was acceptable and fair to all sides, and in the public interest generally. Without such a general concensus I felt that changing the rules at this time would merely be another Federal intervention that might delay building and construction recovery but not effectively compose the deep differences between contractors and union and between organized and non-organized American workers.

(MORE)

From the outset, I specified a set of conditions which, if met, would lead to my approval of this legislation. Virtually all of these conditions have been met, thanks to the good faith efforts of Secretary Dunlop and others in the Building Trades Unions and the Congress. During the course of the legislative debate, I did give private assurances to Secretary Dunlop and others that I would support the legislation if the conditions specified were met.

Nonetheless, after detailed study of the bill, and after extensive consultations with others, I have most reluctantly concluded that I must veto the bill. My reasons for vetoing the bill focus primarily on the vigorous controversy surrounding the measure, and the possibility that this bill could lead to greater, not lesser, conflict in the construction industry. Unfortunately, my earlier optimism that this bill provided a resolution which would have the support of all parties was unfounded. As a result, I cannot in good conscience, sign this measure, given the lack of agreement among the various parties to the historical dispute, over the impact of this bill on the construction industry.

There are intense differences between union and non-union contractors and labor over the extent to which this bill constitutes a fair and equitable solution to a long-standing issue.

Some believe the bill will not have adverse effects on construction, and indeed rectifies an inequity in treatment of construction labor. But with equal sincerity and emotion there are many who maintain that this bill, if enacted into law, would result in severe disruption and chaos in the building industry. I have concluded that neither the building industry nor the nation can take the risk that those who claim the bill, which proposes a permanent change in the law, will lead to loss of jobs and work hours for the construction trades, higher costs for the public, and further slowdown in a basic industry are right.

It has become the subject of such heated controversy that its enactment under present economic conditions could lead to more idleness for workers, higher costs for the public, and further slowdown in a basic industry that is already severely depressed. This is not the time for altering our national labor-management relations law if the experiment could lead to more chaotic conditions and a changed balance of power in the collective bargaining process.

# # #

FOR IMMEDIATE RELEASE **January 2, 1976**

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my approval H.R. 5900, commonly known as the Common Situs Picketing Bill.

The bill before me represents a combination of H.R. 5900, which would overturn the United States Supreme Court's decision in the Denver Building Trades case and the newly proposed Construction Industry Collective Bargaining Bill, S. 2305, as amended. During the development of this legislation, I stipulated that these two related measures should be considered together. The collective bargaining provisions have great merit. It is to the common situs picketing title that I address my objections.

I had hoped that this bill would provide a resolution for the special problems of labor-management relations in the construction industry and would have the support of all parties. My earlier optimism in this regard was unfounded. My reasons for this veto focus primarily on the vigorous controversy surrounding the measure, and the possibility that this bill could lead to greater, not lesser, conflict in the construction industry.

There are intense differences between union and nonunion contractors and labor over the extent to which this bill constitutes a fair and equitable solution to a long-standing issue. I have concluded that neither the building industry nor the Nation can take the risk that the bill, which proposed a permanent change in the law, will lead to loss of jobs and work hours for the construction trades, higher costs for the public, and further slowdown in a basic industry.

GERALD R. FORD

THE WHITE HOUSE,
January 2, 1976

# # # #

December 22, 1975

Dear Mr. Director:

The following bills were received at the White House on December 22nd:

H.J. Res. 749	H.R. 8304	H.R. 11184
H.R. 4016	H.R. 9968	S.J. Res. 157
H.R. 4287	H.R. 10035	S. 95
H.R. 4573	H.R. 10284	S. 322
H.R. 5900	H.R. 10355	S. 1469
H.R. 6673	H.R. 10727	S. 2327

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.