

The original documents are located in Box 2, folder “Common Situs Picketing - Transcripts of Hearings (5)” of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

1 Mr. Thompson. The next witness is Mr. Robert Thompson,
2 the Chairman of the Labor Relations Committee of the
3 Chamber of Commerce of the United States.

4 Will you identify the gentlemen with you, sir?

5 STATEMENT OF ROBERT T. THOMPSON, CHAIRMAN, LABOR
6 RELATIONS COMMITTEE, CHAMBER OF COMMERCE OF THE
7 UNITED STATES, ACCOMPANIED BY RICHARD B. BERMAN,
8 DIRECTOR OF LABOR LAW FOR THE U.S. CHAMBER OF
9 COMMERCE, AND BROCK HEYLIN, LABOR LAW ATTORNEY,
10 U.S. CHAMBER OF COMMERCE

11 Mr. Robert Thompson. Mr. Chairman, and Members of the
12 Committee. I have with me today Mr. Richard B. Berman, who
13 is Director of Labor Law for the U.S. Chamber of Commerce
14 on my right, and Mr. Brock Heylin, Labor Law Attorney with
15 the U.S. Chamber of Commerce on my left.

16 Mr. Thompson. Mr. Thompson, in Mr. Ashbrook's necessary
17 absence I did ask the preceding witness, Mr. Markowitz if he
18 would summarize his testimony, because I rather doubt if we
19 have another roll call if we can come back. Mr. Thompson,
20 I would ask you if you will do the same thing. If you cannot
21 I suppose we will have to schedule another time so that we
22 can complete the testimony. I am not trying to muzzle you
23 in any way.

24 Mr. Robert Thompson. Mr. Chairman, I will be glad to
25 attempt to summarize the testimony. I am not sure that that
is going to achieve your purpose in terms of time because I



1 suppose none of us has any idea at the moment what time you
2 will hear the buzzer.

3 Mr. Thompson. I would imagine in about, if there are
4 no intervening quorum calls, in about 35 to 40 minutes.

5 Why don't we do this? Without objection your full
6 statement will be made a part of the record at this point.
7 Then you may proceed as you wish.

8 Mr. Robert Thompson. Thank you, sir. I will make an
9 attempt to summarize, but I would like to reserve, if we
10 may, the privilege of asking at least an opportunity to
11 return if we do not complete our testimony and the questions
12 here because we consider this to be a matter of the utmost
13 importance, as I am sure the committee does. We are willing
14 to devote the time.

15 Mr. Thompson. We will afford that opportunity, but it
16 will have to be after the 4th of July.

17 Mr. Robert Thompson. We will be glad to reappear at any
18 reasonable time if we feel and the committee is willing that
19 further testimony and questions should be presented.

20 (The written statement of Robert Thompson follows:)

21
22
23
24
25

1 Mr. Robert Thompson. Speaking of the 18 years which
2 the Chairman has been promoting this legislation I feel I
3 might have been riding along on that other track with you
4 most of those years, so it is not my first appearance in
5 opposition to this bill.

6 It is a bill that seems to me the mere fact that it has
7 been pushed for 18 years and has gotten practically nowhere
8 should tell us something.

9 In a slightly lighter vein I think it could even be
10 added that I am not sure that union lawyers in this country
11 could psychologically stand the impact of the legislative
12 repeal of the Denver Building Trades decision because it would
13 take away from them a whipping boy that they have had for
14 10 these many years, and they would have to go out and find
15 another one.

16 Mr. Thompson. There is another one. There is 14 (b),
17 for instance, a number of other things.

18 Mr. Robert Thompson. Well, the construction fellows
19 can't claim disadvantage from other unions which they claim
20 here. I know they would suffer. This is the only area in
21 the law that I know of that they can find to even suggest
22 disadvantage, and they don't mention all the advantages they
23 have.

24 Be that as it may ----

25 Mr. Thompson. We will leave that to you.

1 Mr. Robert Thompson. Thank you.

2 The Chamber of Commerce is very much and very seriously
3 and very deeply opposed to this legislation, as we have
4 consistently stated before the committee and publicly since
5 the effort began those many years ago.

6 I am appearing here in behalf of the Chamber to put
7 into the record this position and the reasons in support of
8 this position. Also, hopefully to answer questions which
9 might arise.

10 Mr. Thompson. Mr. Thompson, may I interrupt you for a
11 moment? I have two sets of testimony. This being your
12 earlier one, and then this one.

13 Mr. Robert Thompson. I think those are identical. The
14 one in your right hand is sort of a dolled up copy for
15 distribution to the public.

16 Mr. Thompson. I don't see a bug on it.

17 Mr. Robert Thompson. I think the text will be the same.
18 Nevertheless we brought along those copies for distribution
19 to anyone who would like a copy.

20 Congress determined in 1946 and 1947 that there was a
21 need to enact legislation to outlaw secondary boycotts, and a
22 great effort went into that enactment. There was a great
23 deal of study and a great deal of debate, and all of this is
24 in the record and has been referred to at one time or another
25 in these and previous hearings.

1 I think the purpose of that legislation in this
2 particular regard is well known and that is to protect the
3 innocent third parties from the effects of the labor disputes
4 between primary employers and the unions which either
5 represent or perhaps seek to represent their employees. The
6 reference which is repeatedly made that subcontractors and
7 various contractors on a construction job are not in fact
8 innocent third parties in my humble opinion is a misrepre-
9 sentation of the realities of the construction field. I think
10 perhaps it should be said that near the outset of this
11 testimony that there is no question whatsoever about the fact,
12 at least in my mind, that the construction industry is
13 different from other industry. It is not only the largest
14 industry in the United States but its work practice, its
15 business practice, all differ from what we know as the
16 general run of the mill industry in this country, which is
17 basically manufacturing and other services.

18 Congress has many, many times recognized this
19 proposition. It has been dealt with in legislation. It has
20 been dealt with in recent years in the administration of the
21 wage control programs where we had a special construction
22 industry program because of the peculiarities of the
23 construction industry. I say that in the highest use of the
24 word and not derogatorily.
25

1 To attempt to cover up that proposition and say that
2 the construction industry should in this instance be treated
3 just like all other industry is a distortion of the realities
4 of business. We wish to state that for the record at this
5 very point.

6 Construction by its nature is different. You go in.
7 You build a building. You complete a building. You turn it
8 over to the owner in most instances. And you go somewhere
9 else and build another building.

10 If you are a large contractor, such as is represented
11 by the witness for AGC, you are in the process of building
12 maybe dozens or hundreds of buildings of one type or another
13 at the same time. Nevertheless, hopefully at some point
14 or another you complete those buildings and move on to another
15 place.

16 The larger contractors in this country not only operate
17 all over the country but many of them operate all over the
18 world. They go to these places. They by and large hire local
19 people. The local conditions are different, and when they
20 complete their job they go somewhere else and hire some other
21 people. Some take workers with them, but most of them hire
22 at the local level.

23 I say these things because I think they illustrate just
24 one simple fact of life with regard to the difference between
25 the construction industry as such and industry and business in

1 general in this country. The construction industry is
2 particularly vulnerable to what we know as secondary
3 boycott. So let us perhaps move away from the term secondary
4 boycott because it can mean a lot of things to a lot of
5 people, as I think has been demonstrated here today, and
6 talk in terms of picketing.

7 Yes, picketing is an exercise of free speech, but the
8 lawbooks are full of cases, the United States Supreme Court
9 cases on down, which clearly establish the law as saying that
10 picketing is free speech, but it also is much more than
11 free speech and, therefore, must be recognized as such. If
12 picketing was solely free speech I would question the
13 authority of Congress to even deal with the subject because
14 after all it is a constitutional right.

15 Picketing in the real world out there beyond the
16 Potomac River is a signal to members of unions that they are
17 not to go on certain premises where there might be a labor
18 dispute, or where there might be a possibility of a labor
19 dispute. There is no free speech involved.

20 Picketing in some instances is a threat to members of
21 unions, that if they go on to the premises that are being
22 picketed they will suffer penalties and fines and so forth
23 at the hands of the unions which provide them in the
24 construction industry with their means of employment.

25 Mr. Thompson. Mr. Thompson, I don't hold the notion, you

1 know, that the right of free speech has no limitations. I
2 am sure you are familiar with a line of cases which establish
3 the fact that free speech is not totally unfettered.

4 Mr. Robert Thompson. That is the reason I referred to
5 the cases because I have heard the free speech argument made
6 here this morning, somewhat to my surprise. When you put
7 picketing and free speech together you have to go in a
8 dissertation on just where does it fit in. It simply is not
9 pure free speech. In the industrial climate it is far more
10 and far less than free speech, and I think we ought to
11 recognize that.

12 My point is this, in the construction industry the
13 exercise of the picket, the establishment of a picket, the
14 engaging and picketing is particularly sensitive and the
15 industry itself is particularly vulnerable to picketing as
16 opposed to the industrial climate with which I understand the
17 proponents of the bill and their supporters seek to
18 equate.

19 Construction workers who belong to the trade unions
20 by and large get their employment through the hiring halls,
21 we all know that. The law permits that when it is done
22 properly. Therefore, their livelihood depends upon their
23 membership in and in some instances their good standing in
24 the unions which conduct the hiring halls. You don't have
25 that generally in manufacturing and service industries.

1 When a construction union throws up a picket it means
2 more than when an industrial union throws up a picket in that
3 regard. In manufacturing the manufacturer does the hiring
4 within the plant, and if there is a union in the plant there
5 are provisions in the law whereby an employee may become a
6 member of the union once he is employed.

7 In the States which have seen fit to utilize 14(b)
8 which apparently is the next target ---

9 Mr. Thompson. No, I did not say that. I just said
10 that it was always around.

11 Mr. Robert Thompson. Yes. I understand that. I have
12 appeared before this honorable Chairman and his committee
13 on that subject a few times.

14 In the construction field the union member comes from
15 the hiring hall. He is already a member of the union. If he
16 does things that don't suit the union he has the union to
17 answer to. That is not always necessarily true in manufactur-
18 ing. Therefore, I come back to my point, and that is that the
19 construction industry is particularly vulnerable to boycotts,
20 secondary boycotts, to picketing. Therefore, the passage of
21 this legislation would be far more serious than if you just
22 simply took a position that seems to be taken here that you
23 are simply trying to equate the application of the laws.

24 Mr. Thompson. I am not trying to say that picketing and
25 secondary boycotts are the same thing, are you?

1 Mr. Robert Thompson. Secondary boycotts are normally
2 identified, not always but normally are identified with the
3 use of the picket. That is the reason that I departed from
4 the terminology secondary boycott and went to the terminology
5 of picket, because really that is what you are attempting to
6 do with this legislation. That is the way the legislation
7 would be implemented I think if the bill is passed.

8 Our feeling is that secondary boycotts and the
9 utilization of the authority and the power which would be
10 vested in the unions if this bill is enacted would work
11 counter to the basic labor policy of the United States.
12 Therefore, in and of itself should be opposed, aside from all
13 the realities of the world.

14 Going back to the point I was attempting to make, we
15 believe the enactment of this legislation would run counter
16 to the basic labor policy of the United States in that it
17 would promote, it would invite and promote labor controversy
18 rather than in some way continuing at least what we have now
19 which is not very satisfactory but at least is better than
20 what would result from this legislation in terms of controversy
21 alone, leaving out all the other effects that this bill would
22 have if it becomes law.

23 The other effects are manifold, and I would like to
24 mention a few. Incidentally, I would voice agreement with
25 the previous statement that was made that the law is there

1 for everyone's application. It simply happens to work in the
2 construction field because of the nature of the field. The
3 construction union is not singled out in the law in this
4 regard.

5 Again, it illustrates the difference between the
6 construction field and other fields. The construction field
7 at the present time at least from my experience is certainly
8 the bulk of your secondary boycott type activity. It has long
9 since gone away in most other fields. We used to get it in
10 trucking and some of the other mobile type or transient
11 type industries, but that has sort of run out now, and it has
12 more or less boiled down to construction in terms of disputes
13 over secondary boycotts.

14 Our position is that the unions themselves, construction
15 and other unions, have more than adequate picketing rights
16 at the present time. The bestowal of additional rights by
17 virtue of this legislation would simply put into the hands
18 of the construction unions additional power to be used
19 against construction employers at a time when all of the
20 facts demonstrate, and I say all of the facts in regard to
21 wages and all of the developments that have come about in the
22 construction field through what you might call collective
23 bargaining as it applies in that field.

24 How the unions in the construction field can say they
25 have been disadvantaged, how they can say they have suffered

1 from the application of the present law on common situs
2 picketing and so forth is absolutely beyond me. If you look
3 at the wage gains which have been made since the Denver
4 Building Trades Case, if you look at the number of hours that
5 they work, which goes right to seasonality, which has been
6 raised here, and I seriously challenge, if you look at any
7 measure of success in terms of progress the workers have
8 made, economic progress workers have made, you have to say
9 that the construction trades have pulled off far more than
10 their advantaged brothers in other fields.

11 The old argument that seasonality brings them down too
12 simply does not hold water any more. The old argument that
13 they can't attain their bargaining goals because of these
14 limitations upon their right to picket, and I heard today to
15 my astonishment, their right to strike, simply does not hold
16 water when you look at the results which they have achieved.

17 There are actually places in the United States today
18 where non-union contractors, and I am not afraid to use
19 that term, they can call it what they will, would not dare
20 set foot, the construction trade unions have such a hold on
21 those areas.

22 Although the Constitution, I believe, gives a man a right
23 to do business where he pleases, it does not apply in the
24 construction field. Yet we would give those very unions
25 more power if this legislation is enacted.

1 The right to strike as I understand it, is the right
2 to withhold your services from your employer in order to
3 achieve some legitimate goal, if you want to put it into
4 proper context. For employees to withhold their services
5 from their employer in order to achieve somebody else's goal
6 in and of itself is considered a secondary boycott. Some
7 people call it a sympathy strike, but when they enter into a
8 contract in which they say they won't strike, then it is
9 hard for me to understand why they consider they are being
10 deprived of the right to strike by virtue of the secondary
11 boycott laws which prevent them from simply getting together
12 and without the benefit of a picket sign which triggers another
13 right they may have built into the contract and withhold
14 their services when they have contracted away that right with
15 their primary employer over primary issues between the two
16 of them.

17 This is a basic falacy in the argument which is made
18 by the construction unions. They are not giving up or losing
19 their right to strike. They have as much right to strike as
20 anybody, and they can contract that away if they will, but
21 they should not want it back by some peculiar twist in the
22 law which gives them the right to use it when they want to,
23 and the right to trade it off for more economic benefits
24 when they decide to go that route.

25 Mr. Thompson. Mr. Thompson, I dislike doing this, but

1 the clock is running out on us. With your permission we will
2 reconvene here at 2:15.

3 Mr. Robert Thompson. You have my permission, sir.

4 Mr. Thompson. Thank you.

5 (Whereupon, at 12:30 p.m., the committee recessed,
6 to reconvene at 2:15 p.m., the same day)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

June 1 1
fols 2
afrance 3

AFTER RECESS

(The Subcommittee on Labor-Management Relations reconvened at 2:25 p.m., Hon. Frank Thompson, Jr., chairman of the subcommittee, presiding.)

Representative Thompson. The subcommittee will be in order. Other members who have commitments will be coming in and out. We will continue with Robert T. Thompson, the chairman of Labor-Relations Committee of the Chamber of Commerce of the United States.

What page did you reach, Mr. Thompson?

Mr. Thompson. Which page did I reach, sir?

Representative Thompson. Yes.

Mr. Thompson. You will undoubtedly recall I was not reading the statement, but attempting to summarize the points which we seek to present. I would say roughly I am at about page 7 in terms of these points although there are some beyond page 7 that I touched on. I will with your indulgence attempt to continue this summary rather than to read the text.

Representative Thompson. Whichever is quicker.

Mr. Thompson. I think probably the summary from this point on may be a little quicker because I did cover some of the points beyond page 7.

The next point which I would like to briefly touch and which we have elaborated in our statement beginning on page 6 actually is the question of "joint venturers" on construction

1 jobs. It seems to me one of the leading arguments which has
2 been advanced in support of the legislation is this one. Our
3 position is that the construction industry is so constituted
4 that even though you may have two or more or normally would
5 have two or more employers on the same site, this does not at
6 all make them "joint venturers." If you take into account the
7 bidding process that is used in a good bit of construction,
8 particularly industrial construction, if you take into account
9 the difference in the work between the various crafts, among
10 the various crafts, such as electrical and plumbing and so
11 forth, if you take into account that there are jobs where the
12 general contractor will actually perform work that a subcontractor
13 might perform on another job, thus putting him in competition
14 with people who subcontract and specialize in the
15 field, unless you could put together what I would consider an
16 unusual situation or collaboration toward a construction project
17 you simply don't have anything that would closely resemble a
18 "joint venture" in law or fact and I stress the latter because
19 I make no effort to be legalistic about this.

20 The books again are full of lawsuits between subcontractors
21 and between general contractors and subcontractors when they
22 have fallen into disagreement over the performance of their
23 portion of jobs. The success of a subcontractor does not
24 necessarily and normally does not depend upon the success of
25 the general contractor on a particular project.

1 If an electrical contractor performs his work satisfactor-
2 ily he normally expects to get paid and I suppose is normally
3 paid even though the building may fall down around him because
4 of someone else's malfeasance. We have elaborated this point
5 in our statement. I won't go further with it except to say
6 that the only resemblance that could possibly be drawn in a
7 normal construction situation on the point of "joint venture"
8 is the fact that they are all there on the same premises,
9 doing their particular thing and it is normally different from
10 what the other companies or the other employers are doing.

11 Moving on as rapidly as I can without sacrificing
12 substance, I would like to really bring this presentation down
13 to what we see to be the real purpose behind this legislation
14 insofar as the building trades unions are concerned without in
15 any way intending to question the intent or the purposes of the
16 Congressional sponsors. That is as we see it to give more
17 power to the most powerful unions in the United States so that
18 they can dictate not just the terms, the wages, the fringes and
19 the conditions of employment on construction jobs but so that
20 they can in fact dictate which businesses shall be allowed to
21 perform the work at the construction site by putting economic
22 pressure through the picket line and other uses of secondary
23 boycotts to bear upon the other contractors on the job so that
24 if they desire to eliminate a particular subcontractor or a
25 number of subcontractors they can do so by bringing the

1 construction work to a halt. We see this as the only real
2 purpose in this legislation. We think it is a purpose which
3 should not be served because it simply would work against the
4 basic policy of the country. It would work against the con-
5 struction industry itself.

6 I want to touch briefly on a point which was made earlier
7 in previous testimony of other witnesses and that is the unem-
8 ployment situation in the construction industry, albeit granted
9 that the construction industry is experiencing and has experi-
10 enced for some months now a very high rate of unemployment. I
11 think that is particularly true in the highly industrialized
12 areas such as New Jersey. I am not sure that there is any way
13 that that unemployment could be correlated to the fact that the
14 building trades unions don't have the right to picket the way
15 they want to picket on a construction site. I would say if
16 anything the past practices of the building trades unions in the
17 use of the right to picket and more importantly I suppose in
18 the use of the economic power which they now have under our
19 present laws have contributed somewhat to the level of unemploy-
20 ment which has been reached in those areas of the country. You
21 don't find that same level in some other areas of the country.

22 Representative Thompson. How can their practices even
23 remotely contribute to unemployment? There has to be some
24 construction before they can work. There have to be contracts.

25 Mr. Thompson. It doesn't have to be in New Jersey, though.



1 That is my point. If I have a choice of where I build a manu-
2 facturing plant I can presumably put it anywhere I want to.

3 Representative Thompson. Of course. We have lost a great
4 many industries for one or another reason, including industries
5 moving to the right-to-work states. We consider that their
6 economic business if they want to move.

7 But I am unable in even the most remote way to connect the
8 fact of construction to the activities of the building trades
9 unions. It could just as well, I suppose, be said that we can't
10 afford to pursue construction because of the price of the bids
11 by the prime contractors in the first instance.

12 Mr. Thompson. I think in some instances that is true. If
13 you can build a building 30 to 40 percent cheaper in some other
14 place that is certainly a matter to be considered if you are
15 going to pay for the building.

16 Representative Thompson. Sure. That is right. If I were
17 a textile manufacturer in New Jersey and I really didn't care
18 except for my own gain I might well, if I could afford it, take
19 advantage of the tax incentives and other incentives in right-
20 to-work states, move my plant there and virtually have a
21 guarantee that I wouldn't be bothered by any union activity,
22 paying the wages that I pay, then carry on like the J.P. Stephens
23 Stephens does with their unfair labor practices. Fire people
24 the day they walk into your plant with a union button on.

25 Mr. Thompson. If you will relate that reasoning to the

1 proposed legislation I think it could certainly be said that the
2 absence of this legislation has not created or contributed to
3 unemployment.

4 Representative Thompson. Are you suggesting that the con-
5 struction trades, building trades, already have so much
6 economic power that they have contributed to unemployment?

7 Mr. Thompson. I think in some areas, yes.

8 Representative Thompson. Where?

9 Mr. Thompson. Your part of the country, among other places.

10 Representative Thompson. I venture to say I know probably
11 as much about my part of the country as you know about yours,
12 perhaps a little bit more about mine than I know about yours.

13 Mr. Thompson. You probably do. I venture to say I know
14 a little bit more about the construction industry than you do,
15 not meaning to be ---

16 Representative Thompson. Probably. I am essentially a
17 legislator and a lawyer.

18 Mr. Ashbrook. Patron of the arts.

19 Representative Thompson. Patron of the arts. Right.

20 Mr. Thompson. An expert on horse racing, as I understand.
21 But nevertheless I think it has to be said that the trend in
22 this country in construction is away from the highly industria-
23 lized areas. Something is causing it to happen. I am insisting
24 that one thing that is causing it is the overconcentration of
25 power in the construction unions at the present time. I dare to

1 say that right here because I believe it to be true.

2 Representative Thompson. You are not taking much of a
3 risk if you dare to say it any more than I am when I dare say
4 you are wrong. It is sort of "Hobson's choice."

5 Mr. Ashbrook. "Thompson's choice."

6 Representative Thompson. Right. He even spells it
7 correctly.

8 Mr. Thompson. I think at least what you have said and
9 what I have said are both illustrating one point. That is that
10 the very least that can be said is that the unemployment rate
11 that is being experienced nation-wide in the construction
12 industry, which is higher generally than is being experienced in
13 other industries, is not attributable to the fact that they
14 don't have the right to engage in common situs picketing. If
15 you gave them that right it wouldn't create a single job. It
16 wouldn't have one ounce worth of effect on unemployment with
17 the possible exception that it might shift a few buildings to
18 other areas of the country than the area where you come from.

19 Representative Thompson. If it wouldn't give them a
20 single job then I don't know why you are afraid of it. I note
21 that earlier that AGC said there is an increasing tendency
22 toward non-union construction, up to 40 percent now.

23 Mr. Thompson. They are speaking of their membership, sir.
24 I don't speak for the AGC. I know for a fact that more than 50
25 percent of the construction in this country is done open shop.

1 They are only speaking of people who are members of AGC. There
2 are a lot of construction people who are not members of AGC.
3 But a job is a job, whether it is done by a union member or a
4 non-union member. I don't think the passage of this legislation
5 is going to create a job.

6 Representative Thompson. Let us concede that it won't.

7 Mr. Thompson. Then I don't see any reason to argue about
8 unemployment in the construction industry having anything to do
9 with this legislation, which has been done here this morning.

10 Representative Thompson. O.K.

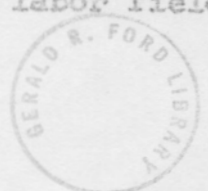
11 Mr. Thompson. I would like to summarize, if that is
12 conceivable to the Chairman.

13 Representative Thompson. It certainly is.

14 Mr. Thompson. With the statement that, as we see this
15 legislation it is intended by the people who expect to benefit
16 from it, that is, the building trades unions, to bestow upon
17 themselves more power in an industry where they already have too
18 much power. It is contrary to the basic philosophy and the laws
19 of the United States in the labor field. It would contribute to
20 more labor disputes, higher construction costs and general chaos
21 in the largest industry which we have in this country.

22 Representative Thompson. In what way is it contrary to the
23 federal labor policy?

24 Mr. Thompson. The federal labor laws of this country as I
25 read them are designed to reduce controversy in the labor field



1 and to promote industrial peace. In this sense I think we can
2 include the construction industry. And to avoid chaos and to
3 avoid conflict which might otherwise exist if we didn't have
4 some rules of the game. We think this particular change in the
5 rules would work counter to those purposes.

6 Representative Thompson. I don't suppose it would do much
7 good to take you back 40 years to the Wagner Act when it was
8 declared to be the policy of the United States to encourage the
9 practice and procedure of collective bargaining and to, as you
10 suggest, encourage the friendly adjustment of industrial dis-
11 putes arising out of differences in wages, hours and working
12 conditions by restoring equality of bargaining power between
13 employers and employees. I don't see that this is contrary.
14 But if that is your point of view ---

15 Mr. Thompson. If you read that, which clearly states the
16 policy that I just attempted to state, and tie in Taft-Hartley
17 and Landrum-Griffin, you have got a composite of the policy,
18 which right in the middle of it is an effort to stop secondary
19 boycotts, which this runs counter to.

20 I don't know whether it serves a purpose or not. But I
21 think that certainly ought to be taken into consideration by
22 the Committee in considering this proposed legislation.

23 There is one other point that I overlooked, Mr. Chairman.
24 That is that it is curious to me why in the protection of
25 minority groups there was no reference made to sex. I don't

1 know whether that was an oversight or whether it was deliberate.
2 But I suggest that it is curious that there is no reference
3 made here to protect an area of discrimination which is rampant
4 in the construction industry. This is a matter that I think the
5 Committee should also look into.

6 Representative Thompson. Of course, that is implicit in
7 the law now.

8 Mr. Thompson. So are these others.

9 Representative Thompson. It has been since the 1964 Civil
10 Rights Act.

11 Mr. Thompson. Yes. And so are these others that are
12 spelled out in this particular statute.

13 Mr. Berman. It is noticeably absent from this particular
14 bill.

15 Representative Thompson. You would like us to add sex in
16 the bill?

17 Mr. Berman. It is an open inquiry on our part. We are not
18 drafting the bills.

19 Mr. Thompson. I don't think it makes much difference. But
20 it is curious that sex would deliberately be assumed. Whoever
21 wrote the thing knew what he was doing and deliberately left
22 the one item out of the five that are now the legal policy and
23 philosophy of the federal government in the field of
24 discrimination.

25 Representative Thompson. I suppose they would be

1 interrelated allies of one kind or another.

2 Mr. Thompson. I think this ought to be pointed out because
3 this is a problem in the construction industry just as much as
4 the minority problem is. It is one that somebody better face
5 up to pretty soon or it is going to be worse.

6 Representative Thompson. I have been facing up to it
7 since I was about 12.

8 Mr. Thompson. I am not suggesting that you haven't, sir.
9 I am suggesting that some of these building trade unions
10 haven't, in employment at least. I don't know about their
11 private lives.

12 Representative Thompson. I was referring to my relation-
13 ship with my mother.

14 Mr. Thompson. I don't know whether that is private or
15 public. But I am referring to the employment relationship.

16 Representative Thompson. How many of your clients in the
17 industry are female entrepreneurs?

18 Mr. Thompson. By that do you mean female owners of
19 construction businesses?

20 Representative Thompson. Yes.

21 Mr. Thompson. I don't know more than one or two, perhaps.
22 And they are people who inherited the business from their poor,
23 dead, hard-working husbands. I am not speaking so much of
24 employers as I am of employees.

25 Representative Thompson. I bet you none of those husbands

1 are doing any Purgatory time.

2 Mr. Thompson. I don't know. You don't know the same ones
3 I know. I was referring to the employee phase of construction.
4 I think we all would have to admit that there is a gross under-
5 employment of females in the construction industry.

6 Representative Thompson. That is probably true. There
7 aren't enough female lawyers either.

8 Mr. Thompson. I agree with that too.

9 Representative Thompson. Do you have any in your firm?

10 Mr. Thompson. No, sir. I haven't had any to apply. I
11 wouldn't say I wouldn't hire one because I think that is very
12 definitely in the picture.

13 Representative Thompson. "Some of your best friends" are
14 women.

15 Mr. Thompson. There are many female, women, lawyers, as
16 you know. The government employs most of them before we can get
17 to them. We can't afford to compete with the government for
18 salaries and things.

19 Representative Thompson. I think we will leave that in the
20 record and send it to NOW.

21 Let us leave sex for the moment. Mr. Ashbrook suggests
22 that I have had varying degrees of success on that subject.

23 Mr. Thompson. I again repeat, I have no knowledge of
24 your private life.

25 Representative Thompson. Yes, sir?

1 Mr. Thompson. Am I finished?

2 Mr. Ashbrook. "Done" or "finished?"

3 Mr. Thompson. I was "done" before I started.

4 Mr. Ashbrook. "Finished" in the sense of "done." And
5 "done" in the sense of "enough." There is a difference.

6 Representative Thompson. I have interrupted you a number
7 of times, Mr. Thompson. I appreciate your good humor. I think
8 that I have done so frequently enough so that I don't have any
9 more questions for the moment. So I will ask Mr. Ashbrook.

10 Mr. Ashbrook. Yes, I have a few questions, Mr. Chairman.

11 First, on page 18 at the top of the page you say one of the
12 reasons is "the impairment, if not total blocking, of vital
13 technological progress through enlargement of the product
14 boycott, a result that would hamper growth and jeopardize hous-
15 ing for the future."

16 I guess I assume since you are speaking for the entire
17 Chamber and not just one segment of industry you would have a
18 little more to say regarding the effect that 5900 would have on
19 industry as a whole, business as a whole. Is that what you are
20 talking about there? Would you give us a little specific
21 information on that?

22 Mr. Thompson. Yes, sir. If you look back at page 14 we
23 have specified several instances of examples where this is a
24 problem. There has been a tendency on the part of building
25 trades unions to resist technological change in the construction

1 industry. Some of these examples show that.

2 I think the earlier testimony from the AGC bears on this
3 point, that is, leaving out the wage factor entirely -- and I
4 think the Chairman might be perhaps pleasantly surprised at how
5 little differential there is in union and non-union or closed
6 and open shop wages, particularly on big construction -- the
7 real saving in construction in open shop versus closed shop is
8 in the use of technological advancement and the freedom of
9 movement that the open shop contractor has, free from the work
10 restrictions that the building trades unions have historically
11 promoted. That is where the saving is. That is the reason I
12 think the open shop movement has grown so and it has grown.
13 There is no question about it. It has grown more than those
14 figures of membership in AGC would be concerned.

15 If I may come back to your point, if this bill is enacted
16 it would simply provide another weapon to be used against tech-
17 nological change because it would draw in the resistance to
18 technological change with the contractor who is bargaining. It
19 would draw into that the other contractors in other fields by
20 allowing the picketing of their work and the shutting out of
21 their work. In other words you would broaden the effect of a
22 picket to stop technological advances.

23 Mr. Ashbrook. You would say as a spokesman for all
24 business and all industry, not just contractors we have heard
25 from before, that businesses and allied industries, particularly

1 employers of whole-fabricated material or material that in the
2 past has been subject to product boycott and so forth, that they
3 would have as much interest in this bill as contractors
4 themselves.- Is that what I gather from what you say?

5 Mr. Thompson. Very definitely. I think the strongest
6 interest ought to be that of the public because that is where
7 the ultimate cost goes.

8 The next interest ought to be, I think, in the people who
9 purchase construction who are the other industries and the
10 government and so forth. The cost goes to them when you have
11 these added costs. They should be concerned about this
12 legislation just as much as the contractor.

13 Obviously a contractor who is not taking his costs and
14 adding to it some factor for profit to stay in business is not
15 going to be around very long.

16 So if the proposition we state and that is that this would
17 add to the cost of construction is sound, and we believe it to
18 be, then that cost is going right through the economy to the
19 purchaser of the construction and ultimately to the public or
20 else whoever is buying the construction won't be around and
21 somebody else will be buying it and passing it through.

22 We see this as a threat that is much, much broader than
23 just the construction industry.

24 Mr. Ashbrook. I was interested in Professor Dunlop's
25 testimony. I assume you either heard it or read his testimony.

1 He made a statement and I have asked the same question of a
2 number of witnesses. I guess as far as he was concerned he
3 would just as leave that a site be either all union or all non-
4 union. What would be the position of your organization on that
5 particular contention?

6 Mr. Thompson. I might say that I have read Dr. Dunlop's
7 testimony. I did not hear it. But I have read it several
8 times. I disagree with him. I think it would be detrimental
9 to the industry and to the public if this is a result either of
10 this legislation or of any other legislation. I say that for
11 this reason. I think it would polarize the construction
12 industry to the point that you put a lot of people out of
13 business. You put a lot of people out of work. There would be
14 other people who would come along perhaps and pick up that work.
15 But in effect what you would have is two separate construction
16 industries, which you don't have today.

17 It is one thing that I think perhaps is not generally known.
18 We have literally hundreds of contractor-clients who employ,
19 who work, on what they call open shop, "married shop," non-
20 union, whatever you want to call it, who work union members on
21 those shops year in and year out, full time. In many instances
22 they are 100 percent of the workers union members and yet they
23 are working right there on open shop jobs, the open shop
24 "sweat-shop" wages that the Chairman characterized.

25 Next year they might be working on a union job. If you

1 polarize the industry you run the risk, I think, of doing away
2 with that, for whatever it is worth. I think union people will
3 suffer from that. But I am not here to speak for them.

4 Mr. Ashbrook. That was my second question. I guess
5 implicit in Mr. Georgine's testimony was in that situation
6 where it went all one way or the other I think he felt they
7 would do reasonably well. Secretary Dunlop took the position
8 that he didn't think it would make a difference either way.
9 Which side of that are you coming down on? Do you think if it
10 were all one way or another would you have more of the industry
11 union or more of the industry non-union?

12 Mr. Thompson. At the present time my information is that
13 more of the industry is non-union than union.

14 Mr. Ashbrook. If 5900 passes.

15 Mr. Thompson. If 5900 passes I think it will lead to an
16 increase in the open shop part of the construction industry.
17 It will do this, though -- and this would be Mr. Georgine's
18 interest, I think, and the interest of his local leaders whom
19 I gather some people say he can't control -- it would tend to
20 solidify their hold on certain areas of the country, geographic
21 areas, and some of them in your state. I think it would freeze
22 a 100 percent union territory around certain industrial areas
23 and protect what they already have from invasion, if you call
24 it that, by the open shop contractor.

25 But the territory that I consider to be up for grabs --

1 this is just plain old construction site talk that I am giving
2 you now; it is not polite Congressional floor talk -- the areas
3 that are up for grabs geographically I think would go to the
4 open shop contractor and he, if he follows the advice of this
5 lawyer at least, would employ nobody but open shop subcontract-
6 ors on his jobs to avoid this kind of picketing that would be
7 legalized if this bill is enacted, whereas today more often
8 than not he is mixing them up.

9 Mr. Ashbrook. I think if I were the employer and I had
10 both situations now, some union and some non-union, and 5900
11 passes would I mentally all of a sudden think, "since the whole
12 site can be shut down I might just as well take my chances with
13 all non-union in that they are more apt to pass the picket line
14 than if I have half and half or partial." Is that what he is
15 going to think? Is that what you are rationalizing?

16 Mr. Thompson. That is exactly what I am saying.

17 Mr. Ashbrook. That my non-union men are more apt to cross
18 the line if all are non-union than just partial.

19 Mr. Thompson. There are building trades lawyers all
20 around this room who are going to disagree with what I am about
21 to say. But you can count on them coming across that picket
22 line if they are non-union or union people working on an open
23 shop job. They will come.

24 Mr. Ashbrook. Union people working on an open shop job?

25 Mr. Thompson. Yes, sir. They come. As I say, they are

fb/18

1 going to disagree with me because there are a few places where
2 they won't. But in the mind of that employer very definitely
3 the best approach if this bill is enacted is to go all the way
4 one way or all the way the other way, union or non-union, to
5 avoid being beat to death with these kinds of pickets whereas
6 now you can live with it because you can have separate gates
7 and those who work for the union contractor come through one
8 gate and those who work for the open shop contractor come
9 through another gate.

10 If the picket is against a union contractor they put it on
11 a union gate and those guys will honor the picket. That is a
12 strike. That is what they say they have been deprived of. They
13 have got every right to do that if they have got a primary
14 dispute with the contractor.

15 If they have got a dispute with the open shop contractor
16 and you put a picket on his gate his folks come on across the
17 and union guys go 50 yards down the fence and go through another
18 gate and continue to work side by side with the open shop
19 workers even though there is a picket on the other gate. That
20 is what this bill is all about.

21 Mr. Ashbrock. Mr. Thompson, aside from the aspect you
22 pointed out of what effect you thought there would be in the
23 product boycott area where there has been a union position
24 against pre-fab, what other areas would you visualize if 5900
25 would spread into other segments of industry? Are there any?

1 Or basically is it a product boycott?

2 Mr. Thompson. I think a product boycott is only one of
3 I think several. They are listed here on page 17 and 18, some
4 of them. I think it would have an effect of allowing these
5 building trade unions to either force themselves upon non-union
6 employers, particularly subcontractors, by forcing them off a
7 job if they don't sign up. Thus it would give them the power --
8 and they have even admitted that in hearings before this
9 Committee -- to put those folks out of business, to destroy them.

10 I think it would have an inordinate effect on minority
11 contractors because they by and large are small contractors.
12 I think by and large they are open shop. Therefore they would
13 get a bigger load of this than perhaps the non-minority. I am
14 talking about the entrepreneurs now, sub-contractors.

15 Mr. Ashbrook. That was a question I was going to ask you.
16 While obviously racial picketing would not be permitted under
17 5900 and is not permitted now, you indicated that you thought
18 as a consequence of the passage of this legislation that minori-
19 ty contractors might be severely harmed, adversely affected and
20 so forth. Is this the reason, because you say they are
21 basically non-union or open shop?

22 Mr. Thompson. My own observation is and I think we could
23 support this, that minority contractors have gone into business
24 more recently by and large than the non-minority contractors.
25 They are by and large smaller and they are by and large open

1 shop. If you put in the hands of a labor union another weapon
2 that can be used against -- best and most effectively against --
3 small contractors, which is what this really is, then they are
4 going to be disadvantaged or hurt out of perspective because
5 they fall more into their field. It is sort of like the
6 present effects of past discrimination in a manufacturing plant.
7 If they most recently hired the minority people under, say, an
8 affirmative action program and you come to a layoff like the New
9 Jersey Power Company had, they go out the door first under the
10 seniority system. It creates quite a squabble that they had in
11 New Jersey recently.

12 The same principle you find in the construction industry.
13 They have been helped by the government for example to get into
14 business in recent years and financed in many respects. They
15 are smaller because they have been around shorter periods of
16 time. They are the ones that are going to feel the weight of
17 this more than others. The big guys can sort of take care of
18 themselves.

19 Mr. Ashbrook. Two quick final questions. Back again to
20 Secretary Dunlop and his recommendation of a 10-day notice to
21 national organizations and implicit in that some authority of
22 a national union to authorize a common situs picketing, what
23 would be the attitude of your organization on that?

24 Mr. Thompson. I don't think it would serve any purpose
25 whatsoever in terms of the real effect of this legislation. I

1 tried to follow Professor Dunlop's philosophy in the construc-
2 tion field. He has been very active for quite a few years in
3 this field, as we all know.

4 I think he has pretty clearly indicated that he believes
5 that if the labor problems of the construction industry could be
6 brought into the international union office rather than left at
7 the local level that they could be better controlled and you
8 wouldn't have all this chaos that you have got now. I believe
9 that is what he said. I simply don't agree with him. If I did
10 agree with him, I don't think it can be done because labor-
11 unions to some extent at least are democratic organizations.
12 They elect their officers at the local level. In the instance
13 of the building trades they are more locally oriented than the
14 industrial unions are. I don't think they are about to change
15 that for Professor Dunlop or anybody else. There again, they
16 can speak for themselves. That is what he is trying to accom-
17 plish and I don't think he is going to accomplish it. I don't
18 think a 10-day notice is going to accomplish it either. Chances
19 are you are going to have 10-days notice of it anyway. If they
20 want to call the home office and tell them they are going to
21 picket a job, they can do that. The union itself could put a
22 sanction on its local if they wanted to give them a 10-days
23 notice, I suppose; I don't know. But I don't see any purpose to
24 be served other than to give a little more time to get injunction
25 papers drawn up if they are going about it wrong.

1 Mr. Ashbrook. My last question is on this recommendation
2 of a 30-day limit on common situs picketing. What is the
3 attitude of your organization on that?

4 Mr. Thompson. This is an over-used expression and it gets
5 us back to the Chairman's favorite subject, sex. That to me is
6 like being a little bit pregnant. It is only legal for 30 days.
7 I think it is wrong, period. I don't think it is in keeping
8 with the basic policy of our labor laws. I don't see any
9 reason for letting them do it for 30 days. I don't see where
10 there is any purpose to be served there if their objective is
11 improper and that in effect is what it is. It is to be create
12 and promote a secondary boycott, which our labor laws say we
13 don't want.

14 Mr. Ashbrook. Thank you, Mr. Chairman.

15 Representative Thompson. Thank you very much, Mr. Thompson.

16 Mr. Thompson. Thank you very much, sir, for your
17 indulgence and the time. I know you had to come back this
18 afternoon because of my long-windedness. I apologize and I
19 appreciate it.

20 Representative Thompson. I don't think you were long-
21 winded. I anticipated that we might have difficulty today.
22 That is why yesterday after the schedule was announced for
23 today that I got unanimous consent that the subcommittee could
24 sit at this time which we normally wouldn't be able to do.

25 Mr. Thompson. Thank you.

1 Our next witness is Mr. Philip Abrams, President of
2 Associated Builders and Contractors.

XXXXX

3 STATEMENT OF PHILIP ABRAMS, PRESIDENT OF ASSOCIATED
4 BUILDERS AND CONTRACTORS, ACCOMPANIED BY JOHN TRIMMER,
5 EXECUTIVE VICE PRESIDENT AND PHIL BODDEN, NATIONAL
6 LEGISLATIVE COUNSEL.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
 (Insert follows.)

1 Mr. Abrams. Mr. Chairman, I am Philip Abrams, President
2 of ABC. On my left is John Trimmer, Executive Vice President.
3 On my right is Phil Bodden, our national legislative counsel.

4 I am also a general contractor for Boston, Massachusetts.

5 The Associated Builders and Contractors with its 9,300
6 members in 47 states is an exponent of the merit shop
7 philosophy in industry.

8 Mr. Thompson. Mr. Abrams, let me interrupt you and ask if
9 possible ---

10 Mr. Abrams. I am not going to read the statement.

11 Mr. Thompson. If you could summarize because we are on
12 what we call the "five-minute rule" on amendments and at any
13 time --- there are pending some 120 amendments to the Energy
14 Bill. I anticipate a number of roll calls.

15 Mr. Abrams. Yes, sir. I do not intend to read the entire
16 statement.

17 Mr. Thompson. Without objection it will be made part of
18 the record in full at this point.

19 Mr. Abrams. I will summarize. I will be skipping over
20 parts of the statement and emphasizing others. I will not
21 belabor points that have been raised that I feel have been
22 covered adequately by previous speakers on the same subject.

23 The merit shop philosophy in the construction industry is
24 that union and non-union workers, union and non-union subcon-
25 tractors, can work and do work productively together on

1 construction job sites. We are not sweat shops. We pay higher
2 wages than the average industrial wage. We pay wages that
3 vary somewhere between 4 and \$10 an hour. Merit shop workers
4 in construction on an annual basis probably make as much if not
5 in many cases more than workers who are unionized because they
6 work more or less a full year.

7 We do not have a competitive advantage solely through our
8 merit shop wage structure but it is more in the productivity of
9 our workers and the productivity of our methodology that we use
10 in the construction industry.

11 We represent over 50 percent of the building construction
12 in the United States. Today I have been asked to also represent
13 the American Subcontractors Association with a constituency of
14 over 5,000 firms and a representation of over 20 specialty
15 trade associations.

16 We oppose House Bill 5900 because it would bring chaos and
17 polarization to the construction industry. A few points about
18 the construction industry that we think are not always readily
19 apparent and which lead to conclusions in legislation such as
20 House Bill 5900 that we feel are unwarranted.

21 There are over 300,000 contractors in the construction
22 industry. The average size of the contractor in the construction
23 industry is under 500,000. There are giants in the industry who
24 do over six or seven million dollars worth. They are mostly
25 people who have worked with their hands themselves and employ



1 one or two men. Together they come on a job site and assemble
2 a jigsaw puzzle. I think it is a more appropriate analogy than
3 a symphony. Although the pieces of a jigsaw puzzle can stand
4 alone they sometimes don't make sense unless they are put
5 together. They are not put together by people who are working
6 on a joint venture basis. They are put together by individual
7 entrepreneurs who are working in the construction industry
8 with their own unique attributes, their own labor policy, than
9 our business policies. We are a unique industry. We are not
10 like industrial manufacturing industries.

11 There has been a history in Congress since the Wagner Act
12 of special privilege legislation and unfortunately the effect
13 it has been intended to have has not always been achieved. You
14 have achieved in the construction industry among the building
15 trades and among merit shop workers the highest wages in
16 American industry. The average wage for a skilled worker in
17 construction is \$10.36 an hour. In San Francisco plumbers
18 recently got \$16.32 an hour. And I might add that there isn't
19 much seasonability in San Francisco.

20 Lower productivity has come out of the excess of the power
21 that the building trades have and has resulted in less work for
22 union contractors and it means less jobs for building trades
23 members.

24 Some of the examples of the special privilege legislation
25 that have been touched on here, Section 8e, the Hot Cargo

1 exemption of the Taft-Hartley Labor Relations Act that allows
2 product boycotts, that allows for preservation of work strikes
3 and agreements which means that union contractors under product
4 boycotts can't use, can't purchase, certain products because
5 they were not manufactured in a union plant. Under preservation
6 of work they can't use machines. They can't use prefabricated
7 boilers. They can't use a number of other labor-saving and
8 innovative technologies that have come into the industry.

9 Finally you have the standard agreement which is allowed
10 under Section 8e which under collective bargaining can be nego-
11 tiated so that a union contractor is not allowed to subcontract
12 to non-union contractors.

13 The result of Section 8e has been a lesser competitive
14 position for union contractors. It has meant less union jobs.
15 It has meant generally higher costs of construction in the
16 country.

17 Under Section 8f, the seven-day clause in the pre-hire
18 section of Section 8f allows the building trade unions to com-
19 pletely control the work force and control the destiny of the
20 managers of construction, contrary to other industries. The
21 result is that a union contractor is unable to control his work
22 force with less control, less management capability, because of
23 these restrictions and is unable to be as competitive as he
24 might be because of these restrictions.

25 The eight-hour wage law that applies to federal

1 construction has been carried over into collective bargaining
2 agreements and requires overtime after eight hours. In collect-
3 ive bargaining it is usually double time after eight hours.
4 What this does is inhibit the union contractor so that he can't
5 make up the time. It actually produces seasonality because the
6 union contractor in the northeast can't work during the winter
7 because he can't make up time on a day when he has good weather
8 and he can work more than eight hours. It results in a
9 situation coupled with collective bargaining stipulations that
10 require show-up time, that require a guaranteed week in some
11 trades and require men who are now non-productive to watch
12 heaters. Men who are more skilled are required to build enclos-
13 ures so that you can heat a building. The sum total is to
14 create the seasonality in the union section of the construction
15 industry which they then claim is the justification for higher
16 wages.

17 This doesn't happen to as great a degree in the merit shop
18 construction industry where we generally work 50 out of 52 weeks
19 a year and are able to provide employment for our people through-
20 out the winter. I am talking about Boston and New England, where
21 I work.

22 Mr. Ashbrook. What is your overtime situation on the
23 average merit shop?

24 Mr. Abrams. We pay time and a half for over 40 hours, in
25 accordance with federal law. The other way -- if we have a good

1 day, like this week we have had a few good days, we can work
2 10 hours. We lost a few days to rain. In the winter it becomes
3 more of a severe problem. We lose days to snowstorms. But you
4 can make it up. You might even make it up on Saturday and give
5 the men an opportunity of working a full 40-hour week throughout
6 the year.

7 The rationale of seasonality being a justification for
8 higher wages is contradicted by the hours that the building
9 trades department put out. They have estimated that the
10 average construction worker works 1,500 hours a year. At \$10
11 an hour that is \$15,000 a year. The average manufacturing
12 worker works 2,000 hours a year at approximately 4.55 an hour.
13 We will call it 5. That is \$10,000 a year. He is still earning
14 \$5,000 a year less than the construction worker who is subjected
15 to this seasonality which is the creation of federal law and
16 collective bargaining practices.

17 The fact is that the highest wages in the country are in
18 California where there is no seasonality. So that justification
19 loses some of its sting.

20 Finally, in the vein of federal legislation that has given
21 privilege to the building trade unions to their own detriment,
22 we have the Davis-Bacon Act, which I am not going to belabor.
23 I am not going to argue at this point except to emphasize that
24 it disrupts the collective bargaining process. The blind
25 endorsement of the federal government and by state government of

1 the results of collective bargaining makes the people who are
2 engaged in collective bargaining irresponsible because they
3 know that in 40 percent of the work built in this country
4 there is going to be the rubber-stamp, the institutionalization
5 of those wages and those work agreements and those low produc-
6 tivity agreements that are put into collective bargaining and
7 come out of collective bargaining negotiations.

8 When you add that to whipsawing and sweetheart agreements
9 and national agreements and food stamps for strikers and the
10 general disunity of union contractors you have a debilitating
11 process that leaves collective bargaining almost to a point
12 where it is unilateral.

13 In effect, all this legislation is killing the building
14 tradesmen with kindness. You have given them high wages but
15 you have created high unemployment and that high unemployment
16 comes about through the low productivity and the high wages
17 that are negotiated under collective bargaining agreements.

18 The House Bill 5900 could make the situation worse yet and
19 we are convinced that it does. Let me go over some of the con-
20 sequences as we see them. First of all the "joint venture"
21 fiction overlooks the individuality of the employers on a
22 construction site. I am not going to belabor the point because
23 others have and you have heard the arguments. You will have
24 secondary boycotts against neutrals. The fact is that the
25 unions themselves recognize the separate entity on the job site

1 because they negotiate separately with the employers of all the
 2 different trades. There are 19 of them. So the unions
 3 themselves don't recognize this fiction of a "joint venture."
 4 They recognize the separate entities which come together on the
 5 job site.

6 One of the effects that is going to come out of this "joint
 7 venture" fiction and come out of secondary boycott permissive
 8 legislation is that it is going to encourage top-down organizing.
 9 As I understand the intent of Congress and the labor policy of
 10 this country, especially Landrum-Griffith, that it was against
 11 top-down organizing. But that is exactly what you are going to
 12 produce by sanctioning secondary boycott picketing on a job site
 13 so that the employer is going to be pressured into signing an
 14 agreement rather than having his men be asked to sign authoriza-
 15 tion cards and endorse the fact that they would like to be
 16 represented by a union.

17 The GE case upon which the building trades base so much of
 18 their argument has been covered by others. Suffice it to say
 19 that when GE was a single employer and the primary picketing in
 20 that particular case was ruled to be legal because it was
 21 against a contractor who was doing what normally was done by GE
 22 employees.

23 That is not the case in the construction industry. I per-
 24 sonally can see no problem. I have discussed it with our labor
 25 attorneys. I can see no problem in applying the GE doctrine to

1 the construction industry as it stands because I don't see
2 where it differs philosophically from the Denver Building Trades
3 case or the Moore Drydock case.

4 The philosophy is that if you subcontract work that you
5 normally do with your own forces then the unions are entitled to
6 picket you and the subcontractor whom you are giving work to.
7 But if you subcontract work to people who normally are indepen-
8 dent contractors, like electricians and plumbers and people that
9 general contractors never hire.

10 In this day and age general contractors subcontract most
11 of their work. They employ primarily laborers and carpenters.
12 They don't employ any of these trades. They are not subcontract-
13 ing work normally done by their employees, which is what the GE
14 case addresses itself to.

15 By logical extension, if H.R. 5900 applied to all industry
16 it would be that if there was a strike against General Motors
17 you could justify at the same time a strike against B.F.
18 Goodrich, against DuPont, American Biltrite, U.S. Steel and
19 everybody else who was a "joint venturer" in the production of
20 automobiles. We just don't see the rationale behind it. We
21 understand the objective. But we can't find any logical
22 argument to contravene decisions of the Supreme Court which we
23 feel are proper.

24 Secondly, taking the next line in this legislation, there
25 would be regularly at great expense to the industry and to the

1 country, with increased amounts of violence, more picketing
2 on construction jobs sites, particularly union job sites. Job
3 sites will be shut down entirely over fringe benefit payments,
4 over pre-fabricated products, over products without union
5 labels and jurisdiction disputes, wildcat disputes.

6 I heard this morning the issue come up over no-strike
7 clauses. Only 50 percent of the union contracts in this country
8 have no-strike clauses. Many of the 50 percent that do have no-
9 strike clauses, when there is an issue that is covered by the
10 no-strike clause you find that the men are not on strike. But
11 they have gone fishing. So there are ways around no-strike
12 clauses.

13 Injunctions, which were discussed this morning, can take
14 30 days or more to get to a federal court or to the National
15 Labor Relations Board in Washington. You have a choice of going
16 either way. In any case it is not an immediate procedure. It
17 is not something that happens overnight.

18 One example of the injunctive relief that is available in
19 the construction industry is on 8(b)1A cases where Secretary
20 General Counsel Nash has instructed local officers to go for
21 injunctions anytime there is violence at a construction job site
22 and the local police cannot take care of it. But I don't know
23 of one injunction that has been filed even though they have been
24 requested.

25 So injunctions are there in the law. They are there in

1 contracts. But they don't come about so easily.

2 The subject of the Alaska pipeline came up. It is true
3 that all the contractors there have filed and have signed no-
4 strike agreements. But there are several instances that
5 wouldn't be covered by that agreement.

6 For instance if a contractor on that job site was purchas-
7 ing stone from a Candian quarry, which is happening, and the
8 stone comes up to the border and crosses the border to deliver
9 to the Alaska pipeline, that is not covered by any of the
10 agreements. This is an out-of-country contractor. Now the
11 unions would have a right to demand that an American driver sit
12 in the cab next to the Canadian driver. The contractor would
13 have the right to refuse. In that kind of situation it could
14 shut down the pipeline from Valdez to the north slope.

15 There are other situations where that Alaska pipeline would
16 come up. There are other energy projects besides the Alaska
17 pipeline that don't have no-strike agreements.

18 I think we are leaving ourselves wide open as a country for
19 the disruption of an energy policy which is just getting
20 started and which is something that the country direly needs.

21 The third point in the legislation is the exemption granted
22 to industrial unions but not exempted are independent unions,
23 the Christian Labor Union, the Congress of Independent Unions
24 with 35,000 members. These unions and the employers who have
25 signed collective bargaining agreements with them are going to

1 be pressured through these secondary boycotts to abrogate their
2 collective bargaining agreements. The question we raise is,
3 is only AFL construction unionism sacred? Don't these men have
4 the right to pursue their unions and their collective bargaining
5 agreements with their contractors?

6 I have spoken with one of these gentlemen. They are
7 seriously concerned. I hope they are going to be expressing
8 their concern to you because if nothing else this legislation
9 would kill these independent unions in the construction industry
10 anyplace the building trades wanted to kill them.

11 Labor practices not previously adjudged unfair will be
12 permitted under this legislation. We interpret this and one
13 possible interpretation is that this permissive line in this
14 legislation precludes further administrative and judicial rule
15 and review of unfair labor practices that might be before the
16 courts or might be before the National Labor Relations Board
17 right now.

18 It also precludes further administrative and judicial
19 review of unfair labor practices which have never been adjudged
20 unfair because they have never been before the National Labor
21 Relations Board.

22 For instance, a case that has never been before the National
23 Labor Relations Board is that you cannot block off a job site
24 from supervisors or management personnel. Under this legislation
25 you no longer could bring that up before the National Labor

1 Relations Board because it has never been adjudged an unfair
2 labor practice.

3 There has never been a case brought before the National
4 Labor Relations Board because secondary boycotts were not
5 allowed on the picketing of the circumference of an entire
6 military base. But you can have this particular item ruled
7 legal because it has never been judged an unfair labor practice.
8 We think that particular line in the legislation would open up
9 a "Pandora's box" of problems.

10 The next item requires 10 days' notification for space and
11 defense construction. This language was taken directly from
12 the '67 and '69 bills addresses itself to a space establishment
13 which isn't the No. 1 or No. 2 priority in this country. Our
14 priorities have changed. But the legislation hasn't. It is
15 the same proviso that was there in 1969. We have other priorit-
16 ies, like the environment and like energy and like employment
17 and those priorities are not satisfied by a 10-day notification,
18 although we don't think that particular notification will be
19 very efficacious in protecting the defense establishment if we
20 were dependent on it for another engagement.

21 The result of the passage of House Bill 5900 in our opinion
22 is that the union contractors are going to be hit the hardest
23 and AFL building tradesmen are going to lose more jobs. Inde-
24 pendent unions are going to be killed. Employee rights to not
25 join a union are going to be put aside by top-down organizing

1 through secondary pressure. Strikes against third parties,
2 innocent parties, people who have no control over the strike
3 situation, are going to proliferate. You are going to polarize
4 the industry so that jobs are going to be either union or non-
5 union.

6 A union general contractor can no longer increase his
7 competitive position by using non-union subcontractors. Union
8 subcontractors are no longer going to be able to work for non-
9 union general contractors. Non-union contractors will take over
10 more of the industry. Common situs picketing doesn't affect a
11 contractor who is completely non-union.

12 Union power over union contractors is already omnipotent.
13 They have resulted in higher wages and featherbedding and work
14 restrictions. They have been choking the union construction
15 industry. They resulted in high unemployment.

16 They resulted in high unemployment because people can't
17 afford to build. Manufacturers have so much in the budget to
18 build. Even the government has a limited amount of money that
19 it can build. The higher the wages, the lower the productivity,
20 the less construction you can build for the dollar you have to
21 spend. That is one of the reasons why we have high unemployment
22 in the construction industry, whether we are in a boom or a
23 bust, whether we are in a recession or good times. Construction
24 leads in unemployment because people can't afford to build.

25 Construction and the building trades unions we don't feel

1 have been treated unequally. The principle behind the Denver
2 Building Trades case, the Moore Drydock case and the GE case
3 don't conflict.

4 More power isn't needed. More picketing isn't needed.
5 More special privileges aren't needed. We submit to you
6 respectfully that House Bill 5900 is not needed at this time in
7 the construction industry.

8 Thank you.

9 Mr. Thompson. Thank you very much, Mr. Abrams. I have no
10 questions. Essentially the ground that you have covered has
11 been covered before. I would like to thank you however for the
12 dispassionate nature of your testimony despite your strong
13 feelings on this subject.

14 Mr. Ashbrook?

15 Mr. Ashbrook. Thank you, Mr. Chairman. One thing I guess
16 I can't resolve in my mind, I try to think from the standpoint
17 of what was said by Mr. Georgine and what you and others have
18 said representing the contractors, it seems like it has got to
19 be somewhere in between.

20 Mr. Georgine and many of the union spokesmen would have us
21 believe that on the site it is interrelated, they are allies,
22 "joint venture" and so forth.

23 Then your statement comes in from industry that says they
24 are independent. I guess in my mind I can't follow that. It
25 has got to be somewhere in between. If you, Mr. Abrams, are a



1 general contractor wouldn't it be true that you come on a job
2 and you exercise some degree of supervision and control over a
3 subcontractor from the standpoint of management, adhering to
4 plans? If somebody is not laying bricks the way you want don't
5 you feel you can come in and say "let us do them over again?"
6 To that extent there is some supervision, I am sure.

7 Mr. Abrams. Right. Either the general contractor or the
8 construction manager or oftentimes today the owners themselves
9 will do away with the general contractor and subcontract work
10 directly. In either case, whether it is the owner or the
11 general contractor or the construction manager, he will super-
12 vize the job, will manage it, will coordinate it and will assure
13 that everything moves together and try to do it in a smoother
14 flow.

15 The degree of success you have in that determines whether
16 you are going to have a good building or whether you are going
17 to make a profit on the job.

18 Mr. Ashbrook. If you are a general contractor and a sub-
19 contractor is installing air conditioning can you come on to a
20 site and say, "Get rid of that man. I don't like the way he is
21 doing that. He is bungling the job." Is that done?

22 Mr. Abrams. I can tell him I am not happy with the work
23 he is doing. But I can't tell him to fire his man.

24 Mr. Ashbrook. You have never gone and said, "Get rid of
25 this crew and bring on another crew?"

1 Mr. Abrams. I never have. And I don't know contractors
2 who have done more than object to the owner of the company that
3 they don't like the quality of workmanship. It is up to the
4 owner of the company to correct it with the same crew or bring
5 in a new foreman to correct the situation.

6 But I can't tell a subcontractor to do anything that isn't
7 in the contract.

8 Mr. Ashbrook. You can stop them right in the middle of
9 the job if you don't like their work.

10 Mr. Abrams. I can give them seven days' notice and then
11 10 days after that I can send him a notice that I am contem-
12 plating terminating him. All in all, it takes quite a long
13 period of time.

14 I have been in business eight years. I have done it once
15 for a subcontractor who gave me a false bond that had been
16 forged. But it just doesn't happen in the normal course of
17 events, unless the subcontractor becomes financially unstable or
18 goes into bankruptcy.

19 Mr. Ashbrook. That is the other side. The point that I
20 was developing a week or so ago, when they say they are totally
21 interrelated allies, from my experience, which is very limited,
22 I have seen jobs where some sub will make money. I have seen
23 jobs will one will break even and one will lose. There is no
24 profit-sharing. Nobody picks up if one guy underbid who can't
25 make it. I guess that is what makes me believe they are

1 independent. But by the same token in the overall supervision
2 you would have to have somebody making them accountable. That
3 tugs the other way and makes me think there is some degree of
4 joint venture. I am not sure which way it bounces the most
5 because I know they keep their accounts separately. They pay
6 their own payroll checks. One sub may be losing money while
7 the general makes money. The accounting side of it really makes
8 you think they are independent.

9 But the thing I have trouble with there is that an architect
10 or a representative of the general contractor, somebody has to
11 have some overall supervision.

12 Mr. Abrams. You have to look at it that it is the general
13 contractor's responsibility on the job to coordinate the jobs,
14 the same way the airconditioning subcontractor's system is to
15 get the ducts in and the refrigerant lines in to get the air
16 conditioning working.

17 Everybody has responsibilities on the job. The general
18 contractor's responsibility is coordination. But that doesn't
19 mean that he is involved with the businesses of the people he is
20 coordinating anymore than General Motors is involved with the
21 business of people who produce tires or batteries or upholstery
22 or steel. You are coordinating. The person who is responsible
23 for the finished job is coordinating. But he is coordinating
24 separate entities.

25 Mr. Ashbrook. We have also had a lot of testimony,

1 shifting to another point, and I have asked just about every
2 witness the same question. Secretary Dunlop indicated that he
3 thought 5900 might bring about a situation in which in his mind
4 he thought was good. Up to now we have had one who said, "yes,"
5 one said, "no" and one said "maybe."

6 Do you think generally we should have all union or all
7 non-union tradesmen on a site?

8 Mr. Abrams. The answer to your question is "no." The
9 Associated Builders and Contractors have the merit shop where
10 union and non-union men are working side by side on a job site.
11 We feel that this is the most productive way of building a
12 building. It encourages competition. It reduces inhibitions
13 on productivity. When union subcontractors bid work for me
14 oftentimes the work rules that they have to labor under when they
15 work for union contractors are suspended.

16 A union painter working for me -- and I use union subcon-
17 tractors if they are the lowest responsible bidder -- and I have
18 been told this, can use any size roller. Can use spray guns.
19 Can use any technique that he finds available that open shop
20 contractors use so he can be more competitive.

21 The whole merit shop movement and this philosophy and
22 practice of union and non-union subcontractors and workers
23 working together on the same job site is doing is bringing about
24 a reform in the construction industry.

25 In my own area the Massachusetts Building Trades Council

1 recently dropped 27 restrictive work practices so that their
2 contractors can compete with open shop contractors. That is
3 what this is all going towards. We don't want to see it go
4 towards a polarization that we think this bill would create,
5 where everybody would either be union or non-union. We would
6 like to see the polarization diminish and the reforms come into
7 the industry so that we can get rid of restrictive work practices
8 and get rid of featherbedding and get rid of low productivity.
9 Then everybody can work together in the industry without any
10 disharmony. That is the basis of the contentions between merit
11 shop contractors and between the building trades unions.

12 Mr. Ashbrook. In your experience with the merit shop where
13 you have had this opportunity to observe union and non-union
14 tradesmen working side by side, what has been the general
15 experience? Has it been workable? Do they tolerate each other?
16 Is there an edge that is cutting all the time? What is the
17 phenomenon? How does it work?

18 Mr. Abrams. I can give you a specific example. Before
19 going into business myself I worked for a union contractor.
20 When I was on those union job sites at coffee breaks, at lunch
21 time, the different trades would go and sit in different corners
22 of the building and each would segregate themselves and there
23 was a certain amount of not outward animosity but competition
24 between the trades, these union trades working on that union job
25 site. Everybody has his own fiefdom. Everybody is concerned

1 that someone else doesn't do their work. You don't have two men
2 who are both pipefitters working with black metal pipe, one a
3 sprinkler fitter and one a heating man, communicating and swap-
4 ping things back and forth because they have separate trades.
5 One is a sprinkler fitter. One is a heating man.

6 The atmosphere on a merit shop job site between the union
7 men on the job and the non-union men on the job is one of
8 harmony. The workers generally communicate. They share their
9 free time on the job, during lunch hour, during coffee breaks.
10 There generally is more of a spirit of cooperation on those job
11 sites. And it is a much healthier situation.

12 Mr. Thompson. Isn't that so with merit craftsmen? Are
13 they different? They are all human beings.

14 Mr. Abrams. They are all human beings.

15 Mr. Thompson. I can understand the separation of
16 specialties. It is something like the practice of medicine.
17 There probably isn't enough specialization in medicine. Why
18 should an ophthalmologist have to do both eyes? He should be a
19 left-eye man or a right-eye man. That is what they are getting
20 at.

21 Mr. Abrams. But there are certain skills in the construc-
22 tion industry that cross eight or nine trades. Take welding.
23 A man who can do welding can work for a plumber, a sprinkler
24 fitter, a heating man, a steel erector, for any number of sub-
25 contractors. And they often do.

1 Mr. Thompson. I don't see the relevance though to your
2 statement that during the coffee break the sheet metal workers
3 will go one place, the pipefitters another, the electricians
4 another. What difference does it make really? They can't build
5 the building finally without a degree of coordination and
6 interrelationship.

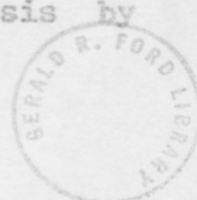
7 Mr. Abrams. But the answer was in response to a question
8 about the harmony on the job site, when there are union and
9 non-union men there. I am saying there is more harmony on a
10 merit job site than a union shop job site. I am saying that
11 from personal experience. The fact that people work across ----

12 Mr. Ashbrook. That would seem to stretch credibility just
13 a little bit. But I suppose ----

14 Mr. Abrams. I am citing experience.

15 Mr. Ashbrook. Not that I want all of them union. But my
16 assumption going in would be that they would be happier where
17 it is all union, if you are a union man and you would be
18 happier where it is all non-union if you are a non-union man.
19 My common sense would tell me that. I don't have experience.

20 Mr. Abrams. In the northeast many of the non-union men are
21 ex-union men. But they are tired of loafing six months a year.
22 They would rather work for \$1 an hour less and work 50 weeks a
23 year rather than having to loaf and collect. There are some who
24 don't enjoy that. There are some men who find that offensive.
25 And they would rather make more money on an annual basis by



1 working 50 weeks a year than make less money by working six
2 months a year.

3 So where does the conflict come in when you have men who,
4 in the expression of the industry, "buried their book" and are
5 working for a non-union contractor and are working on the same
6 job site with men who still belong to the union? There is no
7 conflict.

8 Mr. Ashbrook. One last question. I appreciate your
9 first-hand experience. The testimony seems to be like a "yes,"
10 "no," "maybe" to the question of whether or not 5900 would make
11 for a substantial increase in construction costs. Some said
12 "yes." Some said "no." Secretary Dunlop seemed to think like
13 on most things it didn't make any difference.

14 What would be the observation of a person with the experi-
15 ence you have? Do you think it is going to increase costs and
16 if so how?

17 Mr. Abrams. If the polarization in the industry that we
18 spoke about, on the jobs that are done after that polarization
19 on a strictly union basis they are going to cost more than jobs
20 done on a union basis right now. The union general contractor
21 is not going to be able to take prices from non-union subcontrac-
22 tors. He is going to be more restricted in the use of products.
23 The product boycotts and preservation of work agreements are
24 going to have more of a legislative connotation behind them
25 after 5900 is passed because that whole job site can now be shut

1 down.

2 If the heating contractor decides he wants to use a pre-
3 fabricated boiler, that whole job site is going to be shut down.
4 It is not going to continue to work while he resolves the
5 problem with his union. The entire job site. That has to cost
6 the contractor more money. As well as the knowledge that he
7 doesn't have and that there are more strict measures that the
8 building trades can take against him if he does use a product
9 that is boycotted if he doesn't follow the preservation of work
10 doctrine in the Philadelphia Woodwork case.

11 Mr. Ashbrook. Probably the answer would come in the spec-
12 ulation which I don't have as to which way it would go, would
13 it be more non-union, would it be more union contract jobs.
14 That would probably have to be the key. We have had it both
15 ways. Some say that the unions would do better, get more jobs.
16 Some say the non-union open shops would.

17 One last parting shot. If we pass 5900 and somehow or
18 another you could get an agreement with the trades to take 8e
19 and 8f out, would you consider that a good bargain? Would you
20 trade 5900 to get rid of 8e and 8f?

21 Mr. Abrams. Would I? No. But I think a union contractor
22 might want to give that serious consideration. I am a merit
23 shop contractor. 8e and 8f ----

24 Mr. Ashbrook. Don't mean that much to you.

25 Mr. Abrams. Don't bother me because I don't have product

1 boycotts. I don't have preservation of work restrictions. I
2 don't have pre-hire agreements. I don't have any of these
3 impediments that a union contractor has been saddled with by
4 Congress.

5 Mr. Ashbrook. Thank you, Mr. Chairman.

6 Thank you, Mr. Abrams.

7 Mr. Thompson. Thank you very much, Mr. Abrams.

8 This is the first of a series of record votes. We have
9 yet to hear from a very patient gentleman, Mr. Debro. Would you
10 like to start now, Mr. Debro? Or would you like us to come
11 back?

12 Mr. Ashbrook. We can go and come right back.

13 (A recess was taken.)

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

15 For those of you who are interested in the progress of the
16 energy legislation we just disposed one way or the other of
17 the first of 150 amendments.

18 Our concluding witness for today is a very patient gentle-
19 man, Mr. Joseph Debro. Is that how you pronounce that?

20 Mr. Debro. "Debro."

21 Mr. Thompson. Welcome.

22 STATEMENT OF JOSEPH DEBRO, NATIONAL ASSOCIATION OF
MINORITY CONTRACTORS.

23 (Insert follows.)
24
25

XXXXXX

1 Mr. Debro. Thank you. I would just submit this testimony
2 for the record. I have about four additional pages which I
3 brought in today from San Francisco in addition to the prepared
4 testimony which I had already submitted to the Committee.

5 Mr. Thompson. Without objection your statement and the
6 addenda will be made a part of the record at this point.

7 (Insert follows.)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Mr. Debro. I have also a sort of a historical perspective
2 view of the construction industry from a black contractor's
3 point of view which I would also like to make a part of the
4 record.

5 Mr. Thompson. We would appreciate that. Is that the
6 article you refer to in your testimony?

7 Mr. Debro. Right.

8 Mr. Thompson. Fine. Thank you.

9 That without objection will be made a part of the record
10 following your printed statement.

11 (Insert follows.)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Mr. Debro. I would just like to say that minority contrac-
2 tors are in general open shop contractors. It is not specificall-
3 ly by choice. I happen to be a contractor. I happen to have
4 signed a hiring hall agreement but in general minority contrac-
5 tors are open shop contractors. The reason is that they in
6 general are not able to participate in the hiring hall process.

7 I think a part of our problem with the bill is the fact
8 that we think that this bill perpetuates a continuation of our
9 exclusion from the hiring hall process. We think this will
10 ultimately prevent us from working in the industry as open shop
11 contractors as well as keep us from participating in the hiring
12 hall process.

13 One of the things I cite in the written testimony is a
14 court case which we had in Seattle against five locals. There
15 has been a consent decree since about 1971. We haven't been
16 able to get much progress. It just seems to me that if this
17 legislation is enacted one of the things we would like to see is
18 a way to provide some kind of redress for some of the injustices
19 that we are likely to find being practiced in the field.

20 The things that happen in Washington are quite often
21 theoretical. But our day-to-day experiences with the various
22 locals leads us to have little faith that those locals will obey
23 any new laws as they don't obey existing laws or the courts.

24 So we would like to see something added to this legislation
25 which provides for redress and which shifts the burden and

1 responsibility of seeking compliance with the law from minority
2 contractors to those who can more afford the cost.

3 Mr. Thompson. Mr. Debro, where physically is your
4 company located?

5 Mr. Debro. In San Francisco, which I might add is one of
6 the most restrictive towns in the country. My son wanted to be
7 a plumber. Of course, you have to be born in a plumbers'
8 union in San Francisco. He couldn't get in the plumbers' union
9 through the training program out there. So he had to go to law
10 school.

11 Mr. Thompson. Poor fellow.

12 Mr. Debro. That is my feeling about it.

13 Mr. Thompson. Of course, historically San Francisco isn't
14 the most compatible city in the United States although I think
15 it is the most beautiful city in the United States to union
16 activity of any sort.

17 It has been my experience of late and I gather that your
18 reference to the hiring hall is in the past. at least there was
19 racial discrimination in apprenticeship programs or where unions
20 are concerned. Is that right?

21 Mr. Debro. There still is.

22 Mr. Thompson. I suspect that in many areas that is
23 absolutely true. My experience has been as one who worked very
24 hard for all the civil rights legislation since I have been a
25 member of the House and have watched it closely that it might

1 not be as rapid as some of us would like. But there is an
2 opening of the unions, not only because of the law but because
3 many of them have become more enlightened than they used to be,
4 to use a figure of speech, when some of the trade unions
5 discriminated against anyone except someone in their own
6 family or a close friend. That was a fact with some of the
7 unions that I am well acquainted with in New Jersey and in
8 particular in my home city, which is now a highly predominantly
9 black city.

10 All of the trades are taking minority apprentices and have
11 made plans to take even more minority apprentices. But the
12 unemployment situation which exists there now is such that the
13 electricians, the carpenters and the plumbers, all of them I
14 happen to know about, none of them have taken an apprentice of
15 any description in two years. That doesn't mean that they
16 should or have any right to discriminate. I notice that in
17 your description of the suit against Ironworkers, Sheet Metal
18 Workers, Electricians, Plumbers and Pipefitters and Operating
19 Engineers, without giving us all of the facts you have given us
20 enough. "Judge Lindberg found that the union and their all-
21 white Joint Apprenticeship Committees had violated Title VII of
22 the Civil Rights Act." "Judge Lindberg found numerous occasions
23 of union discrimination." Then you set forth at least one of
24 them or two. Unhappily there are situations where people
25 persistently violate the law. I for one hope there is an end to

1 that.

2 Mr. Debro. I guess what we are asking is if this Act is
3 to become law that there would be something in the Act which
4 would at least provide for redress. What we have in Seattle,
5 of course, is an inability of the courts to effect any kind of
6 solution to the problem. The burden of trying to bring the
7 issue before the court has rested on those who are least able to
8 afford it.

9 So what we are seeking in this kind of legislation is a
10 way to avoid a continuance of that kind of posture.

11 Mr. Thompson. We have a problem with that in this
12 particular legislation because of our own jurisdictional lines
13 here. Properly that subject would come under the jurisdiction
14 of the Committee on the Judiciary although of course we do have
15 clauses but we don't go much beyond them in which we prohibit
16 discrimination because of apparently everything but sex,
17 according to an earlier witness.

18 Mr. Debro. I think though the prohibition against
19 discrimination is not very helpful because the discrimination
20 occurs at a point in time before we get to the site. It occurs
21 at the Joint Apprenticeship Councils. None of those are
22 integrated, or very few of them around the country. It occurs
23 at the hiring hall process level. It occurs at an earlier level.
24 So our members are open shop because they are not permitted to
25 participate in any of these processes and once they get a job

1 the union says, "O.K., sign a hiring hall agreement. We will
2 let your men participate by paying dues." But that is the
3 extent of their participation.

4 What I am arguing is that the cost of this process is
5 getting higher. The social cost is getting higher. We are
6 seeing increased black unemployment in most of our cities,
7 largely due to the fact that we don't work on construction sites.
8 You can go up over Washington, D. C., this city, and look at the
9 numbers. It is just unbelievable.

10 We cite the increased cost of aid to needy children, for
11 example, because blacks are not working. They are not partici-
12 pating in the rebuilding of their cities, in the urban transit
13 and so on. We think this kind of legislation will be a continu-
14 ation of an exclusion.

15 Mr. Thompson. I am in total sympathy with your point of
16 view except that I really honestly don't think that this
17 legislation would be harmful. As a matter of fact I would
18 rather anticipate that in the final analysis with the attitudes
19 of the construction unions changing as they are that it would
20 be useful.

21 But I certainly vicariously at least can share your
22 frustration and that of your son. The unemployment among
23 minorities, particularly young black men and women, in my
24 district is at least twice that of non-black or whites, which is
25 terrible in itself. But they have not, it is perfectly true,

b/5

1 been able to secure employment in a large measure. They haven't
2 been able to qualify in the various trades. This is partly due
3 to some ancient union practices and also partly due to the
4 failure of New Jersey until very recent years to have proper
5 vocational education programs. Everyone just was run through
6 one school without any opportunity to learn a trade. We tried
7 to remedy that by the establishment of a skills center, by the
8 establishment of a county vocational school, by increased
9 emphasis on vocational education all the way through the system.
10 But admittedly we are way, way behind.

11 Mr. Debro. I guess we would argue that the system needs to
12 be more responsive to this specific need. A skills center, a
13 training center and so on, those are good first steps. But in
14 terms of work for most young white men who want to go into
15 construction there is the availability of on-the-job training.
16 But that is because the system is more flexible for them than it
17 is for us.

18 In Seattle for example the Ironworkers again, we looked at
19 that very carefully. We were able to document the difference
20 between the availability of opportunity for blacks and poor
21 whites. That is the kind of thing we are trying to get at.

22 We think that by giving the local like the one in Seattle
23 or the one like in San Francisco some additional unilateral power
24 that we are going to be at their mercy once more or continually.

25 Mr. Thompson. It is only on that point where I have a

1 disagreement with you. I really don't think this is racial
2 legislation. If I were to think in any way that it was, I
3 wouldn't have anything to do with it.

4 Mr. Debro. I guess the point I am trying to make is that
5 it is a different kind of racism in the sense that one of the
6 enlightening parts of unionism has been that it has supported
7 social legislation. But this support falls off very rapidly
8 when we start talking about jobs and competition for jobs.

9 Unfortunately those of you who support the social needs
10 that we have in our community respond more rapidly to an issue
11 like busing or lunch programs or welfare than you do to our
12 need to participate actively in the system at a productive
13 level.

14 So what we are looking for right here in this legislation
15 is the opportunity to participate. At least if not an oppor-
16 tunity to participate, freedom from being hurt by those who
17 capriciously exercise some power that you are about to give
18 them.

19 Mr. Thompson. I would have to agree with your criticism.
20 On this Committee in particular, the full Committee on Education
21 and Labor, have come many wonderful pieces of social legislation
22 over the recent years. I think they have been very constructive
23 but it is true that we have opportunities emanating from this
24 Committee because we have the school lunch program. We have
25 the hold poverty programs. We have Elementary and Secondary

1 Education Act programs. We have manpower training programs.
2 Minimum wage. Fair labor standards and labor-management. But
3 we don't have jurisdiction over the judicial system. For those
4 matters we go to the Committee on the Judiciary.

5 Therefore some of us I suppose are inclined too much to
6 rely upon the court system or another committee.

7 John?

8 Mr. Ashbrook. Thank you, Mr. Chairman. I have read your
9 statement. I would say it is rather strong, particularly
10 when you say that "we know that an appeal based on racial
11 justice has little chance of changing the subcommittee action."
12 Do you think the bill is going to be reported out regardless?
13 Is that what you base that on?

14 Mr. Debro. I have had some interesting experiences with
15 respect to this bill. I think that there is a lack of under-
16 standing by members of the Congress of the issues. The state-
17 ment contained in the bill that picketing would be illegal if
18 it is based on race is really not material because that is not
19 the point at which the issue is joined. I think it reflects a
20 lack of understanding of what the issues are.

21 In San Francisco we have two subcontractors who would like
22 to sign hiring hall agreements. They cannot sign those agree-
23 ments or they will not sign those agreements because they have
24 work crews who have been a part of their organization for the
25 last 10 or 15 years. They won't sign these agreements unless

1 these men are going to be given permanent status in the local
2 plumbers' union. That is not going to happen. So they have to
3 work open shop. If the plumbers' union is working for a
4 general contractor who has signed a hiring hall agreement the
5 plumbers in San Francisco will close that job down. It is not
6 based on race. The issue precedes that. I just hope that kind
7 of understanding is not reflected in the language of the bill.

8 Mr. Ashbrook. Is that what you meant at the bottom of
9 page 2 when you said "If H.R. 5900 passes this will give the
10 large general contractors another opportunity to refuse to use
11 minority subcontractors and to give as the excuse the union
12 pressure which might close down his job?"

13 Mr. Debro. That is exactly right.

14 Mr. Ashbrook. Is that based on your complaint on hiring
15 hall practices or on a subtle pressure that is more pervasive
16 than the hiring hall practices?

17 Mr. Debro. If either of these plumbers goes to a union
18 contractor and gives him a bid, the contractor can then say,
19 "If I accept your bid, which happens to be low, you were the
20 lowest responsible bidder in this instance, I am likely to be
21 closed down because Joe Marsola will not let an open shop con-
22 tractor work in San Francisco." And that is quite true. He is
23 likely to be closed down and he can refuse the bid on that
24 basis. That is not a racial basis.

25 Mr. Ashbrook. Your minority contractors, I assume you are

1 saying, for the most part are subcontractors?

2 Mr. Debro. They are general and sub.

3 Mr. Ashbrook. Which are you?

4 Mr. Debro. I am a general.

5 Mr. Ashbrook. Small? Medium-sized? Large?

6 Mr. Debro. Medium-sized.

7 Mr. Ashbrook. Do you think you could survive if 5900
8 passed?

9 Mr. Debro. I could survive because I work for myself. I
10 only do work that I develop. I perform contracts for my own
11 account. So that is not a problem for me.

12 Mr. Ashbrook. So you have your own employees. You don't
13 have to go to a hiring hall or anything like that.

14 Mr. Debro. As a general contractor I use subcontractors.
15 I have a different posture. I don't work in San Francisco. I
16 have never been able to work in San Francisco. I work outside
17 of San Francisco. My position with respect to subcontractors is
18 they don't have to sign a hiring hall agreement unless the
19 union, their trade, will agree to take in their work force on a
20 permanent basis. We have been able to make that stick.

21 Mr. Ashbrook. Is that the case all the time? Or is that
22 just an isolated practice?

23 Mr. Debro. Is what?

24 Mr. Ashbrook. What you just stated.

25 Mr. Debro. It works because I happen to be working in

1 black areas and we have some turf areas we can be dealing with.
2 But if I built in suburban San Francisco or in Oakland, for
3 example, I would have a different kind of problem.

4 Mr. Ashbrook. I am not one who is necessarily smitten with
5 the bill. But I must say I didn't really see what you referred
6 to as a "more subtle form of racism." I find that interesting.
7 I assume from your experience you truly believe that that will
8 happen.

9 Is the problem then the hiring hall? Or is the problem
10 giving more power to the unions?

11 Mr. Debro. It is misleading when you talk about giving
12 power to unions because I don't want to blanket, make a
13 blanket condemnation of unions because there are a number of
14 unions that are very supportive of what we are trying to do and
15 that are very cooperative.

16 But what I am trying to talk about are the four or five
17 crafts that are important, that are high-paying, where we have
18 difficulty in almost every jurisdiction. What I would like to
19 do is call the Committee's attention to the fact that these are
20 things that happen in the field. We need to somehow at least
21 consider those when trying to figure a bill to deal with the
22 issues we are talking about.

23 Mr. Ashbrook. We went to a hiring hall. But that was a ---

24 Mr. Thompson. That was Longshoremen.

25 Mr. Debro. That is a different situation.

1 Mr. Ashbrook. On page 2 you say "The Congress has already
2 passed laws which allows the real culprit in this circle of
3 discrimination to escape. Minorities are pitted against
4 workers when in fact we should be pitted against the large
5 contractors."

6 Would you explain what you mean?

7 Mr. Debro. I used a firm that is local, Blake Construction.
8 When we object to the fact that they do not employ members of
9 minorities at some parity with the population, they say "We
10 have a hiring hall agreement. We have to go to the hall to get
11 electricians and there are no black electricians in the hall
12 in Alameda County." There are 1,500 electricians and there
13 are 25 blacks, most of whom are recent.

14 If a contractor calls to the hall, he can't say "send me a
15 black electrician."

16 Mr. Ashbrook. He can't very well say "send me a white
17 electrician" either. But the factors are about 100 to 1.

18 Mr. Debro. That is right.

19 Mr. Ashbrook. 80 to 1.

20 Mr. Thompson. He can't advertize for a male or a female.

21 Mr. Debro. The point I am making now is that because of the
22 posture, the previous history of these unions, we continually
23 have this problem. So what happens is that in Seattle we end
24 up suing the Ironworkers when in fact we would be preferring
25 to sue a company that is violating the law so we could get a

1 judgment against that company and it would cost them some
2 money.

3 What do you get when you sue a union? We are suing some
4 workers. We can put a union leader in jail. It is the wrong
5 fight. I think the fight is wrong, because of the kinds of
6 laws that continually get passed.

7 The Civil Rights acts almost always deal with the issue in
8 such a way that we have to be pitted against a union. That is
9 the wrong fight.

10 Mr. Ashbrook. You said in the beginning that you are a
11 union shop company. You said you don't think 5900 would affect
12 you that much because you are not in the San Francisco area.

13 Mr. Debro. I don't work in San Francisco.

14 Mr. Ashbrook. I could see if you were basically non-union
15 and you thought by superior bargaining power, an organization
16 picketing or something, that the unions would push you out,
17 and you would see some damage in 5900. But as a union contract-
18 or now, I ---

19 Mr. Debro. I am not speaking on behalf of my own
20 situation.

21 Mr. Ashbrook. I realize that. You said most of the
22 minority contractors are ---

23 Mr. Debro. Open shop. Right. That is where the problem
24 is. If they are open shop and they want to remain open shop
25 there is the constant threat that the large contractor can

1 refuse to accept their bid, because of 5900. He refuses it
2 based on the fact that he is likely to be closed down, as a
3 result of having an open shop contractor on his site.

4 Mr. Ashbrook. You speak about another situation when you
5 say "5900 would allow a racist union" -- whatever that is --
6 "to close down a job on which an open shop minority contractor
7 is working." That refers to a situation in progress. The
8 other refers to where we are going to bid a job and start
9 letting subcontracts. You are indicating that 5900 would even
10 hurt where there is a job on which an open shop minority
11 contractor is working.

12 Mr. Debro. The union can arbitrarily decide to close a
13 site down because a minority contractor will not bargain. If
14 one of my plumbing contractors decides not to bargain with the
15 San Francisco local because of their practices, then the job on
16 which he is working can be closed down. The whole site can be
17 closed down.

18 Mr. Ashbrook. Thank you, Mr. Chairman. I believe Mr.
19 Debro has some very interesting comments from the field, as he
20 puts it. He does it in a very pointed way. We certainly
21 appreciate it. We may not agree with it all. But there is
22 certainly nothing wishy-washy about your statement.

23 For a last point, how many minority contractors throughout
24 the country are there? Do you have an association?

25 Mr. Debro. There is an association.

1 Mr. Ashbrook. What number would be involved?

2 Mr. Debro. In the association about 3,000.

3 Mr. Ashbrook. About 3,000.

4 Mr. Debro. I think about 7,500 minority contractors in the
5 country.

6 Mr. Ashbrook. Do you purport to speak for an organization?

7 Mr. Debro. Yes. The organization to which I belonged was
8 the National Association of Minority Contractors. I am no
9 longer a part of that, that organization.

10 Mr. Ashbrook. Nowhere did I see that you were speaking
11 for them. You are speaking for yourself.

12 Mr. Debro. I represent an organization called Contractors
13 Organized to Lobby. We have done that on occasion. That group
14 is about 100 contractors, who are specifically concerned with
15 the kind of legislation that affects minority contractors. We
16 deal directly with legislative matters, some of the other things
17 the association deals with.

18 Mr. Ashbrook. You say CONTROL is going to make an effort
19 across the country to oppose 5900.

20 Mr. Debro. The bill itself is not what we are opposing, I
21 guess. What we are really opposing, what we are trying to do,
22 is to educate. I think the statement that I made with respect
23 to what black communities need around the country is the ability
24 to work. We need somehow to be able to get into the system. We
25 don't have that. We keep getting social legislation which

1 perpetuates that kind of dependency, you see. I think we need
2 aid to needy children. But I think we could obviate the need
3 for that. We could decrease the need for that kind of support
4 if in fact the thousands, the millions, of young black kids who
5 are running around the streets unemployed had some way to get
6 into the system of work. This is what we are really talking
7 about.

8 Mr. Thompson. I agree with that. We will take a very
9 careful look at your statement. I would appreciate it if you
10 would take another look at the bill and rather than to oppose
11 the bill on the premise that you have stated her, let us see if
12 we can figure out a way to attack the problem without attacking
13 the bill because I think were this bill to pass that you would
14 not be disadvantaged.

15 With that, Mr. Ashbrook and I had better make this roll
16 call.

17 The subcommittee will recess until tomorrow morning at
18 10 a.m. in room 2175 to take the testimony of Mr. George Meany,
19 President of AFL-CIO. Mr. Meany is ill. But his statement will
20 be read in his own words by Mr. Andrew J. Beemar.

21 Thank you very much.

22 (Whereupon, at 4:27 p.m. the subcommittee adjourned, to
23 reconvene at 10:00 a.m., Wednesday, June 11, 1975, in room
24 2175, Rayburn House Office Building.)

25

- - -