

The original documents are located in Box 2, folder “Common Situs Picketing - Transcripts of Hearings (7)” 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 Gerald Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections.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.

Office 6

Stenographic Transcript Of

HEARINGS

Before The

SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

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

Washington, D. C.

June 12, 1975

Alderson Reporting Company, Inc.

Official Reporters

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

NA 8-2345



TABLE OF CONTENTS

1	House of Representatives,	Washington, D. C.
2	Subcommittee on Labor-Management	
3	Relations of the Committee on	June 12, 1975
4	Education and Labor,	
4	STATEMENT OF:	P A G E
5	John Noble, Friedman and Koven, for the	
6	American Retail Federation (accompanied	
7	by: John White, President, American Re-	
8	tail Federation)	3
9	Joe M. Rodgers, President, Joe M. Rogers	
10	and Associates, Nashville, Tennessee;	
11	Member of the Executive Committee, U.	
12	S. Industrial Council; and William B.	
13	Barton, Council.)	14
14	Harry P. Taylor, President, Council of	
15	Construction Employers	36
16	Robert J. Connerton, General Counsel,	
17	Laborers' International Union of North	
18	America, AFL-CIO	48
19		
20		
21		
22		
23		
24		
25		

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

3 - - -
4 THURSDAY, JUNE 12, 1975
5 - - -

6 House of Representatives,

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

10 Washington, D. C.

11 The subcommittee met, pursuant to notice, at 9:40 a.m.,
12 in room 2261, Rayburn House Office Building, Hon. Frank
13 Thompson (chairman of the subcommittee) presiding.

14 Present: Representatives Thompson, Miller, Ashbrook
15 and Quie.

16 Also present: Daniel H. Pollitt, Counsel; Jeunesse M.
17 Beaumont, Subcommittee Clerk; and Edith Baum, Minority Counsel
18 for Labor.

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

20 It is the practice of this committee to have at least
21 two members of a subcommittee present. We are in a rather
22 complicated situation with several committees meeting, and
23 subcommittees, the Pension Task Force is marking up, other
24 committees are meeting.

25 Our situation is complicated further by the fact that
the House is going in at 10 o'clock. Shortly after 10, there
will no doubt be a quorum call. We will have a recess. We

1 will come back and then the House is going to take a recess at
2 11 o'clock for a Flag Day ceremony and then go back on what
3 remains of the energy bill.

4 I did succeed yesterday in getting unanimous consent for
5 the committee to sit during the five-minute rule today. So
6 that we will in patches be able to complete our work today.

7 Minority counsel informs me that she sees no objection
8 to our continuing.

9 I realize that some of you have come from some distance.
10 So, we will start with Mr. John Noble of Friedman and Koven,
11 for the American Retail Federation.

12 Mr. Noble, by unanimous consent, your full testimony
13 will be made a part of the record at this point.

14 It is nice to see you this morning.

15 Mr. Noble. Thank you, Mr. Chairman.

16 (The full testimony follows:)
17
18
19
20
21
22
23
24
25

1 STATEMENT OF JOHN NOBLE, FRIEDMAN AND KOVEN, FOR
2 THE AMERICAN RETAIL FEDERATION (ACCOMPANIED BY:
3 JOHN WHITE, PRESIDENT, AMERICAN RETAIL FEDERATION.)

4 Mr. NThompson. You may proceed as you wish.

5 Mr. Noble. First, I would like to introduce the gentleman
6 on my left, John White, President of the American Retail
7 Federation. He has kindly agreed to assist me in this presenta-
8 tion.

9 As the Chairman noted, my remarks will be incorporated
10 in the record. It is pointless to go through that testimony.

11 I simply would like to point out a few characteristics
12 of the bill as I view them and as they are treated in the
13 written record.

14 Mr. Chairman, it appears to me from my 15 years in the
15 labor field, including five years with the National Labor
16 Relations Board enforcing this statute, that a need has not
17 been shown for the type of legislation which H.R. 5900 con-
18 templates and is illustrative of.

19 The construction trades union, as the Chairman is famil-
20 iar, ranks among the highest in terms of wages and benefits for
21 the labor organizations in the United States. The enterprises
22 in which the construction trades are engaged involve the
23 exercise of particular craft talents on major and minor con-
24 struction sites.

25 Obviously, the interest of the American Retail Federation
is rather substantial with respect to this piece of legislation

1 inasmuch as this Federation represents major retailers who are
2 constantly engaged in the erection of major shopping centers
3 which have become so much part of the national scene today.

4 The retailer is in a rather unique position, even apart
5 from the construction companies, themselves, inasmuch as the
6 construction of these shopping centers and retail facilities
7 are on a rather highly timed basis.

8 For example, if a major retailer was contemplating open-
9 ing a store in a major midwestern city in the month of September
10 it will have gathered inventory in terms of soft goods especi-
11 ally which are designed specifically for sale during those
12 four months, the back-to-school months, and the like.

13 Obviously, interference with the construction facility
14 or shopping center would interfere with that time schedule.
15 Obviously, if the construction were shut down, the retailer
16 would be left with the inventory which was gathered in contem-
17 plation of a fall opening.

18 Our interest is not just in opposition to the bill. We
19 have a very sincere and substantial interest in seeing that
20 the shopping center construction goes along with a minimum
21 amount of interference.

22 Obviously, there is no way and there should be no legis-
23 lation which would interfere with the legitimate right of a
24 labor organization to picket a primary employer with whom it
25 has a legitimate dispute, either a dispute arising out of the

1 interpretation of that contract or dispute arising out of the
2 fact that the union and employer can't agree to one.

3 The difficulty with 5900 is the fact that if passed it
4 will enmesh neutral employers at the site, many of whom have
5 very good labor relations with the trade and represent employees
6 and many of whom will have labor agreements which were worked
7 out by mutual agreement, the hard bargaining; the labor union
8 is satisfied with it and so are the employers.

9 The Chairman also must recognize that in this day and
10 age of minority representation there are a lot of new con-
11 struction companies which are the product of minority enter-
12 prise, black enterprise.

13 In connection with that, while I was in the airport
14 yesterday coming in from Chicago, I picked up a magazine which
15 is called Black Enterprise. It is the June 1975 issue. I noted
16 that there are several construction companies, one in New York
17 City, one in Miami, one in Chicago, another in Atlanta, which
18 are essentially black enterprises. They are new construction
19 companies.

20 The article indicated that they suffered about as much
21 from the current recessionary period as did any other indus-
22 tries and that they had lost a considerable amount of money
23 in sales from 1973 to 1974.

24 Any bill that would jeopardize the existence of these
25 minority companies, I suspect many of them are, because they

1 are new, are still non-union, would jeopardize that minority
2 program as well and that has to be obviously a concern of this
3 committee.

4 Mr. Thompson. Why do you think they would be jeopardized?

5 Mr. Noble. I think they would be jeopardized, Mr.
6 Chairman, because one of the objectives, it seems to me, of
7 this House Resolution is to enable the picketing of a complete
8 site where one of the employers on that site employs non-
9 union labor and the picketing unions are claiming that their
10 members have no desire to work alongside of non-union labor.

11 I suspect that because these minority companies are new
12 in the field that many of them will be non-union and hence be
13 subject to the extension of that picketing on site.

14 Mr. Thompson. Many are non-union; many are open shop,
15 what are called merit shops.

16 We have testimony from the Association of General
17 Contractors to the effect that there has been a great increase
18 in the number of open-shop contractors, up to 40 per cent
19 at this point.

20 It would not seem to me that this legislation would
21 really affect minority industry.

22 On the other side of the coin, we introduced into the
23 record yesterday a letter from Mr. Bayrad Rustin who heads the
24 A. Phillip Randolph Foundation, writing on behalf of the
25 black minorities, stating he is very anxious for this

1 legislation to be passed because, in their judgment, it will
2 help minority employees.

3 The issue might arise on occasion, no doubt will arise
4 on occasion, where a general contractor has subcontractors,
5 some of whom are union and others which are not. If it is an
6 all open-shop job, I doubt that there will be an issue.

7 Obviously, I am very much aware of the advent of
8 shopping centers and their very rapid growth. I have seen a
9 great majority, I would say, of our retail establishments in
10 my home city of Trenton either move totally to the suburbs
11 or open branches in the suburbs in shopping centers. I know
12 of only one which undertook the construction of a shopping
13 center, itself. That worked out, it might be, because in my
14 part of New Jersey virtually all of the construction trades
15 are union.

16 But, isn't it the usual course of events that some
17 entrepreneur, not necessarily the retailer or retailers going
18 into a shopping center, undertakes the construction of a
19 shopping center and then further undertakes to fill it with
20 a variety of attractive establishments, including retail shops,
21 service shops and so on --

22 Mr. Noble. That is very common, Mr. Chairman.

23 Mr. Thompson. -- where retailers, themselves, are not
24 involved in construction.

25 So, the effect I gather you fear is that if, for instance,



1 a department store planned to move into a new shopping center
2 somewhere in the midwest and there were a labor dispute at
3 the shopping center, that retail establishment might be de-
4 layed in opening on time, in September, for instance, or August,
5 for the pre-school peak shopping period.

6 Mr. Noble. That is one of my concerns, Mr. Chairman.

7 Mr. White. May I add I totally agree.

8 It is not as important that retailers are involved in
9 the actual construction contracting. As you also probably
10 know, as the centers are built the habit is to fill them as you
11 move along. You run into two situations, a partially filled
12 shopping center and were you find expansion going on and addi-
13 tional construction in a center which is already established.

14 Mr. Noble. Mr. Chairman, I also want to address myself
15 to the fact that seemingly the decisions by the National Labor
16 Relations Board, by the Courts of Appeals and, of course, by
17 the United States Supreme Court appear to me to have been
18 very consistent with the intent of Congress.

19 In 1959, I was a trial attorney in the regional office of
20 the St. Louis office of the National Labor Relations Board and,
21 of course, the Landrum-Griffin Act had just been enacted.
22 Since we were delegated to enforce those statutes, we re-
23 ceived interpretations.

24 I am holding in my hand a memorandum dated September 21,
25 1959 which, of course, was for internal use at the time. It

1 makes very clear that the understandings of the Congress in
2 enacting the 1959 amendments which, of course, changed 8(b)(4),
3 were based on an understanding of the existence of the Denver
4 Trades decision by the United States Supreme Court.

5 It points out that the Conference Committee very speci-
6 fically cited the Denver Trades case in discussing the intent
7 of the Congress in enacting those amendments to section 8(b)(4)

8 Mr. Thompson. May I interrupt you to say that, except
9 possibly for Mr. Landrum on this side, I don't think anyone
10 still in this body was more active in and is more conversant
11 with the history of the Landrum-Griffin Act than I.

12 Mr. Voble. I am well aware of that, sir.

13 Mr. Thompson. Having sat as a member of the Committee
14 on Education and Labor, having spoken at length and written at
15 length on this subject for the Congressional Record in the
16 debate and in the conference. Yes; we did concern ourselves
17 very deeply with the 8(b)(4) situation.

18 The conferees agreed almost unanimously that the Denver
19 Building Trades case was a misinterpretation of the intent of
20 the secondary boycott section.

21 The conferees proposed to give relief both to the garment
22 industry and the building trades in what were perfectly
23 analagous situations.

24 Due to a parliamentary ruling by the House Parliamentarian,
25 the garment trade, which certainly would affect your retail

1 establishment, were given complete relief under section 8(b)(4).
2 The Parliamentarian ruled that the relief proposed by the con-
3 fererees for the building trades would not be germane.

4 Before the conference broke up, the late Senator, later
5 President, Kennedy, Senator Morse, Senator Goldwater, Senator
6 Dirksen, myself, Mr. Kearns of Pennsylvania who was then the
7 ranking member of this committee, and others all agreed, as the
8 record during the adoption by the Senate and as the conferees'
9 report will show, that only the parliamentary barrier prevented
10 the relief which this bill would give the building trades at
11 that time. There was virtual unanimity.

12 If you will remember, the conference was a very, very
13 long one and did not end until late August or early September,
14 at which time the Congress adjourned.

15 In the next session, bills were all introduced but the
16 long history is that they have yet to be passed.

17 So, I think that the consensus, both on this side of the
18 Hill and on the Senate side at this time was that this relief
19 should be granted.

20 I might just add, too, that it is not my habit as a lawyer
21 to bicker with the Supreme Court of the United States and try
22 to second-guess that distinguished group, but I am constrained
23 to say that, at the very least, with respect to the Connell
24 case which came down just a few days ago, I know more about
25 what I said and what my intent was when I said it in 1959 than

1 does the Court in its interpretation in at least two instances
2 of my words in coming down with the Connell case.

3 Please proceed.

4 Mr. Noble. Thank you.

5 Must to complete that particular reference, the reference
6 I made was to the House Report 1147 of the 86th Congress,
7 the first section. It is on page 38. The reference I made was
8 that they referred to a proviso and the quotation is that the
9 proviso does not eliminate restrictions or modify the limita-
10 tions on picketing at the site of the primary labor dispute
11 that are in existing law.

12 Then the report cites, inter alia, the Denver Building
13 and Construction Trades Council case which had then come down.

14 That was the reference I was making.

15 Mr. Thompson. That is an accurate reference.

16 The circumstances at the time dictated that the be in
17 the report because that was the situation. We were unable to
18 achieve the remedy which we now seek to do.

19 Mr. Noble. Just to summarize my presentation, I don't
20 believe that labor has shown a need for the legislation. I
21 think that there are means by which labor can legitimately
22 organize employees. They certainly have access to the same
23 National Labor Relations Board facilities under section 9 as
24 to the industrial unions.

25 It does not seem logical to me to interfere with the

1 free choice that section 7 grants to employees to assist or
2 not assist the union or to accept or reject one, to provide
3 a means by which under a common situs a union can pressure,
4 through extension of its legitimate economic sanctions, the
5 employer to recognize the union and to negotiate and execute
6 a contract with it.

7 That is my primary concern.

8 I thank you for your attention, Mr. Chairman.

9 Mr. Thompson. I appreciate your appearance.

10 I also very much appreciate your tone, both orally and
11 your written statement which I have perused. It is rather
12 complete and, as one might expect, having been through this so
13 many times, I would not only anticipate but I am aware of the
14 cases which you cite, Moore Drydock, Washington Coca-Cola, and
15 the rest of them.

16 Mr. Noble. They have become household words.

17 Mr. Thompson. Coca-Cola has, anyway.

18 I assure you we will give careful consideration to this
19 and thank you for being here.

20 Mr. Noble. Thank you.

21 Mr. Thompson. When you read the Connell case, please
22 keep in mind what I said about my own words.

23 Mr. Noble. I have read the case, Mr. Chairman. I
24 understand your concerns.

25 Mr. Thompson. Unfortunately, my relationship with Mr.

1 White is tthat of a very close personal friend. I am not
2 going to see him for a while because, since he is an officer
3 of the Court, I would think inappropriate what I would
4 irresistably say to him.

5 Mr. White. Since he is a neighbor of mine, Mr. Chairman,
6 I frequently get his mail. I will be watching it very closely.

7 Mr. Thompson. Just forward his bills.

8 Mr. Noble. Thank you, Mr. Chairman.

9 Mr. Thompson. Our next witness is Mr. Joe M. Rodgers,
10 President of the Joe M. Rodgers and Associates of Nashville,
11 Tennessee, who is a member of the Executive Committee of the
12 U.S. Industrial Council.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATEMENT OF JOE M. RODGERS, PRESIDENT, JOE M. RODGERS
2 & ASSOCIATES, NASHVILLE, TENNESSEE; MEMBER OF THE
3 EXECUTIVE COMMITTEE, UNITED STATES INDUSTRIAL COUNCIL
4 (ACCOMPANIED BY: HARMON L. ELDER, WASHINGTON
5 REPRESENTATIVE, UNITED STATES INDUSTRIAL COUNCIL; AND
6 WILLIAM B. BARTON, COUNSEL.)

7 Mr. Rodgers. I would like to introduce our Harmon L.
8 Elder, Washington representative of the United States Industrial
9 Council; and Mr. William B. Barton, our counsel.

10 Mr. Chairman, this being my first time to appear before
11 a committee, if I may seem somewhat nervous, it is because
12 I am.

13 Mr. Thompson. Just relax. We will take it easy on
14 you. It is just those veterans.

15 Mr. Rodgers. My statement is very brief. It will take
16 12 minutes to read the statement. I would like to do so, if
17 I may.

18 Mr. Thompson. You may proceed.

19 Mr. Rodgers. I wish to thank the committee for the
20 opportunity to appear before you today to present testimony
21 on H.R. 5900.

22 I appear as a Vice President and a member of the
23 Executive Committee of the United States Industrial Council.

24 Our association, known as the USIC, represents corpora-
25 tions throughout the United States who employ more than three
million people. Among USIC members are firms such as
Champion Spark Plugs, National Airlines, Rockwell International,

1 Hyster Corporation, Robertshaw Controls Company, Tennessee
2 Eastman, Tenneco and General Motors.

3 USIC has its principal office in Nashville, Tennessee,
4 with an additional office in Washington, D. C.

5 Our primary concern is the preservation of the free
6 enterprise system. We strongly believe that free market
7 economy is the foundation of the freedoms that have made this
8 nation great.

9 Essential to the preservation of a free construction
10 market is the improvement of productivity and efficiency which
11 can only be accomplished in the unrestricted development of
12 manpower, materials and equipment.

13 We have taken a position on H.R. 5900 because our firms
14 are major consumers of construction. We are also aware of the
15 great need for capital expansion in the United States and the
16 need to fully utilize our present productive capacity.

17 Many of our firms compete nationally, as well as inter-
18 nationally, and the rapid increases in construction costs as
19 part of our over-all costs has become a significant factor in
20 our expansion planning and future employment capabilities.
21 Therefore, it is as users of construction and employers of the
22 industries that we are principally interested in this bill.

23 As you know, the construction industry employs between
24 10 and 15 per cent of the total American labor force and
25 accounts for more than 11 per cent of the gross national

1 product.

2 It is my understanding that construction unions claim
3 that they represent approximately 20 per cent of this labor
4 force.

5 I feel sure that we all understand that it only requires
6 51 per cent of the votes to decide most elections, so there
7 could be as few as three per cent of the total labor force
8 actually represented by organized construction labor unions.

9 At the outset, I want to make very clear that my reason
10 for taking the time to appear here today is not an attempt to
11 destroy the construction unions. I would not, meaningly, be
12 so naive. I am here sincerley hoping that I can add facts
13 which will help each of you realize that H.R. 5900 is a bill
14 that will hurt the large majority of our vital labor force.

15 You have had other witnesses testify that H.R. 5900
16 will increase unemployment, drive companies out of business,
17 create additional inflation through higher construction costs,
18 cause an increase in strikes, restrict the use of new methods
19 and materials, permit unions involved with a dispute with a
20 single contractor to shut down entire construction sites, even
21 though the other contractors working on the site have nothing
22 whatever to do with the dispute, and increase the already
23 tremendous bargaining power of the unions.

24 Although I agree with these facts, I will not belabor
25 them nor will I repeat to you references to bills, laws or

1 cases of which you already have knowledge.

2 In order to set the stage for several examples which, I
3 hope, will clarify my concern for H.R. 5900, I must tell you
4 about Joe M. Rodgers and Associates, Inc.

5 We are the largest general contracting firm in Tennessee
6 and the 121st in the United States as rated by McGraw-Hill's
7 publication, Engineering News Record.

8 We are primarily hospital builders and completed approx-
9 imately \$86 million of construction in 1974.

10 We have worked in 20 states and several foreign countries
11 during our nine years of business life. We are not anti-union.
12 We are merit shop contractors, which simply means that we
13 believe that every person or firm, union or open-shop, should
14 have the right to work side by side with any other person or
15 firm.

16 We believe in this system and are guided by it day by
17 day and project by project. We are convinced it has been the
18 main reason for our rapid growth and success.

19 During the past nine years, we have completed over 300
20 projects, varying in size from a few thousand dollars to \$25
21 million. Less than two per cent of these projects have been
22 totally manned by union or by open-shop subcontractors.

23 We hire employees and retain subcontractors based upon
24 merit and merit alone. Therefore, we normally retain both
25 union and open-shop workers. More than \$100 million worth of

1 our work has been awarded to union subcontractors. I assure
2 you that this could not have happened if unions had a secondary
3 boycott exemption.

4 I could cite a great many examples which could clearly
5 describe the adverse effect of H.R. 5900. However, due to your
6 busy schedule, I will only give a few.

7 During the first part of 1971, we were awarded a contract
8 by Vanderbilt University to construct the Olin Chemical Engi-
9 neering Building. This was the first project in recent
10 Vanderbilt history that had been awarded to a general contractor
11 who was not represented by a union. We, in turn, awarded more
12 than 50 per cent of the subcontracts to union firms. Within
13 one week after our award, a labor union posted a picket com-
14 plaining that we were unfair. This man, carrying a sign,
15 remained at the job site for approximately one year.

16 Utilizing the separate gate practice approved by the
17 NLRB and the courts, we were able to complete the project on
18 time and within budget. We were not forced to discriminate
19 against certain firms because of their labor practices.

20 While building the multi-million dollar Park View Hos-
21 pital in Nashville, Tennessee, which was manned by all-union
22 subcontractors, the local plumbers' union represent ative
23 claimed jurisdiction over the wood blocking which was to be
24 installed within the bathroom walls. This blocking was a
25 16-inch length of two-by-four, which when placed between the

1 studs would be used to assist in anchoring the bathroom
2 accessories. The plumbers' representative took his men off
3 the project when the carpenters' union representative denied
4 this claim.

5 Because of the separate gate system, the job continued
6 with all other union employees earning their pay each day.

7 After approximately 10 days, the international unions in
8 Washington settled the personal dispute between the two local
9 representatives and everyone returned to work.

10 The value of the wood blocking in man hours was approxi-
11 mately 400 or \$2,800. Sixteen hundred man-hours were lost by
12 this petty difference between two union officials. Because of
13 the separate gates, over 60 men worked each day and earned
14 over \$20,000. H.R. 5900 would have denied them this right.

15 Mr. Thompson. If you don't mind, I think your purpose
16 and our purpose would be served best if Mr. Ashbrook and I
17 could answer this roll call immediately. We will be back in
18 10 minutes.

19 Thank you, sir.

20 (A brief recess was taken.)

21 Mr. Thompson. The subcommittee will be in order to
22 continue Mr. Rodgers' statement.

23 Mr. Rodgers, please forgive any movement back and forth
24 here. Mr. Ashbrook is on at least two subcommittees which are
25 meeting now and has to go to the other one to make a quorum.

1 Mr. Rodgers. I should not be more than seven or eight
2 more minutes.

3 To summarize what I was reading, I was talking about
4 the plumbing union's complaint over the carpenters, and this
5 work would have involved 400 hours or \$2800. Sixteen hundred
6 man-hours were lost because of this dispute but, because of
7 the separate gate, 60 men worked each day and earned over
8 \$20,000.

9 H.R. 5900 would have denied them this right.

10 While constructing a \$7 million hospital in Chattanooga,
11 Tennessee, which was manned with 90 per cent union sub-
12 contractors, two men arrived at the job site from the Roanoke
13 Valley of Virginia. They displayed signs that said Joe M.
14 Rodgers and Associates, Inc. was unfair in their area. We were
15 building, at that time, three projects valued at \$33 million in
16 Virginia which had no work stoppage during their two-year dura-
17 tion. The Chattanooga project was shut down for two days
18 until separate gates were installed. All subcontractors re-
19 turned to their gate and worked behind the usual picket line.

20 I realize that it might seem impossible that two men
21 from Virginia could stop 90 per cent of the work on a Tennessee
22 project. However, it actually happened. H.R. 5900 will deny
23 this freedom of choice and could cause similar acts throughout
24 the country.

25 Whom will it hurt? The employees who are represented by

1 the unions, the contractor and in the near future the con-
2 struction user and the taxpayer.

3 A dramatic example of the merit shop system in action
4 took place in 1972. Less than a month before National Life
5 and Accident Insurance Company's new \$35 million Opryland USA
6 was scheduled to open, employees of a union contractor working
7 on the project had gone on strike. All work had stopped, and
8 the union involved was making demands National Life would not
9 meet. They asked Joe M. Rodgers and Associates, Inc. to finish
10 the job and have it done on schedule.

11 The decision to accept the challenge was made, and two
12 days later men and equipment were moving onto the job. More
13 than 400 new workers had to be hired since the company's exist-
14 ing projects could not be compromised. These workers had to
15 face hundreds of rock-throwing strikers, who harassed everyone
16 trying to enter the jobsite. It was a difficult time, but the
17 work had to go on. We had taken the challenge. The whole
18 community got behind us and that made a big difference.

19 National Life agreed to pay a bonus of \$25,000 for each
20 day the project finished ahead of schedule, and Joe M. Rodgers
21 and Associates pledged to divide any bonus money between the
22 Boy Scouts and Girl Scouts.

23 One day, the Girl Scouts fixed sack lunches and served
24 them to everyone on the job. Everyone seemed to be pulling for
25 us. Several union subcontractors and their employees felt an



1 obligation to finish their work and using separate gates worked
2 behind picket lines to meet this obligation. There, union and
3 open-shop crews worked side by side for the common goal which
4 exemplifies the true meaning of the merit shop philosophy. By
5 all working together, the union and the open-shop, we finished
6 two days ahead of schedule. This meant we had delivered what
7 we promised, and it also meant \$25,000 apiece for the Boy
8 Scouts and the Girl Scouts. Joe M. Rodgers and Associates
9 and the merit shop system had succeeded.

10 In summary, the members of the United States Industrial
11 Council respectfully request that the subcommittee seriously
12 consider the adverse effects and constitutional aspects of this
13 bill.

14 I am truly sorry that Secretary of Labor Dunlop is so
15 poorly informed about modern labor relations. I am also sorry
16 that he has chosen to state that the members of the Associated
17 General Contractors of America and the Associated Builders
18 and Contractors are not good managers.

19 It is evident to me through daily practice that mixing of
20 labor policies is definitely conducive to industrial peace and
21 productivity. It is also good management.

22 I have been informed of the testimony and the discussions
23 that have taken place before this committee on the secondary
24 boycott issue. It appears to me that the fact that the accent
25 has been placed upon relations in those limited geographic areas

1 that are highly unionized. Areas of power blocks with big
2 unions and big management -- rather than the tremendous variety
3 of areas that depict the majority of and relationships that
4 make up the complete construction picture.

5 The truth is that union, non-union, open shop and merit
6 shop people do accommodate themselves in a variety of ways.
7 Where control of manpower supply is absolute, the opportunity
8 for the abuse of power is tremendous. Where there is competi-
9 tion in the industry among firms and labor sources, there is
10 an atmosphere of moderation.

11 While it is true federal policy is directed to encourage
12 collective bargaining as a means of diminishing industrial
13 strife, it is equally true that federal policy protects the
14 right of the individuals to refrain from engaging in collect-
15 ive bargaining.

16 Were the majority of American workers convinced that
17 collective bargaining was the road to their economic salvation,
18 we are convinced that the trade unions movement would not have
19 vailed to represent more workers than they do.

20 If the objective of collective bargaining is the great
21 gift that it is held out to be, hesitancy to accept by more
22 than 50 per cent of industries workers would certainly not be
23 manifest.

24 The evidence is that American workers want freedom, they
25 want variety, they want the right to choose. If we consider

1 H.R. 5900 a tool or weapon -- as you choose to view it -- to
2 promote collective bargaining, it is one that is being
3 fashioned contrary to any observable notion of the construction
4 employee.

5 As far as construction is concerned, according to Business
6 Week, 50 per cent of the commercial and industrial work in the
7 United States is built by the merit shop system, with the re-
8 maining 50 per cent divided between union and open-shop.

9 Over 75 per cent of the labor force is not represented
10 by a union, and, to repeat, what would compel you to take away
11 the freedom of choice from the majority to satisfy the wishes
12 of the few?

13 Could it be that the building trades unions are not
14 trying to sell their goods at the right counter -- where the
15 construction employee has a right to choose as he sees fit?
16 Or, is the intent of H.R. 5900 to force him to join because a
17 pressurized management requires him to do so? Or, could it be
18 that the real intent of this measure is to control manpower
19 with a philosophy of scarcity that is contrary to the free
20 movement of enterprise that remains the basic philosophy of
21 the great majority of Americans?

22 In conclusion, I would state the firm conviction that,
23 given a chance, the labor force of America, union and open
24 shop, would vote overwhelmingly against H.R. 5900.

25 I thank you for the time to read my statement.

1 I am sorry that I could not have spoken rather than read
2 but the intent was there.

3 Mr. Thompson. That is all right, Mr. Rodgers.

4 I have very little to say except to comment that I cannot
5 help but be amused a little bit by the way you waltz us around
6 with the Girl Scouts and Boy Scouts and soften us a little
7 bit and then whack us later. That is a helluva lot of cookies.

8 Did you get merit badges?

9 Mr. Rodgers. They are very fine organizations. I hate to
10 see anybody talk jokingly about the Boy Scouts or Girl Scouts.

11 Mr. Thompson. I don't talk jokingly about them. As a
12 matter of fact, I was a Boy Scout.

13 Mr. Ashbrook. Were you always prepared.

14 Mr. Thompson. I wasn't always prepared.

15 You know, I don't mean anything in derogation of the
16 Girl Scouts or Boy Scouts; that is a very touching story.

17 You go on later but this is your first appearance, and
18 I am not going to say some of the things that occur to me.

19 Mr. Rodgers. I did write this, myself. As you can
20 imagine, I had no help from any individuals.

21 Mr. Thompson. Of course, in writing it you undertake to
22 tell me you know what I am thinking and how I view it and in
23 a very real sense to ask questions which are rhetorical in
24 nature such as "or could it be that the real intent of this
25 measure is to control manpower with a philosophy of scarcity

1 that is contrary to the free movement of enterprise that remain
2 the basic philosophy of a great majority of Americans?"

3 In the course of writing it, you did not take cognizance
4 of what has been the labor policy of the United States of
5 America for more than 40 years, which is the encouragement of
6 collective bargaining.

7 Our intent here, and it is an honest intent with which
8 you can honestly disagree, is to give equal opportunity to
9 construction workers, give them the same rights that are
10 enjoyed by industrial workers. That is the end of my comment.

11 Mr. Ashbrook may have a comment.

12 Mr. Ashbrook. I was looking with interest, Mr. Rodgers,
13 at your testimony on the wood blocking.

14 Was that a jurisdictional argument between the crafts
15 or was it something related to trade practice which might be
16 called restrictive?

17 On page 2 where you say the local plumbers union claimed
18 jurisdiction over the wood blocking that would be installed
19 within the bathroom walls.

20 Mr. Rodgers. Jurisdiction.

21 Mr. Ashbrook. I ask that because yesterday Mr.
22 Beimiller, who obviously speaks for organized labor in the
23 country made a flat-out statement that he knew of no restrict-
24 ive trade or craft practices as such as limitation on the
25 amount of bricks which could be laid in a day or anything of

1 of that type.

2 Do you know of any restrictive craft practices which you
3 have run into over the years?

4 Mr. Rodgers. Congressman, if I could, I would like to
5 give some thought to that. I feel sure I could come up with
6 some.

7 I would like to submit that in writing to the committee,
8 if I could.

9 The problem with the wood blocking, the 16-inch piece
10 of wood, it was a carpenter's job. The plumbers' representa-
11 tive claimed the piece of wood. The internationals awarded
12 it to the plumbers. The carpenters lost it. The carpenters
13 and plumbers argued over who had the right to claim this piece
14 of wood. It ended up that the plumbers got the right. We
15 hired the plumber to cut the wood using a Skilsaw, and place
16 it.

17 The point I was making was the amount of work lost by the
18 carpenters and plumbers on that job because of this dispute
19 but because of the two gate system over 60 men earned \$20,000
20 while the plumbers and carpenters sat off to the side and didn't
21 work.

22 But these men had the right to choose to go ahead through that
23 separate gate and earn his \$20,000 and support their families.

24 Mr. Ashbrook. I take it it is our contention that were
25 5900 the law of the land and you did not have the two gates,

1 the entire project would have been shut down because of a
2 jurisdictional dispute over 16-inch wood blocking.

3 Mr. Rodgers. Yes, sir, and over such a minor point.

4 Mr. Ashbrook. In that particular case, were the only
5 ones who lost man-hours the carpenters and plumbers, or did any
6 of the other craft?

7 Mr. Rodgers. None of the other craft lost work.

8 Mr. Ashbrook. It was just those two?

9 Mr. Rodgers. Yes, sir.

10 Mr. Ashbrook. I would appreciate any supplement you
11 could give to your testimony regarding any restrictive practices.

12 You know it was the flat-out statement by Mr. Beimiller
13 which I would certainly like to take a look at because I am
14 not sure that is the actual practice or the actual fact. If
15 it is, I think it would give a lot of credibility to his testi-
16 mony but if it is not then I think it is something that should
17 be taken into consideration.

18 Mr. Rodgers. I certainly appreciate the opportunity
19 to do so.

20 May I add one other thing?

21 In nine years, we have grown from a company doing
22 \$200,000 worth of work in 1966 to a company last year that did
23 \$86 million worth of work by sincerely and honestly practicing
24 the merit shop, not discriminating against open shop, not dis-
25 criminating against unions. I have seen this labor policy work



1 work harmoniously for nine years. I truly believe that this
2 lack of discrimination has been a big part of our success. I
3 have seen it work. We do it on a day-to-day, project-by-
4 project basis. We award to the lowest qualified bidder. I
5 truly believe that is the way for the construction industry to
6 go.

7 Without H.R. 5900, we can continue to do that. With
8 H.R. 5900, you are setting the lines of all open shop or all
9 union.

10 Mr. Ashbrook. The testimony we have received in the
11 past few days has, of course, varied. I would say the major-
12 ity of the testimony at this point, the weight of the majority
13 of the testimony, including Secretary Dunlop's, which, I think,
14 you referred to quite aptly, was that in most cases we would
15 be better off if it were all union or all non-union, in effect
16 stopping any disturbances, contentions, grievances.

17 It is your testimony that the opposite should be the
18 case, that they can work side by side and should.

19 Mr. Rodgers. I am trying to make a point that we have
20 grown to do \$86 million worth of work last year by this prac-
21 tice, so I know it works. It is not my thought that it works.
22 I know it works and I know it works best for construction
23 unions.

24 Mr. Ashbrook. This may be an embarrassing question, but
25 if H.R. 5900 passed and, say, you had the situation of the

1 wood blocking repeated time and time again where the entire
2 site would be shut down over some grievance or jurisdictional
3 dispute of that type, what do you think would be the position
4 or the attitude or the policy of your firm?

5 Mr. Rodgers. I would not be in that position. I would
6 be forced to use all open shop for subcontractors' employees
7 as long as I am in business, because I completely agree
8 with the freedom of choice. We run our company based on
9 freedom of choice. We do not discriminate because of labor
10 beliefs.

11 Mr. Ashbrook. Thank you, Mr. Chairman.

12 Mr. Thompson. Mr. Miller.

13 Mr. Miller. I have no questions right now, Mr. Chairman.

14 Mr. Thompson. Counsel.

15 Mr. Pollitt. Mr. Rodgers, I have three little questions
16 and then two major questions.

17 First, the Parkview Hospital in Nashville which was a
18 jurisdictional dispute between the plumbers and carpenters,
19 as I read the Act this would not legalize jurisdictional
20 disputes as you indicate here in your testimony. HR 5900
21 authorizes picketing when there is a labor dispute not
22 unlawful under this Act, referring to the National Labor
23 Relations Act, and the National Labor Relations Act has a
24 provision 8(b)(4)(B) which makes jurisdictional disputes
25 unlawful. Since it is unlawful under this Act, you could not

1 picket under 5900 over a jurisdictional dispute. You are
2 not a lawyer. You don't know 8(b)(4)(B).

3 Mr. Rodgers. This can be verified very easily, and I
4 am sure it will. This did actually happen. It did not go
5 before the NLRB.

6 Mr. Thompson. The question is not whether it happened
7 or not, Mr. Rodgers. It is whether or not HR 5900 would make
8 it legal. The answer is that it wouldn't.

9 Mr. Rodgers. HR 5900, we pacified evidently the plumbers
10 and the carpenters by letting them do their thing, and the
11 other unions that were working on the job evidently were
12 pacified by coming into a gate that had no picket on it.
13 Although it did not go into legal procedures it was a
14 pacifying effect that allowed these other unions to claim they
15 were not crossing a picket line.

16 Mr. Pollitt. My point is that HR 5900 has nothing to
17 do with it, it would not authorize jurisdictional disputes.

18 Mr. Miller. The situation he outlines would be the
19 situation with the passage of HR 5900.

20 Mr. Pollitt. Exactly. Your illustration about the
21 hospital at Chatanooga, Tennessee, where they had the
22 so-called area standards, they came up and said you did not
23 pay the wage prevailing in Virginia. That is what we call
24 area standards picketing. HR 5900 has nothing to do with
25 area standards picketing. It would neither prohibit it or

1 permit it. It is neutral on that subject.

2 Mr. Rodgers. Concerning both questions I will give you
3 my answers back to those in writing. I am not agreeing that
4 5900 has nothing to do with that.

5 Mr. Pollitt. We would appreciate your consulting
6 someone.

7 Mr. Rodgers. Thank you, sir.

8 Mr. Pollitt. Then your Opryland USA illustration,
9 rock throwing illustration, there is nothing in 5900 that
10 authorizes anybody to throw rocks at anybody.

11 Mr. Rodgers. I understand that, but it does exclude
12 the separate gate system which would not have allowed the
13 union subcontractors to work on the job. They would have
14 had to cross the picket line. Unions very seldom cross
15 picket lines, but they will work behind picket lines.

16 Mr. Pollitt. I read your testimony as emphasizing the
17 rock throwing.

18 Mr. Rodgers. That is all in the record there, and
19 people were convicted.

20 Mr. Pollitt. Those are my three technical questions.

21 Now Secretary Dunlop was here and he made two suggestions,
22 and I would like to get your comments on them since you are
23 the first actual contractor that we have had. One is the 10
24 day cooling off period before the union is permitted to
25 picket. During that 10 day period both the local union and the

1 local contractor have to notify a parent organization as
2 to the situation and the parent organization tried to resolve
3 it. Secretary Dunlop suggested that we might consider a
4 tripartite mediation between the parent union and the parent
5 contractors association and a neutral with the three of them
6 voting on whether or not to permit the picketing or picket
7 a lockout and so on.

8 I would like to get your views on Secretary Dunlop's
9 proposal about the cooling off period with the notification
10 to parent organizations with the possibility of tripartite
11 arbitration.

12 Mr. Elder. If I might comment on that, it would seem
13 to me that the problem arises that when you speak of a parent
14 organization of contractors, that it is not the same
15 relationship as there is between a union and the national
16 or international union. I think that is where a number of
17 problems it would seem to me would arise.

18 Mr. Thompson. We know that, but we are asking for
19 comment on the Secretary's suggestion. Logically if the
20 Secretary's suggestion were to be adopted and passed into
21 law ---

22 Mr. Barton. Of course we all favor mediation, but I do
23 have great doubts that the proposal of the Secretary would be
24 any help.

25 Mr. Rodgers. I don't mean to be saying could I answer you

1 on every subject you ask, but I do think it is important,
2 and I appreciate your asking. I am so opposed to HR 5900
3 I really had not considered any compromise. I do appreciate
4 your asking the question, and I would appreciate the
5 opportunity of answering it.

6 Mr. Pollitt. Fine.

7 Mr. Thompson. I think it is appropriate at this time
8 to announce that this will be the last day of hearings on
9 this subject. We will keep the record open for supplementary
10 statements and materials, supporting views, et cetera for a
11 period of seven days.

12 Mr. Pollitt. The basic issue that underlies this bill
13 is the relationship of the contractor to the subcontractor.
14 Again, you are the first contractor we have had. You can
15 tell us what your relationships are with your subcontractors.
16 We have heard the Supreme Court describe them as separate
17 legal entities each going its own way more or less. We have
18 also heard them described as interrelated allies, the
19 subcontractor and contractor. We had testimony yesterday that
20 quite often, sometimes, the contractor exercises a good deal
21 of supervision over the work of the subcontractor, tells the
22 subcontractor to remove workers from the job if the contractor
23 is dissatisfied with them.

24 I was wondering if you could categorize your relation-
25 ships with your subcontractors? Are you separate entities in

1 the sense that they do their job and you do your job, or do
2 you exercise some supervision?

3 Mr. Rodgers. We work as a team. We feel like the only
4 approach to the construction job is a team effort, contractor,
5 subcontractor, architect-engineer and suppliers working
6 together to accomplish the goal. We do have contracts with
7 our subcontractors. To that extent we are legally connected
8 with them only by subcontracting arrangement. They do control
9 their own forces, and we are separate.

10 Mr. Pollitt. Do you ever send in substitutes in this
11 team effort? Do you ever replace a halfback or plumbing
12 contractor?

13 Mr. Rodgers. We only replace them in case of
14 bankruptcy of a subcontractor. We make a very strong review
15 of subcontractors before we enter in a contract. So, only
16 because of bankruptcy.

17 Mr. Pollitt. Your prior thinking about it and prior
18 planning makes it unnecessary, except in case of bankruptcy
19 to remove someone?

20 Mr. Rodgers. It has in the past. I don't know that
21 it will continue that way, but it has in the past.

22 Mr. Pollitt. Thank you very much.

23 Mr. Thompson. Thank you very much. I believe that
24 will complete your testimony.

25 Mr. Rodgers. Thank you very much for allowing me to be
here.

1 Mr. Thompson. Our next witness is Harry P. Taylor,
2 President of Council of Construction Employers, Incorporated.

3 You may proceed as you wish. By unanimous consent your
4 statement will be made a part of the record at this point.
5 You may read it, summarize, do as you wish.

6 STATEMENT OF HARRY P. TAYLOR, PRESIDENT, COUNCIL
7 OF CONSTRUCTION EMPLOYERS

8 Mr. Taylor. Thank you, Mr. Chairman and Members of the
9 Committee.

10 If I may, my statement is relatively brief, I would
11 like to read it.

12 Mr. Thompson. Thank you.

13 Mr. Taylor. My name is Harry P. Taylor. I am President
14 of the Council of Construction Employers, Inc. The Council is
15 a non-profit organization, having as its members twelve
16 national employer associations in the construction industry.

17 Council member associations have a combined membership of
18 77,000 contractor employers in the construction industry,
19 employing approximately 3,500,000 construction workers.

20 The majority of our member associations is opposed to
21 HR 5900.

22 All of our member associations have contractor members
23 who employ members of organized labor in the construction
24 industry and therefore are mutually concerned with any
25 legislation having an impact on collective bargaining and

1 related matters. We are probably the most directly concerned
2 management group to appear before this committee. HR 5900,
3 the common situs picketing legislation under consideration
4 here, is an issue with a tremendous potential impact on
5 construction labor-management relations.

6 While some of our constituent organizations have an
7 interest in aspects of HR 5900 which we will not touch upon,
8 they are covering those aspects in testimony or statements
9 submitted on their own behalf. CCE's analysis is presented
10 from the standpoint of its impact on the entire organized
11 labor-employing sector of the construction industry.

12 After careful study of the potential impact of HR 5900,
13 the Council of Construction Employers believes that the
14 measure is adverse to the interest of organized labor and
15 contractors that employ that labor.

16 Construction has been one of the hardest hit industries
17 in our current economic slump. Notwithstanding the
18 horrendous unemployment in the construction industry, there
19 are currently in excess of 100 strikes taking place during
20 efforts to arrive at new collective bargaining agreements.
21 HR 5900 would provide an added potential threat of job-site
22 shutdowns by organized labor with possible costly construction
23 delays. Neither contractor nor labor benefits from those
24 situations. Yet they are very likely to occur should
25 HR 5900 be enacted.



1 Contract construction is, by its very nature, a high
2 risk enterprise. A contractor stakes his business and
3 livelihood on his ability to estimate costs and complete the
4 job in accordance with the specifications at the most
5 economical price. Cash flow is extremely important to the
6 industry. In order for a contractor to continue in business,
7 he must maintain continuous production at the job site
8 insofar as possible.

9 Enactment of HR 5900 would add another significant
10 variable to those many risks already facing the contractor --
11 a tremendous area of risk, and one over which he has no control.
12 When he is a knowledgeable party to labor negotiations, he
13 can assess the factors involved. But the situs-picketing bill
14 would put him at the mercy of forces over which he has
15 absolutely no control.

16 The result of enactment would be to increase risks,
17 costs, delays, and disputes. Urgently needed construction
18 such as energy-related facilities could be drastically
19 delayed. The cost in both time and money is borne not only
20 by organized labor and the contractors who utilize the labor,
21 but by the public as well.

22 I would like to point out a particular inequity which
23 would arise from HR 5900. Prime contractors and sub-
24 contractors on a job site are all independent businesses. In
25 most areas, each organized trade bargains separately with

1 individual contractors or with the management group
2 employing that trade. Where a dispute in one trade or an
3 organizational strike shuts down a job, the uninvolved
4 contractors suffer enormous economic penalties. The most
5 inequitable situation arises where a contractor who uses
6 organized labor is shut down even though he is not party to
7 the dispute. He suffers the economic hardships just as
8 though he were a participant in the dispute, even though he
9 has carefully lived up to the letter of his collective
10 bargaining agreement.

11 Frequently, there is more than one prime contractor at a
12 job site. In such situations, none of the prime contractors
13 has control of the relationships between the owner of the
14 facility and the other prime contractors, not between the
15 other prime contractors and the unions with which they deal.

16 Nevertheless, if HR 5900 should pass, all the prime
17 contractors and all the subcontractors at a given site could
18 be shut down as a result of a dispute between one prime or
19 subcontractor and one union.

20 A construction site might well be considered to be an
21 entire military base, a series of manufacturing plant
22 buildings, an entire planned community or town, or a highway
23 or pipeline. Any one of those might well have dozens of
24 contractors and subcontractors, operating with as many as
25 30 or 40 different labor agreements with various building trade

1 unions. However, none of those employers would have
2 any voice or control in the relationships between the other
3 contractors and the unions with which they deal. Nevertheless,
4 a minor dispute between any one of them and one union could
5 result in a shutdown of an entire site.

6 Because of the inequities arising from the measure,
7 HR 5900 might polarize construction management and labor at
8 a time when, more than ever, they need solidarity and unity
9 of purpose.

10 We concur with the Secretary of Labor when he stated
11 before this subcommittee that the entire framework of
12 collective bargaining in the construction industry is in need
13 of review. Both labor and management in the industry are
14 engaged in such a study. But, in order to achieve some
15 successful resolution to an overall improvement of
16 construction industry collective bargaining, a calm and
17 cooperative attitude must prevail.

18 The Secretary of Labor stated, in his testimony to you,
19 that "the atmosphere which develops on this bill can affect,
20 and set the tone for, the approaches to other problems of
21 industrial relations in the construction industry."

22 We agree.

23 There are important underlying improvements which need
24 our immediate attention. With these points in mind, the
25 Council of Construction Employers respectfully expresses its

1 opposition to situs picketing legislation and urges this
2 subcommittee to abandon consideration of HR 5900.

3 Thank you for granting us this opportunity to present
4 our views.

5 Mr. Thompson. Thank you very much, Mr. Taylor.

6 I have no questions. I have just a comment. I believe
7 you are the second employer representative convinced that the
8 enactment of this legislation would hurt organized labor.
9 That is just an observation I make for whatever value it is
10 worth.

11 Mr. Ashbrook. Thank you, Mr. Chairman.

12 Mr. Taylor, as a spokesman for construction employers
13 can you give this committee any evidence or instances of
14 what might be called restrictive trade practices in the
15 crafts?

16 Mr. Taylor. Not since I have been in Washington, I
17 certainly know of none from the international level of the
18 union.

19 Mr. Ashbrook. I am beginning to believe Mr. Biemiller.
20 I have heard this kicked around for years. I have a speech
21 back in the office that I made about how many bricks can be
22 laid, how many concrete blocks can be laid in a day in certain
23 areas and so forth. I guess if it is repeated long enough
24 it becomes like the gospel.

25

1 I would like to know. I am serious about it. If there
2 is, this obviously has to be a consideration. If there is
3 the ability to use force or to use picketing to institute
4 restrictive craft practice that obviously adds to the cost
5 and that has to be a consideration. If there is no such
6 problem I think that would remove some of the questions that
7 some of us have about 5900.

8 As a representative of the employers if you have any
9 specific instances I would certainly like to know them. I
10 would like to dispel that notion in my mind one way or
11 another.

12 Mr. Taylor. Mr. Ashbrook, I repeat, I know of no
13 policy by an international union of building trades that
14 would advocate that.

15 Mr. Ashbrook. I doubt that it is the policy of the
16 international union.

17 Mr. Taylor. At the local level there have been
18 instances where it has been alleged, and I know at least
19 one instance that alleged such a thing, they took it to
20 arbitration, it was unproved. You stop to think how you
21 can possibly prove it.

22 Mr. Ashbrook. I understand a general slowdown or
23 whether it is a Post Office or Police Department -----

24 Mr. Thompson. The Post Office Department is certainly
25 slow.

1 Mr. Ashbrook. It would be hard to put your finger on
2 the practice in some areas. I think the original allegation
3 was the New York area. I understand the union's position on
4 the product boycott. I would not count that as a restrictive
5 trade practice. That is something else. If you have any
6 such evidence I would like to receive it, or I am going to
7 have to end up agreeing with Mr. Biemiller.

8 Mr. Taylor. If I have any I will submit it to you. I
9 know of no actual evidence.

10 Mr. Ashbrook. Thank you.

11 Mr. Thompson. It is interesting to note that this
12 question has arisen. Mr. Ashbrook quite rightly asks for
13 answers or documentation pro or con. During one rather
14 unhappy period in my life while I was going to law school
15 I found it necessary to work in a factory. I worked for
16 General Motors as a punch press operator. We had a production
17 standard set by the company, 500 units per hour. When one
18 works on a punch press and has to grind out 500 units per
19 hour that is heavy lifting. I didn't like that at all. But
20 that was a company policy. At that time that particular
21 plant was not organized. I was one of those who helped to
22 organize it and sign up my fellow workers, so that NLRB
23 eventually had an election, and the shop became a union shop
24 but the standard of production didn't change. It was agreed
25 upon, however difficult it was to accomplish.

1 I have heard some really amusing stories in days gone
2 by. I heard one yesterday that took place on a job site in
3 New York about 30 years ago where the operating engineers
4 and the bricklayers had a dispute. The bricklayers, wanting
5 to complete their work as quickly as possible thought that
6 one operating engineer to hoist the brick wasn't enough. So,
7 they demanded another operating engineer. The response was
8 that they didn't have the necessary equipment. So they
9 rigged up a block and tackle and ropes and put a horse on
10 the job to pull the ropes and lift the bricks. They marked
11 the street with paint so that the horse would go to one mark
12 and that would take the lift to the floor. The operating
13 engineers demanded that the horse have a union card.

14 Mr. Ashbrook. He wasn't part of management?

15 Mr. Thompson. No, he was part of labor. His initiation
16 fee was \$500, plus dues. So they paid the \$500 initiation
17 fee and dues, and got the horse a union card.

18 They thought the matter was over, except the horse died.
19 The operating engineer, who had a sense of humor obviously,
20 when the horse died applied for and got death benefits for it.
21 That was many years ago.

22 Mr. Taylor. Of course, Mr. Ashbrook, there are many
23 instances in collective bargaining agreements about how many
24 people you have operating equipment and so on and like that.
25 If your question goes to a slowdown ----

1 Mr. Ashbrook. If you can show a restrictive trade
2 practice that could be called featherbedding I would say
3 that is the same thing. It has been bandied around. It is
4 amazing how few people can come up with specifics.

5 Mr. Taylor. I understood your question to mean how
6 many bricks, et cetera, per day.

7 Mr. Ashbrook. We have heard both. In the New York
8 area I heard there was a limitation on the number of bricks to
9 be laid. There are other shops that do a job with one less
10 person than required by union agreement.

11 Mr. Taylor. Many union agreements call for more men
12 than maybe the contractor thinks he wants. That has been
13 part of the collective bargaining process.

14 Mr. Thompson. Mr. Quie.

15 Mr. Quie. I have no questions.

16 Mr. Thompson. Mr. Miller.

17 Mr. Miller. No questions.

18 Mr. Thompson. Thank you very much.

19 Mr. Taylor. Thank you, Mr. Chairman.
20
21
22
23
24
25

1 Mr. Thompson. Our next witness is Mr. Robert J.
2 Connerton, the General Counsel of the Laborers' International
3 Union of North America.

4 Mr. Connerton, without objection your full statement
5 will be made part of the record. You may proceed with it as
6 you wish.

7 Mr. Connerton. Thank you very much, Mr. Chairman.

8 (The written statement of Robert J. Connerton follows:)

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

1 STATEMENT OF ROBERT J. CONNERTON, GENERAL COUNSEL,
2 LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,
3 AFL-CIO

4 Mr. Connerton. I am appearing here today on behalf of
5 the Laborers' International Union. I would propose to
6 proceed by trying to answer briefly if I could some of the
7 allegations that have been made by the Associated General
8 Contractors, and that group of contractors that followed
9 thereafter.

10 The Associated General Contractors in their statement
11 alleged that the Alaska Pipeline could somehow or other be
12 shut down under this bill. As a participant in those
13 negotiations we just categorically deny that. There are
14 extremely tight no-strike provisions in the agreement.

15 I would just simply say I would defy any of the counsel
16 for either the AGC or the other employers to demonstrate
17 how HR 5900 would legalize any type of activity along the
18 Alaska Pipeline.

19 Mr. Thompson. Mr. Connerton, I might interrupt you to
20 say that following that assertion I asked subcommittee counsel
21 to review the collective bargaining agreement relating to the
22 Alaska Pipeline. His report to me is that he concurs with
23 you and sees no way in which the enactment of HR 5900 could
24 possibly stop work on that project.

25 Mr. Connerton. It seems to me, Mr. Chairman, this is

1 kind of -- I don't mean to be critical -- typical of the
2 contractors groups in general, and more typically the AGC.
3 You will recall the last time Mr. Taylor was present here
4 he indicated to the Congress how the passage of the bill to
5 make prepaid legal service subject to bargaining would result
6 in the destruction of the Nation. We know of no case where
7 a strike has resulted as a result of requests for prepaid
8 legal services. I guess somehow the Nation continues on.

9 On page 7 of the AGC's testimony they make some
10 reference to being able to strike a plant. I suggest that is
11 just nonsense.

12 On page 9 of their testimony they indicate that unions
13 are free to picket, to enforce subcontracting clauses by
14 striking under present law. As counsel knows, and the
15 Chairman knows, that is nonsense also.

16 I would like to talk about the Moore Drydock standards
17 for just a moment. Page 10 indicates that there are four of
18 the standards. I would like to submit for the committee an
19 article that I have prepared in the manner in which Moore
20 Drydock standards have actually been administered by this
21 Board, including a newly invented fifth standard they are now
22 employing called the true object test.

23 On page 11 of their statement where they describe
24 what the facts are in G.E. and Carrier, we think that is
25 categorically untrue, as counsel will ascertain when they

1 read through it.

2 But I would really like to talk a little bit more
3 about the jigsaw puzzle presented by Mr. Abrams of the
4 Associated Building Contractors. He somehow believes that
5 pieces of jigsaw puzzles probably all jump in together and
6 somehow or other make a big hole, businesses conducted by
7 handshakes in the construction industry, that no one is in
8 charge of the job, and everybody just kind of wanders around
9 in peace and harmony in this world.

10 But what I particularly resent is this self-appointed
11 apostle coming down to save us and to save the union movement
12 and this Congress from ourselves and from themselves. He
13 came down here to Washington to preach how we can support a
14 strong and viable union construction industry which has made
15 itself soft, and which Congress has made soft through lack
16 of struggle and work. He seeks to renew our strength by
17 repealing those crutches like the right to enter into a
18 pre-hire agreement, repealing our 8(e) exemption, repealing
19 the eight hour law, whose origins, as you know, only stem
20 back to the time of Abraham Lincoln in 1861, repealing our
21 prevailing wage laws, getting rid of what he characterizes
22 as our sweetheart contracts. I guess that is that \$10 per
23 hour wage that we receive.

24 It seems to me that somehow he neglected to tell us
25 how he could save us, or how you could save us, by repealing

1 the minimum wage law, the workman's compensation law, the
2 unemployment compensation law, or the Occupational Health and
3 Safety Act.

4 Mr. Thompson. I was particularly intrigued by
5 Mr. Abram's testimony. I suppose were we not in this ugly
6 modern building I would have envisioned myself on a plantation
7 in the antebellum days, because of all of the happiness and
8 tranquility reflected in his testimony. I felt very much at
9 ease for a time until I realized that it is 1975.

10 Mr. Connerton. I truly enjoyed that routine, union
11 and non-union people living side by side in harmony, eating
12 together, and happy to be free ---

13 Mr. Thompson. If you remember, they don't eat together;
14 they eat by trade.

15 Mr. Connerton. No.

16 Mr. Thompson. That was someone else.

17 Mr. Connerton. No. That is on the union job they eat
18 by trade, on this jobs they eat together, happy to be rid of
19 these chains that were placed upon them.

20 I was thinking of singing that old song, "Oh, Happy Day",
21 and "Thank you, Massa", things like that.

22 Mr. Thompson. We would just as soon you not sing.

23 Mr. Connerton. Of course he would like us to get rid of
24 our union contracts and our established scales and our pensions
25 for people when they grow older, little odds and ends like

1 that.

2 Mr. Thompson. Well, he is an advocate of self-reliance.

3 Mr. Connerton. I gathered that. I was almost back
4 at Harmony Farm for a while.

5 His concern for union workers in this recession is in
6 my mind about equal to that of the Germans in World War II
7 trying to persuade the Jews to go on the trains peacefully
8 to the concentration camps, or maybe to go take a free
9 shower for themselves.

10 We know that so-called ABC for what they are. They
11 are the haters and they are the baiters. All we can say to
12 Mr. Abrams and his crowd is that they may drag us down in
13 the same way that people dragged down the trade union
14 movement in Europe in the 1930s. We just don't propose to go
15 down peacefully.

16 It seems to me that his testimony was purely incredible.
17 We found that he has single-handedly solved the problem of
18 seasonality in this country, which has defied the best
19 efforts of Government, management, and union for the past
20 century.

21 I think it turns out he is an incredible master economist,
22 that even though he has not yet brought the construction
23 industry singly out of the depression which engulfs us, and
24 into the promised land of honey, his studies, contrary to
25 the conventional wisdom which somewhat attributes the

1 recession in the construction industry to high interest,
2 tight money policies, impoundment of construction funds,
3 destruction of construction programs -- his studies have
4 revealed that it is really unions who are responsible for
5 the construction recession in this country. With that I will
6 say no more about Mr. Abrams.

7 Mr. Ashbrook. On that point can I interrupt you. I
8 certainly respect your position. We all live in the real
9 world.

10 There are two sides, that works both ways, doesn't it,
11 Mr. Connerton? Just last Saturday in my home town of Newark,
12 I drove downtown. There was a non-union job putting up the
13 Sheraton Hotel. Some union people drive a truck up beside
14 the job site and they have a big sign saying "Rats" painted
15 on the side, because they are non-union.

16 I think the record ought to show in everybody's mind
17 and experience there are two sides. For every one that is
18 pointed out one way you could probably point out one the
19 other way.

20 These issues grow hot. I am sure both sides have a lot
21 of things they just as soon not happen. I have seen enough
22 in my own area, which certainly could not be called a high
23 union area. I doubt that any peace and tranquility in Newark,
24 Ohio, is aided by pulling up trucks to a non-union site and
25 referring to everybody that goes in there as a rat. That is

1 what makes a few of us recognize that there are truly two
2 sides to this situation.

3 Mr. Connerton. Let me make two comments. One is that
4 the thrust of my testimony is that there are some people who
5 are intent on delaying our entrance into the 20th Century
6 and they have a nationwide campaign on at the present time.
7 There is nothing in HR 5900 that will in any way permit people
8 to run around jobs painting up trucks or engaging in any kind
9 of conduct.

10 Mr. Ashbrook. All the testimony indicates that clearly
11 the trades want 5900, they make no bones about it, to further
12 unionize the non-unionized areas. It depends on whose ox is
13 being gored. There is an all-out campaign to try to stop
14 the trend toward merit shops, open shops. To that extent I
15 guess you could use the same word, and I am not arguing with
16 you. I would much rather show there is an intention on the
17 part of the trade unions to clearly stop, if not destroy
18 or wipe out, as you point out, the non-union segment. I
19 understand that. I don't think there is anything basically
20 wrong with it. I don't think the record ought to show it is
21 a one-sided approach. I recognize that there are contentions
22 on both sides. We try to be objective.

23 Mr. Connerton. I appreciate your views, Mr. Ashbrook.

24 Our principle point today is that the Supreme Court in
25 General Electric reversed the Labor Board's attempt to apply

1 the Denver Building Trades doctrine to an industrial site.
2 But that subsequently the NLRB declined to apply the General
3 Electric work related standard to a reserve gate in the
4 construction industry. It is from that that we feel the
5 unequal treatment of construction workers stems.

6 For one thing, the impact of the Denver decision has
7 been the increased use of the subcontracting system in the
8 construction industry to avoid and escape union standards and
9 conditions.

10 Our point is that union contractors are economically
11 encouraged by the Denver Building Trades case to employ
12 non-union contractors whose wages and conditions are
13 substantially below those applicable to the general contractor's
14 employees. And such subcontractors are very often engaged in
15 work which was previously performed by the employers of the
16 general contractor under union conditions.

17 In addition the enemies of collective bargaining have
18 hidden behind a new what we call a shell game, of shifting
19 corporate forms so that construction companies which are
20 parties to union contracts are now able to establish non-
21 union alter ego companies which in turn are able to bid on
22 work sheltered from their otherwise legal binding obligations.

23 My written statement makes reference to these cases,
24 but the effect has been to encourage the employers in the
25 construction industry to relieve themselves of their collective

1 bargaining obligations by submitting bids in new forms in
2 utter disregard of their basic union obligations established
3 through their regular corporate entities.

4 The problem is made particularly acute because, as you
5 know, and there is no need to go over this area, of the
6 difficulty of conducting elections in the construction
7 industry, and the necessity for some sort of speedy relief
8 prior to the time a job is completed.

9 My statement makes reference to a recent case in which
10 the labor board took cognizance of the great strides being
11 made by employers and unions in the area of fringe benefits.
12 It also recognized the community of interest between
13 contractors working on that particular job and the need of
14 the industry and the need of the union to have contributions
15 from all employees if benefits held forth are to be paid.

16 Indeed, one of the underlying issues here is if our
17 building trades unions are compelled in effect to sit idly
18 by or engage in picketing which is as ineffective as the
19 picketing in a park, while there are many billions of dollars
20 of private pension commitments dumped into the laps of the
21 Pension Benefit Guarantee Corporation, does that constitute
22 salutary public policy? I simply want to raise that issue
23 here.

24 But as these hearings have demonstrated pretty clearly,
25 the building and construction industry, which is the largest

1 in the land, with over I think half a million employers,
2 and 3.5 million workers, we are suggesting these hearings
3 show very clearly it is caught up in the midst of a national
4 open shop campaign of enormous dimensions which is reminiscent
5 of the programs launched by the big industrialists and their
6 construction employer allies in the 1920s under the
7 patriotically titled "American Plan", which in the 1920s
8 resulted in the virtual destruction of the union building
9 trades movement.

10 Today the same anti-union crowd, the major industrialists
11 operating through Business Round Table, which has not
12 testified but which is present all over here, the National
13 Association of Manufacturers, the Chamber of Commerce, the
14 Associated General Contractors, the ABC, and certain other
15 contractor groups, have launched a similar campaign of
16 enormous proportions under the name of merit shop, or open
17 shop, which is designed to destroy the union building trades
18 movement.

19 By their own testimony they have shown since Denver
20 and since Moore Drydock, and since G.E., and separate gates,
21 that they have succeeded in increasing the non-union share of
22 the construction market from the previous 20 percent to more
23 than 40 percent, or 50 percent.

24 What I think I was trying to say, Mr. Ashbrook, is that
25 they are attempting to seize upon the present national

1 tragedy of depression in this construction industry, which
2 suffers from over 22 percent unemployed nationally, in some
3 areas as high as 70 percent, and in some trades such as my
4 trade, over 40 percent nationally, when people desperately
5 need jobs, to destroy established construction standards,
6 to make workers compete for the few available jobs at
7 depressed wages, and thus break the back of the building trades
8 movement.

9 I think what is not so clearly understood by those who
10 don't watch the situation is how virulent the campaign has
11 become. For example, the Associated General Contractors has
12 conducted national, regional, and local seminars and
13 distributed kits to its members showing how they can legally
14 shut down their union obligations and their whole union
15 operation, escape their union obligations, set up non-union
16 operations with the union being prohibited from even defending
17 itself by picketing the union employer before he goes out of
18 business because under Board decisions when a union employer
19 sets up a non-union company that is a separate employer. If
20 you proceed to picket the union company that set it up and
21 controls the non-union employer you are engaging in a
22 secondary boycott.

23 These legal maneuvers, together with maneuvers such as
24 trying to apply the anti-trust laws to break up trade unions
25 and attempting to hold international unions liable for conduct

1 of their affiliates, are all part and parcel of a campaign
2 to undermine and to destroy the unionized building trades
3 movement.

4 Now we have heard the argument made again here that
5 this is not the proper time for the enactment of this
6 legislation. During the 1930s Congress passed the Wagner Act
7 because they had found out through long and sad experience
8 in dealing with many recessions where persons were placed
9 out of work, where wages were reduced, where people were
10 forced to compete with each other for jobs, that unless this
11 wage depression was ended and unless collective bargaining
12 was encouraged, the economic disease afflicting the land
13 would continue.

14 The same principle is at stake with this legislation.
15 The realities of life and in the construction industry today
16 as you have heard from many of the employer witnesses,
17 including a witness this morning, is that the industry is
18 presently subject to the most massive assault on labor
19 standards in history, which seeks to destroy the stability and
20 coherence that trade unionism has brought to construction
21 employment.

22 There is never going to be stability in this industry.
23 Sound public policy cannot permit any one of more than
24 300,000 employers on hundreds of thousands of construction
25 projects to be free to stack the cards any way they want on

1 millions of projects and then deal the cards without at
2 least permitting us as building tradesmen to at least cut
3 the deck.

4 Under these circumstances, sound policy judgment demands
5 at a minimum the same as in a factory situation, that the
6 project should be treated as a unitary whole for the purpose
7 of permitting the union workers to appeal for their support
8 to their fellow tradesmen employed thereon.

9 Much has also been said about the results of local
10 bargaining in the fragmented construction industry.

11 Secretary Dunlop indicated during the course of his testimony
12 that in his judgment from his expert and neutral vantage
13 point that local strikes against local contractors for higher
14 wages at the expiration of collective bargaining agreements
15 would not be affected one way or another by the passage of
16 HR 5900.

17 I guess we should let the matter rest there, but it
18 seems to us that this issue point up more than any other the
19 utter folly of the position that each individual contractor
20 on each project in the country should be free to manipulate
21 his labor relations any way he sees fit. It would follow
22 from that then each labor union on each labor negotiation
23 should be able to do what it sees fit regardless of what the
24 consequences are to the public, to the construction industry,
25 to our land.

1 Now, Mr. McClary of the AGC, who is a very honorable
2 and very decent kind of individual, whose company is probably
3 the finest from a labor relations standpoint in this whole
4 country, ascribed the problem of high wages in large measure
5 to the inability of international unions to control their
6 affiliates.

7 Mr. Thompson knows this was not always the case, because
8 prior to 1960 the international unions did play substantial
9 and vital roles in local collective bargaining. But
10 Mr. Thompson will recall that in 1958 and 1959 the AGC was
11 vigorously supporting the efforts of the Chamber of Commerce
12 and others to impose restrictions upon the authority and
13 control which international unions had hitherto exerted over
14 their affiliates.

15 At that time the battle cry was that international
16 building trades officials were corruptly negotiating
17 "sweetheart contracts" to the detriment of their local
18 membership. Now knowing outside observers like Secretary
19 Dunlop immediately disputed that claim, and they suggested
20 that international unions removed from the immediate scene
21 could call for local union restraints, for locals not to
22 take momentary advantage of this particular situation, to
23 judge a local situation within the national perspective,
24 national needs, to consider the long run interest of the
25 union.

1 I recall at that time informing AGC representatives
2 working up here that they were simply being schizophrenic
3 in urging the passage of the so-called "Bill of Rights", the
4 trusteeship and other restrictive provisions that would
5 destroy the international union's salutary, moderating
6 influence on local bargaining, but apparently mesmerized
7 by the Chamber's propaganda they proceeded enthusiastically
8 to mimic their slogans which, as you all know, resulted in
9 the international unions influence on the conduct of local
10 negotiations evaporating.

11 Mr. Thompson. Mr. Connerton, I don't know whether you
12 were present yesterday when Mr. Biemiller testified, but I
13 asked him if he felt, and I was not being fatuous about it,
14 that if we were to enact the Secretary's recommendations,
15 Dr. Dunlop's recommendation, under which a local would have
16 to receive the permission of its international to strike
17 and his suggestion that the management go to some higher
18 authority, presumably that of an organization to which they
19 belonged, such as AGC, or any of the others, that I suggested
20 it might be necessary in that set of circumstances that the
21 law would have to be revised so that there would be a bill of
22 rights for the employer, including among other things the need
23 for them to vote on the amount of their dues, its use, and
24 the other parts of that so-called "Bill of Rights" which were
25 put in the 1959 Act.



1 They were modified, as you and I well remember. That
2 bill of rights was authored by Senator McClellan and came
3 over to this side where they were substantially modified,
4 but they do exist.

5 Would you agree that if Professor Dunlop's suggestion
6 were adopted that such action would have to follow? That is,
7 the enactment of a bill of rights for an employer.

8 Mr. Connerton. I must respectfully submit, Mr. Chairman,
9 I had not considered that possibility. It could well be.

10 Mr. Thompson. You probably haven't considered it
11 because you had not thought of the possibility that that
12 suggestion might be adopted in the form of legislation. My
13 hypothesis is that it would be adopted. If it were adopted
14 it would follow that such action might have to be taken.
15 There would be NLRB elections for management, for instance.

16 Mr. Connerton. Mr. Kearns's suggestion that we have no
17 legislation proposed for management. We would hope that they
18 would have none proposed for us.

19 When Congress passed the Landrum-Griffin Act, the Agency
20 acted as if nothing had happened, and they continued to request
21 national unions to intervene in troubled local bargaining
22 situations. They appeared astounded that the Act's provisions
23 had in fact weakened the hands of the international unions,
24 and they urged that legislation be introduced to correct
25 this effect. Of course, the damage had already been done, with

1 untold cost to our society.

2 Without the steady hand of international unions
3 in bargaining each local unit and area proceeded to drift
4 off on its own.

5 Secretary Dunlop told you during the controls period
6 1971-74 that significant progress was made in rationalizing
7 the construction industries on such matters as the structure
8 and geographical scope of bargaining wages, fringe benefits,
9 and working conditions. My point here is to say that this
10 rational system worked and worked well in large measure due
11 to the active role played by international unions. And now
12 that statutory controls have ended certain persons are
13 urging a continuation of that system on a voluntary basis.

14 I can only express my personal view, certainly not
15 that of the Building Trades Department, and not that of my
16 union, but my own view from being on the scene for over 20
17 years, but I am convinced if international unions felt
18 relatively secure in a stablized situation, with the reversal
19 of Denver, with equal treatment of industrial workers, that
20 they would be agreeable to a voluntary continuation of that
21 system, and continuing with union national contractors the
22 long overdue rationalization of the construction industry.

23 Of course, this would require that the Landrum-Griffin
24 Act be amended substantially. Of course, international unions
25 by such intervention could not be held legally liable for the

1 acts of their affiliates as Secretary Dunlop has stated.

2 As this committee may not be aware, and I hope
3 Mr. Ashbrook will forgive me for speaking strongly, it is
4 part of what I regard as being a national "hate and bait"
5 campaign on the part of the ABC and the Chamber of Commerce.
6 A concerted legal campaign on a national level is being waged
7 to overturn long-standing law, because, talking candidly,
8 they feel at this point in the system the courts are on their
9 side, and they are out to get whatever they can get their
10 hands on, including that which holds that international
11 unions are not responsible for the actions of their local
12 unions unless authorized or ratified.

13 As part of this campaign they recently persuaded the
14 General Counsel of NLRB to issue a complaint against four
15 international unions, including my own, in local situations.
16 In our case the law judge ruled that simply because the
17 international union had intervened and tried to conciliate
18 a local dispute it should not be held liable for a locals
19 subsequent conduct of which it had no knowledge.

20 My point is not to talk about our particular case, but
21 simply to say that such what I would characterize as
22 being schizophrenic, employer fragmented behavior, can only
23 have the effect of discouraging international unions from
24 even discussing intervention in local bargaining situations.

25

1 There is neither rhyme nor reason for the contractor's
2 actions nationally unless you can conclude, as we do, that
3 in reality the common thread running through their conduct
4 is a desire to destroy the building trades movement entirely
5 by one means or another.

6 It seems to us we need to inject a sense of rationality
7 into this chaos. We submit that passage of HR 5900, treating
8 as it would a construction project as an integrated
9 unitary whole which it is, would be the first step in the
10 right direction.

11 With the project situation stabilized, and I am not
12 convinced myself that the passage of HR 5900 would lead at
13 all to increased unionization, I suggest it would lead
14 rather to a stabilization of the present condition, I am
15 convinced that the AFL-CIO Building Trades Department and its
16 affiliates would cooperate with this committee and with
17 Secretary Dunlop in the interest of national contractors
18 groups to address themselves to the larger basic problems
19 of reforming the entire structure in the construction
20 industry in order that we might meet the future needs of this
21 Nation.

22 Thank you, Mr. Chairman.

23 Mr. Thompson. Mr. Connerton, a number of witnesses have
24 testified that there is already equality between the trade
25 and industrial unions because the trade unions have benefits

1 under Section 8(e), the "hot cargo" clause, and under 8(f),
2 which industrial workers don't have. What is your comment?

3 Mr. Connerton. My comment with respect to Section 8(f)
4 is, as you know, Mr. Chairman, it was passed by the Congress
5 to meet the particular problems of construction unions. Where
6 our industry is characterized by jobs being bid in advance of
7 employment of individuals, where employers must take into
8 account at the time when they submit their bid what their
9 labor costs are going to be, and include a computation of
10 those labor costs in their bid, for all those reasons Congress
11 continued what had been the practice in the construction
12 industry from its inception, what is the practice in all other
13 countries in our western civilization, by permitting the
14 continuation of pre-hire agreements.

15 With respect to 8(e), you and Mr. Quie know that history
16 far better than I do. You recall at the time of the
17 conference in 1959, which was the last time I was involved
18 personally in equal treatment for construction workers, that
19 the conferees had voted to give to the building trades
20 unions relief from the Denver Building Trades case.

21 Mr. Thompson. We recited that history earlier today.

22 Mr. Connerton. Yes. You know, it is strange after
23 25 years by one method or another in our society we have not
24 been able to get a vote in either house of this Congress on
25 this bill. But that is another question.

1 The fact of the matter is that when the Parliamentarian
2 ruled that situs picketing was not germane as an amendment
3 to 8(b)(4)(D) even though the garment workers amendment was
4 germane, which is another question entirely, then you will
5 recall the conferees decided at that time, because they
6 recognized that a job was an integrated unitary interrelated
7 whole, they would permit us to enter into an agreement that
8 would provide for the use of the union subcontractors on the
9 site of construction. That is a long history. That is
10 related to our request here today that you give us a chance to
11 have full equal treatment and not partial equal treatment with
12 industrial workers.

13 Mr. Thompson. You have had extensive experience, both
14 here, in courtrooms, and elsewhere. I am going to take a few
15 minutes to see whether or not you agree with some conclusions
16 which counsel and I have arrived at after reviewing the
17 testimony.

18 In other words, in a sense, what HR 5900 does and does
19 not do. Now you said earlier with respect to the contention
20 of the AGC that the Alaska Pipeline could be shut down. You
21 said categorically no, and I agree with that. See if you
22 agree with my conclusions.

23 First, 5900 expressly says unions can picket only where
24 there is a labor dispute not unlawful under the Act or in
25 violation of existing collective bargaining agreements.

1 Mr. Connerton. That is absolutely correct,
2 Mr. Chairman. In that dispute that Mr. Rodgers was referring
3 to this morning, as I understood it, it was a simple
4 jurisdictional dispute which is unlawful under the statute,
5 is not made lawful by 5900, would not be permitted by 5900.

6 Mr. Thompson. We have examined the Alaska Pipeline
7 contract, and the one with Disneyland Enterprises. It is
8 our conclusion that HR 5900 has no effect, would have none,
9 and that led us to the Boy's Market case in which the Supreme
10 Court held that the courts can issue an injunction to prevent
11 a breach of contract so that there would be a remedy if a
12 strike were to occur. Do you agree with that?

13 Mr. Connerton. That is correct, Mr. Chairman. Secretary
14 Shultz requested that the bill be modified, you will recall
15 in his previous testimony, to reach that result. Subsequent
16 to his testimony the Supreme Court decided Boy's Market. So
17 the need for that amendment has been obviated.

18 Mr. Ashbrook. This is what concerns some of us. We
19 start out by saying in the Alaska Pipeline there are no-strike
20 clauses, there won't be a strike. Now we are talking about
21 what would happen if there is a strike. The fact that there
22 is a no-strike clause doesn't impress me much. There are no
23 strike clauses, but in many cases they are not observed. I
24 don't know why anybody would think a no-strike clause is that
25 meaningful if no-strike laws in many jurisdictions are not

1 enforced.

2 Mr. Thompson. There are restraints. Section 301 allows
3 suits for damages which is an inhibiting factor.

4 Mr. Ashbrook. Realistically that has not really worked.
5 In every case where you have a union shop and you have a
6 wildcat strike, I guess this is the part of the union argument
7 that always has me a little bit wondering. You say in
8 Rockwell Standard you have to have a union shop so we have
9 complete jurisdiction to have labor peace. Then there is a
10 strike. The union says this is a disident group, we can't do
11 much about it. If management comes back and wants to do
12 something about breach of contract, forget it.

13 Realistically, those things don't work. In the one
14 case of a union shop we have jurisdiction. Then we see a
15 wildcat strike, and they say, "That bunch is not doing what
16 we say. Everybody honors a picket line when we have a
17 strike. Management does not do anything." Realistically
18 these things don't add up.

19 Mr. Thompson. First of all, I concede that notwithstanding
20 agreements in either an industrial situation or in any other
21 situation there are times when there are strikes and there
22 is unrest. What I am really trying to get at, John, is, not
23 withstanding those things, to outline what HR 5900 is
24 intended to do, and what it does not do.
25

1 Now to go on for a moment about Section 301, the damages
2 that can be assessed there can be really tremendous. In the
3 case of the longshoremen, Harry Bridges' union, I believe they
4 were fined something like \$500,000. John L. Lewis and the
5 Mineworkers, over a million dollars. That is at least a
6 Sword of Damocles in a sense.

7 We are told by the National Association of Manufacturers
8 that enactment of 5900 would permit the unions, the AFL-CIO
9 unions to force subcontractors off the job if they had
10 contracts with independent unions. My conclusion is that
11 before any picketing is permitted there must be a labor dispute
12 not unlawful under the Act and that this section, that is
13 8(b)(4)(D) makes it unlawful for a union to picket where
14 the object is to force or to require any employer to assign
15 particular work to employees in a particular labor organization
16 rather than to employees in another organization.

17 Mr. Connerton. 8(b)(7)(C).

18 If I can get back to Mr. Ashbrook's statement, I want to
19 suggest to him I very respectfully disagree. The remedies are
20 available under present law.

21 My view from the bridge is that employer's lawyers use
22 them. They are not reluctant in any way to use them, including
23 getting damages where unions go out on strike where there is
24 a no-strike clause contained in the contract.
25



1 Now I can't sit here and answer for all employers. If
2 for some reason or another some employer does not avail
3 himself of a legal remedy that is at his call, then it seems
4 to me that the unions should not be held responsible for that.
5 In any event, Mr. Ashbrook, I think that question of a breach
6 of contract is totally unrelated to HR 5900. HR 5900 does
7 not in any way legalize a strike for breach of contract.

8 Mr. Ashbrook. This only came up because of the no-strike
9 discussion on the Alaska Pipeline. In my opinion the
10 no-strike clause does not mean very much. I don't think you
11 can say, Bob, you can't conceive of a situation where
12 grievance might be such that there would not be a strike on
13 the Alaska Pipeline. It would not be fair for a union to be
14 in that position.

15 Mr. Connerton. No. I think I indicated that I could
16 not conceive a situation where HR 5900 would make it legal for
17 a union to engage in any sort of strike against the Alaska
18 Pipeline. I think that is a fair and accurate statement.

19 If some organization in breach of its contract engages
20 in a strike, then it is subject to have strike monetary
21 penalties under that agreement. My own judgment is that the
22 employer will avail himself of that immediately.

23 Mr. Quie. What would be the situation in the Alaska
24 Pipeline -- you have looked at the contract -- if the
25 Canadian workers went out, or the Seafarer's threw up a picket

1 line and those who had agreed to no strike then stayed out
2 in sympathy, which would not be illegal as I understand the
3 law.

4 Mr. Thompson. Mr. Pollitt is the one who examined the
5 contract. I will ask him to respond.

6 Mr. Pollitt. The contract provides a no-strike clause.
7 Also it provides for immediate arbitration within 24 hours
8 of any dispute. It requires that it be scheduled immediately,
9 that the arbitrator render a decision immediately. The opinion
10 comes later. If anyone fails to obey the arbitrator's
11 decision there is a provision in the contract they can get
12 enforced immediately on the arbitration clause. If anyone
13 fails to obey it they subject themselves to damages.

14 Mr. Quie. Does this apply only to those who have agreed
15 to the no-strike clause?

16 Mr. Pollitt. It applies to the signatory, which is not
17 the Canadian Seaman's Union. If the Canadian Seaman's Union
18 does throw up a picket line someplace the contract does not
19 apply.

20 Mr. Quie. In other words, the rest of them could
21 engage in a sympathy strike then.

22 Mr. Pollitt. I don't think so.

23 Mr. Connerton. I see no way they could engaged in a
24 sympathy strike under the contract without immediately
25 opening up themselves to legal liability. It is an ironclad

1 contract. It is what the oil companies insisted on. It is
2 an ironclad contract with all sorts of legal damages in it.
3 If some strange union came up and did something along that
4 pipeline and any unions supported it at that point the union
5 makes itself liable under the contract.

6 Mr. Quie. Let me stop you here and ask you the
7 question. As you know, I don't have all the knowledge in the
8 field that you do, that is why I appreciate having the
9 information from you and from counsel, would you call that
10 a strike if the union was signatory then did not cross the
11 Canadian picket line?

12 Mr. Connerton. First of all, I am not sure I understand
13 the Canadian part of it. I understand the Pipeline comes down
14 from Prudhoe Bay to Valdez. The gas line may go through
15 Canada, but that is not settled yet. I have not heard of any
16 possible Canadian disputes up there.

17 Mr. Quie. There are some Canadians who are working in
18 the Seafarer's Union. This is the group I am talking about.
19 If they threw up a picket line and the unions were signatory
20 to this contract and did not cross the picket line would that
21 then be called a strike?

22 Mr. Connerton. I would say any assistance rendered by
23 those unions under those circumstances, any failure on their
24 part to take affirmative action as provided for in that
25 contract would mean the union is immediately liable.

1 Mr. Pollitt. There is another clause, that the inter-
2 national union president is on call to arrive at the scene
3 of the dispute immediately and to use his best efforts and
4 so on.

5 Mr. Thompson. I am glad that HR 5900 would not allow
6 the shutdown of the Alaska Pipeline. I would like the record
7 to show that I voted against that pipeline for other reasons.

8 Mr. Quie. What is the penalty if the president does not
9 get them back to work again?

10 Mr. Pollitt. It is a private suit for damages, and it
11 is a jury trial, and the jury assesses damages. I can assure
12 you under 301 which authorizes a suit for breach of contract
13 recoveries in my particular area have been pretty high.

14 Mr. Connerton. Mr. Quie, we would be delighted to send
15 to you and members of the committee a memorandum with respect
16 to the question that you raise as to the various remedies
17 which are inherent in that Alaska Pipeline case.

18 Mr. Quie. I think it does relate to other types of
19 jobs if it is true what I have been hearing that no-strike
20 clauses are being adopted now more and more.

21 Mr. Thompson. I would say that that is true. In the
22 course of the development of the hospital legislation we
23 ascertained that it is almost universal in that industry
24 to have no-strike clauses.

25

1 Before yielding to Mr. Ashbrook I would like to tell
2 you in an aside he said to me, You must be a big caribou man,
3 I am. I am a caribou and tundra man.

4 Mr. Ashbrook. Mr. Thompson has indicated this will
5 probably be the close of the testimony. I think it is proper
6 to have our old friend Mr. Connerton appear to sum it up.
7 I would have to say in listening to all the testimony, as I
8 will point out on the floor, I think there are a few holes on
9 both sides of the argument.

10 It reminds me a little bit of that old story about the
11 reformed alcoholic and reformed drunk. They both got the
12 job done, but the drunk didn't have to attend all the meetings.
13 Both sides figure they can do the job without the vexatious
14 problem that comes with the merit shop dealing with the
15 unions or the unions dealing with the non-union segment.

16 One thing I have to admit, Bob, that leaves me more up
17 in the air. We are all the same just like dragging up
18 Eisenhower, we cling to that. In the case of the trades I
19 think the thing that I find is the most questionable is,
20 of course, you cling to the famous product boycott Supreme
21 Court case and say that is great. In the case of the
22 Denver case you want it changed. Now I can't help but think
23 if the trades are going to increasingly get into management
24 areas, which I would have to say in effect telling management
25 they cannot use pre-cut, prefab, that clearly should be a

1 management decision. If we are going to have that aspect of
2 it I just can't see this as necessary to overbalance the
3 other side.

4 If the trades would say, Okay, we have lived with this
5 for 20 years, we have 8(e), we have 8(f), the product boycott
6 aspect, 5900, we have that, we give up on the other, I guess
7 I would take a little more generous outlook on 5900. But to
8 establish the detail of having the product boycott and that
9 Supreme Court decision is great, but the Denver case is
10 wrong, I guess that selectivity is what probably makes me
11 feel a little less enthusiastic for your side on the 5900.

12 Mr. Connerton. That reminds me, Mr. Ashbrook, of that
13 famous statement by Charles Beard, the noted economist,
14 that the Supreme Court is as solid as the rock of Gibraltar
15 by a vote of five to four.

16 An enormous amount of progress has been made in this
17 area by the Congress. In terms of Sanborg decision it is
18 illegal under the present law if the object of your picketing
19 is to change the representation in an industrial plant. That
20 is a very, very significant improvement. In terms of
21 Wood Workers it was handed down by a vote of five to four.
22 Apparently the Labor Board does not agree with the rationale
23 in the Wood Workers decision and they have invoked the right
24 of control with which we disagree.
25

1 My understanding is that two circuits favored the Labor
2 Board's right to control, and three or four that the opposite
3 position. I am certain this issue will be heading to the
4 Supreme Court for resolution shortly. In the meantime it
5 seems to me that at least in the construction industry an
6 enormous amount of progress has been made.

7 Mr. Ashbrook. It is a clearly enunciated policy in all
8 this testimony that that is the subject of negotiation of the
9 contract, what the union looks upon as job maintenance as
10 against using the management argument that is technical
11 progress and should be utilized. When we use all those
12 stepping stones and get that under our belt and then use
13 5900, if we use 5900 we ought to sweep away some of those
14 things that have been done in the interim, and that obviously
15 is not a palatable position for you or the trades in this
16 particular case.

17 Mr. Connerton. The underlying problems in the area
18 are not peculiar to the construction industry. They exist
19 in longshore and in 15 or 20 other unions. The question
20 becomes how do you rationalize a given industry, how do you
21 take account of the needs of the workers on the one hand
22 and needs of the employer for more efficiency in competition
23 and the sort?

24 I think the record will show in the past seven or eight
25 years there have been enormous strides made in this country



1 toward clearing up the problem in the maritime industry,
2 including the construction industry. This problem was
3 addressed in considerable detail during the years 1971
4 through 1974 by the Construction Industry Stabilization
5 Commission, which Dr. Dunlop headed, and the unions, and
6 national contractor associations participated. There was
7 an enormous amount of tradeoff on that problem.

8 What I am saying is that there has been significant
9 improvement made in the construction industry to my knowledge
10 as sort of an outside observer on that problem, and it would
11 seem to me that the national unions and the employers and
12 the Government could directly involve themselves to the
13 individual situations to take care of these problems.

14 Mr. Ashbrook. Isn't it also implicit in what has been
15 said and what you have said that that tradeoff is based on
16 inaction as far as the Denver Building Trades is concerned?
17 That tradeoff you are talking about, compromises, adding
18 8(e) and 8(f), were all done in lieu of 5900 which of course
19 repeals the Denver Building Trades decision.

20 Mr. Connerton. Maybe I have misunderstood. I don't
21 think 8(f) was in lieu of 5900. 8(e) was only because that
22 was as far as Congress could go at that time. Congress
23 wanted to go full circle at that particular time. I don't
24 see where this problem is directly involved with HR 5900. It
25 would seem to me that when the matter is pending before the

1 courts it is heading for resolution by the Supreme Court.

2 Secondly, it seems to me that through collective
3 bargaining the unions and employers have made great strides
4 in cleaning up the area. If we could get this bone in our
5 throat in back of us, I am certain that the unions in this
6 industry, if that is the question you are raising, are
7 perfectly willing to sit down with national management and
8 the Government through Dr. Dunlop and see what it could do to
9 finally eliminate the problem.

10 Mr. Thompson. The Chairman might note unfortunately we
11 do have a quorum and that is the second bell for the quorum,
12 it is the intention of the Chair following the disposition
13 of HR 5900 to conduct in depth oversight hearings relating to
14 the NLRB and to the Act. Some of these decisions, you know --
15 and I suppose there is an advantage to having an uneven
16 number of Justices on the Court, whether we like the five to
17 four decisions or not. I happen to be the father of just
18 two daughters. Father's Day is coming up on Sunday. I am
19 reliably informed that by a vote of one to one I probably
20 won't get a Father's Day present. If I had a third child I
21 would have a shot at that.

22 Mr. Quie. Do you support the idea that Professor Dunlop
23 suggested that the local not only notify the international
24 but also get approval for a strike beforehand?

25 Mr. Connerton. Let me express my own personal feeling,

1 and I think Mr. Thompson and Mr. Ashbrook will understand
2 this. We were deeply involved in efforts to amend the
3 Taft-Hartley law to cover the employees of non-profit
4 hospitals. We agreed at that particular time to a 10-day
5 strike notice as part of a package in which management agreed
6 to consent to the bill.

7 Mr. Thompson. And the conscientious objectors?

8 Mr. Connerton. Yes, and on the religious objector.

9 Mr. Thompson. That is what I meant.

10 Mr. Connerton. I am sorry. That is our past history.
11 But the fact of the matter is that you could discuss that
12 because we were talking about getting together on what would
13 be a consent bill.

14 Now in this situation it is difficult to talk for our
15 principles, but in this kind of situation we are dealing
16 where the employer groups are just in blind opposition to
17 this bill, and they are not prepared to sit down and
18 suggest that we work toward a compromise.

19 Mr. Quie. The other questions is if you will give
20 your reaction to the 30 days that Professor Dunlop suggested,
21 that you have situs authority for 30 days if it is not
22 resolved at that time. 'If you will put that in the record.

23 The other one is in listening to your testimony, it
24 appeared like you thought the contractors were out to get
25 you. You have the legislation, and they seem to be opposed to

1 the legislation. Could you give me the information on what
2 has happened to the building construction trades unions
3 from 1952 until the present time, because I gather from what
4 you are saying that if you don't get this it may weaken the
5 unions over a period of time, and I would like to review what
6 the history is. Nobody has addressed himself in the testimony
7 so far to what has actually occurred in the intervening years.

8 Mr. Connerton. We have indicated as a result of the
9 Denver case and the G.E. case, and the Moore Drydock case,
10 and all the other extensions they made to those cases, the
11 cases dealing with double-breasted contractors, that in
12 effect, Mr. Quie, our rights to protect ourselves have been
13 denied. You might as well picket in a park.

14 As a result of that our share of the industry has
15 diminished substantially. We feel this will not encourage
16 the non-union part to go union. The effect of this will
17 have no effect on it whatsoever. We hope this will stabilize
18 the situation.

19 We are saying that there is a national campaign going
20 on involving the Round Table, the ABC, the Chamber of Commerce.
21 I would be delighted to furnish you with the documents, the
22 litigation, the kits which are distributed by some of these
23 contractor groups across the country as to how you can
24 abandon the union workers. I would be delighted to furnish
25 it to the committee.

1 Mr. Quie. I would like to have the information, what
2 has happened to the amount of work you have gotten, and the
3 number of union members.

4 Mr. Thompson. You have the information in your
5 testimony. Mr. Que is asking for supplemental information.

6 The subcommittee will adjourn. There will be no
7 further hearings. The record will be kept open for a period
8 of seven days for supplementary statements or additional
9 statements.

10 (Whereupon, at 12:10 p.m., the hearing was concluded)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

