THE PRACTICE OF "SALTING" AND ITS IMPACT ON SMALL BUSINESS

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The Practice of "Salting" and Its'...

JOINT HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

AND THE

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

OVERLAND PARK, KS, APRIL 12, 1996

Printed for the use of the Committee on Small Business and the Committee on Economic and Educational Opportunities

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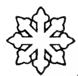

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THE PRACTICE OF "SALTING" AND ITS IMPACT ON SMALL BUSINESS

FRIDAY, APRIL 12, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS, AND
COMMITTEE ON ECONOMIC AND
EDUCATIONAL OPPORTUNITIES,
Washington, DC.

The Committees met, pursuant to notice, at 10 a.m., at Johnson County Central Resource Library, 9875 West 87th Street, Overland Park, Kansas, Hon. Jan Meyers (Chair of the Committee on Small Business) presiding.

Chair MEYERS. The Committee will come to order.

Today the House Committee on Small Business is pleased to be joined with the House Committee on Economic and Educational Opportunities to conduct this hearing on a union organizing practice known as "salting" and the impact of this practice on small business.

I would like to welcome our distinguished panel to Overland Park, God's country as it is better known—take note of that, Harris. I am very pleased to have Congressman Harris Fawell, Representative from the 13th District of Illinois and Chairman of the Employer-Employee Relations Subcommittee for the Economic and Educational Opportunities Committee. We used to call it Education and Labor; now we call it the Economic and Educational Opportunities Committee. He is here with us today as co-chair of this hearing. In addition, a fellow Kansan representing the Second District and a member of the Small Business Committee, Sam Brownback, will be with us a little bit later.

This hearing is being held in response to numerous calls for help that I and many other Members of Congress have received from small businesses who have been targeted in a union "salting" campaign.

The purpose of salting is ostensibly to recruit union members from the ground up on a worker-to-worker level. I support the ability of unions to organize workplaces and recruit members as do most small business owners, I believe. However, significant concern has been raised by small business and their employees that salting has a more sinister goal, putting small businesses out of business if they fail to sign collective bargaining agreements with the union.

As the committee will hear from several witnesses, some salting practices appear to focus on filing numerous unfair labor practice charges against an employer. This forces the small business owner to spend an estimated $5,000 to $10,000 per charge on legal fees

to defend himself and his company from what is often found to be a frivolous charge. Such action, particularly when one notes that very few petitions for union election are filed with the National Labor Relations Board, appears to be harassment of small business owners and nonunion employees. Of course, for a small business $5,000 to $10,000 per charge is an unbearable cost after a while.

My colleague, Mr. Fawell, has introduced legislation, H.R. 3211, amending the National Labor Relations Act to state that nothing in the act shall require the employer to hire a person who seeks a job in furtherance of other employment or Agency status. This legislation is an attempt to bring some balance back to the employer-employee relationship, which seems to be needed in some of these cases. However, I will be interested in hearing our witnesses give their views on H.R. 3211.

We have a very distinguished panel today, with eight persons presenting testimony. Therefore, I am going to keep my remarks brief. Before I turn this over to Mr. Fawell for an opening statement, I would like to say that Senator Kit Bond from Missouri wanted to be here, but he had to be in central Missouri on other commitments. He did ask me to say that based on concerns that he has been hearing from small businesses in Missouri, he is aware that salting is a growing problem for many small employers. A quote from his testimony is that, "because the idea behind salting appears to be to allege as many unfair labor practices as possible, small business owners spend so much time and money defending against these charges that some businesses are forced to move out of the union's jurisdiction or even close their doors altogether."

Without objection, I will enter Senator Bond's statement in the record.

[The information may be found in the appendix.]

Chair MEYERS. At this point I would like to turn this over to Mr. Fawell for an opening statement.

Mr. FAWELL. Thank you very much.

I want to start by thanking Chair Meyers for hosting today's joint hearing between the House Committees on Economic and Educational Opportunities and Small Business. It is a pleasure to be here in Kansas' Third Congressional District—I think that's correct—and I appreciate the efforts of Jan Meyers and her staff in pulling this hearing together.

Likewise, I am also pleased to share the dais this morning with Representative Sam Brownback who, I believe, will be joining us shortly, another distinguished member of the House Small Business Committee, who is from nearby Topeka, Kansas.

I might also say that Jan Meyers and I came to Congress at the same time. I have always enjoyed working with her. She is quite a talented lady. She has made the great mistake of saying that she is not going to run for election again. I think that is a loss for the Congress and certainly a tremendous loss also for the people of the Third Congressional District of Kansas. She is a fantastic lady and time and time again I have seen her rise on occasion and just quietly pinpoint all the pertinent points of legislation that are very arcane—always does her homework.

So, Jan, glad to have you with us for the rest of the present session, but concerned about the fact that you won't be joining us in the next session.

My concern in regard to this matter stems largely from two separate hearings which our committee held last year during which we heard from several witnesses who shared their experiences with so-called union "salting." Much of their testimony included stories about union organizers and agents who sought or gained employment with a nonunion employer, when in fact they had little, if any, intention of truly working for that company. In many cases, the organizers and the agents were there simply to organize and/or disrupt the employer's workplace or to increase the cost of doing business by forcing the employer to defend itself against frivolous charges filed with the National Labor Relations Board.

For most of these companies, many of which were smaller businesses, the economic harm, as Jan has indicated, inflicted by the union salting campaigns can be devastating. Equally troubling was the fact that the union salts were often brazen in their efforts to inflict economic harm on the nonunion employers. Indeed, many of the union salts made clear when applying for a job that their loyalties lay elsewhere and that they had little interest, in reality, in working to promote the interests of the company.

Obviously one might ask why any employer would hire an individual that he knows is not really interested in being a bona fide employee of his company; any employer has to ask that question.

The complicated answer to this question lies in the broad interpretations of the legal definitions of a very simple word, "employee," under the National Labor Relations Act. These interpretations have had the practical effect of presenting employers with a Hobson's choice, either hire the union salt who is already a paid employee of a union and primarily motivated to further the cause of that union or to deny the salt employment and risk being sued for discrimination under the NLRA. Either way, the employer is faced with a hiring decision that may threaten the very survival of his or her business.

I believe it is important that we explore ways of remedying this situation. In fact, as has been indicated, I recently introduced a bill that I believe represents a good first step in doing just that—and I emphasize it is a first step of trying to find the nomenclature, the wording to use—that will be fair to all parties.

H.R. 3211, the Truth in Employment Act of 1996, would amend Section 8 of the National Labor Relations Act to make clear that an employer is not required to hire any person that seeks a job in order to further the interests of the union, that is, primarily to organize the business of the employer and not because he really wants to be an employee on a permanent basis with that employer.

As I did when the bill was introduced, I want to again, however, make it clear that this legislation is in no way intended to infringe upon any rights or protections otherwise accorded employees under the NLRA. Employees will continue to enjoy their right to organize or engage in other considered activities protected under the act, and employers will still be prohibited from discriminating against employees on the basis of union membership or union activism. The bill merely seeks to alleviate the legal pressures imposed upon

employers to hire individuals whose overriding purpose for seeking the job is not to become a bona fide employee but to organize the employer's workplace and/or otherwise to inflict economic harm to the employer.

But I do not wish to focus a whole lot of attention necessarily on this legislation at today's hearing. While our witnesses are certainly welcome to comment on my bill, given its relevance to the subject of the hearing, I believe it would have been more useful for our witnesses to address the broader issues surrounding salting and how salting particularly affects small business. I think that information will be of great value when we hold more focused legislative hearings on this subject after we return to Washington.

In closing, I would also like to thank each of our witnesses we are going to hear here this morning. I sometimes fear that when we hold these hearings back in Washington, we occasionally lose sight of what is going on out in the real world and that instead of hearing from real people who are living day to day with the issues we consider, we are hearing from the inside-the-beltway crowd of lawyers and lobbyists. This is why we have come to Kansas this morning to hear firsthand from the folks who deal with salting on a daily basis.

I know each of you has left your business or job to be with us today, and we fully appreciate your willingness to come and share your experience with us. Thank you in advance for the time and interest that you have in this subject, and I will look forward to hearing your testimony.

Thank you.

Chair MEYERS. Thank you, Mr. Fawell. Let me say that although there are two of us here today and there will be three at a later time, we have invited the full committees. This is a problem that we have with field hearings. We like to hold them, but sometimes it is hard to get all the other Members that we would like to have here; and consequently, we will hold the record open for 2 weeks for other Members who would like to comment.

I will introduce all of our witnesses first and then remind the group who will be speaking as we go along.

Our first witness is Mr. Bill Love, President of SKC Electric, Inc., based in Lenexa, Kansas. SKC Electric, Inc. is a small electrical contracting company which employs approximately 125 workers. As a result of union salting, SKC has dealt with a number of unfair labor practice charges. Mr. Love will provide the committee with his company's experience with this union organizing tactic.

He is accompanied by Mr. Richard Oberlechner, an employee of SKC Electric, Inc., who will provide his perspective on salting.

Next we have Mr. Meyer, Vice President Secretary, Meyer Brothers Building Company, a small general contracting company located in Blue Springs, Missouri, who will also present his company's experience with salting. This includes both vandalism and several unfair labor practice on "ULP" charges, which Mr. Meyer attributes to union salting.

Our next witness will be Mr. Greg Hoberock, Vice President/Secretary of HTH Companies, a small mechanical contracting company employing approximately 100 employees, located in Union, Missouri. HTH has also been subject to a variety of union salting tac-

tics which have resulted in at least 20 ULP charges being filed against the company. Mr. Hoberock will discuss his company's experience with union salting initiatives.

Following Mr. Meyer is Mr. Janowitz, Chair of the Labor and Employment Group Practice of Shook, Hardy & Bacon. Mr. Janowitz has practiced labor and employment law exclusively for over 25 years. Having spent 12 years with the National Labor Relations Board as a trial attorney, supervisory attorney and regional attorney, Mr. Janowitz is uniquely qualified to address the extent to which union salting uses or abuses Federal statutes and agencies in order to inflict economic harm on nonunion employers.

Next we have Mr. James Pease. Mr. Pease is a partner at Melli, Walker, Pease & Ruhly of Madison, Wisconsin. His law firm has considerable experience representing both union and nonunion employers in labor and employment law matters.

In addition, Mr. Pease has represented Town & Country Electric, Inc. for many years, including the recent arguments on its behalf before the U.S. Supreme Court. Having represented Town & Country Electric, Inc. in what has now become the preeminent salting case, Mr. Pease is also uniquely able to describe the current state of labor law and how that contributes to many of the abusive practices inherent in union salting.

Finally, we have Mr. William Creeden, Director of Organizing, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; and Mr. Lindell Lee, Business Manager, Local 124 of the International Brotherhood of Electrical Workers. As Director of Organizing for the union which is generally credited with pioneering union salting, Mr. Creeden is uniquely qualified to explain this particular kind of organizing. Likewise, the IBEW has been active in union salting. As such, Mr. Lee will be able to provide the committees with his organization's views on the use of salting as an organizing tactic.

We will begin now with Mr. Bill Love, President of SKC Electric, Inc., and we will go right down the line. Before we start, I would like not only to thank all of the witnesses for being with us today, but also the entire roomful of people. This brings, as Mr. Fawell said, a little reality to what we do in Washington. Mr. Love.

TESTIMONY OF BILL LOVE, PRESIDENT, SKC ELECTRIC, INC., LENEXA, KANSAS

Mr. LOVE. Good morning, Madam Chair, Chairman Fawell. My name is Bill Love. My associate, Richard Oberlechner, and I thank you for giving us the opportunity to be with you to testify on behalf of SKC Electric. We have been in business for over 15 years here in Johnson County, Kansas. We employ approximately 125 people, the largest electrical contractor in this county.

I learned the industry as an electrician working with my tools. Although I have never been a member of a labor union, I have always respected an individual's right to organize and bargain collectively. In the last 4 years, our employees have been the subject of two very intense organizational drives by the IBEW. The overwhelming majority of our employees, around 90 percent, have rejected the union's advances and have chosen to remain union free. During these organizational drives, the union pays salts a weekly

salary in addition to their SKCE salary to support their cause. We respect the decisions of the individuals to choose what is best for them; and in some cases, people have left SKCE to join the union and then come back. However, since our employees choose not to be represented by a collective bargaining agreement, the IBEW is still determined to undermine our business.

Step number one. The IBEW is abusing our Government agencies, primarily the NLRB office, and our laws to create financial hardship upon SKCE.

The IBEW Special Project Department publishes in the organizers trading manual, "Action capsule five is simply a confirmation of the organizer's intent to use the NLRA and the NLRB against the employer at every viable opportunity. Once a charge has been filed and investigated by NLRB agents with the cooperation and the assistance of the organizer, the employer must provide its own defense at its own expense. Generally speaking, contractors are entrepreneurial craftsmen. They are not qualified by training or experience to handle legal filings or defenses." In bold letters it states, "Legal fees can become substantial financial drains within short periods of time."

The IBEW began by showing up at our office in multiple vehicles, in mass groups of 10 to 20 people with video cameras, trying to get our receptionist to make an improper statement so they can file a ULP charge with the NLRB. We have charges pending because we didn't hire anybody at all. I fail to see why we must defend charges and pay legal expenses simply because our firm wasn't hiring any electricians whatsoever when they applied.

Subsequent to this, we have hired union members and those who aren't union members. We hired union members and we received unfair labor practice charges; we fired nonunion members and we received unfair labor practice charges.

We didn't hire one of their primary union organizers, and he filed an EEOC age discrimination complaint against us. It just so happens we have hired individuals much older than he; however, we must still defend this charge.

We had an unfair labor practice charge filed because a salt wired the lights in a bathroom to come on with an adjoining office. The foreman asked the salt to go fix his error and he was shocked in the process, although not hurt. He accused us, in quotes, of "trying to murder him." Although he was a trained electrician and was trained in OSHA lockout-tagout procedures, we must still defend this charge.

At a new pasta manufacturing plant, picketers were instructed to limit their activities off the premises by the owner, which is perfectly legal. This meant the picketers were required to stand at the end of a dead end street. SKCE was served with an unfair labor practice charge for, quote, "picketing activities are confined to public streets, where they are exposed to an unreasonable risk to their personal safety."

This charge was dropped shortly after reporters from the Kansas City Star investigated. However, I don't feel we can or should rely upon the media to bring common sense to labor/management relations in this country.

We currently have over 30 such issues pending in all of our charges. However, we have not violated the NLRA, and we have not been found guilty of any such violations. Our first hearing is scheduled for next January. You would not know this by reading the correspondence coming out of the NLRB and the IBEW offices. For example, I have included the following exhibits.

Exhibit No. 1, IBEW handbill distributed regarding work at the FAA in Olathe, Kansas.

Exhibit No. 2, handbill defacing President Truman.

Exhibit No. 3, handbill distributed around the Catholic archdiocese.

Exhibit No. 4, NLRB proposed settlement as drafted by the IBEW.

As you can see by Exhibit No. 4, they have used the NLRB office to give the official impression that we are guilty. The first time I saw this document, a customer showed it to me. I remind you, we have not been found guilty and the overwhelming majority of our employees have chosen not to have union representation.

Enclosed is a copy of the latest issue of the Local 124 IBEW Electrogram, Exhibit No. 5, where it states, "Now that the NLRB has come back to life after the Town & Country decision and two Federal shutdowns, we will begin to see the heat going way up on our yet unorganized shops. There are some seven nonunion companies with 28 ULP's pending. For the remainder of 1996, Chris, Jim and various complainants will be spending many, many hours at the NLRB offices and in the courtrooms." In big letters it says, "Get 'um, fellows." This costs the union no legal expenses; us taxpayers fund this stuff. I ask you, aren't we a litigious enough of society?

Step No. 2, the union has taken these ULP charges to damage our credibility with our customers and our employees. The IBEW sends letters with copies of all the charges to customers in hopes of taking our business away, thus not allowing us to keep our employees fully employed. They tell them they might want to hire a, quote, "respectable contractor." See the following exhibits.

Exhibit No. 6, IBEW letter addressed to Jacobson's Stores.

Exhibit No. 7, IBEW letter referencing a new regional shopping mall.

Not only does the IBEW take these phony charges and attempt to destroy us economically, they also send these to our employees, attempting to undermine confidence in their company. I remind you, we have not been found guilty of any of these violations.

Step No. 3, the union has taken these ULP charges to call strikes by salt employees to weaken our company. The IBEW has taken these NLRB charges to call numerous ULP charges against our firm. The IBEW Special Project Department publishes in the organizers training manual a long sequence of 19 steps that it goes through, and the last step that it says in there, "the employer declares bankruptcy."

"The employer declares bankruptcy," it states. They bankrupt the contractor with the help of the U.S. Government. Is that what they have planned for SKCE? I can tell you not; however, some of my peers aren't, and won't be, so fortunate.

There are those who might say, see, the system works; SKCE is still successful and is still in business. Well, SKCE has spent over

$30,000 in legal bills thus far and we haven't even been to a hearing. We will probably spend over $100,000 defending these allegations. However, just because we can, this doesn't mean smaller contractors can. I feel it is important to note that nobody is saying the NLRB shouldn't be available to both labor and management in bona fide situations. It is the phony charges and the abuse of the system for intentional financial harm that is unfair. I have personally talked with NLRB board agents that, off the record, agree.

The unfortunate part of this is that this activity is supported and funded by the U.S. Government. We are away from our jobs today because it is important that we restore some "common sense" back to our labor-management relations in this country so that the rights of the 88 percent majority of the nonsignatory, private employees are protected.

Chair MEYERS. I thank you, Mr. Love.

[Mr. Love's statement may be found in the appendix.]

Chair MEYERS. Mr. Oberlechner.

TESTIMONY OF RICHARD OBERLECHNER, EMPLOYEE, SKC ELECTRIC, INC.

Mr. OBERLECHNER. Madam Chair, members of the committee, my name is Richard Oberlechner. I thank you for the opportunity to be with you today.

I am presently an employee of SKCE. I have worked in the electrical and construction industry since 1970, and received my electrical training in the U.S. Navy and at various trade schools. I am a master electrician and have worked at every level of the electrical industry from apprenticeship to electrician to apprenticeship instructor and company owner.

Upon my honorable discharge from the U.S. Navy in 1969, I went to work for Fishbach & Moore, one of the largest electrical contractors in the United States. I saw firsthand at that company how a union can run a company out of town when it wanted to. I later worked for L.K. Comstock, another large national contractor, and again saw the union have their people drag their feet, take longer than it should; and again, L.K. Comstock left town.

In 1980 I managed Overland Electric Company here in Johnson County, a union company. When contract negotiations broke down, the IBEW went out on strike, we hired nonunion replacements to service our customers. The union filed charges with the NLRB. The NLRB ruled that the union had negotiated in bad faith and the union strike was not legal. Instead of coming back to the bargaining table and working out our differences, the union left our company. However, they targeted our customers and cost the company many contracts. In 1988, I went to work for South Kansas City Electric.

I am here today to testify on behalf of a large number of my coworkers and myself. We would like to make it clear that we are tired of the harassing tactics, both on a company basis and against us individually. We sense the IBEW salting practices, combined with the abusive use of the NLRB and our laws, have the potential to hurt the economic status of our company and to jeopardize our livelihoods.

I recently had personal one-on-one contact and disappointment with the IBEW and their salts. I am working on a large hospital project in St. Joseph, Missouri. We had productive discussions with the local IBEW, No. 545, and we attempted to employ their employees on the project. We had reached an agreement and were then informed that they could not work side by side with our nonunion people. We could, however, use union workers if all the nonunion workers were removed from the project. This obviously would be unacceptable to my fellow South Kansas City employees and myself.

We recently had two IBEW salts, David Morgan and Rick Thompson, assigned to work on our project. We needed the work force and were glad to see them. They had both worked with me on previous projects and were very hard and dependable workers. Since the previous time, they had become union employees and were receiving weekly union salting salaries.

St. Joseph is an hour north of here, and they did not want to work in St. Joseph. We talked to both of them when they started to work and explained that we needed the help in getting the project done and they were the first available electricians. My past impressions of Dave's and Rick's hard work were certainly no longer the case. This time it was as if both of them were working for someone else. They deliberately did not follow instructions, continuously talked to, harassed and disrupted their fellow workers. But most of all, they did not get anywhere near the production they had in the past. Every one of the other workers, six of us in total, complained about their actions; and the complaints ranged from they would not leave people alone so they could work, they were dragging their feet, they were not getting anything done.

Dave and Rick bragged about receiving checks from the IBEW as well as our employer. They were out to get SKCE one way or the other. The inference was always there that if our employer did not become part of the union's group, they would put us out of business.

To shorten what could be a long story, Dave Morgan arrived at the project site one morning. He started walking back and forth, carrying a picket sign that read, SKCE had committed unfair labor practices. I asked Dave, what was the problem, and he would not talk, only pointing to the sign. I asked if this was personal or who should I call to find out what needed to be done to clear this matter up. Again, Dave would do nothing but point to the sign and say nothing. I asked one last time, saying, there is no information, no phone number, no name on your sign. Please tell me who I may call to rectify this misunderstanding. Dave only stood there and pointed to the sign.

I am not aware that SKCE has committed any unfair labor practices. I have always found that when reasonable people sit down and discuss their differences, we can always work things out. This was obviously not their intention, to work things out. This is a disruption tactic. This caused lost time and wages for other building trades as they would not cross the picket line. Dave and Rick have now gone out, as I understand it, on a ULP strike.

In summary, we feel something should be done for those of us that do not want to organize so that we may maintain our freedom to work for whomever we choose.

We feel something should be done so the NLRB is used for its original purpose and not these frivolous charges. Maybe if the charges filed were found to be frivolous or not true, the filer should pay.

We feel it should be the legal use of NLRB forms as real—we feel it should be illegal—excuse me—to use the NLRB forms as real until they have been agreed and signed by both parties.

SKCE is one of the best companies for whom I have ever worked, and I have personally received tens of thousands of dollars in bonuses and profit sharing. We are concerned that SKCE may be unable to continue being such a good provider if they must spend all this money defending frivolous and not true charges. We do not want our future jeopardized for the monetary gains of others.

Thank you.

Chair MEYERS. Thank you very much, Mr. Oberlechner.

[Mr. Oberlechner's statement may be found in the appendix.]

Chair MEYERS. We have been joined by Mr. Sam Brownback of the Second District of Kansas. Sam, at this time, I would ask you if you have a brief opening statement.

Mr. BROWNBACK. No, I don't have an opening statement, other than being delighted to be here, delighted to see so many people present on an important topic.

On a personal note, I want to congratulate Chair Meyers for all the great work she's done in chairing the Small Business Committee—I am sad to see you going—but she's done a fabulous job. I have been privileged to be able to serve with her on the committee.

I look forward to the rest of the testimony today. Thank you.

Chair MEYERS. Thank you, Congressman Brownback.

Our next witness will be Mr. Meyer of Meyer Brothers Building Company, Blue Springs, Missouri.

Mr. Meyer.

TESTIMONY OF DAVID R. MEYER, VICE PRESIDENT, SECRETARY, MEYER BROTHERS BUILDING CO., BLUE SPRINGS, MISSOURI

Mr. MEYER. Madam Chair, Mr. Chairman and Congressman Brownback, thank you for this opportunity.

In March 1977, Roger Meyer drove into Blue Springs, Missouri in his rented U-Haul with his wife and 1-year-old daughter. He pooled his $7,500 from the sale of his home in California with the $7,500 I had borrowed from our grandmother. Thus was the beginning of Meyer Brothers Building Company.

During the next 2 years, we each took the grand total of $2,400 out of the company. In 1978 we hired our first employee. Since that time, Roger and I are the only persons in our company to ever miss a paycheck. We have had to place second mortgages on our homes and do a lot of other creative things to ensure that every employee of Meyer Brothers has always received their check and benefits on time.

We now have 50 employees whose benefits include a comprehensive health insurance plan, paid holidays, paid vacations and a

401(k) retirement plan that we contribute to. We even make short-term, no-interest loans to employees that run a little short from time to time.

In 1983, we had an employee nearly lose his life. He was off work for over a year. We supplemented his workman's compensation benefits—against our attorney's advice—to help him support his wife and two young children. Our philosophy is that our people are our most important resource.

We have had problems with the unions from the beginning. We have had numerous pickets, threats and many job sites vandalized and extensively damaged. We have always been able to handle most of the situations that we have faced. The irony of it is that they have never formally tried to organize our employees. Their intent has always been to create financial hardship sufficient enough to "drive us out of business."

Our most serious problems began toward the end of 1994. In December of 1994, the Family Life Center we were building for the RLDS church was "ink-bombed," a method they use by filling beer bottles or baby food jars with printer's ink and tossing them against the buildings. A month later, another of our job sites was ink-bombed, oil and antifreeze poured on the concrete floor, windows broken, several pieces of equipment with holes jabbed in the radiators, gas tanks filled with sugar and on and on. The total damage was over $10,000.

One month later, a union organizer filled out an application for employment at our office. We were not aware that he was affiliated with the union at that time. It didn't really make any difference; we were not hiring anyone at that time, anyway. On March 29, 1995, Mike Bright, the union organizer, came into our office and talked with our field supervisor. He made the statement that he was going to organize our iron workers and left the premises. The next day Bright came into our office with Pat Masten of the carpenters union. They entered the front door with a video camera and began intimidating the two female employees at our front desk. Then during the early morning of April 3, 1995, our office building was ink-bombed, causing almost $5,000 in damage. The next day, my wife took a call at the office in which the anonymous caller stated, "Sorry for the bath. We will do a better job on Roger and Dave's houses."

That same week several other merit shop contractors had buildings ink-bombed. Pat Haggarty, a small general contractor and steel erector, had all of the structural steel on a small building he was erecting just down the street from our offices pulled down to the ground, causing several thousand dollars in damage. It is my understanding that he is now getting out of the steel erection business.

A Chili's Restaurant, under construction by a merit shop contractor on 39th Street in Independence was burned to the ground in July 1995. The damage was estimated at several hundred thousand dollars. Most job-site damage has been minimal since that incident.

The technique they are now using to financially damage merit shop contractors has been through the use of the services of the National Labor Relations Board. I can personally attest to this method, also.

On January 17, 1996, our company ran a help wanted ad for experienced metal building erectors in the *Kansas City Star*. The ad read that applications were by appointment only and ran for approximately 1 week. We had many calls regarding the ad and many interviews. By January 31, Danny Doherty, who was doing the interviewing and hiring, had made conditional job offers to approximately six applicants. One of the applicants was a Richard Christopherson.

On January 31, a Jeff Brown came in. He informed our receptionist that he had talked to Danny, who had told him to come in and fill out an application. Danny informed our receptionist that he was no longer interviewing but to allow Brown to fill out an application. Brown filled out the application and left.

Two hours later, Brown, Christopherson and four others came into the office stating they wanted to fill out applications for employment. They smelled of alcohol and were very intimidating to our receptionist, who called Danny to the front desk. Danny informed the group that we were no longer taking applications since all of the openings had been filled.

On February 5, 1996, we received notification from the NLRB that unfair labor practices had been filed against us by this group. We had not hired anyone since January 31, nor did we need to. We contacted the NLRB and informed them that we would be willing to accept their applications if they would contact us individually to schedule an appointment. We were trying to handle them the same as all of the other applicants. They refused our offer and said they wanted to pursue the charges against us.

We have given our statements to the NLRB regarding this matter and have tried repeatedly to determine the status of the charges and to resolve these charges. Their method now is to drag this on as long as they can. They try to get back pay damages awarded to the applicants. The longer it takes to resolve the charges, the more back pay it will cost us if they can win the case through the NLRB.

Just 3 days ago, April 9, as I was beginning a meeting in my office with Kevin Godar, executive director of the Heart of America Chapter of the Associated Builders and Contractors, 15 iron workers crowded into our small reception area requesting to apply for a job. They had video cameras and recording devices. Although our discussion was cordial, I am certain that another unfair labor practice charge is being filed.

At this point, I have no idea how much our legal fees will be. Our neighbors and friends at Enterprise Interiors have spent well over $20,000 to defend themselves and their case is not settled yet. From everything I have seen and read about these types of cases, we could easily incur legal bills of $10,000 or more.

Unions once served a useful purpose and do so still today in many cases. We have had several employees who were once union members. We have also had several leave our company to go to the promise of higher wages and benefits only to find out they were being sold a bill of goods. A couple of those people have come back for their old jobs. In the past, we would not have had a problem hiring certain union members. We have had them before. It is very different today with the practice of "salting." We are being forced,

forced by the Federal Government, to hire union-paid employees to come into our companies and totally disrupt our operations.

The unions are not doing this to organize our employees. They want to put us out of business. The NLRB is now their weapon. All they need to do is stroll into the nearest NLRB office, fill out a form and watch Uncle Sam take over from there. They do not incur attorneys' fees or any other expenses. They sit back and watch as we are forced to jump through hoops because of their frivolous charges.

What has happened to our free enterprise system? We can no longer hire whom we want, when we want. I am not afraid of the unions organizing our employees. If we treat them well, they do not need the union. They are better off dealing directly with the owner of the company than with a third party that is living off of their hard-earned wages.

Please put us back on a level playing field. We can hold our own there. We are not rich, fat cats taking advantage of the little people. We are the little people, risking everything we own to keep our businesses operational, to support our families and to provide a decent living for our employees and their families. Right now it is David facing not one but two Goliaths—the unions with their large coffers and the NLRB.

It is very frightening to think of what may happen if changes are not made soon. Small businesses are the backbone of the country. Please do not stand by and watch the small businesses and our free enterprise system being destroyed by the unions and a tax-supported branch of our Government. We need to have Representative Fawell's proposed bill, H.R. 3211, passed quickly.

Thank you.

Chair MEYERS. Thank you very much, Mr. Meyer.

[Mr. Meyer's statement may be found in the appendix.]

Chair MEYERS. Our next witness will be Mr. Greg Hoberock, and he's Vice President and Secretary of HTH Companies, a mechanical contracting company in Union, Missouri.

Mr. Hoberock.

TESTIMONY OF GREGORY E. HOBEROCK, VICE PRESIDENT, HTH COMPANIES, INC., UNION, MISSOURI

Mr. HOBEROCK. Good morning, Chair Meyers, Chairman Fawell, Congressman Brownback. I thank you for this opportunity to speak to you today concerning union salting.

HTH Companies incorporated a merit shop insulation contracting firm formed in 1984 by my wife, Barbara, and myself. We employ approximately 100 workers throughout the Midwest. We train unskilled workers through our Department of Labor BAT-approved apprenticeship program. We offer competitive wages, health insurance, a retirement plan and a vacation plan to our employees.

HTH was the first merit shop insulation company to incorporate in and around the St. Louis area, offering the end users an alternative to Local No. 1 of the International Brotherhood of Heat and Frost Insulators. We have had to overcome every obstacle placed in our path by Local No. 1. From the start, we had to offer our customers a higher quality of work at a substantially lower price so

our customers would be able to overcome other costs inflicted by the AFL–CIO affiliated unions.

It is my understanding that the National Labor Relations Act was enacted to protect the rights of employees during the troubled times of the Depression. Management had grown abusive of its work force, a national act was needed.

I would never suggest that the act should be repealed. However, we find today that labor groups are abusing management and now need to be brought in check by a national act. H.R. 3211, the Truth in Employment Act of 1996, is a start in bringing about a balance to labor-management relations. Put simply, employers should not be required to hire persons who have no genuine interest in working for their companies.

Simultaneously at the time of the salting campaign, HTH Companies, Inc. endured many actions designed to intimidate our employees and our customers. But we are not accusing the union of involvement. Legal counsel advises me to make this very clear. We do not believe the time was coincidental. These acts included stalking, hand-billing and vandalism. In one instance, an employee found a dead rat in his mailbox.

A salting campaign against HTH Companies began approximately 26 months ago. A large group of male construction workers barreled into our office demanding employment applications from the female office staff worker. Their actions and language were both abusive and intimidating. None of the intruders were offered a job, and our first unfair labor practice charge was filed. The National Labor Relations Board found no merit with the charges because we could show that, first, we hadn't hired anybody that we needed with those qualifications; and second, we already had two members of their union on our payroll. Even though no merit was found in the union's claim, HTH suffered the economic loss of defending this frivolous charge.

The Heat and Frost Insulators then began what we thought was a union organizing campaign. However, as time went on, we began to realize that the union was not interested in organizing our labor force, but only interested in harassing us through the use of the National Labor Relations Act. At no time did the union petition the National Labor Relations Board for an election. In fact, HTH Companies was advised by employees that the union was not interested in representing HTH employees but instead wanted to put HTH out of business.

The union was successful in "buying" several of our employees. The scenario goes something like this: "HTH employee, if you will stay employed with HTH and perform acts that will allow the union to file charges with the National Labor Relations Board, we well give you a union card at the conclusion of your employment with HTH." As a result of this tactic, HTH lost eight employees to other employers. The eight persons who left HTH Companies have the right to seek employment which they feel will be better for their lives and those of their families. However, if HTH conducted its affairs in a manner similar to the actions of these eight agents of the union, we would probably be facing legal action today. According to other employees, one of the employees provided confidential information to the union leadership and has also encouraged

other employees to engage in a variety of acts to the detriment of their employer.

In total, HTH has faced 32 charges filed under the National Labor Relations Act with a total of 120 allegations. Out of these charges, the National Labor Relations Board found merit to a portion of three charges. The other 29 charges were found to be without merit in their entirety. HTH elected to settle the portion of three charges for a total of $720 in back pay. Legal counsel advised me that in their opinion HTH would prevail in a formal hearing with the National Labor Relations Board. However, the estimated cost would be $15,000 to $20,000 per charge. Considering the possible economic loss of battling the Federal Government for a potential savings of $720, the prudent business decision was made to settle. In settling these charges, HTH never admitted any wrongdoing and I remain convinced today that we have always followed both the spirit and the letter of the law.

Of the 29 meritless charges filed against HTH, one included dismissing an employee who left the job site on a Thursday. He was also absent on Friday, which caused a great amount of concern for my customer. Nevertheless, the employee took the following week off, without permission and without explaining why he would be gone from work. We told the employee that we desperately needed him at the job site. He refused to heed our pleas and never explained his actions. Not only did we have to deal with the potential loss of a client, we had to defend our disciplinary action with the National Labor Relations Board. After a thorough and costly investigation, the charge was dismissed.

Another charge was filed when a payroll clerk made a clerical mistake in calculating a weekly payroll. An employee was shorted $120. We found the mistake, prepared a check for the difference and mailed it to the employee immediately. His means of notifying our office was through a National Labor Relations Act charge. By the time the paperwork was delivered to our office, restitution had already been made. All allegations involved under this charge were eventually dropped.

How would you like to defend your company's management of a construction project? HTH faced a National Labor Relations Act charge because we asked persons on a job site to communicate with our office the progress of the project. We were accused of discrimination against employees because we wanted to know what work was being done on a site a 4-hour drive away. After a costly investigation, all allegations included in this charge were dropped.

Under the current administration, I thought employers were encouraged to provide health insurance and retirement coverage for their employees. We faced charges because we institute a 401(k) and a Davis-Bacon pension plan. Even at face value, it is obvious that no discrimination has occurred because our plan is offered to all employees and because we had commenced our discussions regarding these plans prior to the start of the salting campaign. HTH Companies, Inc. still had to endure the economic loss of defending a charge which was eventually dropped.

An apprentice was terminated because of his poor work record. We faced three separate charges over his termination. Each time, no merit was found to the charge and no action was pursued by

the National Labor Relations Board. The cost to prove to the National Labor Relations Board that no discrimination occurred was once again borne by HTH Companies.

Some employees of HTH decided to get together one evening for drinks. The activity was neither sponsored by nor funded by the company. The business agent of Local No. 1 filed charges under the National Labor Relations Act for excluding his agent, an uninvited employee. HTH had to defend the charge and then had to decide whether to encourage or discourage socialization among their own employees. Once again, the charge was found to be without merit, but we were forced to spend time and money responding to a baseless allegation.

One employee attended a sponsored meeting by the union. After considering the offer to accept membership in Local No. 1, he informed me of his intent to resign. We told him—he told me that the union had offered him membership at a substantially higher wage. After wishing him well, I inquired when he would be leaving. No information was available on a specific date of termination, but he told me he would inform me as soon as possible.

After some time had elapsed and no termination date was provided, the employee informed me that the union had placed conditions upon issuance of his union card. He told me he had been asked to perform acts in an attempt to harass HTH Companies, Inc. and provide a basis for the union to file charges under the National Labor Relations Act. His position was that HTH had been good to him and that if the union wanted to grant him membership because of his skill, then he would join. If membership was contingent on what he considered unethical acts, he would remain employed by HTH Companies.

I would estimate an average of 40 hours of my time was spent to defend each charge filed under the National Labor Relations Act. Additionally, it takes about the same amount of time of my staff. Although we do not account for our legal fees specifically by charge, I know that my legal cost has tripled over the past 2 years. This money is a cost inflicted on HTH Companies with no benefit to the employees or the company.

Forcing employers to hire persons whose intent is to bankrupt the employer does not make sense. Employees have told me that the business agent for Asbestos Workers Local No. 1 has announced that it is his intention to put HTH out of business. Under current law, he himself or those persons he may send to my office to apply to work are protected applicants. A prudent manager is not prone to hire a person referred by a person whose stated intention it is to put you out of business.

Federal law, as currently interpreted by the Supreme Court in Town & Country, forces the manager into a "no-win" dilemma. When laws are used by unions to harass employers rather than to organize employees, the employees involved in such harassment must lose their protection. Our elected officials have to find a way out from union salting tactics and lift the business community from the salting "Catch 22."

Thank you very much.

Chair MEYERS. Thank you, Mr. Hoberock.

[Mr. Hoberock's statement may be found in the appendix.]

Chair MEYERS. Our next witness is Mr. Janowitz, and he is Chair of the Labor and Employment Practice Group of Shook, Hardy & Bacon.

Mr. Janowitz.

TESTIMONY OF ROBERT JANOWITZ, CHAIR, LABOR AND EMPLOYMENT PRACTICE GROUP, SHOOK, HARDY & BACON

Mr. JANOWITZ. Thank you, Chair Meyers, Chairman Fawell, Congressman Brownback. Welcome to Kansas City.

My name is Robert Janowitz. I am a lawyer who has specialized in labor and employment law for over 25 years. During my career, I have had a broad range of experience which I think makes me uniquely qualified to testify in support of H.R. 3211.

I started my labor law career in June 1969 as a trial attorney with the NLRB in Seattle, Washington, designated as Region 19. During my 6-year tenure as a trial attorney, I investigated, settled and litigated literally hundreds of unfair labor practice cases and conducted numerous representation hearings regarding preelection and postelection issues.

You may be aware that the NLRB itself is unionized, and has both professional and nonprofessional bargaining units. I was among the first trial attorneys in Region 19 to join the NLRB union, and am proud to say that I was active in that union until my promotion to a supervisory position in 1975.

In 1975, I accepted a promotion and was transferred to a supervisory attorney position with Region 6 of the NLRB located in Pittsburgh, Pennsylvania. In that position, I was responsible for training and reviewing the work of a team of trial lawyers, processing ULP charges, developing litigation strategies and helping to ensure that the NLRB's investigative process remained thorough and impartial.

In December 1976, the NLRB's General Counsel, John Irving, appointed me Regional Attorney of Region 17 based in Kansas City. You may not be aware, but the current regional office is located right across the street. Currently, Region 17, based here in Overland Park serves a broad geographical area, including Oklahoma, Nebraska, Kansas and the western half of Missouri.

As Regional Attorney, I was primarily responsible for determining whether unfair labor practice charges should proceed to complaint or be dismissed. It made no difference to me or my staff if the respondent was a labor organization or an employer. The consistent goals were impartiality, thoroughness and an understanding that before proceeding to litigation, we had to be satisfied at the regional office that we could meet our statutory burden of proof that an unfair labor practice had been committed.

I also had the privilege of working closely with senior civil servants of the board at the NLRB's Division of Operations in Washington, DC and helped develop the criteria for the Senior Executive Service representing the interests of all Regional Attorneys across the country. I also participated and helped write the NLRB trial attorneys training program that was put on a national basis several times before I left the Agency.

I left in October 1980 to accept a position in private practice and since that time I have represented management in all areas of

labor employment law, currently chairing the Labor and Employment Law Section at Kansas City's largest law firm, Shook, Hardy & Bacon. A significant amount of my time and energy in private practice is devoted to representing my clients' interests in matters directly and indirectly involving the board and the National Labor Relations Act.

I have continued to have a high regard for the integrity and fairness of most of the NLRB's field personnel, but I am concerned that the current board Chairman and General Counsel appear to have politicized the decisionmaking process. The impressions of many of us in private practice on the management side is that the zeal expressed by the recent appointees to the board and the General Counsel have swung the pendulum so far and so fast that the impartiality of the Agency is subject to question. This is particularly true in the construction industry and is one of the reasons I strongly support Congressman Fawell's bill.

Over the last several months, construction industry clients have reported to me or my staff over 2 dozen salting incidents. Many of these leading to NLRB charges against these companies. These companies are small businesses who cannot afford the cost of NLRB litigation.

In addition to the costs, as you have heard here this morning, many of these small business owners believe they are powerless in responding to what they view and I view as obnoxious and inappropriate conduct by several of the construction area labor unions. As you have heard, the typical tactic is this.

Picture a small corporate office or construction site trailer where the receptionist or job-site superintendent is beginning the workday. All of a sudden, unannounced, 5 to 12 strangers enter the office or the trailer demanding the right to apply for a job. One or more of these intruders is using a video camera to film the incident. Should the receptionist or superintendent feel threatened or coerced or intimidated, call the police or seek other types of assistance to have the individuals removed, charges will be filed with the NLRB claiming it was the rights of the intruders that were violated. The company's failure to hire any of these intruders also will be alleged as an unfair labor practice refusal to hire.

We had even had one recent case where the union's full-time paid organizer made 35 phone calls over 14 days, 75 phone calls over 40 days, asking for a job, tying up the company's one phone for that period.

Although a good argument could be made that under existing Missouri law this conduct would constitute criminal harassment, when the company reported the harassment to the phone company and the authorities, the union filed an NLRB charge alleging this conduct as an unfair labor practice.

I suggest no legitimate public policy is being furthered by allowing and encouraging this type of behavior. As rational, intelligent and objective individuals, we ask you, "Who is being burdened? Who is being harassed? "

I believe it is important for the Joint Committee to understand that my clients do not oppose a union's right to properly attempt to organize their employees. They clearly recognize their obligation not to discriminate under the act. This basic tenet of the act has

been around since 1935; we are well aware of it. My clients and I also recognize that as nonunion companies, their employees may attempt to unionize. We believe that our employees are entitled to determine for themselves through the traditional noncoercive secret ballot process whether or not they wish to be represented by a union. Union representation is not the issue.

When it comes to analyzing the unions' motives behind the salting strategy, it is noteworthy, as I think you pointed out, Chair Meyers, that with all of the salting cases our office has handled, I do not recall any instance in which a union has filed a petition for an election. This is because the employees involved were not interested in representation and, in my view, because organizing is not the motive. The real union objective is to do away with the nonunion competition and to drive these small nonunion companies out of business.

What support do I have for that statement? In a recent unfair labor practice proceeding before an administrative law judge prosecuted by Region 17, a business agent was on the stand under oath. Under cross-examination, he was asked the following question: "Have you ever expressed either your desire or the Carpenter District Council's desire to put the company out of business?" Although the NLRB's counsel objected to this question, the judge required the witness to answer. The union business agent's response, under oath, quote, "Yes, I believe I have. I have said that in the past."

This sworn testimony supports the evidence that ABC and other witnesses have put into the record that a major goal of the union's salting program is to run nonunion competition out of business. Something must be done to stop this malicious practice.

May I continue, I have got a page-and-a-half.

Chair MEYERS. If you could conclude your remarks within a minute or two, it would help us.

Mr. JANOWITZ. I think comments have been made regarding acts of vandalism. I was going to go into that; those remarks have been made.

Chair MEYERS. I will say that the total testimony of all witnesses will be entered into the record.

Mr. JANOWITZ. I will sum up. Thank you.

Chair MEYERS. Thank you very much.

Mr. JANOWITZ. Let me comment on another professional hat that I have worn over the years. Since about 1979, I have had the privilege of teaching the labor law class as an adjunct professor at the University of Missouri-Kansas City Law School. It is not uncommon for the classroom materials and the students to point out that from one administration to the next, there seems to be a shift in several labor law doctrines depending upon the composition of the board. But in my view what makes this board and this General Counsel unique is the zeal and lack of subtlety in their efforts to revamp elements of the law and the process.

There is a need for this Joint Committee and the Congress to make the appropriate statutory changes, and House bill 3211 is a significant start. Thank you.

Chair MEYERS. Thank you, Mr. Janowitz. In the question period which will follow the testimony, maybe we will get the opportunity to hear more of your remarks.

[Mr. Janowitz' statement may be found in the appendix.]

Chair MEYERS. Our next witness is Mr. James Pease. Mr. Pease is a partner at Melli, Walker, Pease & Ruhly of Madison, Wisconsin. He did argue the Town & Country Electric case before the U.S. Supreme Court.

Mr. Pease.

TESTIMONY OF JAMES K. PEASE, JR., ESQ., MELLI, WALKER, PEASE & RUHLY, MADISON, WISCONSIN

Mr. PEASE. Thank you, Chair Meyers, Chairman Fawell and Member Brownback. It is good to be here.

The reason I am here is to speak out against the strategy of salting as we see it today, because I do not think Congress intended to protect salting union organizers. I do believe Congress intended the NLRB to be an impartial empire in the contest between unions and employers.

I think it is important to understand that the unions are subject to the control of the unions throughout the time they are on the targeted employer's payroll. They are the eyes, the ears, the arms and the voice of the union on the job site. In a sense, they are the union on the employer's payroll. Their objective is to do whatever is necessary to achieve the union's objective, which is to secure a contract with that targeted employer. The unions may camouflage their objectives by claiming that their purpose is really just to communicate information on employee rights to or assist employees in making a choice. My experience is that the unions do not care one bit about what the targeted employees actually want. If those employees happen to be amenable to unionization and sign up, that is a bonus. But what the unions want ultimately is a contract with that targeted employer. I do not think the unions like the NLRB election procedure, because they don't have the right to win.

I think that salts differ fundamentally from other employees. They are just temporarily there on an assignment, a mission for the union. They are working for the union. When they are done doing what their duties—what duties they have been given by the union, they either return to the work for the unionized employers or they are sent on to another salting assignment.

They really don't have any interest in performing work for the targeted employer other than the fact that it gives them direct access to the targeted employer's employees and an opportunity to work for the union in an effort to obtain a contract with the employer. It is sort of like being a kid in a candy store; from within the employer's operations, a targeted employer is very vulnerable to attack from a salt and the employer's hands are tied by Federal law in attempting to protect himself from those acts. When it no longer serves the interests of the union for the salt to be there, they are pulled, for example, after they have voted as directed by the union in an NLRB election, unless of course the union wants them to lead a strike.

Because the salts have no interest in working for the targeted employer, their mission cautions them to spend their time doing

things that serve that mission. This is true even when the union ostensibly, with a wink and a nod, says, you're only supposed to engage in union activity during nonworking time. In fact, that mission for the union causes them to be gathering information to be used against the employer, talking to employees about unionization, even if there is a no-solicitation rule, planning or carrying out espionage action against the employer, such as slowing down work, challenging a supervisor's authority in front of other employees, performing work incorrectly, abusing the employer's tools and equipment or otherwise disrupting the employer's operation.

Admittedly, not all salts are this way. There are some salts who choose to take the high road, and they do follow the theoretical model of someone trying to be an exemplary employee. But those folks are few and far between.

The much more common salt that I am seeing today is the in-your-face business destroyer. From the moment that salt steps on the job site, it exudes defiance. The salt is contemptuous of the targeted employer and its supervisors, and it frequently provokes the employer and challenges them, daring them to either refuse to hire them or to fire them so that they can file an unfair labor practice charge.

In my opinion, the whole purpose is to undermine the employer's authority, disrupt the job, in some instances, fabricate injury, destroy employee morale, harass opponents of the union—these are employees who oppose unionization—harass them to the extent that they terminate their employment with the employer, thereby removing an obstacle to the union's effort, and to inflict financial pain on these targeted employers so that they will sign a union contract in order to have that pain stopped.

I believe that the salts perceive themselves as being at war with the targeted employer. For example, IBEW had a game plan involving Helix Electric in San Diego. The culmination of that strategy was what they called Operation Helix Storm, an obvious allusion to a war-type operation.

I don't see how Congress can sanction protection of a union agent whose purpose is to make war in a targeted employer while on that targeted employer's payroll. These salts are not dependent on their employment with the targeted employer. Many of them are receiving gap pay, which is the difference between what the union's scale is and the nonunion employer pays them, so they really don't care what the nonunion employer pays them.

They are usually also getting fringe benefits, they are paid for by the union or through some organization the union has influence over. In effect, what the union is doing is using the money that the nonunion employer is paying those people, in essence, to in part finance their own organizer to work against that employer. Because the salt has—it isn't dependent on that employment. They really have no incentive to wholeheartedly work for that employer and it's virtually impossible for the employer to control them.

Today employers can't afford the number of supervisors that would be necessary to monitor every employee all day and every day in order to make sure they work effectively. The only way employers can control employees in an attempt to persuade them to work effectively is if the employees are already motivated to do a

good job. The reason they want to do a good job is because they need the money from the targeted employer, they don't want to be disciplined because they don't want that flow of money to stop, and they don't want a bad reference from that employer because that will prevent them from getting a good job in the future.

None of this is true of the salted organizer. The salt doesn't care if he is fired. In fact, that may be his purpose. Indeed, he will become a hero. Malcolm Hanson, the salt in the Town & Country case, went back to Minneapolis where he was from and was elected president of the local union and he is still there now.

I have seen many instances where salts engage in blatant misconduct, particularly right after the union sends a letter notifying the employee that they are organizers and the union rushes in and says, see, right after they got that letter, they fired him. Well, that is because the firing was provoked. The destroyer doesn't care if the employer gives them a bad reference because they are going to be going back to unionized employment where they will be a hero and their job is secure. In essence, the employer has no effective means of controlling them.

I think a salt is basically a wolf in sheep's clothing, and they are there to eat the sheep by forcing the employer to sign a union contract even if that forces the employer out of business and causes those employees to lose their jobs. I think many unions will insist on a standard area agreement and force employers to sign that even though, in the market the employer works in, it will put them out of business.

I have other remarks, but in short, I would say that I think there has been a tragic misuse of the National Labor Relations Act, and I believe that the NLRB has become a full partner with the unions. I think that this may be similar to what happened after the 1935 passage of the law, where the unions didn't get the message that the NLRB—or I am sorry, the NLRB didn't get the message that they were supposed to be impartial; and in 1947, Congress had to take affirmative action to add a provision to Section 7 to give employees the right to refrain from engaging in that activity.

The only way the board can serve both those interests and protect both those rights is by being a neutral player. I don't believe that that is what is happening today. I think that today the NLRB is sacrificing the freedom of choice of employees on the altar of the union's self-interest. I think that is wrong.

I think Representative Fawell's bill addresses that, and I urge its prompt passage. Thank you.

Chair MEYERS. Thank you, Mr. Pease.

[Mr. Pease's statement may be found in the appendix.]

Chair MEYERS. Our next witness is Mr. William Creeden. He is Director of Organizing, International Brotherhood of Boilermakers, Iron Ship builders, Blacksmiths, Forgers and Helpers.

Mr. Creeden.

TESTIMONY OF WILLIAM CREEDEN, DIRECTOR OF ORGANIZING, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, KANSAS CITY, KANSAS

Mr. CREEDEN. Chair Meyers, members of the committee, I would like to thank you for the opportunity to be here today.

The Boilermakers represent approximately 85,000 members, over a third of whom work in the construction industry. Boilermakers in the construction industry perform a variety of tasks, but are especially skilled in precision welding and heavy rigging.

Organizing in the construction industry has never been easy, but it has grown increasingly difficult over the past two decades. According to estimates in 1980, 1 in 20 workers engaged in organizing was discharged for their organizing activity. By 1990, that figure had risen to 1 in 10.

The NLRA fails to adequately address organizing in the construction industry where jobs are of short duration and the work force is transient, where workers are tied to an industry or a craft rather than to a specific employer. Despite these obstacles, the Boilermakers have for the past 17 years been engaged in a program known as "Fight Back" in an attempt to organize the unorganized in the construction industry. A number of election petitions have been filed during that time.

"Fight Back" emphasizes bottom-up organizing through direct contact with the nonunion worker. Sometimes paid organizers obtain employment with nonunion contractors in an effort to reach the nonunion worker. Other times, contacts are made outside the workplace. However, the majority of the contacts with nonunion workers are initiated by Boilermaker members who voluntarily obtain employment with nonunion contractors in order to assist our organizing efforts. These volunteers receive no compensation, wage subsidy or fringe benefit contributions, nor are dues waived on their behalf while they are employed on a nonunion project.

Many employers have complained of salting efforts by the Boilermakers and other unions. At bottom, the employer's real objection is that the law prohibits them from refusing to hire union sympathizers or from discharging employees simply because they participate or intend to participate in an organizing effort.

The volunteer organizers involved in "Fight Back" are engaged in organizing activity in its purest form. These individuals volunteer their time and work for substandard wages with little or no benefits because they believe in the principles of unionism. This is precisely the type of activity which both the Supreme Court and the NLRB have recognized as being the central purpose of the Act. It does not follow that simply because a person obtains employment with the intent to organize the employer that he or she will be less competent or less loyal than another employee who decides, independent of any contact from the union, to try to organize the employer.

The idea that support for one's union constitutes unforgivable disloyalty to one's employer was banished with the enactment of Section 7. All organizers, paid or unpaid, must devote working hours to working for the employer and organize only on their own

time, before work, after work or on breaks. To do otherwise subjects them to discharge for cause.

All organizers have a tremendous incentive to satisfactorily perform assigned tasks for the nonunion employers. To do otherwise not only subjects them to discharge, but makes it less likely that other workers will respect them. Poor performance by the organizer would also send the wrong message to both the contractor and the customer. In fact, as I speak here today, a Boilermaker paid professional organizer is currently working for a nonunion contractor at the country's largest nuclear power plant where he is attempting to organize during nonwork hours. After a layoff due to lack of work, this organizer was actually rehired by the contractor in question because of his excellent performance on a prior job. Moreover, he was required to undergo arduous background checks by the Nuclear Regulatory Commission prior to his appointment.

In light of these facts, there is no basis for concluding that organizers, as a class, fail to perform satisfactorily. Some of the stories you have heard include allegations of sabotage and personal harassment of family members or other workers. The Boilermakers do not instigate or condone sabotage, slowdowns or any other type of unlawful activity, nor would we tolerate such activity in connection with "Fight Back." Unlawful activity has no place in any organizing campaign. Following or stalking family members is not protected activity and in many States violates criminal statutes. The response to such abuses should be to enforce existing law against the perpetrator, not to remove the legal protection from law-abiding citizens engaged in lawful union-organizing activity.

What these same employers have not told you is the kind of activity that they use to thwart union organization. In Pennsylvania, Puerto Rico and California, Boilermaker organizers have had their lives threatened. Yet another volunteer organizer was assaulted by the employees of a nonunion contractor while in a job site parking lot.

Mr. Pease, seated to my immediate right, is currently involved in a case where a supervisor of a nonunion employer assaulted a Boilermaker organizer with a pipe. Due to the resulting head injury, the organizer had to be removed from the job site in an ambulance. Criminal charges were filed in this instance. These are the stories that the employers have not told you, and these are the issues that this committee should really focus on.

In our opinion, the act as currently written, does not impose any real penalties for violating workers' rights. We believe that the act should be amended to include enhanced remedies on employers found in violation. Such reform would deter an employer from engaging in unlawful conduct and provide a just remedy for employees harmed as a result.

I would also like to point out that the NLRB that decided Town & Country and Sunland Construction were all appointed by Republican Presidents, and that the majority of the Supreme Court that decided Town & Country were also appointed by Republican Presidents. In short, I strongly urge this committee not to recommend H.R. 3211.

At this time, I would also again like to thank you for allowing me the opportunity to testify.

Chair MEYERS. Thank you very much for being with us, Mr. Creeden.

[Mr. Creeden's statement may be found in the appendix.]

Chair MEYERS. Our next witness is Mr. Lindell Lee, Business Manager of Local 124 of the International Brotherhood of Electrical Workers.

Before you start, Mr. Lee, I would like to ask unanimous consent to submit for the record the testimony of Mr. Jim Bentsen, the Business Manager for Local Union 1179, who was invited to be with us and has asked us to enter his testimony into the record.

[The information may be found in the appendix.]

Chair MEYERS. Mr. Lee.

TESTIMONY OF LINDELL LEE, BUSINESS MANAGER, LOCAL 124, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, KANSAS CITY, KANSAS

Mr. LEE. Thank you. Good morning. As you said, my name is Lindell Lee. I have been an electrician for 27 years. I also wish to thank these committees for the opportunity to provide information and to express my views on the subject of salting.

Just 2½ years ago, the members of the International Brotherhood of Electrical Workers, Local 124, entrusted me with the position of business manager to represent them. I am in no way what has been referred to as a "union boss."

I have reviewed the pending bill and a number of the statements presented by the nonunion contractors to this committee, in particular that of Mr. Love. As you are aware, a number of those statements portray salting efforts as having the goal of driving nonunion contractors out of business by violence, sabotage and decreased productivity.

I am frankly shocked and amazed to learn of these allegations. All of these tactics are contrary to the goals of Local 124.

Our goal is very simply to organize the unorganized employees in the electrical industry, period. Contrary to Mr. Love's assertions, many of his current and former employees have become members of Local 124. Attached to my witness statement, you will find letters from several of Mr. Love's employees, stating how much they appreciate what Local 124 has done for them. Moreover, a number of Mr. Love's employees are here with us today to express their support of Local 124, and I would invite the committee to ask these people what they think.

Mr. Love's employees have never been afforded the right to vote on whether they want us to represent them. Instead, these employees have been threatened and coerced. Their fear of being punished or fired discourages many of them from openly expressing an interest in union involvement. What this bill will do is remove all of their protection and allow employers to discipline employees for exercising their freedom of choice.

Mr. Love asserts that Local 124 abuses the National Labor Relations Board. I notice the committee did not invite Mr. Galen Sharp, the regional director, to address these charges. However, I have found out that since we began salting, we have filed 37 charges with the board. In 28 cases, complaints have been issued by the board; four of those cases are currently under investigation and in

only 5 of those 28 cases have the charges been dismissed. One can hardly call this an abuse of Government Agency.

None of the charges filed by our local against Mr. Love's company have been dismissed. On the contrary, the only charge ever filed against us have been dismissed. I would ask the question, who is filing frivolous charges?

Mr. Love complains that his—that this costs him money, and I say to Mr. Love, don't violate the law. It seems to me that it's the duty of every American citizen and especially this committee to see that Mr. Love and others comply with the law. It baffles me why we are having hearings because unions are asking employers to abide by statutes that this Congress passed.

Mr. Love complains that we publicize his violations of the law. We do. Surely we are entitled to advise others of these violations of the law. If what we said is not true, Mr. Love can sue for libel. He has not. If this costs money, then quit violating the law and it will cost no more.

Mr. Love complains because his employees can withhold their service by going on strike to protest his unfair labor practices. Of course, Mr. Love's employees can go on strike. I think, if my recollection of American history serves me right, it was a Republican who abolished slavery. It is a fundamental right of every American to withhold his or her services to protest an employer's action. If Mr. Love wants his employees not to strike, I say once again, quit violating the law.

Finally, Mr. Love complains because the Government investigates charges. I would remind Mr. Love and this committee that the same NLRB which investigates our complaints protects Mr. Love in the event that we violate the law. We have not violated the law. We have simply sought to enforce it. If some of the allegations made here this morning are accurate, I would ask why board charges have not been filed against the union. It seems to me that what is a waste of Government resources is to hold hearings merely because employers are being asked to comply with the laws that have been in effect for over 60 years.

Please don't misunderstand me. I am not suggesting that this committee would intentionally waste valuable Government resources. I do not believe they would. However, the time has come for the members of this committee to say to the employers in the United States, you have nothing to fear from salting campaigns or organizing campaigns. Simply don't violate the law.

Once again, I would like to thank this committee for the opportunity to present my views on this issue.

[Mr. Lee's statement may be found in the appendix.]

Chair MEYERS. I would like to maintain order, and I think you deserve that. You have all stood there so patiently, and I am sorry that we don't have enough seating in this room.

Let me start the questioning and I will try to be brief, because I would like then to turn it to Mr. Fawell because H.R. 3211 is his bill, and finally to Mr. Brownback.

Mr. Lee, I am not sure that I understood correctly what you said, but did you say that you were not aware prior to today that there had been any charges on the part of Mr. Love that there had been problems with salting in Mr. Love's place of business?

Mr. LEE. I believe what I said was that I have heard allegations. I have heard a lot more of them this morning than I have ever heard before.

What I said was that if these are true and factual, why haven't charges been filed with the labor board against us? Because that board is there to protect them as well as us.

Chair MEYERS. I do think that you made the comment that you think that Congress should not be intervening in this problem, but should be respecting laws that have been on the books for a number of years; and I do think that circumstances change. We have heard here today that salting is a relatively new practice implemented as it has been described today, and Congress believes there should be a balance between labor and management and that it is our job to maintain that balance. Therefore, I do think it is appropriate that we hear the concerns of Mr. Love and of you and try to maintain that balance.

How do you think that H.R. 3211 would remove protections from workers?

Mr. LEE. The way that I am reading it is that anyone who is willing to volunteer to work with the union to organize would be prohibited from doing so.

There is no secret, and I will be the first to say, when I send a salt out, his job is to organize the employees of that company. If supplementing him is something that he needs financially, I am willing to do that. It seems to me it is putting more burden on those people who volunteer and who by their own desire want to help in the organizing—they believe in the American labor movement, and that they want to provide services—that somehow if they are loyal to the union, it looks to me like we are trying to prevent them from doing what they want to do.

Chair MEYERS. I don't see H.R. 3211 as doing quite what you said it does, but I will let Mr. Fawell comment on that in his time. At this time, I would like to address a question to Mr. Love.

Mr. Love, walk me through the process of what would be an appropriate way for a union to try to organize your work setting. What would be the process?

Mr. LOVE. I think that all employees should be afforded an opportunity to obtain as much information as they can about what the union can offer them, what they can do for them; and I think that those employees should also be afforded the opportunity to know what our company provides for them as well.

I view that organizers should be able to do that on their own time. If they want to contact people at night and talk to them or during their lunch break or whatever the case may be, I think that the union should go about their activities in educating the work force through normal means.

Then I think that those employees should be afforded a vote for them to make a decision for themselves whether or not they choose union representation or not.

The part that I am objecting to is the administrative burden that has been placed upon our firm by the NLRB and the abuse of the system, not in the fact that employees are not being afforded a choice. I view it that they should be afforded a choice to make a decision for themselves.

Chair MEYERS. Thank you.

Mr. Janowitz, as I understand it, the role—and Mr. Pease can comment on this, too. The role of a salt is legal. Someone introduced from the union into a nonunion work site is legal, but—and obviously any kind of stalking or behavior that would sabotage a work site is already illegal.

What is an appropriate way for a salt to conduct himself? Have you seen this process work in an appropriate way?

Mr. JANOWITZ. I think Jim can talk to the appropriate ways if he has seen it.

My experience has been, from what my clients have told me, that the problem with the salting policy is that it begins with what I understand is a formal training program sponsored by the AFL–CIO Comet Program, and the salt is sent out to the job to support the primary motive of either organizing, getting a contract or otherwise creating disturbance and harassment within the company. Clearly, if the employee goes on to that job and is hired, he must comport with the standard rules that the employer has legitimately established and, I am assuming, is going to implement in a nondiscriminatory way.

But you have heard from these construction company owners that notwithstanding their implementation of legitimate rules in a nondiscriminatory way, they are still subjected to having to defend themselves against numerous charges, incurring expenses to prove themselves innocent. If the charge is dismissed, it is a pyrrhic victory. The agony of going through the cost and hassle of defending yourself, only to have the charges dismissed ultimately, is a pyrrhic victory. That, I think, is the crux of what I hear these gentlemen testifying this morning.

Chair MEYERS. Mr. Pease?

Mr. PEASE. I assume by your opening comment on that question that you are referring to the Supreme Court's decision in the Town & Country case, the statement that a person introduced into a job site as a salt is legal. I don't believe that is what the Supreme Court held.

I believe that the Supreme Court said that because it is possible that a person could have a relationship both with the union and with an employer at the same time, that the court was not going to reverse the NLRB's determination that that person was an employee within the meaning of the act. It left open the question of whether the relationship between the salt—or this person we have in question, the relationship between that person and the union was so incompatible with a bona fide employment relationship with the employer that it would be unreasonable for the board to grant that person the protection of the act.

The NLRB has already decided in its Sunland decision, which was a companion case to Town & Country, that if the salt happened to be from a striking union that the employer had no obligation to hire that salt. I think that what the NLRB has failed to recognize is that with the sophisticated strategies that have been developed in this salting tactic, that in effect it is a strike inside the plant, inside the job site.

This is something that now is being used in the construction industry. It could be used in any industry. It could even be used

against unionized employees by another union trying to raid. There is nothing that limits it to the nonunion construction area.

Now, in my opinion, the distinction is between whether or not that person is controlled by the union. If the union has control over that person and sends them in there for the purpose of working for the union's objective, then the control that they have is so inconsistent with the interests of the employer that it causes them to have conflicting and incompatible objectives.

Chair MEYERS. Would control constitute—if they received payment or benefits from the union, does that constitute control?

Mr. PEASE. That certainly would be an indication of control. I think there is case law to the effect that frequently monetary compensation does amount to control. If an insignificant amount, it may not. It is a question of fact.

But seems to me the issue is, do they control them? If somebody is simply a zealous union supporter who, on their own, without its being any sort of Agency relationship with the union, engages in this sort of activity, that is what the act intended. That is what the act contemplated.

I think that the Supreme Court said that the act is really to protect the employees, not the union. They said that in the Lechmere case. I think that sometimes we get off base here because we get to think that it is really the union that is being protected and it is usually really the union's right to organize, that is, the union's right to become their representative, that that is paramount. I think that loses sight of the fact that the employees are the ones who are really being protected and they should have a choice. Most of these salting situations, they never get a choice.

Chair MEYERS. I would like to clarify one thing with a question directed to Mr. Lee, and then I am going to turn the questioning over to Mr. Fawell.

Mr. Lee, just as a point of clarification, you said several times that Mr. Love should not break the law. Mr. Love has not been found guilty by the NLRB of unfair labor practices. As I understand it, charges have been filed, no hearings have been held yet, to determine if the charges are accurate. I wanted to clarify that and maybe you would like to comment.

Mr. LEE. Right. The process is very slow.

Investigation is done by the labor board. If they find that there is merit for these charges, then hearings are set. It is a very timely process. It takes, as we all know, several months.

I believe his first hearing is in January. But the complaints have been issued by the board, which means there is a lot of evidence to that—enough evidence to see that we should have the hearing.

Chair MEYERS. Mr. Love, would you like to comment, and then we will go to Mr. Fawell?

Mr. LOVE. It has been our position all along that we have not violated the act; and we intend on vigorously defending these charges and are very confident that we will prevail in the long term.

With the current makeup of the board, that may be a long process and it may take many years, but we do think we will ultimately prevail because we have not violated the act.

Chair MEYERS. Thank you, Mr. Love.

Mr. Fawell.

Mr. FAWELL. Thank you.

This is a difficult area to cover because, obviously, there are people on both sides that feel very, very passionately on this subject. This is our third hearing. What I have been trying to do is to come up with language that would be fair to employer and to prospective employee, and that really is what we are centering on here.

The thing that has struck me in all of the reports that I have heard—and I have heard an awful lot of charges that are deemed to be salting. Basically, some are very serious—they are just plain old racketeering, trying to put people out of business, perhaps a violation of the RICO statute—really some terrible things, some rotten things. I am not saying here that that is real widespread, but it is happening.

Of course the unions don't—they deny that they are involved. But there are some resolutions that have been created by unions which are basically saying, we intend to put our competition out of business. That is what salting is all about.

I have been a little bit nonplused as to why there is not a massive suit in those instances against any entity that is involved in a conspiracy, which I think violates the RICO antiracketeering statute, when things like that are occurring. Because that certainly isn't the usual, but there are instances of that occurring.

What I have been trying to do in creating the legislation is to try to determine in instances where there are paid employees of a union, full-time—he doesn't need a job, he is full-time employed. There are probably many members of the union that don't have jobs that do need jobs, but he or she is out there applying for jobs, and oftentimes, as we have heard this morning, coming in with videos, with other members, making it very clear and flaunting what you are about to do, that you want to organize a nonunion employer's place of business, which obviously everyone knows is going to cause some emotion and some—I think in some circumstances, hopefully, a misstatement that can turn into an unfair labor practice, et cetera, et cetera. I guess that is all understandable human nature.

But what we have strived to do insofar as our subcommittee is concerned is to ask the question of who is a bona fide applicant, a "common sense" statement. There is no doubt that one can be a member of a union and a strong adherent of the union—and I will go so far as to say a paid employee of a union or an agent of a union—and still carry out his responsibilities as a loyal employee. I think that is basically what Town & Country said. There was no evidence in the record that there was anything untoward, as I understand the case, that anybody was doing any racketeering or burning down a restaurant or taking black ink bottles and splattering them on walls and doing all these things, putting sugar in gas tanks, all that kind of stuff.

That does happen, but nothing like that in the record.

So, the question that the court, it seemed to us, did say, that it is—after all, there is a right of the people to be able to collectively bargain. I am not talking about rights of unions, I think—as Mr. Pease has correctly pointed out—and the right of a person not to be a member of a union, too; and the employer is told, don't you

discriminate against either one of these, because that is their right as American citizens. We are looking at that.

So, when somebody shows up at a place of employment and they are paid employees of a union—or in our bill, of any other employee; they are already fully employed, they don't, you would think, normally need a job, but they are there asking for a job—in those circumstances, we set forth that if they are seeking employment with an employer, however, and the facts of the case—which can change and alter with each case, but the facts of the case would indicate that they are there primarily in furtherance of some purpose on behalf of their present employer. That is, if they are employed by a union, they are there basically not because they want to be an employee of that company or a permanent employee or to help that plumbing outfit or that electric company or whatever to do the job and be a good employee; they are there for another purpose.

It may be a lot of them. Maybe they are there to save souls. I don't know. All kinds of reasons why people wouldn't necessarily want to come in and apply. Then, under the factual circumstances that are involved, we are simply saying that the court has a right to look at those circumstances when there is an employee—somebody who is already fully employed, somebody who is clearly an agent of the union—and under those circumstances, the basic reason was not because you wanted to be an employee, but because you wanted to further the interests of your present employ—we say, under those circumstances, the employer doesn't have to hire you, that's all.

Because I think anybody out there who has ever had a business of their own would say that you want somebody who is going to be your employee, who has to be like a dog gnawing a bone. You want somebody who really wants to work for you and build a better company, et cetera. That is the idea we are trying to press.

We are not saying that one cannot be a valuable employee. You could have circumstances where one has been a member of a union for years, in a paid position, and just because he is a member of a union and even employed by a union doesn't mean—when he applies for this job with a construction outfit or whatever, it doesn't necessarily mean that he is not going to be a good employee. So, we leave that question open. We think that is a fair way of trying to approach the problem. We think that the problems that come where there truly are some breaches of law taking place are in instances where somebody is full-time pay as a salter.

When Mr. Creeden spoke of voluntary salters who are not paid, in no way does our bill touch that. Nor do we want to touch that. If someone wants—as an employee, wants to do everything possible to organize that company, absolutely. That is that person's right. We don't in any way—we cover in this bill only those circumstances where there is a person who is a definite employee of another employer—doesn't necessarily have to even be a union—or the agent of another employer; and the facts show that basically he is there to—not because he wants to be the employee, but because he is there to further other interests.

They may be salutary or nonsalutary; that is what we are trying to express. We think it is a fair way of trying to address a problem that is important.

We have had literally hundreds and hundreds of small businesspeople all over America who feel that they are in jeopardy. Let's face it. Anybody can file a claim with the National Labor Relations Board and it is accepted. It can be abused.

I am concerned about the accusations of abuse whereby the NLRB is really part and parcel—the Government is part and parcel of harassing people, taxpayers. I am concerned about that. I am concerned about testimony that we have received today of the politicization of a judicial process. That is what the NLRB is; it is the judiciary.

They should be above any type of criticism. They have got to be objective and neutral, or we will not have justice; and there are an awful lot of people out there who feel that the present general attorney is anything but neutral, and that is unfortunate.

I really think that these hearings ought to be held by the NLRB, by the way, not by Members of Congress necessarily, because it is important. I am not saying that—it is obviously a part of our business, but the NLRB ought to be concerned about the criticism they are facing and the lack of confidence that comes as a result of that. Thus, obviously, I have not uttered any question.

But I guess, Mr. Pease and Mr. Janowitz, because you are fellow attorneys and we suffer from the same background in that regard, but as I have looked at the legislation, we have asked the question, well, if a court looks at this type of a bill then and says, well, did or has this employee or this agent, let's say, of a union that is applying for a job, is actually doing it in furtherance of—I guess I would say almost primarily in furtherance of his other employment, what would be the factors that a court would look at to determine the motivation of that applicant under those circumstances, to determine whether or not—let's start with you, Mr. Pease—to determine whether or not there is actually—that paid employee, that union agent, that it is in furtherance, really, of the union's purposes rather than being a bona fide employee.

Mr. PEASE. I think the first thing that the board or the court would have to look at would be, what were the obligations of this person who comes in as an agent of the union—what were they obligated to do; what is their job for the union; and what are they going to have to do, or what will they do, or what are they likely to do in furtherance of that job—and then compare that with what the employer, the targeted employer would want its employees to do and would expect of them if they were in fact wholeheartedly there to work for the targeted employer; and then compare to see whether those obligations conflicted, whether it would be possible to perform—for the obligations of the salt to be able to be performed without interfering with their obligations to the employer.

I think that that is based primarily on the basic law of Agency, which I believe that the Supreme Court has repeatedly held as the basis that Congress intended its definition of employee in labor law to be interpreted. I think that that analysis would then—in those instances where there was an incompatibility, I think the basic law of Agency would say, there is no—it is not possible, you can't serve

that second employer if you are going to be serving the first employer.

So, if there is that incompatibility, if there is that conflict of interest, you can't enter into a bona fide employment relationship with that employer; therefore, you are not entitled to the protections of the act with respect to that employer. I think that would be the analysis.

Mr. JANOWITZ. If I understand the question, Congressman, let me give you, I think, some factual underpinnings: That if your question is, what evidence would be presented to the board or to a court to support evidence, as I view the term, in furtherance of the objective or purpose of this person's employment, as you probably know, the term "object and purpose" is used throughout the act in 8(b)(7), the provision regarding recognitional picketing, in 8(b)(4), the general prohibitions against secondary boycotts.

So, these are terms that are not new to the fundamental analyses given to those provisions of the act. Here are some things that I think, not that any one would be determinative, but on a totality of the circumstances analysis may be relevant.

First, had the applicant been trained to be a salt? There is a training program. Hundreds of thousands of union members have voluntarily or through selection by the individual unions been put through formal training programs under the comet program.

Second, has the applicant applied at any number of other merit shops within a relevant timeframe to show perhaps, again, circumstantially that the goal here is not gainful employment, but just to go from one merit shop to the other in an attempt to organize?

Third, has this individual participated in a group application process, the type of video camera, mass application process, which I think in my judgment would tend to show something other than a bona fide seeking of employment?

Fourth, has the applicant's wages or benefits been subsidized by a particular union would be relevant.

Fifth, are there other elements to which the individual would gain favor from the union by engaging in such conduct? Has his place been held open on the out-of-work list?

Chair MEYERS. Would you repeat that last statement?

Mr. JANOWITZ. Has the salt's place on the out-of-work list been held open for him once he finishes concluding his salting activity?

Sixth, has he been promised employment in a union job, regardless of his efforts in salting the merit shop contractor?

These are some things that just come to mind. There might be others relevant to that, but these would seem to me to be those types of evidentiary factors that would tend to prove or not prove, if I read your term right, what "in furtherance of other employment" would mean under your bill.

Mr. FAWELL. I appreciate the comments. Just in closing, I would say that really we are looking at that question. Incompatibility, when you come right down to it, we all know that there are certain circumstances where there is a breach of ethics. You are just not in a position to give to the employer the kind of loyalty that anybody, any of us who, if we were employers, would expect. When I hire someone in my congressional office, I am looking for someone

who is just hungry for that opportunity, for that business, to make their way in life, so forth and so on.

As has been indicated, I was unaware of this particular decision that Mr. Pease has mentioned in his testimony, which I just read while driving over here this morning, that if there is an applicant and he is an applicant from a striking union, it is deemed not to be a bona fide employee.

So, the question that I am really saying is, to what degree should Congress begin considering the expansion of that particular area? Because I repeat, the problems that we have, the unfortunate problems that we have do stem from those instances where you have really a paid professional salter, who goes from job to job and does this.

Mr. Creeden, you had some comments?

Mr. CREEDEN. Yes, Mr. Fawell.

I was the paid professional on the Sunland case to which Mr. Pease was referring. But he did get it slightly wrong; it was only the paid professional in that case that the ALJ found that Sunland did not have to hire during the course of that strike. The volunteers were still eligible for hire.

I would also say that every argument that Mr. Pease and Mr. Janowitz have run here in the last 10 minutes was also tested before the board in Town & Country and Sunland before the Supreme Court, and they were rejected there. Sir, I understand your displeasure with how the Supreme Court ruled, but nonetheless it has already been tried.

Mr. FAWELL. I have read the Supreme Court case, too, and I felt that they made the statement that there was nothing in the record of which they were aware that would determine that, factually speaking, improprieties had been performed, but I may be wrong in that regard.

But at least I think we are clear that we are trying to be as fair as possible so that any employer is able to get what any employer is entitled to; and that is an employee who is applying because he wants to be an employee, a permanent, solid employee with that employer, and he needs the job. But I know you can't define that completely, so we are leaving it factually for a court and a jury to make those kinds of decisions.

I don't know if the language that we have is nirvana and perfection. It probably isn't. The law at its best is terribly imperfect; that is one thing I have learned in 30 years of practicing law. But we are trying. I appreciate very much all of you being here.

Feel free to keep sending us information, by the way, because I—every hearing I have, I learn something more about the problem that is there. I do know that it is a heartrending problem for an awful lot of people, and I do know that there is an impassioned feeling on both sides. It is something that we have to try to be very careful about.

We have, by the way, in all due respect to—I must confess, I am a Republican, but we have not really for some 40 years had the analyses of a lot of these laws, all of which had a good genesis and a good basis, and most of them are sound yet. But there is nothing wrong with looking at this kind of stuff and analyzing it; and I

know that not all of you will agree with that. But that is what we are trying to do, and it has not been done for a long time.

It has not been done for a long time, and we in the House are trying to look at it as objectively as we can.

Thank you, Madam Chair.

Chair MEYERS. Thank you very much, Mr. Fawell. I thank you all for helping us to clarify what is in H.R. 3211 and at what stage it is. It is a developing bill and we want to hear from people. I would agree wholeheartedly with Mr. Fawell in that it is good to review laws that have been on the books for a long time to see if they need changing or correction.

Mr. Brownback.

Mr. BROWNBACK. Thank you very much, Congresswoman Meyers. I appreciate that.

Thank you very much, the panelists here, for testifying and presenting your information. I found it very informative, the information that you have shared and put forward. I know it is a passionate and difficult subject.

The most troubling thing, though, I have heard this morning is, Mr. Janowitz, something you said about the politicization of a judicial process. It may be that there is some linkage or not to this salting issue, but I would appreciate if you would expand upon, you if you can cite particular items there, because I think that is dangerous to credibility if that is indeed occurring. You have a background with the NLRB; I would appreciate some furtherance on that because that, to me, is a very troubling statement.

Mr. JANOWITZ. Let me make sure, since I realize I have been critical of the current general counsel and board chairman, my comment to you, Congressman, is going to be taken from a formal speech that Mr. Gould recently gave to the Japanese Labor Relations Commission. This speech was published in the NLRB's own weekly summary of cases, which is a formal publication that comes out from the NLRB Office of Public Information, that summarizes the NLRB case and also publishes for the general public, those of us who are interested, general counsel memoranda, appointments and promotions and also, in this case, the speech of the chairman that I am referring to.

This speech was given on February 20, 1996. It was published in the weekly summary of March 8, 1996. Realize that I am cherry-picking some of this language, but not out of context.

Mr. BROWNBACK. You will be willing to provide that speech?

Mr. JANOWITZ. The speech is already, in full, attached to this weekly summary of cases.

Let me quote from Chairman Gould in this speech:

"Free collective bargaining is more vulnerable today, in the United States at the present time, than at any time since the Wagner Act was passed in 1935. Let me make unmistakably clear what is at stake. A vacuum in collective representation, vacated by unions, imperils democracy in the workplace and society generally, and it is contributing to stagnation in real wages and a growing gap between the 'haves' and the 'have-nots.'" That is the chairman of the NLRB's philosophical position.

He then goes on in the next paragraph and says, "In response to the President's executive order that directed companies doing

business with the Federal Government that they could not hire permanent strike replacements, notwithstanding the well-established body of law and the fact that that executive order was held to be invalid recently by the Second Circuit Court of Appeals," Chairman Gould says the following, "unions have reached the point where they rarely use the strike weapon."

"For example, in the entire United States last year, only 32 strikes were reported at employers with 1,000 or more employees. The lowest level since World War II. As a result, the viability of collective bargaining is undermined as is the delicate balance between labor and management that is essential for our labor relations system to work," because we are having fewer strikes.

I will finish my comment, Congressman, the last quote from the speech:

"Recently the U.S. Court of Appeals for the District of Columbia declared the President's order to be unlawful. The President believes, as I do, that the right to strike without the fear of being permanently replaced is a fundamental, democratic right that must be preserved, clearly taking issue with that Second Circuit opinion."

Certainly the Chairman is entitled to his personal thoughts, but to publish them as Chairman of the NLRB, the Agency for which he has declared and sworn an oath of impartiality, I find troublesome.

Mr. BROWNBACK. So you can't—that is a speech, and I see what you are troubled about there; but you don't cite the particular decisions that they have made. Now this is a politicized decision, you are troubled by this is philosophical and it is a statement as Chairman?

Mr. JANOWITZ. Yes.

Mr. BROWNBACK. I wanted to understand the context.

Mr. JANOWITZ. I am sure there were differences of opinion. I am expressing my view. I have cited some cases in my formal remarks that I found to support my conclusion. I didn't want to give the full citations for the record, burdensome, but they are there. The line of cases going beyond the construction industry that led to my conclusion there as well.

Mr. BROWNBACK. Thank you, Madam Chair.

Chair MEYERS. Mr. Creeden, did you have a comment that you would like to make in relation to this?

Mr. BROWNBACK. Yes, please.

Mr. CREEDEN. Yes, I would. Thank you very much.

I believe that Chairman Gould's statement was taken from the preamble of the act itself—part of the purpose of the act is to promote unions. I would just like to comment on Mr. Janowitz's comments.

Chair MEYERS. Mr. Lee.

Mr. LEE. Yes, in reference to Mr. Brownback's question as to whether the NLRB—there is some kind of political swing or philosophy at the board, I would like to make a couple of comments. First, I would like to remind you of what was pointed out earlier, that the present board and the Supreme Court, who both did Town & Country, are primarily made up of people appointed by Republicans.

Mr. BROWNBACK. But that doesn't make them nonsusceptible to politicization.

Mr. LEE. No, but we are talking political here. They were appointed by Republicans. I do not think the board has done anything differently. What they are doing now is more of it.

One of my jobs as a union leader is to educate nonorganized workers of their rights, and when they learn their rights, they will file charges when they are violated.

I don't see the board as taking one stand, moving to the left or the right on this issue. They are just seeing more people who know their rights, who understand them and who are going to stand up for them.

Chair MEYERS. Thank you.

I have a couple of more questions. Then if there are not parting comments from the witnesses, we will adjourn.

My concern in this has been mostly because it seems that salting, as implemented in the way that it has been described this morning, has been targeted primarily at smaller businesses that just do not have the resources to withstand the repeated charges, and that has been my principal concern.

Mr. Meyer, I would like to ask you if there—just off the top of your head, if you can, but what has been the cost of the repeated charges and the attempt to salt in terms of the destruction and the legal fees and that to your firm?

Mr. MEYER. I would estimate to date in the neighborhood of $20,000. Our case, brought against us by the NLRB, has just begun, so I have no idea what the future brings as far as costs.

Chair MEYERS. How many charges have been filed?

Mr. MEYER. One at this point.

Chair MEYERS. One at this point.

Do you think that H.R. 3211, as you understand it, would bring more balance, would put small business back on more of a level playing field?

Mr. MEYER. Yes, I do. It gives us the ability to hire someone who we feel will be a good employee. I don't care if they are a union card member or not. We look at what that person's attitude is, how they look at the job, whether they want to work. We just want that ability. We don't look at the application to see if they are a union member or not. We don't even have that question on an application. As I stated in my testimony, we have had union members in our employ in the past.

Chair MEYERS. Thank you, Mr. Meyer.

Mr. Hoberock, you said that 32 charges have been filed, 120 allegations, and only three have been found with merit. Of those three, they were settled with $720; and you chose to settle rather than to go to court.

That is the kind of thing, the kind of complaint and concern that I have heard expressed to me, just of multiple charges.

What do you estimate the cost to your firm has been?

Mr. HOBEROCK. I estimate that my legal fees in the last 2 years probably total in excess of $60,000 or $70,000. I estimate that the time that I spend in dealing with it to detract from my business probably cost the business another $200,000 a year, because I can't manage the construction that is out there because my time is tied

up. I can't bid work, I can't satisfy customers' needs. I cannot satisfy the needs of employees because I am tied up in these frivolous charges brought on by people who are not our employees.

Chair MEYERS. Let me ask one other question that puzzled me. In your testimony, you said that charges have been brought because you had instituted a pension plan and a 401(k), and that that had been dismissed.

Why would anyone bring a charge in a case that—it seems to me it would be desirable to have a pension plan or a 401(k) plan.

Mr. HOBEROCK. I am not an attorney. I would leave it to the attorneys to explain this, but my understanding of the basic charge was—is that during an organizing campaign or during some time, you cannot offer economic rewards to employees who refrain from participating in a union activity. Since I offered a 401(k) plan to all our employees, the allegation was that the plan was offered to employees not to participate in the union.

What I neglected to offer as testimony earlier was the initial conversations of these plans started some 2 years prior to the salting campaign. There was no correlation. Unfortunately, the people filing the charges didn't take time to understand that. They knew that they could under this provision of the act, and they knew that I would have to spend time, money, energy and dollars to defend that.

Chair MEYERS. Thank you very much.

At this time, I am going to ask if Members have further questions. Mr. Fawell?

Mr. Brownback?

Mr. FAWELL. Just one. We have heard a lot this morning about what I would call "serious racketeering charges," what I would call "racketeering charges." I was a prosecutor at one time. I wonder, the counsel who are here, anyone, has anyone taken a look at violations of the RICO statute? Or what has the Department of Labor, in their labor racketeering duties, done, if anything? Because these charges, we keep hearing them over and over again, a rather common occurrence where essentially small businesspeople are just punished by all kinds of untoward things happening, threats, coercion.

This is America. That stuff—who is ever doing it out there and is it accurate, is it really occurring?

Someone, it would seem to me, should put together a darned good conspiracy case and go after—if the union is doing it, then the union ought to be really hauled into court and hit with punitive damages until they are bankrupt if they are going to do things like that. Because those things, if they're out there—why isn't this being done?

Chair MEYERS. I think both Mr. Janowitz, Mr. Creeden and probably Mr. Lee would like to comment.

Mr. JANOWITZ. Mr. Fawell, what I feel comfortable saying to this committee and in formal testimony, as noted on page 8 of my statement is this, several months ago, I and several representatives of my clients did meet with a special investigator of the U.S. Department of Labor and Racketeering. All I feel that it's appropriate to say at this time is that those allegations and circumstances are under investigation.

Mr. FAWELL. One of the witnesses, I can't recall who, said that they did file a criminal charge and, lo and behold, the result of it was that they got hauled in for the another unfair labor practice charge.

Mr. JANOWITZ. That was with respect to those nuisance and harassing phone calls that were made. When a complaint was lodged under the appropriate Missouri statute, that was an element in the unfair labor practice charge that was filed with the NLRB by the union and business agent who engaged in the conduct.

Mr. FAWELL. I am also working on legislation, and I hope it can be bipartisan in nature, that we can do more to improve perhaps the neutrality of the general counsel, or the regional attorneys, so that when someone files a claim, for instance—it is easy to do, anybody can file it—the record will be completely open. Regional attorneys now hold those records; they don't let the respondent, whether it is a union that is being charged or whether it is an employer. I think that, my gosh, in a murder case now, the person who is being charged has a right at least to see the record. I mean, it is open; it is there for you to see. Yet we find still, from all of my knowledge and testimony here, regional attorneys holding the complaints and the allegations close to their vest and not letting the employers even know what they are being charged with. They have to drag it out. When they drag it out, they have got to go through the expense of counsel, whereas the taxpayers are footing the bill otherwise. So, I think that does a lot to avert the fairness.

The regional attorney should be absolutely neutral. He is there not as the prosecutor primarily; he is there to bring people together and to hopefully have settlements of these matters quickly and not to drag them out; and it's this kind of stuff that we have heard of a lot that has hurt the reputation of the NLRB, regardless of who is appointing the various members.

It is not good when you start having an awful lot of people having a disrespect, or feeling sometimes that they can use—that they have got allies; that is not good, either. We can improve that a lot, I think, if we make it clear when anybody any time files a complaint, a—whether it is the employer or it happens to be an employee, that that record is in the hands of the general attorney, as in the Kansas City area, is absolutely open for the respondent to be able to look at. I think it can help a great deal, Madam Chair.

Thank you very much. I am pleased, I think this has been a good hearing.

Chair MEYERS. Thank you, Mr. Fawell. I think in relation to your RICO question, Mr. Fawell, that Mr. Creeden and Mr. Lee wanted to comment.

Mr. CREEDEN. Yes, on RICO, I believe that management attorneys all over the country have looked into RICO. The reason they haven't filed charges is that they don't have any basis for it.

I would also like to say that we would like to see RICO applied the other way, against recidivist employers, who time and time again violate the act. Again, we have existing law that protects these smaller businesses. It is called the Equal Access to Justice Act, where they can get the same kind of forum that any big player can get.

It is apparent to me, and I mean no disrespect here, that some of the panel do not really understand how unique construction is. Mr. Fawell, you commented that if you were to hire an employee, you "would want them to be hungry like a dog," you wanted somebody that would come in there and stay. Well, that is simply not the nature of the construction industry.

An employee in the construction industry may work for numerous employers in the course of a year. He may be reemployed by the same employer numerous times, or he may work for dozens of them. So, like I said in my earlier comments, this employee isn't tied to a specific contractor; he is tied to an industry or a craft. That is a big difference.

Chair MEYERS. Not to be argumentative, Mr. Creeden, but even though he only works for that employer for a matter of a few weeks, a few months, that employer, I think, has the right to expect loyalty from the employee, just as the employee has a right to expect decent and concerned treatment from the employer. Even if it is just for a brief period, there should be an employer-employee relationship there that has some mutuality to it.

Mr. CREEDEN. Again, they have never proved that any of the union organizers are any more loyal or disloyal than any of their other employees. It is a point of contention, I am sure, but there isn't any proof in the record that these people make any different type of employee—that they are any less of an employee because of their status.

One other question that is really not clear to me, and that is exactly, in the proposed legislation, it says that "nothing in this subsection shall be construed as requiring an employer to employ any person who seeks or who has sought employment with the employer in furtherance of other employee or Agency status."

Mr. Fawell, exactly what is meant by "Agency status"?

Mr. FAWELL. Well, there is a tremendous amount of case law that attempts to set forth just when one is the agent of another person. We aren't going to change that law. We will incorporate, by reference, the Agency law that exists in this Nation. What we are trying to bring about, of course, is if there is an incompatibility or an inconsistency, if there is a clear violation of loyalties. That is what we are looking at.

Mr. CREEDEN. Would this cover a person who holds two jobs? Say he worked at the 7-Eleven store as a night clerk; would he have a conflict of interest if he went to work for a nonunion electrical contractor, or would it just be an employee or a member of a labor union?

Mr. FAWELL. We are referring to any situation where the applicant is an employee or is an agent of another employer.

Now, in most of those cases, there is going to be no problem whatsoever. But—in the average case, there is just not, because a lot of people do work two shifts and two different jobs and they have part-time work. So, in the average case, no, it is not going to do much.

But we are looking for—what we are saying is, a court, however, will have the right to look into that employer, that other employer-employee relationship, and to see if there is a conflict. Normally speaking, of course, employers do this all the while. Today, they

don't object to the fact that someone has other employment or has other Agency relationship. They would like to know, do you have an employment relationship, by the way, which is going to have a conflict with what your duties are with me. That is normal. That is what we are trying to extend here and to make it clear, that labor law is no different from any other hiring situation in that respect.

If there is another relationship, an employer-employee relationship, full-time, part-time, whatever, or an Agency relationship that does exist and when you look at it, you realize that as a practical matter this applicant is not a bona fide applicant. Then we should know about that. If that is the case, in those limited circumstances, that particular applicant would not be deemed to be an employee under the National Labor Relations Act. That is all we are trying to do.

Mr. CREEDEN. But the act already protects that right to test for bona fide applicant. Why do we need additional legislation to test it?

Mr. FAWELL. I think because obviously we have all the lack of clarification that exists right now. The only case we have that has ventured into this area of determining when there is the incompatibility is the case that Mr. Pease referred to. The Supreme Court in Town & Country just left this open. They didn't get into the question of when would we, as in the previous case—the name of that case again is?

Mr. PEASE. Sunland Construction.

Mr. FAWELL. The Sunland Construction case. We do know that there is an incompatibility because of an existent employment status, but we don't have the clarification. Since we do have the problems that exist all over this Nation—this is not just in Kansas City, it is in my area of Chicagoland, too; it is all over—we think it is legitimate, and we think NLRB could look at this, too. It is legitimate to say that we are going to have to have clarification here.

Mr. CREEDEN. But in all due respect, there are two other cases out there that I am aware of; both are Boilermaker cases, one called Ultrasystems, the other Fluor Daniel, that go to that same issue.

Mr. FAWELL. If you would give me those citations, I will be more than happy to receive them. I am not here just on this end; I am here to receive as much information as I can. We are going to try to put through a bill that hopefully will be—maybe this is naive, but can be of a bipartisan nature, that we don't have to have people who are antagonistic here, that most people would agree, yeah, you want bona fide employees and you want bona fide employers working together. That is all we are trying to do and to clarify law that I think right now is cloudy. That is all.

Thank you again. I appreciate all of your comments on this.

Chair MEYERS. We thank you all very much for being here today. I appreciate it, and I have learned alot.

Mr. Fawell does not have a markup date set yet for H.R. 3211, which means that it is a work in progress; and I think the goal of all of us is to do whatever we can to bring about the appropriate balance and to have clear law in this area to improve relations.

Again, I thank you all for being here, and we are adjourned.

[Whereupon, at 12:35 p.m., the committee was adjourned, subject to the call of the chair.]

APPENDIX

STATEMENT OF REPRESENTATIVE JAN MEYERS
CHAIR, COMMITTEE ON SMALL BUSINESS
"THE PRACTICE OF 'SALTING' AND ITS IMPACT ON SMALL BUSINESS"

FIELD HEARING CONDUCTED JOINTLY BY THE
COMMITTEE ON SMALL BUSINESS
AND THE
COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

OVERLAND PARK, KANSAS
APRIL 12, 1996

The Committee will come to order. Today, the House Committee on Small Business is pleased to be joined with the House Committee on Economic and Educational Opportunities to conduct this hearing on a union organizing practice known as "salting", and the impact of this practice on small business. I would like to welcome our distinguished panel to Overland Park -- God's country as it is better known. I am very pleased to have Congressman Harris Fawell, representative from the 13th District of Illinois and Chairman of the Employer-Employee Relations Subcommittee for the Economic and Educational Opportunities Committee here with us today as Co-Chair of the hearing. In addition, a fellow Kansan representing the 2nd District and member

OF THE SMALL BUSINESS COMMITTEE, SAM BROWNBACK, HAS JOINED US AS WELL.

THIS HEARING IS BEING HELD IN RESPONSE TO NUMEROUS CALLS FOR HELP THAT I, AND MANY OTHER MEMBERS OF CONGRESS, HAVE RECEIVED FROM SMALL BUSINESSES WHO HAVE BEEN TARGETED IN A UNION "SALTING" CAMPAIGN. THE PURPOSE OF "SALTING" IS OSTENSIBLY TO RECRUIT UNION MEMBERS FROM THE GROUND UP--ON A WORKER TO WORKER LEVEL. I SUPPORT THE ABILITY OF UNIONS TO ORGANIZE WORKPLACES AND RECRUIT MEMBERS, AS DO MOST SMALL BUSINESS OWNERS, I BELIEVE. HOWEVER, SIGNIFICANT CONCERN HAS BEEN RAISED BY SMALL BUSINESSES, AND THEIR EMPLOYEES, THAT "SALTING" HAS A SINISTER GOAL--PUTTING SMALL BUSINESSES OUT OF BUSINESS IF THEY FAIL TO SIGN COLLECTIVE BARGAINING AGREEMENTS WITH THE UNION.

AS THE COMMITTEE WILL HEAR FROM SEVERAL WITNESSES, SOME SALTING PRACTICES APPEAR TO FOCUS ON FILING NUMEROUS UNFAIR LABOR PRACTICES CHARGES AGAINST AN EMPLOYER. THIS FORCES THE SMALL BUSINESS OWNER TO SPEND AN ESTIMATED $5,000 TO $10,000 PER CHARGE ON LEGAL FEES TO DEFEND HIMSELF AND HIS COMPANY FROM WHAT IS OFTEN FOUND TO BE FRIVILOUS CHARGES. SUCH ACTION, PARTICULARLY WHEN ONE NOTES THAT VERY FEW PETITIONS FOR UNION ELECTION ARE FILED

WITH THE NATIONAL LABOR RELATIONS BOARD, APPEARS TO BE HARRASSMENT OF SMALL BUSINESS OWNERS AND NON-UNION EMPLOYEES.

MY COLLEAGUE, CHAIRMAN FAWELL, HAS INTRODUCED LEGISLATION, H.R. 3211, AMENDING THE NATIONAL LABOR RELATIONS ACT TO STATE THAT NOTHING IN THE ACT SHALL REQUIRE THE EMPLOYER TO HIRE A PERSON WHO SEEKS A JOB IN FURTHERANCE OF OTHER EMPLOYMENT OR AGENCY STATUS. THIS LEGISLATION IS AN ATTEMPT TO BRING SOME BALANCE BACK TO THE EMPLOYER/EMPLOYEE RELATIONSHIP, WHICH SEEMS TO BE NEEDED IN SOME OF THESE CASES. HOWEVER, I WOULD BE INTERESTED IN HEARING OUR WITNESSES GIVE THEIR VIEWS ON H.R. 3211.

WE HAVE A VERY DISTINGUISHED PANEL TODAY WITH EIGHT PERSONS PRESENTING TESTIMONY. THEREFORE, I WILL KEEP MY REMARKS BRIEF AND TURN IT OVER TO CHAIRMAN FAWELL FOR AN OPENING STATEMENT.

NEWS from Congressman Harris W. Fawell

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Statement of the Honorable Harris W. Fawell
Joint Field Hearing on "Salting"
Committee on Economic and Educational Opportunities
Committee on Small Business
Friday, April 12, 1996

I want to start by thanking Chairwoman Meyers for hosting today's joint hearing between the House Committees on Economic and Educational Opportunities and Small Business. It's a pleasure to be in Kansas' 3rd congressional district, and I appreciate the efforts of Mrs. Meyers' and her staff in pulling this hearing together. Likewise, I am also pleased to share the dais this morning with Rep. Sam Brownback, another distinguished Member of the House Small Business Committee, who is from nearby Topeka, KS.

As Chairwoman Meyers has indicated, the subject of our hearing today is the union organizing tactic known as "salting." As Chairman of the Subcommittee on Employer-Employee Relations - the Subcommittee with legislative jurisdiction over the National Labor Relations Act - I have been interested in "salting" for some time. It is an issue, I must admit, that also gives me great concern.

My concern stems largely from two separate hearings our Committee held last year, during which we heard from several witnesses who shared their experiences with union "salting." Much of their testimony included stories about union organizers and agents who sought or gained employment with a non-union employer when, in fact, they had little if any intention of truly working for that company. In many cases, the organizers and agents were there simply to organize and/or disrupt the employer's workplace or to increase the cost of doing business by forcing the employer to defend itself against frivolous charges filed with the National Labor Relations Board (NLRB). For most of these companies - many of which were smaller businesses - the economic harm inflicted by the union's "salting" campaigns was devastating.

Obviously, one might ask why any employer would hire an individual that he knows is not really interested in being a bonified employee of his company. The complicated answer to this question lies in broad interpretations of the legal definition of an "employee" under the National Labor Relations Act (NLRA).

These interpretations have had the practical effect of presenting employers with a Hobson's choice: either hire the union "salt" who is already a paid employee of a union and primarily motivated to further the cause of the union or, deny the "salt" employment and risk being sued for discrimination under the NLRA. Either way the employer is faced with a hiring decision that may threaten the very survival of his or her business.

I believe it is important that we explore ways of remedying this situation. In fact, as many of you may know, I recently introduced a bill that I believe represents a good first step in doing just that. H.R. 3211, the Truth in Employment Act of 1996, would amend Section 8 of the National Labor Relations Act to make clear that an employer is not required to hire any person who seeks a job in order to further the interests of the union, i.e. primarily to organize the business of the employer and not because he really wanted to be an employee.

As I did when the bill was introduced, I want to again make it clear that this legislation is in no way intended to infringe upon any rights or protections otherwise accorded employees under the NLRA. Employees will continue to enjoy their right to organize or engage in other concerted activities protected under the Act. And, employers will still be prohibited from discriminating against employees on the basis of union membership or union activism. The bill merely seeks to alleviate the legal pressures imposed upon employers to hire individuals whose overriding purpose for seeking the job is not to become a bonified employee but to organize the employer's workplace and/or otherwise inflict economic harm to the employer.

In closing, I would also like to thank each of our witnesses for agreeing to appear here this morning. I sometimes fear that when we hold these hearings back in Washington, we occasionally lose sight of what is going on "out in the real world." That, instead of hearing from "real people" who are living day-to-day with the issues we consider, we are hearing from the inside-the-beltway crowd of lawyers and lobbyists. That is why we have come to Kansas this morning - to hear first hand from the folks who deal with "salting" on a daily basis. I know each of you has left your business or job to be with us today and we appreciate your willingness come share your experience and insights.

Thank you all for your time and interest. I look forward to hearing your testimony.

104TH CONGRESS
2D SESSION

H. R. 3211

IN THE HOUSE OF REPRESENTATIVES

Mr. FAWELL introduced the following bill; which was referred to the Committee on ________________________

A BILL

To amend the National Labor Relations Act to protect employer rights.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Truth in Employment
5 Act of 1996".

6 **SEC. 2. FINDINGS.**

7 Congress finds that:

1 (1) An atmosphere of trust and civility in labor-
2 management relationships is essential to a produc-
3 tive workplace and a healthy economy.
4 (2) The tactic of using professional union orga-
5 nizers and agents to infiltrate a targeted employer's
6 workplace , a practice commonly referred to as
7 "salting" has evolved into an aggressive form of har-
8 assment not contemplated when the National Labor
9 Relations Act was enacted and threatens the balance
10 of rights which is fundamental to our system of col-
11 lective bargaining.
12 (3) Increasingly, union organizers are seeking
13 employment with non-union employers not because
14 of a desire to work for such employers but primarily
15 to organize the employees of such employers or to
16 inflict economic harm specifically designed to put
17 non-union competitors out of business, or to do both.
18 (4) While no employer may discriminate against
19 employees based upon their views concerning collec-
20 tive bargaining, an employer should have the right
21 to expect job applicants to be primarily interested in
22 utilizing their skills to further the goals of the
23 business.
24 **SEC. 3. PURPOSES.**
25 The purpose of this Act is—

1 (1) to preserve the balance of rights between
2 employers, employees, and labor organizations which
3 is fundamental to our system of collective bargain-
4 ing;
5 (2) to preserve the rights of workers to orga-
6 nize, or otherwise engage in concerted activities pro-
7 tected under the National Labor Relations Act; and
8 (3) to alleviate pressure on employers to hire
9 individuals who seek or gain employment in order to
10 disrupt the employer's workplace or otherwise inflict
11 economic harm designed to put the employer out of
12 business.
13 **SEC. 4. PROTECTION OF EMPLOYER RIGHTS.**
14 Section 8(a) of the National Labor Relations Act (29
15 U.S.C. 158) is amended by adding after and below para-
16 graph (5) the following:
17 "Nothing in this subsection shall be construed as requir-
18 ing an employer to employ any person who seeks or has
19 sought employment with the employer in furtherance of
20 other employment or agency status.".

UNION SALTS

HON. HARRIS W. FAWELL
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Friday, March 29, 1996

Mr. Fawell. Mr. Speaker, in two separate hearings last year, the Committee on Economic and Educational Opportunities heard from witnesses who shared their experiences with the union organizing tactic known as "salting." Their testimony included stories about union organizers and agents who sought or gained employment with a non-union employer when, in fact, they had little if any intention of truly working for that company. In many cases, the organizers and agents were there simply to disrupt the employer's workplace or to increase the cost of doing business by forcing the employer to defend itself against frivolous charges filed with the National Labor Relations Board (NLRB). For most of these companies—many of which were smaller businesses—the economic harm inflicted by the union's "salting" campaigns was devastating.

Equally troubling, Mr Speaker, is the fact that union "salts" are often brazen in their efforts to inflict economic harm on non-union employers. Indeed, most union "salts" make clear when they apply for a job that their loyalties lie elsewhere and that they have little interest in working to promote the interests of the company.

Obviously, one might ask why any employer would hire an individual that he knows is there to hurt his company. The complicated answer to this question, Mr. Speaker, lies in broad interpretations of who is covered by provisions of the National Labor Relations Act (NLRA) that prohibit employers from discriminating against employees because of their union interests or activities. These interpretations have had the practical effect of presenting employers with a Hobson's choice: either hire the union "salt" who is sure to disrupt your workplace or file frivolous charges resulting in costly litigation; or, deny the "salt" employment and risk being sued for discrimination under the NLRA. Either way the employer is faced with a hiring decision that may threaten the very survival of his or her business.

To remedy this situation, I am pleased today to introduce the Truth in Employment Act of 1996. This legislation would amend section 8 of the National Labor Relations Act to make clear than an employer is not required to hire any person who seeks a job in order to promote interests unrelated to those of the employer. If enacted, the bill will help restore of the balance of rights that "salting" upsets and that is fundamental to our system of collective bargaining.

I want to make it clear, Mr. Speaker, that this bill is in no way intended to infringe upon any rights or protections otherwise accorded employees under the NLRA. Employees will continue to enjoy their right to organize or engage in other concerted activities protected under the Act. And, employers will still be prohibited from discriminating against employees on the basis of union membership or union activism. The bill merely seeks to alleviate the legal pressures imposed upon employers to hire individuals whose overriding purpose for seeking the job is to disrupt the employer's workplace or otherwise inflict economic harm designed to put the employer out of business.

Mr. Speaker, the aggressive "salting" campaigns being waged in today's workplace are relatively new and were not contemplated when the National Labor Relations Act was first enacted. Surely, Congress could not have intended the NLRA to be used as the legal shield that union "salts" now commonly invoke in defense of their abusive behavior. Moreover, common sense tells us that employers should be entitled to some measure of confidence when making hiring decisions that the job applicants they consider are motivated by their desire for work for that employer.

The Truth in Employment Act will help instill that confidence, Mr. Speaker, while at the same time protecting the rights of employees and their union representatives. I urge my colleagues to support its passage.

STATEMENT OF WILLIAM T. CREEDEN

DIRECTOR OF ORGANIZING

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO

BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

U.S. HOUSE OF REPRESENTATIVES

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO ("the Boilermakers") submits this statement in support of the Statements filed on October 31, 1995, by the International Brotherhood of Electrical Workers (IBEW) and the Building and Construction Trades Department (BCTD) of the AFL-CIO, concerning the use of "salting" as an organizing technique in the construction industry.

The Boilermakers, with a membership of approximately 85,000, represent employees in a variety of industries, including construction, shipbuilding, cement, forging, mining and manufacturing. The Boilermakers International employs a twenty-seven person staff assigned to organize employees in all industries falling within the Boilermakers craft jurisdiction. These organizers often attempt to join the work force of the employers they intend to organize.

A significant portion of the Boilermakers membership works in the construction industry. Boilermakers in the

construction industry engage in a variety of tasks, but are especially skilled at precision welding of high pressure vessels and tanks in the paper and petrochemical industries and in the nuclear and fossil fuel power industries.

Organizing in any industry has never been easy. But, as noted by both the IBEW and BCTD, organizing in the construction industry has, for a variety of reasons, grown increasingly difficult during the past two decades.

In our experience, part of the reason lies in the fact that an increasing number of employers are willing to retaliate against union activists through discharge and other forms of intimidation. The National Labor Relations Board's (NLRB) own statistics show that between 1960 to 1980, the number of charges filed over employer unfair labor practices rose fourfold; charges over discharge for union activity increased threefold. In 1984, in their book, What Do Unions Do?, Freeman and Rogers estimated that one in twenty pro-union workers, involved in organizing campaigns, ended up being discharged in 1980. By 1990, the number had risen to one in ten. Governing the Workplace: The Future of Labor and Employment Law, Paul C. Weiler (1990).

Changes in the law have also made it more difficult to reach unorganized workers. As noted by both the IBEW and the BCTD, the NLRB's decision in John Deklewa & Sons, 282 N.L.R.B. 1375 (1987), enforced, 843 F.2d 770 (3d Cir. 1988), has added to the problems faced by organized labor in the construction industry. Deklewa's reinterpretation of §8(f) has rendered the

"top down" method of organizing workers through the use of pre-hire agreements nearly obsolete. The Board itself acknowledged that Deklewa would result in the redirection of union organizing efforts towards "bottom up" strategies more typical of the manufacturing and service sectors. 282 N.L.R.B. at 1386, fn. 46.

This shift in the direction of the law has been unaccompanied by any recognition of the differences between the construction industry and other sectors of the American economy. Unlike manufacturing or service employees, construction workers are not a static workforce tied to a single employer at a single job site. The industry is characterized by short term employment with multiple employers scattered over a broad geographic area. This means that, in many instances, the time frame for a particular job is too short to mount the type of organizing drive typically found in the manufacturing or service sector. It also means that the attachment of the worker is to his or her particular craft or trade -- boilermaker, carpenter, pipefitter, etc. -- not to a particular employer. Despite this, in our experience, it is almost impossible to convince an NLRB regional office of the appropriateness of a bargaining unit limited to a single craft or group of related crafts. Instead, regional offices refuse to direct elections in anything less than a wall-to-wall unit of all crafts on the job site.

The Boilermakers "Fight Back" Program

Despite these obstacles, the Boilermakers have

continued to utilize the system in an effort to organize the unorganized. For the past seventeen years, the Boilermakers International has been engaged in a program, known as "Fight Back", aimed at organizing workers in the construction industry. The Boilermakers have filed a number of election petitions seeking to represent employees in the construction industry. See, e.g., Advance Tank, Inc., 10-RC-13360 (1986); Qualified Personnel, Inc., 5-RC-12901 (1987); CBI Nacon, (1987); ESP Reco Tank, (1987); PDM Hydrostorage, (1987); Qualified Personnel, 32-RC-2526 (1987); Process Mechanical, Inc., 7-RC-18862 (1988); Harbert, Inc., 12-RC-7200 (1989); Harbert, Inc.; 10-RC-13954 (1989); Foster Wheeler Constructors, Inc., 4-RC-17073 (1989); Process Mechanical, Inc., 1-RC-19275 (1989); Pyropower Corporation, 1-RC-19381 (1990); McBurney Corp., 6-RC-10487 (1990); McDermott International, et al., 15-RC-7606 (1991); U.S. Boiler & Tube Co., Inc./U.S.B.T. Abrasives & Refractories, 10-RC-14310 (1992); McDermott International, et al., 6-RC-10795 (1992); Zurn Nepco, GR-7-RC-19853 (1992); Zurn Nepco, 4-RC-17616 (1992); Foster Wheeler Constructors, Inc., 11-RC-5939 (1993); H.B. Zachry, 11-RC-5965 (1993); Brown Minneapolis Tank, 11-RC-5959 (1993); The Industrial Company, 18-RC-15368 (1993); Foster Wheeler Constructors, Inc., 11-RC-5973 (1994); Research-Cottrell, 9-RC-16404 (1994); Tampella Power, 6-RC-11111 (1994); H.B. Zachry, 11-RC-6084 (1995); Metric Constructors, 5-RC-14206 (1995); Duke Power Co./Scope Service, Inc., 11-RC-6137 (1996).

The Boilermakers International has also filed unfair

labor practice charges with the NLRB where an employer's response to organizing efforts has been to unlawfully discriminate against applicants or current employees. Two of these cases -- Sunland Construction Company, Inc., 309 N.L.R.B. 1224 (1992) and Sunland Construction Company, Inc., 311 N.L.R.B. 685 (1993)[1], -- were companion cases before the NLRB with Town and Country, Inc., 309 NLRB 1250 (1992), enforcement denied, 34 F.3d 625 (8th Cir. 1994), reversed, 516 U.S.__, 116 S. Ct. __, 133 L.Ed 2d 371(1995).

As you are probably aware, the United States Supreme Court ruled in the Town & County decision that paid union organizers are employees within the meaning of the National Labor Relations Act. Clearly a nine to zero decision by the United States Supreme Court has validated the National Labor Relations Board's position and organized labor's position.

Like similar efforts by other construction trades, "Fight Back" emphasizes bottom up organizing through direct contact with the nonunion worker. Boilermaker staff organizers attempt to bring the union's message to nonunion workers. Sometimes staff organizers attempt to hire on with nonunion contractors in an effort to reach the nonunion worker; other

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1 Following the NLRB's decision, the Boilermakers and Sunland entered into a settlement agreement in which Sunland extended voluntary recognition to the Boilermakers. The parties further entered into three collective bargaining agreements under which Sunland is currently performing work. See, Sunland Signs Union Contracts, Boilermakers Drop ULP Charges, Daily Labor Report, 9/9/1994, at A-6.

times, contacts are made outside the workplace.

However, the bulk of the contacts with nonunion workers are initiated by current Boilermaker members who voluntarily hire on with nonunion contractors in order to assist our organizing efforts. These members receive no compensation or wage subsidy of any sort. No fringe benefit contributions are made or dues forgiven on their behalf while they are employed on a nonunion project.

What the Boilermakers ask of these volunteers is that they accept employment with the nonunion contractor, perform assigned tasks in a competent and professional manner for the duration of the project and, during their own time, discuss the benefits of unionism with other employees. Volunteers may assist interested workers in becoming union members or seek signatures on authorization cards to be used to support RC petitions.

"Salting" Is Protected Organizing Activity

The Boilermakers are aware of complaints by many employers concerning "salting" efforts by the Boilermakers and other unions. The Boilermakers agree with the IBEW's statement that, at bottom, the employers' real objection is that the law prohibits them from refusing to hire union members or from discharging employees simply because they participate or intend to participate in union organizing.

Much of the attention and comment on this issue has focused on paid union organizers. However, as noted above, the

bulk of the organizing activity under the Boilermakers "Fight Back" program is carried out by volunteers who receive no compensation from the union.[2] In considering the appropriateness of "salting", it is important to keep in mind that the right to organize has long been viewed as an essential ingredient of an industrial democracy.

Section 7 of the National Labor Relations Act ("the Act") guarantees the right of every American worker to engage in organizing activity or to refrain from doing so. 29 USC §157. In adopting the Act sixty years ago, Congress chose to protect the rights of working people to engage in "concerted activities," including organizing and collective bargaining, as a means of providing them with some measure of economic leverage in dealing with their employers. The Act opens with the recognition that "[t]he denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining" imposes intolerable burdens on the free flow of commerce. See, 29 U.S.C. §151. In NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), the Supreme Court, in upholding the constitutionality of the Act, recognized that unions are "essential to give laborers opportunity to deal on an equality with their employer." 301 U.S. at 33.

In 1974, Congress reaffirmed its view that protection

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2 The Boilermakers can, of course, speak with authority only about "Fight Back". However, it is our impression that volunteers, not paid organizers, make up the vast majority of union "salts".

of organizing and collective bargaining remains an efficacious antidote for the social ills of disproportionately low wages, poor working conditions and labor unrest by extending the coverage of the Act to not-for-profit hospitals. See, Beth Israel Hospital v. NLRB, 437 U.S. 483, 497-98 (1978) ("Congress determined that the extension of organizational and collective bargaining rights would ameliorate these conditions and elevate the standard of patient care.")

Experience has demonstrated that Congress was correct in its view that unions and collective bargaining are good for the nation and the economy. Studies consistently find union workers earning higher wages and having better benefits than nonunion workers. For example, union workers are twice as likely to have health insurance as nonunion workers. Mishel & Bernstein, State of Working America, EPA Series (1993). The grievance and arbitration procedures which typically accompany union contracts provide the means for resolving workplace disputes in a peaceful and fair fashion. All of this, in turn, increases productivity and quality.

The volunteer organizers involved in "Fight Back" and similar efforts are engaging in organizing activity in its purest form. These individuals volunteer their time and work for substandard wages with little or no benefits, because they believe in the principles of unionism. This is precisely the type of activity which both the Supreme Court and the NLRB have recognized as being "the central purpose of the Act". American

Hospital Association v. NLRB, 499 U.S. 606,609 (1991); Sunland Construction Company, Inc., 309 N.L.R.B. 1224, 1229 (1992).

Congress chose to shield the workers' right to organize both with affirmative protections afforded those engaging in such activity and with negative prohibitions forbidding employers from discriminating against anyone engaged in organizing. Thus, a refusal to hire based on organizing activity has long been held to violate the Act. This is true whether an individual's organizing activities have been directed at fellow employees or at workers employed by other employers. Current employees are protected from discharge for engaging in organizing activity. Applicants may not be rejected nor current employees treated differently on the ground that they are likely to be union supporters.

Employers who complain about "salting" suggest that anyone paid by their union to organize should not be protected under the Act. Most go on to argue that even unpaid union members, who respond to their union's request to assist, on a voluntary basis, in organizing efforts should be denied the protection of the Act. While some organizers may receive compensation, most do not. They do share, however, one common characteristic -- both seek employment with a nonunion employer for the underlying purpose of engaging in lawful protected organizing activity.

To deny these individuals, regardless of their paid status, the protection of the Act based on their organizing

purpose literally stands the Act on its head. It disqualifies the employee for engaging in the very activity which the Act is designed to protect. The fact that the organizer seeks access to nonunion employees in order to promote the principles of unionism does not and should not affect the protected status of his or her organizing activities. The protection of the Act has never been premised on an evaluation of a person's subjective motivation for undertaking otherwise lawful protected concerted activity.

It has been suggested that, by asking a member to work for a nonunion contractor, the union will exercise an impermissible degree of "control" over the employee's activities while at work. Such a view is mistaken for several reasons.

To begin with, the Act does not require that, in order to be protected, organizing activity be spontaneous or unplanned. As the Supreme Court has recognized, like any other right in an industrial democracy, "organization rights are not viable in a vacuum"; their exercise depends both on the right of employees to discuss organization among themselves and the right of unions to discuss organization with employees. <u>Central Hardware Co. v. NLRB</u>, 407 U.S. 539, 542-43 (1972).

Moreover, it does not follow that, simply because a person obtains employment with the intent to organize the employer, that he or she will be less competent or less loyal than a current employee who decides, independent of any contact from the union, to try to organize the employer. The idea that support for one's union constitutes unforgivable disloyalty to

one's employer was banished with the enactment of Section 7. As one of the Justices noted during oral argument of Town & Country, "the theory of the act is that there's no inherent incompatibility between obligations to the union and obligation to the employer, and I don't know how to make the act work without adopting that --." Transcript of Oral Argument in NLRB v. Town & Country Electric, Inc., et. al., October 10, 1995, at pp. 26-27.

The complaint is made that the organizer may be inclined or directed by the union to quit at a critical time, leaving the employer in a lurch. Such an argument ignores the fact that nonunion employees are considered "at-will" employees, meaning that either the employer or the employee may terminate the employment relationship at any time for any lawful reason. See, Blade, Employment at Will v. Individual Freedom, Colum. L. Rev. 1404, 1419-20 (1967). Moreover, under the law, the right to strike is guaranteed all employees, regardless of union status or organizing proclivity. Hence, this asserted "danger" already exists in the nonunion setting, independent of any organizing activity.

The Boilermakers do not instigate or condone sabotage, slow downs or any type of unlawful activity. The authorization card utilized by the Boilermakers, a copy of which is attached to this statement, reminds both the volunteer organizer and the nonunion recruit that such activity is strictly forbidden. The Boilermakers are not aware of any AFL-CIO affiliated union which

condones such tactics. All organizers, paid or unpaid, must devote working hours to working for the employer and organize on their own time -- at lunch, before and after work. To do otherwise subjects them to discharge for cause.

As the Board noted in both Sunland and Town & Country, there is no body of evidence which suggests that paid organizers as a class have any tendency to engage in wrongful conduct. 309 N.L.R.B. at 1230 and 1257. This observation is borne out by prior cases which have considered the work performance of paid organizers. In H.B. Zachry Co., 298 N.L.R.B. 838 (1988), enforcement denied, 886 F.2d 70 (4th Cir. 1989), both the Board and the Fourth Circuit concluded that the work of the paid organizer there "was satisfactory, and that he was proficient at his trade." 886 F.2d at 71. See also, Oak Apparel, 218 N.L.R.B. 701, 707 (1975); Pilliod of Mississippi, Inc., 275 N.L.R.B. 799, 811 (1985).[3]

Indeed, an organizer, paid or unpaid, has a tremendous incentive to satisfactorily perform his assigned tasks for the nonunion employer. To do otherwise not only subjects him to discharge but renders him largely ineffective, since other workers are not likely to listen to someone who does not pull his weight on the job. The union has an equally strong interest in discouraging poor performance, not only because poor performance

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[3] In Town & Country, the Administrative Law Judge rejected the employer's argument that the organizer there was a poor worker as a defense "structured upon a composite of lies." 309 N.L.R.B. at 1275.

renders the organizer less effective, but because it sends the wrong message to both the contractor and the customer. The contractor will not be interested in dealing with a union that cannot deliver quality craftsmen. Moreover, even if the union is ultimately successful in organizing the contractor, the customer will be unlikely to invite back a contractor whose employees failed to perform adequately.

The Boilermakers recognize that the Committee has heard testimony from various employers who believe that they have been subjected to unfair or underhanded tactics through union "salting" efforts. Obviously, the unions involved in these stories have their own view of what occurred, views which do not appear to be reflected in the Congressional Record at this time. Surely, instances can be found where someone abused the law, just as there are legions of cases where employers have, despite the law's prohibitions, discharged or refused to hire employees because of union activity.

The point is that existing law is available to deal with such abuses. An organizer who fails to perform his assigned tasks in a proficient manner may be discharged without sanction. Indeed, the NLRB has upheld just such a discharge of a paid organizer in Sears, Roebuck & Co., 170 N.L.R.B. 533 (1968). See also, Sunland Construction Company, Inc., 309 N.L.R.B. 1224, 1230 (1992) (organizer does not get "carte blanche in the workplace . . .the organizer lawfully may be subjected to the same nondiscriminatory discipline as any other employee.")

Some of the stories you have heard include allegations of sabotage and personal harassment of family members or other workers. These types of activities have no place in any organizing campaign. The Boilermakers do not condone and would not tolerate any such activity in connection with "Fight Back".

The point is that, once again, existing law is available to deal with such abuses. Following or stalking family members is not protected activity and, in many states, violates criminal statutes. The response to such abuses should be to enforce existing law against the perpetrator, not remove legal protection from law-abiding union members engaged in lawful organizing activity.

It is ironic that the employers who have come before you complain about the costs associated with defending themselves against what they perceive as unwarranted NLRB charges. The Boilermakers have incurred tremendous costs in attempting to organize. More important, however, are the costs incurred by employees who are denied employment or lose employment because of their union convictions. Having asked these individuals to assist in our organizing efforts, the Boilermakers are compelled to stand by these individuals and to seek redress on their behalf before the NLRB.

Yet, we have no illusions regarding the efficacy of such relief. It can take anywhere from two to four years to move a case through the administrative process before the NLRB. Additional delay occurs if the matter is submitted to one of the

Circuit Courts of Appeals. Even if this process is successful, no real penalty is imposed on the employer. The employee is entitled to back pay, but only to the extent that his or her interim earnings do not match or exceed what would have been earned absent the discrimination. In short, even though the employer has violated the Act, the employee is obligated to mitigate their own damages.

Real labor law reform should focus on those issues which prevent the Act from effectively protecting the right of workers to organize, as well as on those items which make the process of determining whether employees wish to be represented both time consuming and expensive for all parties, including the NLRB. Although the Boilermakers have several ideas on this subject, we will mention only the one directly related to effectiveness of the Act as a deterrent to unlawful activity.

In our opinion the Act, as currently written, does not impose any real penalty for violating worker's rights. In order to remedy this, we believe that the Act should be amended to impose enhanced remedies on employers found to have violated the Act. These would include allowing employees harmed as a result of an employer's violation to collect damages, based on the amount of backpay due (for example, double or triple the backpay due), without deduction of interim earnings; a requirement that the employer reimburse the government and the charging party reasonable costs, including attorney's fees; imposition of additional monetary fines on employers who repeatedly violate the

Act and debarment from receiving government contracts. The effect of such reforms would be to both deter an employer from engaging in unlawful conduct and to provide a just remedy for employees harmed as a result of an employer's unlawful activity.

Not all workers will find union organization appealing; but all workers should be allowed to consider the question on its own merits, with free access to information and in an atmosphere free from coercion and intimidation. This is both the promise and the purpose underlying the Act.

As illustrated above, and in the Statements submitted by the IBEW and the BCTD, it has grown increasingly difficult to deliver the union's message to employees. Asking members to work for nonunion contractors in order to assist job site organizing efforts is simply one attempt by organized labor to respond to this problem. The relationship between an employer and a union organizer is no different than that between the employer and any other employee who chooses to be a union supporter. Both are protected under the law. To change the law in order to allow employers to discriminate based upon an employee's organizing intent would totally undercut both the spirit and purpose of the Act.

AUTHORIZATION FOR REPRESENTATION

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, CFL

I, the undersigned employee of

▲ Print COMPANY Name

hereby select the above-named union as my collective bargaining representative. I understand that this is not an application for membership and that this card may be used to gain voluntary recognition from the employer or to gain an election through the National Labor Relations Board or both.

▲ Print LAST NAME PLEASE PRINT LEGIBLY

▲ Print FIRST NAME ▲ Print M.I.

▲ Print Home STREET ADDRESS

▲ Print Home CITY

▲ Print Home STATE ▲ Print Home ZIP CODE

▲ Print SOCIAL SECURITY NUMBER

▲ Print AREA CODE & TELEPHONE NUMBER

▲ SIGNATURE ▲ DATE SIGNED

Revised 5/91

31

EMPLOYEE EMPLOYMENT INFORMATION

▲ DEPARTMENT/SHOP ▲ JOB CLASSIFICATION

▲ YOUR CURRENT SHIFT ▲ YEARS & MONTHS EMPLOYED

▲ CURRENT HOURLY WAGE RATE ▲ MONTHLY HEALTH INSURANCE COST

EMPLOYEE EMPLOYMENT CONCERNS

WHAT ARE THE MAIN PROBLEMS AT YOUR WORK PLACE?

WHAT WOULD YOU LIKE TO SEE IN A FAIR LABOR AGREEMENT WITH YOUR EMPLOYER?

ORGANIZER WITNESS TO CARD SIGNING

▲ Print LAST NAME PLEASE PRINT LEGIBLY

▲ Print FIRST NAME ▲ Print M.I.

▲ SIGNATURE ▲ DATE SIGNED

Revised 5/91

31

Your Rights to Organize are Guaranteed by Section 7 of the National Labor Relations Act:

"Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargaining collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection..."

31

It's Your Right to Organize...Join the International Brotherhood of Boilermakers!

Protect your job and your right to organize by following these 10 important organizing rules:

1. Organize only on your own time Before Work After Work & On Breaks
2. Take notes on any threatening statement or action by your supervisor
3. Arrive at work on time and do not leave before the scheduled quit time
4. Perform a fair day's work for a fair day's pay
5. Do not engage in any kind of sabotage to company property
6. Report any company harrassment problems to your organizing committee
7. Do not lose your temper with or be insubordinate with your supervisor
8. Always conduct yourself in a controlled and orderly manner
9. Report any deviation in company disciplinary policy to the organizer ASAP
10. Attend organizing meetings for proper guidance and information

TESTIMONY OF

GREGORY E. HOBEROCK

hth companies, inc.

BEFORE THE

ECONOMIC AND EDUCATIONAL OPPORTUNITIES COMMITTEE

AND

THE HOUSE COMMITTEE ON SMALL BUSINESS

UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 12, 1996

hth companies, inc.

Mechanical Insulation Contractors

Good morning, Mr. Chairman and members of the subcommittee. My name is Greg Hoberock, and I thank you for giving me the opportunity to be with you this morning. I would like to testify as general manager of hth companies, inc. located in Union, MO.

hth companies, inc. is a merit shop insulation contracting firm formed in 1984 by my wife, Barbara Hoberock, and myself. We employ approximately 100 construction workers throughout the midwest. hth companies, inc. has expertise in performing insulation work from small office buildings to large industrial complexes and power houses. We train unskilled workers through our BAT-approved apprenticeship program. We offer competitive wages, health insurance and retirement plan and vacation pay to our employees.

hth companies, inc. was the first merit shop insulation company to incorporate in and around the St. Louis area offering the end user an alternative to Local #1 of the International Brotherhood of Heat and Frost Insulators. We have had to overcome every obstacle placed in our path by Local #1. From the start, we have had to offer our customers a higher quality of work at a substantially lower price so our customer would be able to overcome other costs inflicted by the AFL-CIO affiliated unions.

It is my understanding that the (NLRA) National Labor Relations Act was enacted to protect the rights of employees during the troubled times of the depression.

BUS: (314) 583-8698
FAX (314) 583-5971

1191 Clearview Road
Union, MO 63084

Management had grown powerful and abusive of its labor force. A national act was needed. I would never suggest that the NLRA should be repealed; history has taught us management would abuse its labor force if left unchecked. However, we find today that labor groups are abusing management and now need to be brought in check by a national act. H.R. 3211 "The Truth in Employment Act of 1996", is a start in bringing about balance to labor/management relations. Put simply, employers should not be required to hire persons who have no genuine interest in working for their companies.

Simultaneously at the time of the salting campaign, hth companies, inc. has endured many actions designed to intimidate our employees and customers. Though we are not accusing the Union of involvement, we do not believe the timing is coincidental. These acts include stalking, hand billing and vandalism. In one instance, an employee found a dead rat in the mailbox.

A salting campaign against hth companies, inc. began approximately 26 months ago. A large group of male construction workers barrelled into our office demanding employment applications from a female office staff worker. Their actions and language were both abusive and intimidating. None of the intruders were offered a job, and our first unfair labor practice charge was filed. The National Labor Relations Board found no merit with the charges because we could show that 1) We had not hired any worker meeting their qualifications, and, 2) We already had two members of their Union, who had made proper application, on the payroll. Even though no merit was found in the Union's claim, hth companies, inc. suffered the economic loss of defending the frivolous charge.

The Heat & Frost Insulators then began what we thought was a Union organization campaign. However, as the time went on, we began to realize that the Union was not interested in organizing our labor force, but only interested in harassing us through

the use of the NLRA. At no time did the Union petition the NLRB for an election. In fact, hth companies, inc. was advised by employees that the Union was not interested in representing hth's employees but instead wanted to put hth out of business.

The Union was successful in "buying" several of our employees. The scenario goes something like this, "hth employees, if you will stay employed with hth and perform acts that will allow the Union to file charges with the NLRB, we will give you a Union card at the conclusion of your employment with hth". As a result of this tactic, hth lost 8 employees to other employers. The 8 persons who left hth companies, inc. have the right to seek employment which they feel will better their lives and those of their families. However, if hth conducted it's affairs in a manner similar to actions of these 8 agents of the Union, we would probably be facing legal action. According to other employees, one of the employees provided confidential information to the Union leadership, and he also encouraged other employees to engage in a variety of acts to the detriment of their employer.

In total, hth companies, inc. has faced approximately 32 charges filed under the NLRA, with a total of some 120 allegations. Out of these charges, the NLRB has found merit to a portion of three charges. The other 29 charges were found to be without merit in their entirety. hth companies, inc. elected to settle a portion of three charges for a total of $720 in back pay. Legal council advised me that in their opinion hth would prevail during the formal hearing at the NLRB; however, the estimated cost would be $15,000 to $25,000 per charge. Considering the possible economic loss in battling the federal government for a potential savings of $720, the prudent business decision to settle was made. In settling these three charges, hth never admitted any wrong doing, and I remain convinced that we have always followed both the spirit and the letter of the law.

One of the 29 meritless charges filed against hth companies, inc. included dismissing an employee who left the jobsite on a Thursday. He was also absent on Friday, and this caused our customer to become very upset. A written complaint was received by our office. Nevertheless, the employee took the following week off without permission and without explaining why he would not be at work. We told the employee that we desperately needed him to be on the job. He refused to heed our pleas and never explained his absences. Not only did we have to deal with the potential loss of a client, but we had to defend our disciplinary action with the NLRB. After a thorough and costly investigation, the charges were dismissed.

Another charge was filed when the payroll clerk made a clerical mistake in calculating a weeekly payroll. An employee was shorted $120. We found the mistake, prepared a check for the difference and mailed it to the employee immediately. His means of notifying our office was through a NLRA charge. By the time the paperwork was delivered to our office, restitution had already been made. All allegations involved under this charge were dropped.

How would you like to defend your company's management of a construction project? hth companies, inc. faced an NLRA charge because we asked the persons on the job site to communicate with our office about the progress of the project. We were accused of discriminating against an employee because we wanted to know what work was being done on a site which is a 4-hour drive from our Union, MO office. After a costly investigation, all allegations included in this charge were dropped.

Under the current administration, I thought employers were encouraged to provide health insurance and retirement benefits to their employees. We faced charges because we instituted a 401(k) and a Davis-Bacon pension plan. Even at face value, it is obvious that no discrimination has occurred because our plan is offered to all employees and because we had commenced our discussions regarding these plans prior to

the start of the salting campaign. hth companies, inc. still had to endure the economic loss of defending a charge that was eventually dropped.

An apprentice was terminated because of his poor work record. We faced three separate charges over this termination. Each time no merit was found to the charges, and no action was pursued by the NLRB. The cost to prove to the NLRB that no discrimination occurred was, again, borne by hth companies, inc.

Some employees of hth companies, inc. decided to get together one evening for drinks. The activity was neither sponsored by nor funded by hth companies, inc. The business agent for Local #1 filed charges under the NLRA for excluding his agent, an uninvited employee. hth companies, inc. had to defend the charge and then had to decide whether to encourage or discourage socialization among its employees. Once again the charge was found to be without merit, but we were forced to spend time and money responding to baseless allegations.

One employee attended a meeting sponsored by the Union. After considering the offer to accept membership in Local #1, he informed me of his intent to resign. He told me that the Union had offered him membership at a substantially higher wage rate. After wishing him well, I inquired when he would be leaving. No information was available on a specific date of termination, but he told me would inform me as soon as possible. After some time had elapsed and no termination date was provided, the employee informed me that the Union had placed conditions upon issuance of his Union card. He told me he had been asked to perform acts in an attempt to harass hth companies, inc. and provide a basis for the Union to file charges under the NLRA. His position was that hth companies, inc. had been good to him and that if the Union wanted to grant him membership because of his skill, then he would join. If membership was contingent upon performing what he considered unethical acts, he would remain employed by hth companies, inc.

I would estimate an average of 40 hours of my time is spent to defend each charge filed under the NLRA. Additionally, it takes about the same amount of time for the staff. Though we do not account for our legal fees specifically by charge, I know that the cost of legal advice has tripled over the past two years. We estimate frivolous NLRA suits cost our company $25,000 per year. This money is a cost inflicted on hth companies, inc. with NO benefit to the employees of our company.

Forcing employers to hire persons whose intent is to bankrupt the employer does not make sense. Employees have told me that the business agent for Asbestos Workers Local #1 has announced that it is his intention to put hth companies, inc. out of business. Under current law, he himself and those persons he may send to my office applying for work are protected applicants. A prudent manager is not prone to hire a person referred by a person whose stated intention is to put you out of business. Federal law as currently interpreted by the Supreme Court in "Town and Country" forces the manager into a "no win" dilemma. When laws are used by unions to harass employers rather than organize employees, the employees involved in such harassment must lose their protection. Our elected officials have to find a way out from union salting tactics and lift the business community from the salting " Catch 22".

Thank you.

TESTIMONY BY

ROBERT J. JANOWITZ

Before The

COMMITTEE ON ECONOMIC AND

EDUCATIONAL OPPORTUNITIES

and

HOUSE COMMITTEE ON SMALL BUSINESS

April 12, 1996

Overland Park, Kansas

Good day Mr. Chairman and members of the Joint Committee. My name is Robert Janowitz. Thank you for the opportunity to testify. While I am testifying on my own behalf, let me note that I am currently on the Board of Directors of the Heart of America Chapter (the Chapter) of Associated Builders & Contractors (ABC), a national trade association that represents about 17,500 contractors, subcontractors, material suppliers, and related firms around the country. I am a lawyer who has specialized in labor and employment matters for over 25 years. During my career I have had a broad range of experience which makes me uniquely qualified to testify in support of H.R. 3211.

After growing up in New York City and graduating from the University of New Mexico School of Law, I started my labor law career in June 1969 as a trial attorney at Region 19 of the NLRB based in Seattle, Washington. During my six-year tenure as a trial attorney, I investigated, settled, and litigated hundreds of unfair labor practice cases and conducted numerous representation hearings regarding preelection and postelection issues. Some of you may not be aware that the NLRB itself is unionized

and has both professional and nonprofessional bargaining units. I was among the first trial attorneys in Region 19 to join the NLRBU and was active in the union until my promotion to a supervisory position in 1975.

In 1975, I accepted a promotion to a supervisory attorney position with Region 6 of the NLRB located in Pittsburgh, Pennsylvania. As a supervising attorney, I was responsible for training and reviewing the work of a team of trial lawyers, processing unfair labor practice charges, developing litigation strategies, and helping to ensure that the investigative process was thorough and impartial.

In December 1976, the NLRB's General Counsel, John Irving, appointed me Regional Attorney of Region 17, based in Kansas City. I was one of the youngest Regional Attorneys ever appointed. Region 17 services a broad geographical area that now includes Oklahoma, Nebraska, Kansas, and the western half of Missouri. As Regional Attorney, I was primarily responsible for determining whether unfair labor practice charges should proceed to complaint or be dismissed. It did not make any difference to me

or my staff if the respondent was a labor organization or an employer. Our consistent goals were impartiality, thoroughness, and an understanding that before proceeding to litigation we had to be satisfied that we could meet our statutory burden of proof that an unfair labor practice had been committed.

As Regional Attorney, I received Certificates of Commendation in 1978 and 1979 for "high quality performance." I had the privilege of working closely with senior civil servants at the NLRB's Division of Operations in Washington, D.C., to develop the criteria for the Senior Executive Service and to represent the interests and concerns of Regional Attorneys across the country. I also participated to a substantial degree in the nation-wide trial training programs for the NLRB's trial attorneys.

I left the NLRB in October 1980 to accept a position in private practice. Since that time, I have represented management in all areas of labor and employment law. Since March 1987, I have Chaired the Labor and Employment Law Section at Shook, Hardy & Bacon, L.L.P., Kansas City's largest law firm.

A significant amount of my time and energy in private practice is devoted to representing my clients' interests in matters directly and indirectly involving the NLRB and the National Labor Relations Act. Throughout my career with the NLRB, and continuing through my career in private practice, I have had high regard for the integrity and fairness of almost all of the NLRB's field personnel. I am concerned, however, that the current Board and General Counsel appear to have politicized the decision-making process. The impressions of many of us in private practice on the management side is that the zeal expressed by the recent appointees has swung the pendulum so far and so fast that the impartiality of the Agency is subject to question. This is particularly true in the construction industry and is one of the reasons I support Congressman Fawell's Bill.

Over the last several months construction industry clients have reported to me or my staff over two dozen salting incidents. Many of these incidents have led to NLRB charges against these companies. These clients are small businesses who cannot afford the cost of NLRB litigation.

In addition to the costs, these small business owners believe they are powerless in responding to obnoxious and inappropriate conduct by several of the construction unions in this area.

The typical tactic of these unions is this. Picture a small corporate office or construction site trailer where the receptionist or job site superintendent is beginning the workday. All of a sudden, unannounced, 5 to 12 strangers enter the office or trailer and demand the right to apply for a job. One of these intruders is using a video camera to film the incident. Regardless of the hiring procedures, these individuals refuse to leave. Should the receptionist or superintendent feel threatened, coerced, call the police, or seek to have the individuals removed, charges will be filed with the NLRB claiming that the rights of the intruders were violated under the Act. The company's failure to hire any of these intruders also will be alleged as an unlawful refusal to hire.

We had one case where the union's full-time paid organizer made 35 phone calls in 14 days and 75 calls over 40 days asking for a job.

Under Missouri law (RSMo 565.225), his conduct could constitute criminal harassment. When the company reported this harassment to the phone company and the authorities, the union filed an NLRB charge against the company. No legitimate public policy is being furthered by allowing and encouraging this behavior. As rational, intelligent, and objective individuals, I ask you, "Who is being burdened and harassed?"

In another example, the NLRB recently has ruled that when employers respond to this obnoxious salting conduct by instituting neutral policies with no evidence of discriminatory implementation, these policies still may be unlawful. Tualatin Electric, Inc., 319 NLRB No. 147 (Dec. 18, 1995).

I believe it is important for the Joint Committee to understand that my clients do not oppose a union's right to properly attempt to organize their employees. They clearly recognize their obligation not to discriminate in violation of the Act. They also recognize that as nonunion companies, their employees may attempt to unionize. They believe their employees are

entitled to determine for themselves through a noncoercive secret ballot election process whether or not they wish to be represented by a union. Union representation is not the issue. When it comes to analyzing the unions' motives behind this salting strategy, it is noteworthy that with all the salting cases our office has handled, I do not recall any instance in which a union has filed a petition for an election. This is because the employees involved were not interested in representation, <u>and</u> organizing is not the unions' motive. The real union objective is to do away with nonunion competition, drive them out of business. In a recent unfair labor practice proceeding, a Business Agent was asked, "Have you ever expressed...your desire or the Carpenters' District Council's desire to put [name of client] out of business?" Over the objection of the NLRB's counsel, the judge instructed the Business Agent to answer. His response was, "Yes, I believe I have...I have said that in the past...." (TR 399, 400).

This sworn testimony supports the evidence ABC and other witnesses have put into the record that a major goal of the unions' salting program is to run nonunion competition out of business. Unfortunately, the

current NLRB and its General Counsel are permitting the NLRB's processes to be used to accomplish this goal. Something must be done to stop this malicious practice.

Is there anything else going on in the Kansas City area to support this conclusion? Unfortunately, over the past several months several Chapter members have been subjected to incidents of vandalism, property, and equipment damage. Although there is insufficient evidence to bring formal charges, given the timing of the misconduct and the companies who were victimized, in April of last year a meeting took place with a special agent of the U.S. Department of Labor Office of Labor Racketeering to review these incidents. I will mention a few of these incidents to give you the flavor of what has happened:

In the first months of 1995, the following occurred at job sites and company offices around the same time that these companies were being salted:

1. About $6,500 of damage to recently installed drywall.

2. A newly constructed restaurant was vandalized with jars of indelible black ink. Similar vandalism occurred at an RLDS church job site, and the job site trailer was broken into.

3. On another job site, bottles of indelible ink were thrown at the building, bars were pushed through radiators of forklifts, tires were cut, glass was broken, and significant damage was done to a generator and van.

4. Windows were smashed on a job site trailer, and an employee's personal vehicle was severely damaged.

5. A strip center where the offices of salted companies were located was vandalized by glass jars of indelible ink. Anonymous threatening phone calls followed.

Construction companies have not been the only businesses subjected to the unions' salting tactics. The Chapter itself was confronted several months ago with the harassing scenario I previously described. On two occasions, without warning, up to a dozen individuals, one using a video camera, barged into the ABC office and insisted on filing applications for employment. As you can guess, charges were filed with Region 17 claiming that the Chapter serves as a "hiring hall" for its members, an allegation that the Regional Office dismissed. Recently, the union who filed the charge has requested an extension of time to file an appeal.

In closing, let me comment on another professional hat I have worn for a number of years. Since about 1979 I have taught the labor law class as an adjunct professor at the University of Missouri-Kansas City School of Law. It is not uncommon for the classroom materials and the students to point out that over the years there have been shifts in several labor law doctrines depending upon the composition of the Board. In my view, what makes this Board and this General Counsel unique is the zeal

and lack of subtlety in their efforts to revamp significant elements of the law and the process.

Whether it is the Board's condonation of the union's obnoxious salting tactics, its recent attempt to engage in rule-making for single-location units, its apparent unwillingness to apply the Supreme Court's decision on nursing supervisors, its decision overruling YMCA (Young Men's Christian Assn., 286 NLRB 1052 (1987)) that would appear to create impediments to voter turnout (Broward County Health Corp., d/b/a Sunrise Rehabilitation Hospital, 320 NLRB No. 28 (Dec. 19, 1995)), or the aggressive use of 10(j) injunctive relief, there is a need for this Joint Committee and the Congress to make the appropriate statutory changes to ensure the integrity and impartiality of the NLRB. Thank you.

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ROBERT J. JANOWITZ

Bob Janowitz, Chair of the Labor and Employment Law Practice Group, has practiced labor and employment law exclusively for over twenty-five years. Mr. Janowitz spent twelve years with the National Labor Relations Board, as a trial attorney, supervisory attorney, and regional attorney. He has written extensively and has presented seminars on a variety of labor and employment matters including seminars on behalf of Associated Industries of Missouri, Council on Education in Management, Missouri Merchants and Manufacturers Association, Advanced Education Seminars, the American Warehouse Association, American Payroll Managers Association, and Associated Builders and Contractors.

Since 1978, Mr. Janowitz has taught the labor law class at the University of Missouri-Kansas City School of Law. He is a member of the American Bar Association's Labor and Employment Law Section and a member of the Section's NLRB Practice and Procedures Committee. He is past president of the Kansas City Metropolitan Bar Association's Labor and Employment Law Committee. Mr. Janowitz graduated from the City College of New York in 1964 and from the University of New Mexico School of Law in 1967.

Labor board losing a peacemaker

By Michael Yablonski
Labor Writer

As the regional attorney for the Kansas City office of the National Labor Relations Board for the last three years, Robert Janowitz has been one of the key people keeping the peace between employees, unions and employers throughout Kansas, Nebraska and the western half of Missouri.

For Janowitz, working for the labor board encompasses more than just protecting the rights of employees to conduct union activity or the rights of management against illegal union actions. The labor board, he said, also stands as a barrier against "industrial chaos."

Preserving industrial peace by enforcing the National Labor Relations Act often has been a thankless job, Janowitz said, and after 11 years with the labor board he has decided to leave federal employment for private practice.

"It is not uncommon for us to get blasted from both sides," Janowitz said as he reflected on his years of dealing with labor disputes.

In one sense, Janowitz likens the job to that of a baseball umpire, the man nobody likes, but in another sense he found the work challenging because it offered attorneys the opportunity to work both as investigator and prosecutor.

Robert Janowitz

"A large part of our work is determining what motivated (the person charged with a labor act violation) to do what he did," he said. "It involves a unique investigative technique. You have to be sensitive to personalities. You have to be sensitive to the objective facts and you have to dig."

The general public often sees the labor board as an arbitrator or mediator of labor disputes, but most cases before the board are resolved administratively before going to a hearing, and even then the cases are not marked with the courtroom drama sometimes found in civil or criminal trials, Janowitz said.

Although the labor board deals in only one small segment in the wide area of labor law, Janowitz tells the students in a class he teaches at the University of Missouri-Kansas City Law School that the National Relations Labor Board is at the center of the labor movement.

"You're where the action is," he said. "The board is really where it's at in determining what workers are going to be represented by a union because we control the procedure."

Names & faces

Janowitz jabs with polished rhetoric and open law volumes

Management's Negotiator

Robert J. Janowitz's role in labor law is to keep management out of hot water with labor.

Janowitz, 37, appears tough as a prize fighter, solid but quick on his feet as he moves about his office, ready to go the limit with his opponents, usually employees of management he represents. But he doesn't bound from his corner punching or dancing circles in the legal ring; his style is that of a seasoned, well-trained competitor jabbing with polished rhetoric and open law volumes, while counseling management or downing employees to the canvas for the full count.

A native New Yorker and a 1967 graduate of the University of New Mexico at Albuquerque school of law, Janowitz is a partner in the law firm of Roan & Grossman, which specializes in representing employers in all matters involving labor law and employment rights. According to Janowitz, the firm is the only law firm in this area that deals exclusively with labor relations.

"Our firm's product is fairly new," he said. "We can service our clients by being more in tune with a specialized area of law. Most of our clients, which include virtually every segment of business, have in-house counsel or other attorneys on retainers, but they occassionally need the expertise of our firm."

Janowitz sees his role as far different from jumping into a legal dispute between an employer and employee and giving the employee a good black eye. "We have a very pragmatic approach here," he said. "We would like to educate management as much as we can on the current employee laws and how they can act with labor in regard to those laws. We work closely with the laws covering OSHA, Workmen's Compensation, wage and hour and collective bargaining. We would like to advise people as to when potential problems exist. One of the banes of the legal profession is that we get called in too late to advise and then we have a whole new ball game." That new ball game means either intensive arbitration or battles in federal courts.

One of Janowitz's opponents at times is the National Labor Relations Board, the nation's primary regulatory agency in the area of labor management disputes. It is also an opponent he knows quite well.

Janowitz served as the regional attorney of the NLRB in Kansas City prior to joining Roan & Grossman. He was one of the key peacemakers between employees, unions and employers throughout the western half of Missouri, Kansas and Nebraska.

He first joined the NLRB in 1968 after two years in private practice in New York. His work entailed being a "watch dog," ensuring that union elections were conducted fairly and the collective bargaining process were free from strife. "Our goal was to maintain a stable environment in labor relations," he said.

His work with the NLRB took him to Seattle and Pittsburgh before he was appointed in 1977 to the Kansas City post. At 33, Janowitz was the youngest regional attorney ever appointed by the NLRB.

In late 1980 Janowitz elected to return to private practice with Roan & Grossman. "As chief legal officer of the NLRB, my duties included more administrative activities and duties than those of an actual practicing lawyer. As my staff grew to the point where I had 32 professional people on salary, my administrative responsibilities took a great deal of my time away from practicing law. I wanted to get back into actual practice." Janowitz also sees the purse of the private sector lawyer as heavier than the NLRB's.

At Roan & Grossman, Janowitz feels he is doing as much to stabilize labor relations as the NLRB or other regulatory agencies are. "We are even doing it better, especially by educating management in the ways they can communicate with their employees."

STATEMENT OF LINDELL LEE, BUSINESS MANAGER
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NO. 124

Before the Sub-committee on Oversights and Investigations of the Committee on Economic and Education Opportunities

U.S. House of Representatives

Overland Park, Kansas April 12, 1996.

My name is Lindell Lee and I have been an electrician in the Kansas City area for 27 years. In June of 1993, the 2000 electricians who are members of the IBEW Local No. 124 elected me through the democratic process to represent them as their business manager. I wish to thank this sub-committee for the opportunity to provide information and express my views on the subject of "salting." IBEW Local No. 124 represents approximately 2000 workers in the construction industry in both western Missouri and eastern Kansas. IBEW Local No. 124 is located in Kansas City, Missouri.

As business manager of Local No. 124 my responsibilities are varied. I negotiate collective bargaining agreements on behalf of our members, administer those collective bargaining agreements, handle grievance and otherwise represent working electricians to the best of my ability. The members of IBEW Local No. 124 have entrusted me with these responsibilities through a free and democratic vote. The Congress of the United States, through the passage of various laws, has charged me with the responsibility of representing these electricians fairly. I take all of these responsibilities very seriously.

Along with these other responsibilities, these 2000 working men and women have elected me to attempt to organize unorganized electricians in the geographical jurisdiction of Local No. 124. For over sixty years, the Congress of the United States has guaranteed the rights of working men and women to freely engage in organizing activity. Both my local and the International Brotherhood of Electrical Workers have freely embraced the rights that the elected officials of our country have given us. I consider the current bill pending before this committee to be a direct assault on the rights of working men and women to freely organize themselves and others into unions.

I wish to take this opportunity to specifically adopt the statement of my International President John J. Barry given to this committee on October 31, 1995, his accompanying statements and all the attachments to that statement. I believe International President Barry has succinctly and accurately portrayed the importance of the continued right to organize through the use of "salting" techniques. I would like to also take this opportunity to express some of the specific concerns of Local No. 124.

I have reviewed the pending bill and a number of the statements presented by non-union contractors to this committee. As you are aware, a number of these statements portray "salting" efforts as having the goal of driving non-union contractors out of business by violence, sabotage, or decreased productivity. I am frankly shocked and amazed to learn of these allegations. All of these tactics and goals are contrary of the goals of IBEW Local No.

124. Our goals are to organize the unorganized employees in the electrical industry.

We as a labor union are prohibited from discriminating against electricians who are non-union. Likewise, non-union employers are prohibited from discriminating against our members. Local No. 124 and its members have simply sought, through "salting" efforts to be employed by non-union employers, to do a good days work for good days pay, in an attempt to organize those non-union employers' employees during non-work hours. This is what "salting" means.

Contrary, to what some of this committee has heard, there are many contractors organized by IBEW Local No. 124 that are happy. For example, I have attached to this statement as Exhibit A, a copy of a newspaper article appearing in a local paper regarding one of those contractors. I would also like to take this opportunity to quote briefly from what Mr. McKarnin, General Manager of Pioneer Electric, stated in that newspaper article. Mr. McKarnin stated, and I quote:

> "I have worked very closely with IBEW 124 since our employees voted to be represented by the IBEW about five years ago. *** Middle class America was created by unions. Non-union wage standards are set by unions. Most people don't realize that. Most people think that the employer will automatically take care of employees. *** Other reasons I support the union is because of the federal laws they have fought for. *** Look at your air pollution and water pollution, OSHA safety programs. These and other protections were lobbied for and fought for in Washington, D.C. by unions. That is a fact. *** Federal labor laws are like stoplights and speed limits. *** Somebody has to set the standard."

I fully endorse these statements of contractor McKarnin from Pioneer Electric Company. Over sixty years ago, Congress set these

standards. Now, this committee contemplates unfairly removing these standards.

This committee needs to realize that it is dealing with the rights of the working men and women of this country. IBEW Local No. 124 has taken in 246 members who it has organized through "salting" campaigns. Those men and women now enjoy a better standard of living as the result of being members of IBEW Local No. 124. Those men and women all enjoy a living wage rate, allowing them to be productive members of American society. It is these middle class Americans who are the backbone of the taxes paid to support your salaries. These men and women now enjoy pension benefits, and health and welfare benefits that they never enjoyed before. These men and women were not coerced into becoming members of IBEW Local No. 124. IBEW Local No. 124 showed them a better way for their family and they have wholeheartedly embraced a better standard of living.

Attached to this statement as Exhibit B are the statements of several of those people. I would like to read you some short excerpts from some of those letters.

> "I have received several raises since I joined SKCE [South Kansas City Electric] but none until the union organizer (SALT) showed up."
>
> -Richard Brockman

> "Did I make the right choice to join Local 124 IBEW" You bet I did and would do it again."
>
> -Anthony Galate, Jr.
> South Kansas City Electric
> Employee

> "I have been with IBEW Local Union 124 now for only six months, however, I have already seen the benefits afforded me by becoming a union member and I am finally excited about my future."
>
> -Mark Bates

I would like to further point out that all of the tactics employers accuse unions of engaging in in connection with "salting" campaigns which this committee has heard about are already unlawful. It is unlawful for unions to engage in violence. It is unlawful for unions to engage in sabotage. It is unlawful for unions to intentionally attempt to reduce an employer's productivity. Employers currently have adequate protection under the law to protect them from all of these types of activities.

Moreover, Local No. 124 has never employed such activity. Over the years that we have been engaged in organizing campaigns through salting efforts, we have only once been accused of any activity that even resembles this type of unlawful conduct. In March 1995, the local chapter of the Associated Building Contractors accused the local building trades, along with IBEW Local No. 124, of engaging in trespass. After a thorough investigation, Region 17 of the National Labor Relations Board dismissed those charges. As was their right, the Associated Building Contractors appealed this decision to the National Labor Relations Board's Office of Appeals. After careful consideration by the Office of Appeals, that appeal was dismissed. In short, the ABC accused us of wrong doing, we had our day in court before an impartial administrative agency and we were vindicated.

I ask this committee to consider one very important issue. If in fact unions were engaged in such widespread violations of the law as portrayed by the non-union contractors in connection with these hearings, why haven't lawsuits been filed and unfair labor practices been filed to back-up these hollow allegations? The reason being is that these are simply hollow allegations with no facts to support them.

In closing, we the 2000 voting men and women of IBEW Local No. 124 ask only one thing. To be treated fairly and be allowed to continue to engage in lawful organizing activities. Accordingly, I would ask this committee to not recommend the passage of HR 32-11.

The Labor Times

Serving the Working Men and Women of Greater Kansas City

IBEW 124 Ties Good Business, Contractor Says

By Tom Bogdon

One of the active boosters of recruiting reforms within International Brotherhood of Electrical Workers Local 124 has been Carl McKarnin, general manager of the power plant division of Pioneer Electric Co. That is not too surprising considering McKarnin's own experience as a young electrician fresh out of the Navy and seeking a career in electrical work.

"I talked to the girl working in the front office (of the union)," McKarnin said in a recent interview. "She said she was sorry that no one got any farther without a sponsor. It was a closed-door union. I didn't know anyone at the time to sponsor me. I had no choice but to seek out other unions or go to a non-union shop.

"And it wasn't just the IBEW,"

Carl McKarnin

McKarnin continued. "All the skilled trades were like that. If you didn't have a relative or friend in the union for a sponsor, you didn't get in."

Local 124 shunned McKarnin back in 1964, but the exclusionary policies in effect then did not slow McKarnin very much. He went on to build one of the largest and most successful electrical contracting firms in the metropolitan area. And five years ago McKarnin signed an agreement affiliating his firm with Local 124.

Now McKarnin assists actively in the aggressive efforts led by Local 124 Business Manager Lindell Lee to organize the unorganized sectors of the Kansas City electrical industry. McKarnin is fighting alongside Lee and other Local 124 members to eliminate vestiges of the "Country Club" atmosphere that for 30 years contributed to a steep decline, both locally and nationally, in the market share of electricians represented by the IBEW.

Also like Lee, McKarnin does not dismiss the competitive threat to growth of the unionized sector of the electrical industry posed by such non-union contractors as South Kansas City Electric (SKCE), which is currently the target of a Local 124 organizing effort.

"Unions have got a hard fight on their hands," McKarnin said. "There are several very good non-union companies out there that have good employees working for them. People like Lindell Lee recognize that and are moving aggressively to do something about it.

"An example of that is the employees working for us (Pioneer) who came out of SKCE," McKarnin continued. "We've taken in five of them. I believe that's correct. One of them, Tony Galate, has been with us four years and is a general foreman. He's running the new Federal Courthouse project Downtown for us now. That's the largest single contract the company has now or has ever had."

McKarnin was born 52 years ago in Liberty and grew up in the village of Randolph in Clay County. He attended North Kansas City High School, but dropped out when he got a job in a greenhouse, later working for National Bellas Hess and Pioneer Bag Co. He joined the Navy in 1960 for a four-year hitch, and was stationed on the aircraft carrier Lexington.

McKarnin trained ashore as an electrician while the Lexington was docked in San Diego. He described his 14-week Navy training course in electrical work as "excellent." His duties aboard the Lexington included maintaining the carrier's flight deck lighting system.

Upon returning to Kansas City and, b- ing unable to join IBEW Local 12 McKarnin went to a North Kansas City bar to open an account. McKarnin said the bar president asked him what he did for a li- ing, and that he replied he was unemploye and looking for a job as an electrician. Th banker recommended that McKarnin talk Gabe Brull at Clayco Electric.

McKarnin was hired at Clayco, who employees were represented by District of the United Mine Workers, serving a fou year apprenticeship with that organizatio which later merged with the United Stee workers of America. McKarnin, who o tained a GED certificate in the Navy, al studied electronics for two years at the Ce tral Technical Institute and electrical eng neering for two years at the Finley Engineer ing College.

In 1969, McKarnin worked nine mont at Evans Electric with a temporary IBE Local 124 ticket, helping to build a runw. at Kansas City International Airport and t nearby Trans World Airlines office buildin He also served six years as president of t 200-member Steelworker Local 1443 which at that time represented electrician

"It's interesting," McKarnin observe "I've worked so closely with IBEW 124, b I was never a card-holding member."

In 1984, McKarnin and his wife Patric bought Pioneer Electric, which had be founded in 1977. In 1994, Pioneer was so to Duane Russell, and McKarnin signed five-year contract to remain with the co pany as general manager for the power pla division.

In addition to other types of work, Pi neer servicesfour Kansas City Power Light Co. power plants, the Board of Publ Utilities' Quindaro plant, the Thomas H Power Plant north of Columbia, Mo., a other plants in Denver, Sioux City, Io among others.

McKarnin said Pioneer currently employs about 160 electricians, including about 90 IBEW 124 members and others from Local 226 in Topeka. McKarnin said Pioneer's employment peaked at about 300 last year, including office and craft personnel.

"I have worked very closely with IBEW 124 since our employees voted to be represented by the IBEW about five years ago," McKarnin said. "Middle class America was created by the unions. Non-union wage standards are set by the unions. Most people don't realize that. Most people think the employer will automatically take care of the employees.

"But if you travel outside this country to anywhere there is no union representation, you have two classes of people—the extremely rich and the extremely poor." McKarnin continued. "The middle class of any country is created by the unions. And non-union wages are set by the unions. Usually the non-union shops pay just a little bit less. But they don't pay any more than they have to.

"It also should be noted that the middle class—created by unions—pays most of the taxes that have set the high standard of life in this country that is envied by most of the world." McKarnin said.

"Other reasons I support the union is because of the federal laws they have fought for," McKarnin said. "Look at your air pollution and water pollution laws, at OSHA safety programs. These and other protections were lobbied for and fought for in Washington D.C. by unions. That's a fact.

"Federal labor laws are like stop lights and speed limits," McKarnin said. "Somebody has to set the standard. There are people out there who will kill other people. Maybe they have no respect for human life and human rights."

McKarnin, who has assisted in Local 124's organizing efforts at the employer level and also by speaking to prospective union members, was asked if this is because he is an enlightened boss or simply because it is good business.

"It's just something I believe in," McKarnin replied. "I believe very strongly in union representation and that would be my attitude whether or not I owned a company. I buy American-made clothes when I can. Most of my clothes have a union label.

"Unfortunately some union members don't do the same thing, or you wouldn't have the unfair competition from foreign products. A good example is a union member who drives to work in a foreign vehicle. As owner of the company I have discouraged that and still do. It's not good business."

McKarnin said he has been involved with Lindell Lee and Local 124 organizers Chris Heegn and Jim Beem in the effort to organize SKCE.

"One employee asked me why doesn't the owner of SKCE want to go union," McKarnin said. "Simply stated, the reason SKCE employees should vote to go union are all the reasons why the employer does not go union.

"The employer does not want to pay a competitive wage and benefit package," McKarnin said. "And another thing is young people want the cash money in their pocket right away. Retirement is a lifetime away for them. They don't care about costly benefits such as health insurance, life insurance and retirement planning.

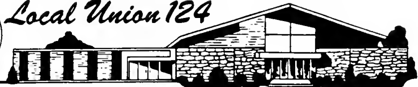
"People interested in joining the union have been with the company 10 or 15 years," McKarnin continued. "They've started thinking about the future and realize why they would benefit from joining the union."

McKarnin said that while employees benefit from union membership, so does the company.

"In the case of Pioneer Electric, the company believes we benefit from union representation," McKarnin said. "When we went IBEW, we had 25 employees. As I said, we peaked out last year at 300. So we have seen some benefits from IBEW affiliation in the availability of skilled manpower. We can't survive without the union, and the union can't survive without the company. That's the bottom line."

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

IBEW Local Union 124



April 10. 1996

Dear Chairman:

As I understand, the House and Oversight and Investigations Sub-Committee of the Economic and Education Opportunities Committee held a hearing in an effort to gather evidence to justify an attempt to revise current labor laws that protect all workers' rights to join, form and assist labor organizations. Some of the attention of these hearings has been focused on whether or not union representatives shall be recognized under the NLRA when they are engaged in an organizing technique commonly referred to as "salting."

As you are aware, on November 28. 1995, the Supreme Court, in a unanimous ruling, in a case from Minnesota, reversed a Federal Appeals Court ruling that said paid union organizers do not qualify for legal protection as employees, as defined by the NLRA. Quoted from the Associated Press, "Can a worker be a company's "employee"... if. at the same time, a union pays that worker to help the union organize the company?" Justice Stephen G. Breyer wrote for the court. "We agree with the National Labor Relations Board that the answer is 'yes,' he said.

At these congressional hearings these employers are asking for your help and merely alleging unfair union activities. In attacking the very heart and purpose of the NLRA itself. these unscrupulous employers. in my opinion. **have committed the ultimate unfair labor practice by interfering with, restraining, and coercing employees, at the highest level--the Congress of these United States--** because the employees sought to exercise their legal rights.

Please find enclosed letters written by organized workers and "salts." Let these letters speak for themselves.

Sincerely.

Christopher Heegn
Director of Organizing

enclosures
CH:lla
opeiu320

PO BOX 8727 • 301 EAST 103RD TERRACE • KANSAS CITY. MISSOURI 64114 • 816-942-7500 • FAX 816-942-8805

→ The plight of the American workers right have always been attacked but none so heavily as recently by the 104th Congress.

→ Being a recently organized worker for IBEW I have now had the opportunity to see how "Special Interest Groups" operate to erode the rights of all American workers organized and non-organized. I became an electrician after working a decade in the managerial and supervisory positions in the Grain Industry. I thought that being successful meant having a title by my name. It was the exact opposite! I.E., long demanding days, working weekends, never being home. The stress that I had become immune to, my wife and children didn't. Their complaints fell on deaf ears. I was always "in fear" for my job knowing there was a new guy waiting in the "wings" for my ~~job~~ position. I know for a fact, is how I got my job, waiting for someone to step on their toes. At that point I had to do something different, a change to get a trade.

The following letter is quite lengthy but just a fraction of all the violation — I have witnessed in the merit shop system.

I was unaware at that time that there was [illegible]

to Williams Electric, an ABC merit shop They were more than willing to hire me as long as I paid for my own schooling. I thought that this was Standard practice afterall I was going to get a "trade" out of it. During my 2nd year of apprenticeship I was running work for $7.50 an hour. My 1st project was the U.S. Post Office, Platte City, Missouri I had a Small crew, some older making $10.00 an hour and some younger making $5.00 an hour. None of which were serving an apprenticeship program or possessed a journeyman card. They were just hired off the streets as electricians. Just before the completion of the project I had a "union organizer" approach me but I had been warned by my boss," to ignore them", "they would cause you problems". So I did that for I was in fear of compromising my position I blew him off like the boss said but the others didn't. They agreed to meet him after work and they were informed of several benefits that they were entitled. For Example prevailing wage under the Davis Bacon Act and others that I would never had known about if it hadn't been for the organizer This is something that the wage and hour board if funded right could have informed me. But being loyal to my boss with the grief this was COST NG him, a couple of us worked out a deal to pay him back. The things that men have to do for job security!) After working for almost 5 years with this Contractor and witnessing several violations on other Government jobs and ~~[illegible]~~ successful private contracts the owner sold his company unexpectedly. I went on to other contractors one of which is South Kansas City Electric, (SKCE) which I am presently employed with. They had a reputation as being a "tough" company to work for but very successful. Besides they

I was hired as a foreman at $13.00 an hour to run projects. After 1 year you qualify for the 401K and profit sharing program. After 2 years you get holiday and vacation time what more could you ask for. After 10 years with the ABC Merit Shop Program and approaching 40 years old I have acquired approximately $6,000.00 to my retirement fund. Not being able to work 2 jobs because of company policies it looks like I will have a great retirement (working until the day I die). I have received several raises since I joined SKCE but none until the union organizer (SALTS) showed up. Since then I have gotten a $3.50 an hour. Running several projects at one time is "Standard Practice" in the merit shop system. One of my projects they had hired a union organizer. He showed up on my project just being hired off the street. There was something different about him. His appearance was neat and clean, he had confidence in himself and his work habits were of high quality. I had never experienced anything like this before in all my years in the Merit Shop system. A Qualified Electrician! I had heard about all the bad things salts and organizers and the terrible things they can do from the other superintendents of the company. I had my defense up about him but I was ~~[illegible]~~ too busy running other projects that I couldnt properly supervise him. Everything that I had asked him ~~to do~~ he completed. He helped other members of the crew, younger and older with tasks of their own. I was a licensed Journeyman and Foreman of the project and he was showing me things that had never been covered with me in any of the classes of ABC. Being a loyal Merit Shop Man I resisted any comments of his beliefs of being organized. To be seen talking to an organizer was sure termination or at the least a demotion to the "shovel brigade". To dig a trench with a hand shovel like had happened to other men in the

that title by my name again you get another 50¢ an hour. Still working 10-12 hour days at the time, going home reading blueprints at night to be prepared for the next day with the same stress on wife and no quality time for the kids I blew him off like before but not before he handed me some literature about the union. Not realizing I had my future in my hands without reading it I threw it on the floorboard of my truck and continued working on my project. With the help of the salt and an apprentice we got caught up on the project which gave me time to read the literature I glanced over it and was amazed at the difference in wages and benefits some of which was too much to comprehend. Still being loyal to my company it took 6 months to break my ties with the merit shop way. At no time was I coerced, threatened or intimidated into joining the union. In fact if anything I had always felt this way by my boss, that is his tactic the merit shop tactic not the union. I made my decision which is the right choice of my own free will and I would do it all over again but a whole lot sooner!

Signed,
Richard G Brockman
1311 McHenry
Indep Mo. 64057

[signature]

November 24, 1995

Economic and Education Opportunities Committee
House Oversight and Investigations Subcommittee

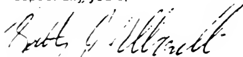
Dear Committee Chairman,

Allow me to introduce myself, Keith J. Albarelli, of Blue Springs, Missouri. I decided to become an electrician after working a summer job as a helper in 1971. After successfully completing a four year apprentice training school run bv the State of Vermont, I received a journeyman's license in 1976. During this five year period I worked for a nonunion electrical contractor.

After moving to the Kansas City, MO area in 1976 I immediately became employed by Al's Electric Service, Inc. This employer was truly a pleasure to work for, but as a nonunion contractor, the wages and fringe benefits were not sufficient to raise a family in the tradition of the American Dream. In 1979, three other journeymen and myself contacted IBEW Local 124 concerning our becoming union members. After sitting for a journeyman's exam and having the benefits and responsibilities of a union electrician explained to us, we were inducted as full members of IBEW Local 124. During this process I was treated fairly, honestly, and allowed to pursue a dignified lifestyle for my family.

Of all the choices I've made, none have hac a more positive impact on my life than joining IBEW Local 124. In 1990 I was a cofounder of Heartland Electric Corporation, an IBEW affiliated electrical contractor. Our all union workforce at Heartland enjoys excellent wages health insurance, pensions, safe working conditions, and the opportunity for their families to lead a dignified lifestyle. This fact is the one I am most proud of as an employer and a union member. I firmly believe that this form of collective bargaining serves the best interests of the employee, employer, and customer.

Respectfully yours,



Keith J Albarelli

November 22, 1995

The 104th Congress
The House Oversight and Investigation Subcommittee of
Economic and Education Opportunities Committee

To whom it may concern,

Please let me take this opportunity to introduce myself. I am Anthony J. Galate, Jr., and live at 8261 N. Revere, Kansas City, MO.

Recently, I heard of a hearing that was held by the above mentioned subcommittee regarding labor laws. I started in the electrical field in September of 1977, and have 18 years experience in the trade.

In 1990, I was contacted by Phil Nichols, the Local 124 IBEW organizer. I was working for South Kansas City Electric at that time, a "merit shop". I was job foreman for SKCE on their larger projects and had been for five years. Let me tell you my opinion of a merit shop. You are a good foreman/electrician in the merit shop's eyes if: 1), they like you, 2) if you make them money, 3), if you keep people who work for you scared of their jobs, and 4), if you keep people who work for you thinking that wages, benefits and conditions are not important.

In my opinion, things such as wages, benefits and conditions are what makes America what America all around the world is known for. The constitution states "all men are created equal". In the merit shop's eyes, not all men are created equal.

One of the best opportunities for myself and family was when the Local 124 organizer introduced himself to me in 1990. That day I felt some people still cared about the workers of America. Not once in the approximate 11 months did the organizer threaten me or intimidate me. He explained what the IBEW was all about. He even came to my house and explained things to my family. And he always showed respect to me and my family.

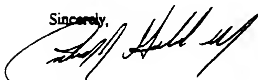
On November 1, 1991, I felt like a mountain was lifted from my shoulders when my family and I made the decision to join Local 124 IBEW. Here are the reasons why: 1) health insurance, not only for me but my whole family, 2) pension - security of a future when I retire, 3) wages - I now have the opportunity to do extra things for my family and plan for my children's college, 4) I don't have to bear the guilt of a man with three kids coming to me and saying, "I am only making $7.50 and hour and need more money" and having to tell him the next day the shop said after six months you wil get 50 cents more an hour, 5) I don't have the guilt of asking men to work over-time with no compensation or laying off a man because he didn't go to the shop and help them relocate to a new building on his day off.

The 104th Congress
The House Oversight and Investigation Subcommittee of
Economic and Education Opportunities Committee
page 2

So, in conclusion, did I make the right choice to join Local 124 IBEW? You bet I did and would do it again. As the saying goes, "In a New York minute" I would do it again.

I wish I could talk to each and everyone of you one on one. You would see my honesty and sincerity in my eyes of what I have said in this letter. So please don't take my children's right away to join, form or assist labor organizations. Give people a good life and a good future. That's what America is all about.

Sincerely,



Anthony J. Galate, Jr.

11-21-95

Dear Chairman,

My Name is Arthur R. Salmon. I have Lived in Kansas City for 15 years. After Graduation from the Electronics Institute of Kansas City in 1985 when Electronics Jobs were scarce and low paying ($4-5.00/HR.) I became a non-union electrician's Helper. Starting pay was $6.50/HR. I have been an Electrician for 10 years. I Graduated from the non-union ABC school in 1990. Two weeks After Getting my Bleck Journeyman's Card in July of 1990, I was Laid off 2 Weeks Later.

I was Contacted by a Union "Salt" Late in 1994 While Working for a non-union Shop, South Kansas City Electric, Inc. SKCE does not pay good wages. I was told I would get a Raise in Six months. After 8 months, I asked for a Raise. I was told by the Vice-President I didn't deserve a Raise, Because I was "Book. Smart, I over-Engineer things, and I asked to many questions", so they would not give me a Raise. My Group Insurance Cost me $92.00

a week. After I left SKCE, I was offered the same insurance coverage by the same company for approximately 70% less premium. No, I was not happy there.

The union "SALT" contacted me because he said he had been watching me and I did good work and was a knowledgeable electrician. He said the union wanted craftsmen like me and he urged me to contact the union hall. Subsequently I was sworn in Dec. 14, 1994.

After speaking at length with Mr. Jim [illegible] and Chris Hegan I elected to take the union test and make application to join Local 124. The main reason I joined was the better wages better benifits and the better education afforded by the union. I am currently taking the master electricians course offerd by the Local 124.

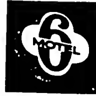
I do not see the willful disregard for the National Electric Code here

IN the UNION that I SAW IN NON-UNION shops.

IN CONCLUSION I FEEL I have made the best Possible CHOICE FOR MYSELF AND MY FAMILY. I ONLY REGRET I didn't do it many years earlier.

SINCERELY,

Arthur R. Salmon



My Name is Carl R Burbank Sr. I live in Calif.
2040-N-PREISKER LN.
SANTA MARIA CA. 93454-1153, I have been a electrician for 37 years. I am getting ready to retire from the trade.

I was contacted by the union in 1952 oct. or Nov. to become a union member and I did. In 1958 I became, after working 5 yr. as a Stockman or wireman, I was working for Bachman Electric Co. It was one of the best places to work that I worked at.

When the union contacted me to become a member. I felt that we knew one another for a long time not like we just met. No. Hard Knock selling, they were pleasant and very respectful of my feelings.

The main reason I became a union-member the benefits were grate, good Ins. & pension plan fair wages.

Every contractor I have worked for was fair and reasonable about work.

If I was 35 or 40 yr. younger and starting over I would join the union by going to them and asking.

Yours Truly
Carl R. Burbank

MOTEL 6 Operating L.P. 1616 Highway 95 Bullhead City AZ 86442 602 753 1002 FAX 602 763 3868

ACCOR

To whom it may concern

My name is Ken Bunney
I reside in Louisburg Kansas.
I have been employed in the electrical
field for the last Seventeen years.
I became interested in the electrical
field because many of my family
members were employed in the trade
It has come to my attention that
the rights of the American Worker to
organize has become an issue of debate.
I feel it is my right as a newly
organized member of the IBEW 124,
that I express my position on this
matter.

My first contact with a Union
member occured in September of 1994.
I was employed by Mi-Linn Electric,
a open shop. At this time I was Content
with working condition and my rate
of pay. After having several insightful
discussions with Union members, It
became quite clear to me that what
the Union had to offer was the very
thing that I personally have tried to
~~p~~ pursue throughout my electrical
career. to no avail. The pride of
Union values extend from the excellence
of craftmanship, comradery:

workers rights and benifits, also the undetermined committment of the community and charitabl causes as well.

After careful consideration and more deliberation, I found that the Union would be the best choice for myself and my family. Therefore I chose to become apart of the I.B.E.W. 124, and was sworn in as a member September 13th 1995.

Throughout my career as an electrician, I have experienced many unjust working conditions, wages, and lack of benefits. Also a total lack disregard for individual rights and privileges.

I feel that my decision to enter the Union was the correct choice to make. My only regret is that I wasn't informed much earlier in my career about the benefits of being a Union member

Respectfully yours

Ken Bonney

TO WHOM IT MAY CONCERN

MY NAME IS DOUG PRATHER
I LIVE IN GRAIN VALLEY, MISSOURI
I'VE BEEN AN ELECTRICIAN
FOR 6 YEARS

I WAS CONTACTED BY
JIM BEEM, THE DIRECTOR OF
ORGANIZING FOR THE INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL UNION # 124, IN DECEMBER
OF 1994 WHILE WORKING AT
WESTHUES ELECTRIC IN RAYTOWN,
MISSOURI. I WAS UNHAPPY WITH
THE DECLINING WORK CONDITIONS,
AS WELL AS, THE DECREASE IN
BENEFITS AND FAILURE IN
OBTAINING WAGE RAISES.

TO WHOM IT MAY CONCERN:

My Name is Terry McGuire. I have been a resident of Lee's Summit, Missouri for 30 years. I became an electrician about 25 years ago after being Trained in the Navy to be an Electronics Technician. It was a natural passage to civilian Life to pursue a trade which would utilize that training and Schooling.

I Contacted International Brotherhood of Electrical Workers L.U. #124 while working for Mi-Linn Electric because I was very unhappy about broken promises of higher wages, no health benefits and no pension plan. I couldnt afford to go out and get these benefits because of low pay scale. These non-union contractors treat their employees with Absoluted no dignity or Respect.

The Organizers of L.U. #124 explained wage, benefit and pension package to me and helped me find suitable contractor

for me to work for, with whom I'm satisfied, and I am still with this contractor two years later. I was free to make up my mind without any sort of pressure or coercion.

My main reason for joining the Union was because at age forty, pension and health benefits are becoming extremely important to me.

I feel that, after two years, joining the union was one of the best things that has happened for me in my life. My only regret is that I didn't make this transition years ago.

Thank you
Respectfully

Terry McGuire

Attention: Economic and Education Opportunities Committee

My name is David Baldridge and I live in Olathe, Kansas. I have been an electrician for 20 years.

While working for Schultz Bros. Electric, I began to notice that the benefits were starting to be taken away. First, my family insurance plan was starting to come out of my check, then the one week paid vacation. When I asked about the family insurance I was given a increase in pay to offset the cost; when the subject of a vacation was discussed, I was told that to get a paid vacation, I would have to work hours and let them build up to get paid for the week I took off. After working for a company for nearly five years and loosing the few benefits we had agreed on at my first interview, I decided to contact the local Union.

I first called Local Union 124 on or about 8/1/94 and talked briefly on the phone to Mr. Jim Beem. We sat up an appointment a few days later and to my surprise I couldn't believe how well I was treated the first time we met. Unlike all the horror stories I had heard of being treated like a second class citizen, we talked for hours like it was minutes. Jim, Lindell, + Chris made me feel very welcome, treated me with mutual respect, and showed me the dignity that all people deserve. At that moment, I decided that I would give my two weeks notice to Schultz Bros. Electric.

Since joining the union, I now have insurance for my wife and three sons, the working conditions are such that I can now afford not to have to work weekends and overtime to make ends meet, and upon retirement I will have more than Social Security to live on. While at Schultz Bros., I always heard about a retirement plan, how many applications for work

he had come into the office and that they were working on an employee handbook. But after five years of <u>hearing</u> and not seeing a change for the better, I joined Local Union 124 and would do it all over again.

Now I don't work extra hours for a vacation and then not get paid. I don't work 10 and 12 hour days at straight time and I love it!

Sincerely

David Baldridge

To the Committee,

My name is Gary Bly, a member of Local Union 124 IBEW. I live in the greater Kansas City area, and have been a Union electrician 25 years. Prior to my affiliation with Local 124, I was a member of the railroad union and the United Food and Commercial Workers. As you can see, union membership has been my stalwart my entire working career.

It is because of these unions that I have received fair wages and benefits for my labors, thus being able to pay taxes, raise a family, buy a home and live the American dream.

When it came to my attention that my local was trying to organize the unfortunate non-union electricians in our area, I jumped on the wagon to try and help

Working in a non-union shop opened my eyes to the unfair advantages merit shops place on their employees. Arriving at work early or staying late after working hours to fill the needs of the job for the next day, on your own time, and without pay, was just one of the embarrassment put on their employees. Unusual and demanding hours to keep up benefits without having to self-contribute to keep those benefits was another embarrassment I hadn't had to suffer prior.

Enjoyment in organizing was telling those less fortunate how our overtime worked, the relationship of the union with the community, the better pay and benefits and having the security of the union since the merit shop hired the very young and I saw no minorities, elderly, or females in the merit shop of which I worked.

Will I keep organizing? You bet! A fair wage for a fair days work is something to which we all strive. To inform the uninformed, to bring security to ones life, to allow a man a fair wage whether he works a Davis-Bacon job or not, speaks clearly of the right to organize.

Unions are needed and wanted, and to change our American philosophies will do no one any good now or in the future.

My hope is that this letter makes aware to the committee that to educate, train, organize and make known to those who don't know, that there is another way in the working world and that maybe the union way is the better way. It's still a mans right to decide on his own without fear of retribution.

Sincerely,

Gary Bly

November 25, 1995

Patrick Ferguson

29013 Ragar Road

Sedalia, MO 65301

Dear Committee,

I began working for Medallion Electric in 1978. I began as a helper and gradually learned the trade.

In April of 1993 I contacted Lindel Lee of Local Union #124. My employer, which was still Medallion Electric, had begun to get very choosy about the jobs he wanted to bid on for the past few years. Consequently, I was laid off quite often. The wages and benefits were good at this shop, but when there was no work there was no paycheck. When I met with Lindell Lee and Chris Heegan, they explained to me how the union worked, and the criteria I would have to meet to become a member. They answered the many questions I had, and told me that it was totally my decision to become union. They told me that if I decided to become a member they would help me transfer from a non-union employer to a union member. I decided to join the union because it offered the opportunity to work for different employers if the work ran out for your current employer. Also, they offered schooling in the area of electrical work you wanted to learn about. These advantages were not offered by my previous employer.

I've been in Local Union #124 going on two years. I strongly recommend that if any non-union electrician would have the opportunity to talk with union officials to do so. I have never

regretted making the move.

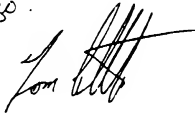
Thank-You,

Patrick Ferguson

20 November 1995

My name is Tom Costello. I moved to Kansas City five years ago from Fargo, North Dakota. I have been an electrician for 8 years. I was approached by the union local 124 in June of 95. At that time I was working for a non-organized shop, South Kansas City Electric. For the most part I can say I was happy at SKCE, except for the fact that I had noone looking out for my best interest and felt I should be paid a better wage for the work I was performing. My wages were below what my fellow electricians were making who were members of the IBEW. I felt my wages would be far less if not for the organizing efforts of the union. When I was approached in June of 95 by Jim Beem I was treated with the utmost respect. He respected my situation, I had been at SKCE for 3 years and this would be a hard decesion for me to make. I was never threatened or coerced

in making my decesion. I was told I could take all the time needed to make my decesion. My choice was made by my family & me with no pressure from the union. The reason I became union was to raise the standard of living for my family and to have the union look out for my family & fellow electricians best interest.
My experiences thus far have been nothing but the best and if I had the opportunity I would have joined eight years ago.



November 20 1995

Dear Mr. Chairman

I, Roger Thompson, of Local Union 124, Am writing a letter to stress the need of Unions! I live in Kansas City Missouri. I had 2 years of Vo-tech (Basic electricity) in High school, served 4 years in the Service, and have been working in K.C. as electrician since June of 90.

I was contacted by the Union in the Summer of 94. I was working for a non-Union Shop. They had no experienced help, the wage was about 40-45% less then my current wage and the benefits were not even comparable! After being contacted by the organizer, after discussing the union with relatives, co-workers, union members and friends, after a couple of months of consideration, my wife and I decided to see for ourselves.

We met with an organizer at the Hall. He showed us around, then simply laid out on the table what the union had to offer. From the wage to the Union dues, he went over everything

one by one! The organizaor was very professional, and treated us like we were guest in his house. Our experience with the Union has been nothing less than professional.

Working union is the Best decision I've ever made. Besides raising my standard of living, my wife is able to stay at home with our kids were she should be. I have good health and Dental Insurance, A great pension plan, and a better place to work!

In conclusion I think the Union is the greatest opportunity for the working class family. My only regrete is that I wasn't union 5 years ago. I would be more than willing to share my experience with the union with the Committee personally!

Sincerely
Roger Thompson

Electrician
Local 124

11/21/95

Kirk Vreeland
Gladstone Mo.

I Have been in the Electrical trade for 3 years and associated through Electronics for a total of 6 years. I changed into the Electrical Construction for several reasons. More variety & pay scale for a couple.

I was first [illegible] with the IBEW in Sept of 94. I was working for a Non-union Shop. Things there were going along pretty good for me. For my experience I felt I was getting a fair wage. I was going to school & had a few Benefits. So when the union approached me

I figured I didn't need them. After talking & having several items made clear I felt the union was for me. The Union provides security for its members. As a group we can ensure safer working conditions, fair wages, representation for the individual, medical & retirement benefits. The IBEW provides these things to the members. Unions have helped the working man since unions started. They give the member representation on the local level in the Construction Trade.

Kirk E. Vrieland

Gerald W. King
2704 Beverly Circle
Indep., Mo. 64052
816-461-5045

I became an Electrician around 1950, when a friend of mine needed some help on a small job. I liked the work & started going to classes to try & learn a trade. I worked for several non-union shops & they all had one thing in common, low starting wage. About the time you made decent money, the job was over & you had to start all over with a new company.

I was contacted by a union representative in early 1990, when I was working for Community Elect. Community Elect was a minority contractor that did mostly Government jobs, that were prevailing wage.

They had a retirement program where they took $3.00 an hour out of your check. We eventually got screwed out of all of that money. Since they paid prevailing wages they would make you work late or on Saturdays for free, lamping or lighting parties they called them.

When we were first contacted by a union organizer, he just commented he liked our work & had we ever thought about joining the union, well we had all thought about it & when the owners called us in for a vote, it was 100% in favor of joining.

I no longer work for Community Elect. but where ever I go to work, I'm assured of a fair wage & that my retirement & health insurance is being handled by people voted into office.

I've since been a member
of I.B.E.W. local 124
for five years, my only
regrets are that I didn't
start my electrical career
as a union member. Unions
are a much needed partner
in the work place.

Gerald W. King

November 22, 1995

Kevin J. Stone
16019 W 154th Terr.
Olathe, KS 66062

Chairman of the Committee
The House Oversight and Investigations
Subcommittee of the Economic and
Education Opportunities Committee

RE: Labor Unions

To whom is may concern:

My name is Kevin J. Stone. I live in Olathe, KS at 16109 W 154th Terr.. After graduating from high school I worked as an apprentice electrician for a man who 2 years later became my father-in-law. Traveling the country for 5 years for an electrical contractor was not good for a young marriage. Electricians in Norfolk, NE were paid less than $15.00 per hour after over 30 years of service. without any type of benefits. In order to be able to have steady work and not have to continue traveling my wife and I decided to relocate to Kansas City.

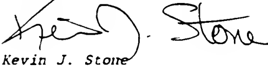
While working on Westport High School as an electrical foremen for a non-union shop on a basically otherwise union job site, I was approached by Phil Nichols from L.U. 124, Kansas City, MO. After introducing himself I was asked my thoughts on the union and I was listened to. Phil truly wanted to know what I thought, I talked of my concerns about working where I was around people who were hired simply because they answered an ad in the paper, not because they had specialized training in what can be a dangerous and/or deadly business. Long hours, understaffed crews, heavy work loads, old worn out tools, frayed cords, rickety high lifts, unsafe scaffolds, old trucks were every day dealings for me.

I always heard the same excuses when I asked for proper equipment, etc. "We don't have it in this job", "We cut hours to get this job. Would you rather sit home?", "Use what you got". I was not coerced or threatened by the Union. I was tossed a lifeline and pulled from disaster.

The only people I work with now are competent and well trained. The company I work for are all serious about safety because of union concerns. Good working conditions prevail. Problems are corrected. Together, with the same problems and concerns we are strong - as individuals we are doomed to a cut-throat existence.

My wife of 11 1/2 years and my baby girl, due in February, know I will be home safe after work and that is what a "union" is all about.

Sincerely,



Kevin J. Stone

April 10, 1996

My name is Matt Mapes, I have been a member of IBEW Local 124 for 20 years. In the past two years I have worked as a salt for five non-Union Electrical Contractors.

Since the name of the committee holding a hearing in Kansas City on April 12, 1996 is Economic and Educational Opportunities, I will address those two issues.

At every non Union contractor I worked for as a Union Salt, my take home wage was 30 to 50 percent less than the Union wage in this area. The effect of this is devastating on the economy. Not only is my buying power greatly deminished, the taxes I pay are affected proportionatly.

Another issue I feel of importance to the economy, is that none of the non Union contractors I worked for had Pension or health insurance benifits of any kind. This fact alone has created generations of workers that are unable to provide the security every working person deserve as well as creating a tremendous burden on all tax payer's who are left holding the bill for some form of welfare.

On the subject of education, many of the young workers I encountered while salting were not given an opportunity to participate in any type of formal training. What they did learn, they had to pick up on their own, on the job if there was time, and there seldom was.

The training programs that are available to unorganized workers appear to be sub-standard at best. I say that because many of the induvuals who have entered our apprentiship are unable to keep up, eventhough they had previous training through the A.B.C.

When workers are not compensated for their labor adequately enough so that they can afford to purchase the products or services they produce, they are working for a company that is destined to fail, so goes the economy and so goes the Country.

Sincerely
Matt Mapes

MY NAME IS CALVIN CARR, I LIVE IN BELTON MISSOURI. AND HAVE BEEN AN ELECTRICIAN FOR FIFTEEN YEARS

I WAS WORKING FOR K.C.MO. CONSTRUCTION SERVICES WHEN I WAS FIRST CONTACTED BY THE UNION THE BENIFITS AT KC.MO WERE NOT VERY GOOD. IT DIDN'T TAKE VERY MUCH TALKING FROM THE UNION FOR ME TO REALIZE WHERE I NEEDED TO BE. I WAS NOT COERCED, THREATEN, OR INTIMITADED IN ANY WAY, SHAPE OR FORM TO MAKE MY DECISION. I HAVE ALWAYS BEEN TEATED VERY WELL BY LOCAL 124 PEOPLE

THE MAIN REASONS WHY I JOINED THE UNION WERE BENEFITS, WORKING CONDITIONS, AND SECURITY FOR MY FUTURE, ALL THE THINGS THAT NON-UNION CONTRACTORS WANT TO TAKE AWAY.

THERE IS NO DOUBT IN MY MIND THAT I MADE THE RIGHT DECISION AND I DO BELIEVE THAT EVERYONE SHOULD HAVE THE RIGHT TO ORGANIZE

THANK YOU.

[illegible]

November 28, 1995

Chairman of the Economic and Education
Opportunities Committee

Sir:

My name is Robert Lynn Bricker, I live at Cross Timbers, MO.

In 1962 I enlisted in the U.S. Navy, went through the Electrician's school. I served 5 years (part in Vietnam) and was Honorable discharged. I have been an electrician for 32 years.

I December 1993 I hired on as foreman to Little Rock Electric in constructing a Tyson plant in Sedalia, MO.

In all my career I have never been on a job where there was so much drug usage, safety violations, and discrimination. We worked for two weeks in conditions so dusty over half of us were out sick, only then did they do anything about it.

On two different occasions I mentioned the drug usage to the Superintendent and the owner, nothing was done about it.

On another occasion I refused orders to put two men to work in some 13,500 volt switchgear because we did not have control of the breaker two miles away in the power company switch yard, or know if it was even locked out.

From then on I was ostracized and discriminated against also falsely accused, by a company that paid poor wages and no benefits. They wanted me to quit but after a discussion they laid me off.

Two weeks later I was contacted by Lindell Lee of IBEW 124. That was a phone call that changed my life. I now feel like I have a future. I work with people who have respect and professional courtesy for one another. I have a pension plan and we purchased our first new vehicle in 18 years. I no longer have to worry about being unfairly laid off, or working in unsafe conditions.

I only wish that this opportunity could have happened 20 years ago.

Sincerely,

Robert L. Bricker

MARK E. BATES

16004 W. 139th Terrace
Olathe, KS 66062-1944
(913) 782-8628

November 24, 1995

The House Oversight and
Investigations Subcommittee
301 E. 103rd Terrace
Kansas City, MO 64114

Dear Committee Members:

My name is Mark Bates and I live in Olathe, Kansas. After attending college for two years, I decided to take a break from school and took a job with an open shop as an electrician's apprentice. That was in 1975 and I have been working in the industry ever since.

In April of this year, I was contacted by the IBEW. I was working for Diversified Electric Company at the time. Having been in the industry for 20 years and in my early 40s, it became very apparent to me that I needed to *do* something about my future retirement plans. Working in open shops, I felt my wages were not commensurate with my skills and I was being offered no benefits to help me with my future. It was strictly a day's work for a day's pay. I became frustrated with the open shop's interest in only the quantity of work it could produce, sacrificing quality and the safety of its employees. Their lack of concern for their employees' future was also very discouraging. The open shops always "passed the buck" when it came to worrying about their employee's future. Their philosophy was "someone else can just take care of that," which in turn placed the burden on the taxpayers of America.

The IBEW representatives to whom I spoke about joining the Union treated me with respect and dignity and were very considerate of my situation. After weighing the tremendous benefits offered by an organized labor force, I made the decision to become a Union member so that I could provide a better life for me and my family and take care of my future as well. The Union has provided me an opportunity to work for an organization that provides a pension plan, wages which reward me for the skills I have crafted over the years, and better working conditions. For the first time in 20 years, I am proud of the electrical trade.

The House Oversight and Investigations Subcommittee
Page 2
November 24, 1995

"White collar" workers are able to work for companies that provide many benefits such as pension plans, vacation time, reasonable health insurance rates, etc. "Blue collar" workers on the other hand are treated much differently, even though our jobs serve an important function to society as well. The organized labor force is able to provide these important benefits to the hardworking men and women in the technical trades.

I have been with IBEW Local Union 124 now for only six months, however, I have already seen the benefits afforded me by becoming a Union member and I am finally excited about my future. Needless to say, I am extremely pleased with my personal decision and wish I had done it years ago. I have a lot of lost years to make up for and I plan to do that with the IBEW!

Sincerely,

Mark E. Bates

mb

My name is Daniel Hoffman and I live in Kansas City, Missouri. I became an electrician in my early years of life, because I wanted to follow my dad's and my grandfather's footsteps. My grandfather started his own shop and then my father took over. I wanted to continue this dream and opened my own shop up here in Kansas City, Missouri. I had this business for about four years, after some time, I thought about turning my shop into a union shop, but after more consideration of this, I decided to close up and became a union member.

I am currently working for Capitol Electric based out of Leavenworth, Kansas and Kansas City, Missouri. I am pleased to be a union member, I became a member because I feel I'm a professional and I wanted a better standard of living for both myself and my family.

Sincerely,

Daniel B. Hoffman

DEAR SIRS,

MY NAME IS THOMAS L. MONSON
I LIVE IN WARRENSBURG MO
I STARTED IN THE ELECTRICAL TRADE IN JUNE OF 1977 IN NORTHERN WISCONSIN
I FIRST CAME INTO CONTACT WITH THE IBEW IN APRIL OF 1989 WHILE WORKING IN BAZOIL WY AT A GAS PLANT. THE CONTRACTOR I WAS WORKING FOR REFUSED TO ASSIGN ONE OF OUR MEN FOR START UP. THE CLIENT THEN GAVE STARTUP TO ANTHOR CONTRACTOR AND THEN BROUGHT IN A THIRD CONTRACTOR, WHO WAS UNION, TO DO ALL THE EXTRAS. THEY WERE VERY COMPETENT AND VERY SAFETY ALERT

NON-UNION WAGES 13^{40} HR
UNION WAGES 16^{50} HR
NON-UNION ~~WAGES~~ BENEFITS - 0
UNION BENEFITS - HEALTH INS
RETIREMENT FUND
NON-UNION CHARGE TO CLIENT 32^{50} HR
UNION CHARGE TO " 32^{50} HR
NON-UNION - WE WERE SHORT CONDUIT - WIRE - TOOLS. OUT OF 17 MEN 6 HAD NO DRIVERS LICS.

THE SUPERINTENDENT, FOREMAN AND MYSELF WERE WORKING WHITE TICKET. OUR END OF THE JOB WAS RUN BY IBEW 415 MEMBER BRUCE SMITH. OTHERS ON OUR CREW WERE MIKE DEKEMPER, ED HAAS, CAREY LANNING, BILL MCLAUGHLIN, MAURICE MEYERS, DON BURTON, TIM LACKEY.

BRUCE SMITH AND I STARTED ON OUR END AND THE OTHERS JOINED US AS THE JOB PROGRESSED. BRUCE TOLD ME THAT HE KNEW I DID NOT BELONG TO THE UNION, THAT IF ANY QUESTIONS I HAD HE WOULD BE GLAD TO ANSWER THEM. THE BUSINESS MANAGER CAME & TALKED TO US ABOUT THE UNION. I WAS NEVER THREATENED OR PRESSURED IN ANYWAY TO JOIN.

AS THE JOB PROGRESSED I BECAME MORE IMPRESSED BY THE UNION MEMBERS ABILITY AND TRAINING AS TO HOW THEY DID THEIR JOBS. I HAD BEEN EXSPOSED TO GUYS ON NON-UNION JOBS WHO AFTER 7 YEARS COULD NOT PASS THE STATE TEST, COULD NOT WIRE A STOP/START BUTTON, WERE SCARED OF WORKING ON 480 V SWITCH GEAR, DIDN'T KNOW HOW TO READ PRINTS AND DO LAY OUT WORK. AND IF THE WORDS "DRUG TEST" WERE MENTIONED 2/3 OF THE CREW WOULD FAIL.

WORKING ON A NON-UNION JOB YOU HAD BETTER STAY ALERT AT ALL TIMES BECAUSE OF LAX SAFETY. THE UNION COMPANY WERE EASY TO WORK WITH AND TO GET ALONG WITH. THE COMPANY I WAS WORKING FOR BID A JOB ON A COAL MINE IN WRIGHT WY. THEY DID NOT GET THE JOB. THE START-UP CONTRACTOR AT THE GAS PLANT, MID-MOUNTAIN ELEC GOT THE JOB. MIDMOUNTAIN ELEC NEEDED A JOURNEYMAN ELEC WITH A MSHA CARD. THE JOB WAS IN LOCAL 415, CHEYENNE WY. JURISDICTION. LU 415 ONLY MSHA CARD HOLDER, CHARLENE SUNDQUIST, WAS AT THE TIME WORKING AS A MAINTENANCE ELECTRICAN AT A MINE IN GILLETTE WY. THROUGH THE OFFICE OF THE BUSINESS MANAGER I WAS GIVEN A WHITE TICKET TO WORK ON A UNION JOB WHILE NOT BELONGING TO THE UNION. I RECIEVED THE SAME PAY THE SAME BENEFITS AT EVERYBODY ELSE. I WAS RESPONSIBLE FOR THE MSHA TOOL INSPECTION AND LOG BOOK AND TRIED TO SEE THAT MSHA RULES AND PROCEDURES WERE FOLLOWED. THERE WAS 3 OF US WORKING WHITE TICKET AT THE TIME.

I DECIDED TO JOIN THE UNION BECAUSE WORKING CONDITIONS AND THE BENEFITS PACKAGE.
I MADE THE RIGHT CHOICE WHEN I JOINED. THE JOBS ARE SAFER, BETTER MANAGED.
THOSE WHO SAY ~~THAT~~ WISH TO TAKE AWAY MY RIGHT TO BELONG TO A UNION ARE REALLY TRYING TO ELIMINATE THE COMPETITION SO THEY CAN SLIDE BY ON MEDIOCRE WORKMANSHIP.
THIS IS A VOLUNTEER ORGANIZATION NO ONE FORCED ME TO JOIN.
I WISH TO RETAIN THE RIGHT TO CHOOSE FOR MYSELF

Thomas L Monson

THOMAS L MONSON

[illegible]eased [illegible]

Spencer Jett
P.O. Box 340
Lawson, Mo. 64062

To whom it may concern:

My name is Spencer Jett. I live in Lawson, Mo. I became an Electrician about fifteen years ago. At first I worked as an Electrician in Industrial Maintenance after training in a Vo-Tech School. A few years later I became a Construction Electrician and took more training.

A year and a half ago a friend of mine told me he was joining the I.B.E.W. Union and had given them my name. He suggested I give them a call because they were taking in new members — so I did. An interview was set up by a Union Organizer. The Organizer was totally honest with me about what the Union had to offer. He was friendly and treated me respectfully. The decision to join or not was totally up to me. I decided to become a member because of their excellent benefit package and the help you get in employment opportunities.

I had been working at [illegible] Electric before I joined the Union. The only benefits [illegible] were holidays and one week paid vacation. I wasn't paid time and a half for over forty hours or for the use of my truck. I had no medical insurance and no retirement

improper materials or without the proper permits. It's not this way with the Union. They provide excellent workmanship using proper materials and methods. Having a Union not only helps the working man but also Governmental Agencies (City Codes Administration etc.) and the consumer by being above board and legal. So the choice was easy to make whether to join or not. If I had to – I'd do it again.

Thank-you for your time and attention.

Sincerely,
Spencer Jett

November 21, 1995

Dear Congressman.

My name is Mike Damico. I am a second generation electrician in Kansas City, MO. As fathers will do, mine offered me the opportunity to follow his footsteps and so in 1975 I entered the 4 year apprenticeship program of Local 124, IBEW.

His opportunity came by way of organization. 30 some years ago my father was offered a chance to become part of Local 124 and he jumped at that chance.

As important as the pay raise was, the single most important attraction was the unions involvement with social issues. This was the foundation of his belief that workers are the most vital like in the chain of production. Dignity and respect are the keys to a productive work force and to unite for this cause is every persons right.

Without the stress of constant job searching, Dad was free to enjoy his family and pursue his social justice issues. His wages allowed us to attend Catholic Schools, all 5 of us! He was able, with the help of Local 124 and his collective bargaining agreement, to provide solid middle class upbringing.

My father passed away before he had a chance to retire, but even in his death he and his union left a pension and health care for Mom. I cannot express the gratitude and relief knowing that Mom is going to the okay.

I continue this legacy with my union membership. I have a pension, annuity, 401(k) option, health & welfare coverage and the training to do electrical work anywhere in this country. My children will reap the benefits of my union membership as I did. And I am sure my children will fully understand the reasons unions are important.

Don't restrict our right to organize, help the middle class recover--you need us!

Sincerely,

Michael J Damico

11-21-94

Dear chairman

My name is Jackie Busby. I live in Independence Mo. I began my career as an electrician in the U.S. Navy in 1972. Upon discharge in 1977 I went back to Independence Mo where I have lived and practiced my trade since then.

My first contact by a Union organizer was about 1987. I was working for a Non Union Electrical contractor. The company name was Williams-Bungart Electric. At first I was satisfied at this company. I was hired when the company was founded and we all worked hard to make the company and ourselves successful. We were promised better wages and benefits once the company got on its feet. After four years many of the original employees grew disgruntled when the promises weren't kept. At the same time the owners were always driving new vehicles and taking luxury vacations.

In January of 1991 our organizing effort was started when the Union Organizer walked onto one of our jobs. He invited us to come down to the Union hall that night. At our meeting that night we discussed what our present wages were and our total lack of benefits. We realized we needed help. The organizer was very honest with us. He explained

the organizing effort to us and what we could expect to happen. Through out the organizing effort I was amazed by the contrast in how we were treated by the employer and the Union. The employer never treated us worse, and the union treated us with respect, dignity and honesty. The contractor chose to get out of the business rather than be organized.

Since joining Local Union 124 I now have health insurance, paid vacation and holidays, a very good pension to look forward to, safer working conditions, and have almost doubled my hourly wages.

In conclusion I feel I have definitly made the right choice. If I had it to do over I would gladly do it again. I firmly believe that all workers should have the right and oportunity to organize their employers. I am strongly opposed to changes in the law that would make it more difficult to organize a non Union shop. When you tear down the Union you tear down the middle class.

Respectfully your
Jochin Dell Busby
Journeyman Wireman
Lu 124 IBEW

To whom it may concern:
My name is Bobby A.Taylor, address is 9313 E 90th Terr KC Mo 64138
I begain my carreer in the electrical field 1971 thru 1973 in trade school. I work in electrical maintenance for the city of KC Mo. I've also worked from 1979 to 1982 for Alber Electric, an completed my 4 year appenticeship. From 1982 to present I've worked for Quick Electric. August of 1995 I came to IBEW and begian to organize Quick Electric.I joined the union September 1995. When I started work in 1982 for Quick Electric I was making approx. $17 per hour, with paid vacation, holiday, sick pay, health insurance and a pension plan. Today at Quick Electric there is NO paid vacation, holiday, sickpay or pension plan. NO OVERTIME PAY, my pay is $18 per hour and with no benefits. my payroll is late almost every week, sometime we are not to cash it till next week. That is a cut in pay. That is not fair ! I'am very displeased! So I joined the union and we have begun to organize. Quick Electric. I have never been treated with the respect by any employer as I have by IBEW.I think my decision to become union was one of the best decision I have made . For without IBEW I could afford to stay in this trade. I truly hope we are successful at organizing Quick Electric because this company's UNLAWFUL CONDUCT HAS TO BE STOPPED!!.

Fraternally yours

Bobby A. Taylor
Journeyman wireman

Nov. 20, 1995
31006 Old Major Rd.
Grain Valley, Mo. 64029

The House Oversight and Investigations Subcommittee of the Economic and Education Opportunities Committee

Gentlemen,

My name is Kenneth J. Balan and I have been an electrician for nearly thirty years. When I became a member of the IBEW sixteen years ago it was the result of a mutual employer and employee decision. At the time I had a good working relationship with my employer which continued after becoming an IBEW member.

I felt that belonging to a union would make my job more secure. This has proven to be true. In addition my wages and other benefits are greater than they otherwise would have been. I believe I made the right choice in becoming an IBEW member.

Very truly yours,
Kenneth J. Balan

My name is Roger Lake. I live in Oak Grove, Missouri, about 30 miles East of Kansas City, Missouri, on the family farm. I'm 33 years old at the present time, and 8 1/2 years ago I had the opportunity to become an electrician.

I hired on with Westhues Electric in May, 1987. At that time, they belonged to Local 14436, United Steelworkers Union. A Journeyman was making $19.47 an hour. Our total package, with insurance, was comparable to Local 124, IBEW. Local 14436 had about 23 contractors and 450 members. It was explained to me at the time I was hired about the benefits of belonging to a union. That if one contractor got slow, we could go to another and maintain our wages and insurance. That belonging to a large membership would help reduce our insurance rates and insure that our contractors were paying our premiums. This became evident in '91 when the employees of Westhues had to take $1.25 an hour cut in pay so Westhues could maintain our insurance--$19.47 minus $1.25, thus $18.22 an hour. This happened right after the United Steelworkers Local 14436 dissolved in 1990.

I stayed with Westhues Electric so I could complete my schooling through the Steelworkers program, even though our Local was gone. In the Spring of 1991 I successfully completed my 4 year apprenticeship with Westhues Electric, expecting to make Journeyman wages of $18.22 as previous employees had when they turned out as a Union shop. I was told that in order for anyone from then on to earn $18.22 an hour, all employees would have to pass the Journeyman Block Test, which meant going back to school. Several of us did. I passed and made $18.22 an hour.

I was with Westhues Electric over 7 years. I was their 1st employee, and had watched the company grow, but not without sacrifice by the employees. If we wanted a job, we were required to show up at the shop between 7:15 and 7:30, but our pay didn't start till 8:00 A.M., and frequently we were expected to work on our jobs till 4:30 P.M.,then come to the shop to get lined out for the next day, which put one going home around 5:30 P.M. So, on average, the employees would put in 9 to 10 hour days, and only get paid for 8. This is still going on today, among other practices which I believe to be unfair.

In the Spring of 1994 I was approached by a friend, an ex-Steelworker whose shop was taken into Local 124 IBEW a few years earlier. He asked if I was interested in becoming a #124 member. I said sure, I had always wanted to be Union, but didn't know how to go about getting into Local #124. He passed my name and phone number on to his boss who gave it to Lindell Lee, Business Manager of Local #124. After a few phone conversations, I met with Lindell at his office and agreed to make the change. However, I wanted to wait till later that summer so I could witness first hand Union organizing and also to avoid leaving my customers in a bind. I had two organizers on my job and I can truthfully say they performed for me, the customer and their employer, Westhues Electric. There was no time taken away from

the job discussing Union organizing. I felt the organizers purpose was to gather information about non-union employers and their men to help educate the non-union worker of their legal rights and to let the workers, such as myself, know they have a say in their future. So often, as it is with Westhues Electric, the amount of time and rate of pay one receives in a non-union shop depends on how much of ones own time they donate to the shop.

I left Westhues Electric in July, 1994 and went to work for Superior Electric in August, 1994, got my Journeyman ticket, and I'm still working for Superior Electric today, but now when I work a 10 hour day I get paid for 10 hours.

Since I left Westhues Electric, 4 other employees have made the move also. This would not have happened without the organizers working on non-union jobs to educate the non-union worker.

I am now an organizer myself, taking this information to educate not only employees of Westhues Electric, but all non-union workers.

History proves time and time again, if you keep the masses ignorant, the few will control and prosper while the many will stay at status quo.

I do not believe this was the intent of our forefathers when they drew up the Declaration of Independence:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.
> That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

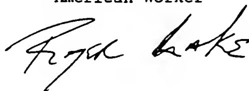
Sure, the non-union employer is going to cry foul, because for the first time in recent history, the labor force of America is not only learning what their rights are, but how to fight for them.

Frankly, I don't see much difference between union organizers in non-union shops than the lobbyists in Washington that you do business with. We both have our agenda. You don't see us every day, but we are out there.

We have laws to protect the American worker. Those laws were put in place for a purpose - to lose those laws would be devastating to the American worker. What we need most of all is better systems to make these laws work for the people.

As an organizer, my 1st objective is to educate and to implement a system of checks and balances for these laws.

Sincerely yours,
American Worker



To Whom It Concerns date 11-21-95
Electrician Local 124 IBEW Local
Union

Gerald P. Banister
9005 Switzer
Overland Park, Ks 66214

I have been a Electrician for Thirty four Years. I Started this trade When I was Sixteen - Weekends and Summer helps Than full time after High School. In the Sixty I work out of Local Union on a white Ticket, In to Seventy- At that time I did not Become a Member of the Union. Which was a Misake.

I am 50 years old. I have been Working for Diversified Electric Co for many Year's. I was Contacted by the Union organizer at the office of Diversified Electric Co. The Union Organizer treated Me With respect and dignity. He also answered any question With true honesty.

I Made my own decision to become a Member OF IBEW Local union, for Many Reasons, For wages, Pension, working Conditions, Heath Insurance, and to have brother + Sister to perform Work IN a Safe and Proper way date 11-21-95 Gerald P. Banister

To the House Oversight and Investigations Subcommittee,

My name is Patrick "Scott" Kelly. I live in Blue Springs, MO. I became an Electrician in 1986. A friend of mine was a non-union Electrical Contractor so I began working for Paragon Electric of Blue Springs, MO.

Because it was a small residential and commerical shop, I did not get the training or experience I needed to provide a decent wage for my family. The wages and benefits were limited.

When I approached the Union, I was pleased with the treatment I received. They were willing to work with my experience to place me in the areas where I could learn the most. I never felt obligated

to become a member. It was a decision I made based on my own need to learn more and provide a better income and benefits for my family. I am satisfied with my decision to become a union member and plan to continue to stay a member as long as I am able

Sincerely,
Patrick S. Kelf
11-21-95

DEAR CHAIRMAN

MY NAME IS GEORGE REED, I LIVE IN TONGANOXIE, KS

I JOIND THE NAVY IN 1965 AND BECAME AN ELECTRICIANS MATE. AFTER DISCHAREE IN 1970, I [illegible] THE ELECTRICIAN'S TRADE. I HAVE WORKED FOR ALOT OF NON UNION CONTRACTORS FOR LOW WAGES LITTLE BENEFITS AND NO SECURITY

I WAS WORKING FOR MCLINN ELECTRIC WHEN THE COMPANY WAS APPROACHED BY LOCAL 124 IBEW TO JOIN THE UNION. EVERY ONE IN THE COMPANY HAS JOINED. I HAVE NO COMPLANTS ABOUT JOINING, AND I KNOW I HAVE GOOD BENIFITS AND BETTER JOB SECURITY.

I WISHED I HAD JOINED SOONER

LOCAL 124 IBEW UNION MEMBER

George Reed

November 27, 1995

The 104th Congress
The House Oversight and Investigation Subcommittee of
Economic and Education Opportunities Committee

To Whom It May Concern,

Please allow me this opportunity to introduce myself. My name is Henry Wohlgemuth of Sugar Creek, Missouri. I was employed fourteen years in service work before I joined the electrical trade. I have currently been an electrician for twenty three years.

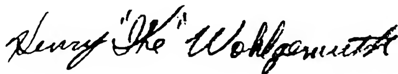
I was first contacted by the union organizer in 1991. At that time, I was working for South Kansas City Electric. I worked two years with SKCE. If I was not working on a job paying prevailing wages, I took a $5.00 per hour cut in wages and was paid according to their journeyman scale. The insurance benefits were paid on myself but not on my spouse. Vacation benefits were paid according to their journeyman scale, even if I was working on a prevailing wage job. I was expected to come in on Saturdays for meetings, etc., all on my own time without pay.

When I was contacted by the Local 124 IBEW union organizer, he was very informative and straight-forward with me, and to my knowledge, everything he told me then has been true and accurate. I in no way felt coerced, threatened or intimidated. I was well satisfied with his presentation of the union. I made the decision solely on my own to join the union and accept their representation.

My main reasons for joining Local 124 would have to be the all-around benefits I gained. My family is now covered under my health benefits, I have a secured pension, and I no longer have to worry about working a prevailing wage job to draw journeyman wages. In a non-union company, sometimes what they tell you and what you wind up with are two different things.

In conclusion, I definitely feel I made the right decision to join the union. I have a secured income and know what wages I'll receive each week, and a pension to look forward to in my retirement.

Sincerely,



Henry Wohlgemuth

November 26, 1995

The House Oversight and Investigations
Subcommittee of the Economic and Education
Opportunities Committee

My name is Ophie Parks I reside at 11405 E. Sheley Road, Independence, MO 64052. I started my career in Electricity duming the 1960's, in the oil fields of Kansas. I was contacted in June of 1994 by the Union, ot that time I was working for a small electrical contractor AUM ELectric out of Raytown, MO. I was very unhappy in that position, they offered no benefits , poor working conditions, many times I was asked to work more than 8 hours a day. For straight time wages, my wages were $15.00 an hour.
I was treated with respect and honesty by Union Organizer, I did not feel intimidated. I never felt and pressure to join, and I weighed all the pros and cons and made a decision based on my findings.
The working conditions, pension wages and helth insurance was the main reason for joining the Union. I feel it was a wise decesion to join and would do it again if need be. Thank you for your time.

Sincerely,

Ophie Parks

Chairman of the Committee:

My name is Norman Mauldin, and I live south and east of K.C. Mo. in Blairstown Mo. I became an electrician approx. thirty years ago. I worked for Ward Electric intill about 1988 when approached about joining IBEW local 124. I joined local 124 shortly thereafter, as did others from the same shop. We did not have the benefits and conditions and wages of local 124.

When approached with the invitation to become a member of local 124, I did so and feel I have been blessed with all the respect and brotherhood that a working person deserves and should get. I did not have this before. No one has ever threatened, coerced, or intimidated me in any way. Instead, I was treated like a good friend. This is a great organization and has many benefits such as retirement pension, 401K plan, health insurance, working conditions and very good wages.

I know I made the right choice to join local 124, and if I had to do it all over again, I would surely join local 124 again.

Thank you Norman Mauldin

November 21, 1995

Dear Sirs:

My name is Galen Sharp. I'm an electrician and a member of Local Number 124 of the IBEW in Kansas City, MO. I started into electrical work while still in high school as part of a school work release program. At that time I had never heard of the IBEW and I was working for a union shop that was about to go non-union. Well, at the time, the owners of this shop made a lot of promises to pay the employees that everything would be better for us. Well, that was not the case. Within one year a lot of the higher paid employees were gone and the younger, lower paid, inexperienced help were forced into unsafe and unfair positions in the field. Also, our benefit package became a joke. Insurance got expensive for the employees and we were told that we were already overpaid and that we were lucky to even have a job.

Well, needless to say, I felt trapped with no place to go unless I left for another shop (non-union) and this would mean taking a cut in wages and benefits.

I finally left them for better pay at another shop. When I started with this company I talked to the owner about why he wanted to hire people at a higher rate than other non-union shops. He admitted to me that he had just fired all of his union hands and had started up a non-union shop. This started me thinking about those employees. I did feel a little research into this issue and found out the company had been in business for over 60 years with union employees and his father as the owner. Well, the some took over for 3 years and lost money every year. He blamed the union for his problems and decided to start up non-union. I decided that it was not to my benefit to work for someone who would do this to people who worked for him over 30 years. I decided to contact the union. A friend of mine who was a union electrician told us about the organizing efforts of LU 124.

I was afraid of being organized because for all the bad things put into my head for 10 years by mu employers. I finally agreed to meet with the organizers of LU 124. They told me about the benefit package, insurance, retirement, and pension. They told me I could improve working conditions for myself and other electricians in town.

I gave the issue about a month of thought. Then I went to my non-union employer and told him what I was planning. He immediately tried to give me a big raise. I refused. He offered me an office job and I said no. I asked him what would happen to me in 20 years when I couldn't produce as fast or as much work. He couldn't give me a decent answer. That was when my mind was made up. I called the union and went to work within a week. I was made welcome by the union members at my new job and I quickly became an extremely happy and productive electrician and union member.

In closing I would just like to say that I've been in this trade for over 10 years and that I will never again work non-union because I have been on both sides and there is no comparison. Union is the only way to go.

Sincerely,

Galen Sharp

To Whom It May Concern:

My name is Robert J. Carreiro, I reside at 12824 Century Overland Park, Kansas. I have been a electrician for 25 years I started by attending a Vocational Trade School for 4 years in the Electrical Program. Upon Graduation I worked at St. Luke's Hospital New Bedford, MA., 1 year later I took the State Exam and became a Licensed Journeyman Electrician.

I worked for non-union shop, until June of 1994. At that time I became a member of IBEW #124, Kansas City, Kansas.

I contacted the local in regards to membership, and I was fortunate in being accepted. They told me what to expect from the union, and I am happy to say it is all true.

I am very happy that now I can use all my skills that I have obtained through the years, and be paid a fair wage, that I and my family can live on.

I have the up most respects for all the organizers I have been fortunate to be associated with, they just told me the facts, and it was all true.

I feel great now that I am no longer being used and cheated by non-union contractors.

May IBEW #124 live on forever, for without it there is no likely hood, Amen.

Robert J. Carreiro

Dear Committee Chairman

My name is Paul Dame, I live in Kansas City, Kansas.
I decided to be an electrician about 13 years ago. I studied on my own, took training classes and learned from other experienced journeymen in this trade.
I worked for several non union shops through out my career,always looking for the better opportunity. Whenever I changed employers I always did so to better myself and also to better my financial well being.The last shop I worked for was universal electric, they treated me fair and looked out for my interests. when work became so heavy they began to take advantage of me, always wanting more and more but never coming through with the financial promises that were made to me.
I sat back and watched as many coworkers were going to the union side by the droves, but I stayed put thinking in my mind that they would be discarded as the unions work slowed down, a year later I saw it wasn't so, what the union had been telling people was true, they were offering a fair opportunity to those who were qualified. As nothing had changed in my job I decided to take the chance and begin work as union electrician.
The pay and benefits far out weighed what I was receiving working for nonunion shops, not to mention the reduction of stress that was put upon me there also. I was really leery of how I would be treated once I came over, but I was greeted with open arms by the organizers, union officials, contractors, and fellow electricians.
I never felt that I was being misled or deceived in anyway, they treated me with respect and told me it was my decision to make and when I had decided they would back me up 100% no matter what I decided to do.
My decision is obvious, and I do not regret it at all, the chance I took was to better mine and my families life, and sir I have done that.
Nothing would make me change my mind, about working with the fine electricians, and union officials that I have come to know and trust.

Thank you for your time,

To the members of "The House Oversight and Investigations Subcommittee of the Economic and Education Opportunities Committee";

11-21-95
Blue Springs, Mo.
64014

Dear Sirs:

My name is Mr. Glenn D. Mallott; I live at 385 Gingerbread Ln., Blue Springs, Mo. 64014, and I have been proud to be a member of Local Union number 124 of the "International Brotherhood of Electrical Workers for over 26 years.

The benefits that I have recieved, my family has recieved and the contractors and people having electrical work done recieve because of the union are beyond comprehension. The education of electrical installation of devices, conductors, conduits, switching and transfering equipment, the "National Electrical Code", fiber optic installation, coupling, terminating and tungston inert gas, metallic inert gas and arc welding are just a few of the topics covered in the most detail in our apprentice training and journeyman training. These topics are covered in great detail and many applications are preformed in our labratory.

The hourly wage we recieve is fair to the employer and fair to us to maintain a average life style. Without the union our life style and standard of living would be far below this level.

Our health benefits are what everyone should have but do not. Without our health package I would have

11-21-95
Page 2

been bankrupt several years ago. My daughter was involved in drugs and if it hadn't been for our drug rehabilitation program, I would have lost everything.

Through the union, thank goodness, I'm also looking forward to retirement and having enough money to travel and live comfortably. This is something that few people in our work that are nonunion have to enjoy.

Unions are needed to increase skills of the crafts and updating skills of installations and procedures. Unions are need to maintain and increase safety standards on and off the job site. Unions are needed to establish and increase hourly wages and benefits as the skill and speed of the works increase so that a good standard of living for the average working person can be kept. The list of benefits continues and expands each day.

Unions are a definite necessity in our country today and in the future — without them working skills and standards will surely fall along with living and benefit standards. Progress is the key work here and Unions are Progress! Please reconsider in favor of organized labor.

Thank You,
Sincerely,
Mrs [illegible] C. [illegible]

November 21, 1995

TO WHOM IT MAY CONCERN:

My name is James A. Koenig. I live in Kansas City, MO. I've been an electrician for 8 years. I've been a union electrician since I was organized in June of 1995. I first started to talk to a union organizer in November of 1994. I was working for South Kansas City Electric Co. I liked working for SKCE, but was always worried about being laid off. I worked for SKCE 4 [illegible] of the last 6 years. I quit working for them once and went to work for Westhues Electric (for more money), was laid off from them, then went back to work for SKCE.

Next time I left SKCE I was being laid off. 11 people were laid off that time (August 30, 1992.) Two were laid off from the job I was on, the rest from other jobs. I asked my foreman (Steve Turner) why I was laid off and he had no answer. I couldn't understand why he laid off because the job wasn't even near being completed yet. I worked for several other local contractors for 3 months and then went back to work for SKCE. They kept me employed until I was organized in June of 1995.

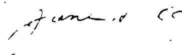
When I left SKCE I was up to $15.00 per hour. I didn't use any of the health and welfare benefits offered because they cost too much. At the time my wife's job provided my family better health and welfare benefits for less money.

The organizer that I talked to told me what would happen to become a union member. All the decisions that needed to be made were my decisions alone. The transition from non-union to union was easy. I simply quit SKCE and went to work for Mark One Electric, a union contractor. The union has treated me with respect since the day we first met and I believe that it has been one of the most important and the best decisions of my life.

My family is why I became organized. Working as a non union electrician I knew I would be working for the rest of my life and have nothing to show for it. The union offered me a life of quality that I didn't have before. I can now see that when I retire I will still have a life of quality because I have retirement benefits and pension I did not have as a non-union electrician.

In closing, I would like to thank the IBEW Local for making me and my family an offer that I couldn't refuse because my becoming union has been the best thing I could ever do for me and my family. I wish I'd been asked years ago because I would have become union then.

Sincerely,



James A. Koenig

[illegible]

My name is Jody D Mathis
I live in Overland Park Kansas
I became an Electrician when
my best friend talk me into
going into the field. I first
joined the Army, 13 Bravo and
switch up communications then
went into the Electrical field

I was contacted by Bauer
Hellmann Electric to talk to the
Union. I was working for
a non union outfit and I
was using my truck for service
calls, my own tools and only
getting a small hourly wage
and my bosses were living
high on the hog. I was very
unhappy. I was told I could
work on school government jobs
but they wanted me to work
for half of the wage that
was prevailing. I would not
do that so I saw 2 days
of school work.

We also have insurance
1500.00 deductable and 268.00
a month so go figure.
Lindell Kyle and Jim
Beam and Chris were very
good to me in the Union.
They have made my life change
so much. I can afford to pay
my bills and live. I feel I
have a importance in life
My main reason to join
Union is so I and my family
can get a fair wage and
live a decent life and enjoy
what I do instead of hating
to go to work knowing your
non Union boss is spending
your benefits on his self
Yes If I could have
joined the Union years ago
I would have been
there. I love the Union
heath and welfare, retirement
pension and that is good.
ginger [illegible]

My name is David Lawrence. I live in Kansas City Kansas. I became a electrician after a couple years of electrical engineering in college. I decided, I liked putting it in and maintaining the work better than designing it. My total time in the trade, Union and merit shop equals a little over four years.

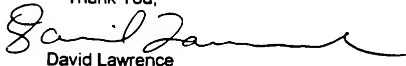
I decided to contact the Union about joining after a couple of friends joined. At that time I was working for South Kansas City Electric a merit shop company. That was the best move I ever made. The pay and benefits are so much better, I can actually make a living and provide insurance for my wife. The working conditions at a merit shop are back breaking. Always fighting to keep your head above water, trying to outperform the other guy, but no matter how hard I tried I could never catch that carrot, every time I thought I had it, it was moved away. That is how merit shops work, they make you think after years of hard work you will reap the rewards, but it doesn't happen. The only time we received raises was when the Union started to orginize our shop and people left to join the Union. It is still happening now as you read this letter, someone decides to join the union and the merit shop gives out raises to try to keep the others from leaving (their pay is still $5.00 per hour less, on average, than Union electricians).

The Union Organizers were very helpful. They answered all my questions openly and honestly. I was treated with dignity and respect and I never felt pressured or threatened to join the Union. I joined after deciding it was best for my furture to become a Union member. The Union Organizers made it very clear that it was my decision to join or not to join the Union. I felt comfortable, that if I had decided not to join that there were going to be no hard feelings and if I changed my mind, I was always welcome at a later date.

There are a lot of reasons I joined the Union. The pay, pension, and all the other benefits are far beyond what you can expect from the merit shops. The working conditions are much safer, example; The safety belts were not existent on merit shop jobs and if they were on the job, they were over sized and unsafe. On a Union jobs they are always handy and we are required to wear them in certain occasions. There are many things merit shops take advantage of because they have their employees over a barrel. Employees have no power in a merit shop, they are powerless against any situation, I could NEVER go back to an environment like that.

I know I made the right choice, leaving a merit shop for a Union Shop. I wouldn't change anything about my decesion. I would do it all over again, I just can't believe I didn't leave sooner.

Thank You,



David Lawrence

November 21 '1995

Dear Chairman.

My name is Martin Hayes; I live in Mission, Kansas. I have been an electrician for 21 yrs.

In 1992, the shop I was working for became a union shop. The shop DKD ELECTRIC, Albuquerque New Mexico, had over 150 employees. Each [illegible] was given the choice of going union. The local union IBEW 611 held a series of meeting to explain how the union worked, benefits (health [illegible] retirement. Nobody was forced to become [illegible]

For me the union offered a good [illegible] [illegible], it was the first time I had good [illegible] insurance, a first for having a retirement plan. The union has been good for me. My only regret is I did not become a member 20 yrs ago.

Today I encourage every electrician I know to join the union. It gives you a voice in the work place.

Thank you,

Sincerely,
Martin C Hayes
MARTIN C HAYES

Charles S. Yaeger
705 Canterbury Rd.
Blue Springs Mo.
64015

11-21-95

The House oversight and Investigations Subcommittee of the Economic and Education Opportunities Committee.

Dear Sirs:

My name is Charles Scott Yaeger. I reside at 705 Canterbury Rd. Blue Springs, Mo. 64015. I worked at Armco Steel from 1972 to 1982, where I served a four year apprenticeship under Local 13 of The United States Steel Workers of America. Due to Steel imports my job was eliminated. I then went to work for Lake City Army Ammunition Plant in Independence where I was employed for ten years, until government spending cuts eliminated my job.

Being a single parent and having a son to raise that is fourteen years old, I was forced to go to work at low wage rate after I lost my job at LCAAP. I went to work for a non-union electrical contractor called Commercial Electric. Commercial Electric was a strange company, that paid all of their workers differently. Some of the men had medical insurance, others did not, some made higher wages. I was thoroughly disgusted after six months, but I knew that they were going union, because of unfair labor practices, so I stayed. I knew Local Union 124 was where I wanted to be, because of the fairness, benefits, wages and working conditions.

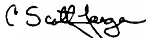
At our first meeting with Local Union 124, Chief

Organizer, Chris Heegan made me feel very welcome. He explained everything about the Union and left the final decision up to me. I went before the Union Executive Board, had four hours of orientation, and took the journeyman's test. I stood up in front of the membership and took my I.B.E.W. Oath, which was a proud moment in my life.

I became a Local Union 124 I.B.E.W electrician for several reasons: the working conditions, the wage and health package, plus the pension program. When I worked for Commercial Electric I had only a wage, while other people working for the same company had health insurance and other benefits.

One of the best choices in my life was to become a Local 124 journeyman. Though the democratic process, both contractor and the union found a way to provide a decent wage, benefit package and a great training program for apprentices. I would definitely do it again.

Sincerely,



Charles Scott Yaeger

November 21, 1995

Dear Committee Chairman:

My name is Russell Gould and I live with my wife and two children in Raytown, Missouri. My father was an electrician and a 30 year member of the IBEW. I have been doing electrical work for approximately 12 years.

I started out working for Ready Electric, a non-union electrical contractor. My wages were around $4.50 to $5.00 an hour with no benefits. I later began working for South Kansas City Electric. I worked for then for approximately 7 years, on and off the last 2 years. The highest wage I ever received working for SKCE was $13.50 per hour with no health care benefits because I could not afford to pay for them. It would have costed me about $80.00 per week to have insurance for my family, which I could not afford.

I periodically approached the union about membership. In 1994 I began to work with Chris [illegible]egn on obtaining union membership. During my dealings with the organizers at Local Union 124, IBEW I felt nothing but pleased. The organizers were good at providing me with information on benefits and wages. I never felt intimidated or forced into making any decisions I did not want to make.

The main reason I became union was for security, finances, self-esteem. Since joining the union I can afford the things I want to do in life, not only the things my bank account will allow. I no longer have to life from day to day. Since joining the IBEW I am out of debt and have afforded to purchase a camper in which to spend time with my family.

I feel I made the right choice in joining the union and if I could do it again I would have done it twenty years sooner.

Sincerely, Russell Gould

Russell Gould
[illegible]14 Booth
Raytown, MO 64138

November 26, 1995

House Oversight and Investigations Subcommittee
Economic and Education Opportunities Committee
Washington, D.C.

Dear Members;

My name is Frank D. Mathews, Jr. and I live in Roeland Park, Ks.. My grandfather was an electrician, my father was an electrician, I have 5 uncles (2 retired, 2 deceased, 1 still working) and 3 cousins; all of whom are members of I.B.E.W. Local #124. I began Working for my father when he was an electrical contractor on the Mississippi Gulf Coast in 1965. I was 16 years old. After 5 years of military service, college on the G.I. bill, and many NON-UNION employers; I began working for my father, again, 12 years ago. I applied for the apprenticeship program with Local #124 in 1990 and 1993, but my placement was high on the list, and not many applicants were selected for these years. Then, in 1994, I learned of the organizing efforts of the I.B.E.W. and Local #124

Since so many members of my family were and are UNION ELECTRICIANS; I new of the excellent wages, benefits, and working conditions associated with ORGANIZED LABOR UNIONS. I contacted Local #124 in Jan.,1994. That phone call and interview was the best decision I have made in the last 12 years! I have worked for many NON-UNION contractors, I have been a contractor, I have been self-employed, I have lived too long on "the other side of the fence". NON-UNION employers offer substandard wages, no benefits (insurance, vacations, pensions, etc.), and not a lot of concern for employees. I hustled my work through news paper ads, word of mouth, and by going door to door, house to house. Winter time work was scarce, I could not draw unemployment insurance because I would get laid off from a company without benefits, I had no health insurance (I thank God that I did not have any major medical injuries because I am a Diabetic), and I usually had an extremely long vacation; from around Thanksgiving to late February or early March. A very long UNPAID vacation I might add.

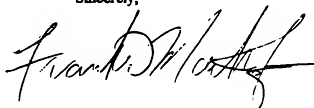
I first contacted the Director of Organizing for Local #124 in Jan., 1994 It took me about 5 months to begin working, and I became a member in Aug., 1994. It was not an easy process. My union has made a commitment to organizing as many quality minded and qualified electricians that want to join. If a person does not want to join a union that is their business. I was told at the time that there were several steps involved in becoming a UNION MEMBER. There had to be approval by an executive board, examining board, and by the rank and file members. Then I had to pass my Inside Journeyman Wireman test. After going through this process I boosted my self-respect, confidence, and dignity ten-fold I have become active in organizing other electricians who wish to become UNION MEMBERS because I feel that LABOR UNIONS are very much needed in this country. Labor unions have created a standard of living as well as a standard for quality

workmanship in the construction industry. Construction sites are safer, workers lives and health are safer thanks to LABOR UNIONS.

It is every persons individual choice to become a UNION MEMBER. The only people who forced me to become a UNION MEMBER was the unorganized, non-union, "rat" contractors who made my life so miserable; when all I wanted to do was be productive and support my family in a decent lifestyle. When you think of how this country was built a lot of things should come to mind. Blood, sweat, and tears should be on the top of the list. When I look back and remember where I have been, I know that joining I.B.E.W. Local #124 was the best choice I have made in a long time. I have the confidence and security that I have never had before, I know that there is work available any place in the USA, I know that I don't have to work under unsafe conditions, I have a pension, I have a health and welfare insurance plan, and I have a wage scale that provides my family with a decent standard of living.

GOD BLESS UNIONS, AMERICA NEEDS THEM!

Sincerely,



November 20, 1995

Dear Chairman,

My name is Jeff Porter. I am an electrician from Independence, Missouri. I've worked as an electrician in the Kansas City, Missouri area since 1983.

I was working for Diversified Electric of Olathe, Kansas in July of 1994 when I was contacted by a former coworker. He had left the company earlier in the year to work Union. He put me in touch with a Union organizer. I had been unhappy for some time because of substandard wages, poor benefits, extremely poor equipment and lack of personnel training. I contacted Local Union 124 organizer Jim Beem in late July 1994. We met and Jim Beem explained what the Union stands for and their organizing goals. At no time in our conversation was there any intimidation or coercion. I was very impressed with the IBEW and the great oppurtunity offered to me. This was a chance to raise the standard of living for my family, through better wages, benefits, and working conditions.

It has been nearly a year and a half since I made the decision to work Union. A decision I do not regret and would do again without hesitation.

Sincerely,

Jeff Porter

To whom It may Concern:

I Kevin H. Elwell am a Resident of Blue Springs MO. I Became a union Electrician in 1974 Traugh Steel worker's Local 1464 of KC MO. worked in that Local for 16 years. worked For 3 Different Contractors During that time Period. Steelworkers Local had Several Problems. AT a contract Impass the Employees of Pioneer Electric Decided to De-certifi Trough NLRB. We were given the opshun to go No union OR union We electected to go IBEW union For Several Resons. wages health And welfare vaction Better Schooling all around Better woking Conditions. AT Know time During my organizing move DID I Feel Treatend or Intemidated. I have Been in IBEW Local 124 For 6 years and have No Regrets what so ever. I Belive all workers should have the Right to organize.

Sincerly
Kevin H. Elwell

To whom it may concern:

Being a newly organized member of the IBEW 124 it saddens me to hear that the government wants to abolish the rights of the American worker to organize.

In my years in the electrical trade I have seen and worked in unfair, unsafe + poor-professionalism of open shops.

If you take away these workers rights, the conditions will continue to grow + ~~worsen~~ prove until no-one is able to make a fair wage or have safe working conditions.

The union is set up to serve and protect its members from these conditions. ~~To~~ To rid the workforce of America from these rights would be taking our rights of job security, and the rights to pursue happiness, higher standard of living, + freedom of choice, + to promote reasonable methods of work.

Sincerely

Mike Carlino

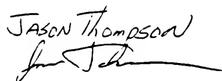
IBEW #124

My Name is Jason Thompson, I Live in Olathe, Kansas. I am a second period apprentice, I started becoming an electrician working for South Kansas City Electric, Along side my father. Although I have only been in the Trade 2 years I have seen both sides of the, if you will, "Pickett fence".

While working for SKCE wasn't a totally unpleasant experience it had its Downfalls. The work place in a non-union shop is NOT AS SAFTY concious, The demand for quantity of work rather than quality of work is much greater. And finally the Pay is NOT AS good or AS fair in the NON-UNION ENVIORMENT. These Are things most non-union workers don't know About & Probably will never know without union organizers. I think it is good for people to know what is available for them. If it wasn't their for me I would be working harder for less money and I would be an unhappy person.

Sincerly,

Jason Thompson



THE HOUSE OVERSIGHT AND INVESTIGATIONS SUB COMMITTEE OF THE ECONOMICS AND EDUCATIONAL OPPORTUNITIES COMMITTEE:

MY NAME IS RAYMOND C. DUNKLE, I RESIDE IN HIGGINSVILLE, MISSOURI. I BECAME AN ELECTRICIAN THROUGH A UNION APPRENTICESHIP PROGRAM IN 1968. THIS HAS BEEN MY PRIMARY LIVELIHOOD SINCE THAT TIME.

IN THE RECESSION OF 1981 I DROPPED MY UNION AFFILIATION AND BEGAN WORKING NON-UNION. FROM 1981 TO 1986 AS A NON-UNION EMPLOYEE, THE ONLY BENEFITS I RECEIVED WERE LOWER PAY SCALE AND SELF-PAY FAMILY INSURANCE. IN 1986 THE COMPANY I WAS EMPLOYED BY WAS INVITED TO BECOME ORGANIZED BY THE LOCAL UNION. I WAS DELIGHTED TO HAVE THE OPPORTUNITY TO SIT DOWN AND DISCUSS THE ADVANTAGES AND RESPONSIBILITY OF UNION MEMBERSHIP. THE UNION ORGANIZER WAS VERY STRAIGHTFORWARD AND ~~HONEST~~ AS TO WHAT UNIONISM COULD OFFER US AND WHAT WE SHOULD EXPECT TO CONTRIBUTE OURSELVES. ALL QUESTIONS WERE ANSWERED AND WE WERE ALLOWED TO INDIVIDUALLY MAKE OUR CHOICE. PERSONALLY, I WAS VERY ANXIOUS TO RETURN TO UNION MEMBERSHIP FOR THE BENEFITS OF BETTER HOURLY PAY, COVERED HEALTH INSURANCE, PENSION PLAN (OF WHICH I COULD AFFORD NON WHILE RAISING FOUR CHILDREN) AND THE ABILITY TO WORK IN A SAFE AND PROFESSIONAL ENVIRONMENT.

I FEEL I AM MOST FORTUNATE TO AGAIN BE ABLE TO STATE, "I AM A UNION ELECTRICIAN." UNIONISM REPRESENTS CONTINUING EDUCATION AND EMPATHY FOR THE WORKING CLASS.

SINCERELY
Raymond C Dunkle

November 21, 1995

To whom it may concern:

My name is Jamie Farmer. I live in the Kansas City, Missouri area. I was introduced to the electrical field at a young age by my father who is an electrician. I have worked in the field, as a wireman, for two years.

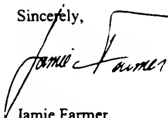
I was contacted by the union when I was working for Mi-Linn Electric. I was happy working for that shop in regard to co-workers and being able to do the work I enjoy. Although I had no benefits while working there.

The union organizer was very helpful with any information I asked for. They never, at anytime, or for any reason threatened me. I made a decision early on, before being faced by an organizer to become union.

I became union because I felt it would benefit myself in more ways than staying non-union. Job security is very important to me, and I feel as long as my union exists my job will also exist. Wages, healthcare and a pension also weighted heavily in my decision. All of these benefits are contracted in my signature to the union, there is no contract that offers you this with a non-union shop.

I did make the right choice in becoming union. If I had it to do all over again, I would.

Sincerely,



Jamie Farmer
6717 NW Mirror Lake Terrace
Parkville, MO 64152

The House Oversight And Investigations Subcommittee of the Economic And Education Opportunities Committee

Dear Sirs,

I am Brian McShane and have resided in the Kansas City + Blue Springs Mo area for 32 years.

I became an electrician on account my family owned a business and I too wanted good wages + benefits for my family to come. I have been a Union member from the beginning of my Appentiship with Steelworkers Union #14436 and recieved good wages, benefits etc.

I later was introduced into Local Union #124 IBEW and recieved even better pay, more benefits etc.

The organizer for #124 IBEW Union was very helpful in decisions we had to make and treated us with dignity and equally.

The main reason I became Union is because I believe each man or women should have EQUAL PAY for EQUAL work. And without Unions you will not have this or the Quality of work.

IF I need construction done of my own I will make sure they too are UNION.

Brian McShane IBEW #124 member

11-27-95

Economic and Education Opportunities Committee
House Oversight & Investigations Subcommittee

I am Richard Pfeiffer living in Sedalia, Mo over 50 years. Switched from the CATV business after 6 years and started doing electrical work in 1972.
Was contacted by IBEW Local 124 in early 1994. Was working for Medallion Electric Co. for last 22 years. Enjoyed working there but work kept getting slower and wages had not increased for 15 years. Benefits increased a little.
The Union organizer explained the wages, benefits, and working conditions. I deceded to go with the union and told my boss and, asked him to talk with the union people. They bent over backwards treating all of us with dignity and respect. Boss would not organize the shop so I finally left Medallion Electric. The last 10 years working there I would tell the younger employes they needed to try and get into the union apprientence program if they wanted to make decent wages.
I became union mainly for the higher wages. Since working for a union shop about 2 years I think maybe the working conditions are more inportant them the increased wages. I defitnitly made the right choice going union; wished I had done it 20 years sooner

Sincerely

Richard C Pfeiffer

November 21, 1995

To Chairman of the Committee:

I, William W. Ashurst of Kansas City, MO 64127 have been doing electrical work since 1971. I was able to join IBEW Local 124 in August of 1994.

I contacted the union after hearing that they were taking in new qualified members. I was working for Diversified Electric of Olathe, KS. I have always wanted to be a member of Local 124. The wages that Diversified paid were very low and we really didn't have any conditions.

I contacted Jim Beem, an organizer for Local 124 and told him I was interested in becoming a member. I was treated as nice as if I have been treated in my life by anyone.

I wanted to be a union member because at my age 45, I felt like I needed a pension plan, health insurance and all the other benefits that the union had to offer that I could never afford on my own.

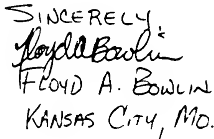
Becoming a member of IBEW Local 124 has been one of the very best things that has happen to me in my life.

Thank you.

Member of IBEW Local 124
William W. Ashurst
2317 Lawndale
Kansas City, MO 64127

MY NAME IS FLOYD BOWLIN. I LIVE IN KANSAS CITY MO.
I BECAME AN ELECTRICIAN BY SALTING A NON-UNION CONTRACTOR
WHILE I WAS A SALT I DID NOT FORCE THE UNION ON
ANY OTHER EMPLOYEE. I WAS A GOOD WORKER AND
I PERFORMED MY JOB TO THE BEST OF MY ABILITY.
I DID NOT TRY TO SLOW THE JOB DOWN. I WAS
THERE TO HELP ANYONE BECOME UNION.

I WAS RAISED IN AN UNION FAMILY. THE UNION
HAS PROVIDED A GREAT CHILDHOOD AND ADULT
LIVING. I HAVE NOT FOUND A COMPANY WITH
A BENEFIT PACKAGE LIKE WE HAVE WITH THE
UNION. I HOPE WE WILL KEEP OUR RIGHT TO
ORGANIZE I WILL DO THIS AGAIN

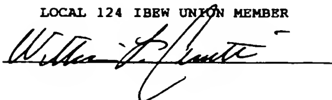

SINCERELY,
Floyd A Bowlin
FLOYD A. BOWLIN
KANSAS CITY, MO.

NOVEMBER 6,1995

TO CHAIRMAN OF THE COMMITTEE

I WILLIAM LEROY CERUTTI LIVES IN LEES SUMMIT MO.64086
I,AM A ELECTRICIAN I STARTED OUT IN RESIDENTIAL
WORKING NONUNION,I WAS 20,YRS OLD AT THE TIME,I,AM 41,YRS OLD NOW
ONE DAY, I WAS APPROACHED BY UNION MEMBERS OF LOCAL 124,IBEW
THEY EXPLAINED TO ME AND OTHER PIONEER ELECTRIC EMPLOYEES
THE BENEFITS OF BEING BACK BY A LOCAL UNION, THE UNION ORGANIZERS
WAS POLITE AND I FELT THEY WERE VERY HONEST IN WHAT
THEY WERE DOING,FROM WHAT I SEEN ABSOLUTLY NOBODY WAS FORCED
TO DO ANYTHING THEY DIDNT WANT TO DO. EVERY PERSON THAT ORGANIZED
AT THE TIME FELT IT WAS THE BEST MOVE FOR THERE FUTURE.
MY DECISION WAS BASED ON SECURITY,AND ALL THE BENEFIT SUCH AS
HEALTH INS,AND SAFE WORKING CONDITIONS,PENSION OS NEEDED
FOR THE FUTURE,AND THE PROTECTION OF WAGES,
I FEEL THIS WAS ONE OF THE BEST MOVES I EVER HAVE IN MY LIFE TO
PROTECT MY JOB,MY SELF,AND,MY FAMILY.
I HAVE NO REGRETS OF BEING ORGANIZED BY THE UNION. IF I HAD TO DO
IT OVER YOU WOULD NOT HAVE TO ASK ME TWICE.
PROUD TO BE UNION. I WISH MORE PEOPLE WAS OS LUCKY TO HAVE THE
SECURTIY OF A UNION.

LOCAL 124 IBEW UNION MEMBER



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Nov. 20, 1995

Dennis K Foster
[illegible]
Kansas City Kans 66106

I've been in the electrical field for over twenty-two years. I began my [illegible] shop in June of 1973 with the [illegible] Company where in August of 1977 I became a union journeyman electrician. That was a [illegible] job with greater benefits. However in July of 1982 I was asked to become an electrical draftsman which was a management position and after [illegible] years I was promoted to the electrical engineering position in the [illegible] office. During this management time between 1982 and 1990 I elected to maintain my union status by paying my union dues as an inactive member. While being in management there was no protection from upper management and you did what you were told or else. Long working hours without pay, away from home at anytime for long periods of time and basically married to the company.

[illegible] with most American businesses, downsizing and local [illegible] were and still are an everyday occurrence and in July [illegible] it took its [illegible] [illegible]. I became unemployed after seventeen years with the railroad. I don't have the opportunity to [illegible] [illegible] back to [illegible] [illegible] after paying [illegible] [illegible] those years. Because from the [illegible] [illegible] had pretty much [illegible] crafts [illegible] buy-outs [illegible] contracting. Some [illegible] had [illegible] [illegible] and [illegible] cuts.

I [illegible] for work [illegible] electrical field through [illegible] sending resumes. I sent [illegible] the [illegible] City [illegible] [illegible].

After several weeks [illegible] with a large, local engineering firm in Kansas City. I was hired as a Senior Electrical Designer and felt the firm had good health insurance, working conditions, [illegible] and well known in the community. There was [illegible] in the firm but I was told

that several years earlier some
[illegible] employees tried to
start a local in house union to
protect their rights but most were
terminated or relocated by upper management.
After four years with the engineering
firm my position was terminated due to
cash flow problems caused by losing
several [illegible] lawsuits. I was thankful
for the termination because I myself
[illegible] agreement [illegible]
[illegible] management [illegible]
employees at this firm did. I myself
was interviewed to become a manager of
a new division [illegible]
looked forward to joining [illegible]
supervisor found out and denied my
transfer. [illegible] employees
began to feel that all the [illegible]
health insurance plans, working conditions
and benefits were mainly used at
interview time for luring scams.
Benefits such as three days off for
death of [illegible] family member wasn't
true. I only received two days and had to
make up three days. Time off
for jury duty had to [illegible]
[illegible] I found out the hard way.

In the summer of 1993 I received a call from Mr. Chris Heegn of the Electrical Union Local No 124. Mr. Heegn had been reviewing through some of the old files and found the resume I had sent the local in 1990 after termination from the railroad. Mr. Heegn was very friendly and polite during our phone conversation. Mr. Heegn seemed impressed with my work history and skills. He asked where I was working and if I was thinking of making any job changes. At that time I told Mr. Heegn I planned on staying with Black & Veatch and not making any change at that time. If only I had known that a year later I would be terminated from Black & Veatch.

After termination from Black & Veatch in July of 1994 I decided to try and get into the union where I felt there was some employee protection with a union. Employers not taking advantage of their employees as seen at B&V. I contacted Mr. Heegn and Mr. Jim Beem who both treated me with respect, dignity and honesty. I thank both of these

gentlemen for their efforts in the
possibility to get me into the
IBEW Local No. 124 and back to
being an electrician again. A field
I enjoy working in and a place
where if there is a problem between
employer and employee its addressed
and resolved. Not swept under
the carpet to be forgotten by non-
organized labor as seen by Santa Fe
and Black & Veatch management.

As of August 1994, I'm proud to
say I've been a member of IBEW
Local No 124 for fifteen months which
makes my total electrician career over
ten years.

I'm pleased to be a union member
for the benefits which they offer.
Since so many people in todays work
force have no benefits such as my wife
who went to college and became a
dental assistant. This is an example
of a college professional working in a
profession without medical insurance.

I made the choice to return
back into the union not only for
the security and job satisfaction but

most of all, protection from unlawful conduct by employers.

To summarize, I know with my own experience from working both sides that management will and does take advantage of their employees. This is not only my own experience but talking with friends, neighbors and relatives the same experiences they have confronted. The days are long gone for a person to graduate from school and serve one employer until retirement. Employers treat employees as if they are a dime a dozen.

Therefore, we need unions and similar organizations to protect the workers from management abuse.

Sincerely
Dennis K. Hatch

November 20, 1995

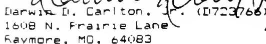
To: The House Oversight and Investigations Subcommittee of the Economic and Education Opportunities Committee

My name is Darwin D. Carlton, Jr. I live in Raymore, Missouri, south of Kansas City, Missouri. I started out as an electrician in a small Iowa town, working for a local contractor when I was in high school. After high school, I served in the United States Army and when I got out I went to avionics school in Kansas City. While attending school, to make ends meet, I accepted a position with B & W Electric and ended up back in the electrical field. After working for several different contractors, I went to work for Pioneer Electric. I was contacted by IBEW L.U. 124 while working for Pioneer Electric but could not be organized right away because of belonging to another union. I was not very happy there because I was not very well represented. After many hours of deep thought I sought the transition by talking to several union officials and going through the legalities of labor. The organizers treated me with respect and sincere concern. After talking with the organizers and other members of Pioneer Electric, Inc., we, as a body, decided to go IBEW L.U. 124.

I can only speak for myself but I think organizing is a good move on the part of the union. I think the main reason I wanted to become a part of Local Union 124 was because of retirement, job security, being able to work on larger, more challenging jobs, and with qualified individuals. I also believe in updating one's knowledge which this local provides. I like the other benefits of being in the union--for instance, insurance, the working conditions, the brotherhood, the family atmosphere of helping each other. If I had to do it again, there would be no doubt that I would make the same decision. I only wish it had happened twenty years earlier.

And if those of you who sit on the committees and subcommittees are not adequately informed, it might interest you to know that it was, is and always will be THE UNIONS THAT BUILT AND WILL MAINTAIN OUR MIDDLE CLASS. IF THE UNIONS DISAPPEAR, SO WILL OUR MIDDLE CLASS AND WE WILL BE LIKE THE THIRD WORLD NATIONS--THE RICH AND THE POOR.

Sincerely,



Darwin D. Carlton, Jr. (D723766)
1608 N. Prairie Lane
Raymore, MO. 64083

November 21, 1995

The House Oversight and Investigations Subcommittee
of the Economic and Education Opportunities Committee

Dear Chairman:

My name is David Johnson and I live in Smithville, Missouri. Ever since I was a very young boy I had wanted to be an Electrician. I attempted to join the Union in 1977 but work was slow and I was forced to work for a non-union Electrical company. Work was plentiful but there was no health insurance, vacation or overtime pay.

A year ago I became so depressed and frustrated that I ended up in the hospital. Completely exhausted I decided it was time to do something about it. I was fortunate enough to be able to work on a White Ticket last summer and was given a chance to join the Union last fall.

Without Unions there are no benefits, substandard pay and poor working conditions. I will never go back to a non-union shop.

Please think long and hard before making decisions that would cripple Labor Unions in this great country of ours! Think not only of our generation but of our children and their future children as well.

Sincerely,

David P. Johnson
15080 Lakeport Lane
Smithville, MO 64089
(816) 532-0172

November 21, 1995

To whom it may concern:

My name is Michael D. Crone, I am a union electrician in Kansas City. I started in the construction industry in 1985. I have presently been an electrician for 9 years.

I am not somebody that was non-union but I was somebody that was a member of United Steelworkers of America for 2 years. During those two years I was lied to and not represented to the ability that I should have been. When the opportunity to get out of the union or to change unions, I voted to go IBEW.

I feel that as an individual I will be better represented by the union then by myself. With the union I have the ability to change jobs or location if need be. If I am non-union I am at the will of my contractor. With the unions I am granted the ability to further my education which gives the industry a better educated electrician. If I was non-union the education would not be available or not affordable.

In conclusion my decision is my own! And I have never regretted it.

Sincerely,

Michael D. Crone
18110 Holke Rd.
Independence, MO 64057

November 20, 1995

To Whom It May concern:

My name is James Banks. I live at 9203 Alden , Lenexa, KS 66215. I have been an electrician for twenty years.

I have been working thru IBEW Local 124 since August 19, 1994. Before that time I was working for Diversified Electric, Olathe KS. There were about six electricians working with Diversified that joined Local 124 at that time.

Diversified Electric, like all non-union shops, did not pay very well. Any benefits came out of our hourly pay. The health insurance was not very good, with a high deductible and very basic coverage. But, at least Diversified did offer us insurance, most non-union companies do not. All Diversified employees were expected to use their own personal vehicles to haul tools and materials to and from different jobs.. Material and tools was hauled from the supply houses and shop to the jobs using our trucks. I was expected to use my truck on the job as a company truck.

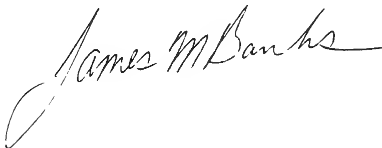
Non-union shops make lots of promises to their employees, and keep very few of them. After you have been with a non-union shop a few years , work your way up in their organizations, the owners know you will put up with their lies. Because, if you quit, you have to start all over again at the bottom with another non-union company. That non-union company will treat you the same way.

In August of 1994, I was working with an electrician named Doran Wormell. When we heard that the IBEW was accepting new members, Doran called Local 124 and asked if someone would please come and talk to us. We had representatives from both Locals 124 and 226 come by. The job Doran and I was on at this time bordered both Locals.

Both representatives were very open, informative and professional. On a day when the representatives from Local 226 was with us, there were six or eight electricians from South Kansas City Electric that came by requesting information about joining the union.

We joined the IBEW because the pay is better, but also for better insurance, holidays, vacations, and most of all for a retirement plan that works.

I still work with Doran Wormell and we both agree that we made the right decision and would gladly do it again.



November 21, 1995

To Whom It May Concern:

My name is Bob Busby Jr. and I live in Kansas City, Missouri. I took a vocational class in highschool about basic wiring which helped me to decided to become an electrician. I have since been an electrician for 5 1/2 years.

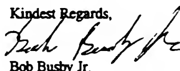
I was contacted by the Union in 1993 while I was working for a contractor affiliated with the CIU Union. We paid $300 a year to belong to this "union" but we weren't given vacation pay, sick pay, or health insurance. I also worked many nights and weekends without receiving overtime pay.

The Union organizer was very helpful. He presented the facts about the Union and let us talk about it amongst ourselves. As a result of attempting to organize our nonunion shop, myself along with many of my fellow co-workers were terminated by our employer. We were later reinstated by a decision made by the N.L.R.B. (National Labor Relations Board). Within the next year my employer went out of business and I applied for the apprenticeship program.

The main reason I decided to become Union was to create a higher standard of living for myself and my family. Since I've joined the Union I have health insurance, as well as a retirement plan. I have better wages and safer working conditions. I am also paid overtime by my Union employer when I work extra hours at night or on the weekends.

In conclusion, I feel I've made the right decision to become a member of our Union, and if I had it to do over again, neither myself or my family would have to think twice- we've been extremely satisfied with the results!

Kindest Regards,



Bob Busby Jr.

November 21, 1995

Attention: House Oversight and Investigations Subcommittee of the Economic and Educational Opportunities Committee

My name is Paul Richey. I live in Independence, MO. I an writing about your discussions on Labor Union Organizing. I started working as an electrician for my uncle around 8 years ago. I did heating and A/C work before that for 4 years. I'm now an IBEW member.

I contacted an organizer named Chris Heegn earlier this year, when I worked for Tann Electric in Kansas. I was making $14.00 an hour, had 1 week paid vacation, and paid for my own health insurance offered by Tann for me to pay. We (the journeymen) working for him organized a meeting with him to bargain for more money, and that he pay for insurance on employees only. He would not go for anything. Instead, he made a ridiculous plan to give us raises, according to his judgement. If we are worth more to him than we're being paid, shouldn't we get that by his judgement in the first place?

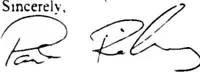
When I contacted Chris, he was more than willing to discuss with me wages and benefits, conditions, etc... I never once felt intimidated by him. I've only seen one or two merit shop owners with ability to treat people as people.

After thinking about it, I felt I owed it not only to my family, but to myself to join this union. Since June 29th my family has enjoyed a much better standard of living.

Having working conditions that include safety as a standard, not profit alone, I'm happy to go to work. My future doesn't seem to bleak, now that I have a pension and wage that will allow me to include more than one week of planning where my money goes.

I also feel safe, for having someone to fight for me. Commercial Electric was not paying our full wages on a government job. The union has since invested litigation to right my wages in FULL! I would join them again, and I'm trying to get other people I know to talk to them also. We all should be this respected.

Sincerely,



Paul Richey
1710 N Ponca Dr.
Independence, MO 64058

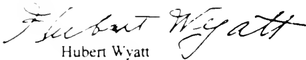
November 21, 1995

Dear Chairman:

My name is Hubert Wyatt and I live in Greenwood, Missouri. I became an electrician by catching a job here and there non-union. I started working as an electrician in about 1950. I worked in the Kansas City area for many years non-union and later became a member of the Local Mineworkers, electrical division.

An IBEW Business Agent visited my job site and we began to speak of union membership. I chose to join the IBEW for better benefits, better pay and a chance to get more experience working on better jobs. I have always been treated well in this organization and as an equal with anyone else in the Local. I have a lot of respect for the Local organization and all the help they have given me over the last 25 - 30 years. I have been very grateful for the pension I have received over the past few years.

Sincerely,



Hubert Wyatt

1206 W. Main
Greenwood, MO 64034

11/20/95

Dear Chairman,

My name is Daniel McCready, I live in Independence Mo. About eleven years ago I was working as a non-union rough-in carpenter in Phoenix Arizona for $5.00 an hour with no benifits and no pension plan. I was contacted by my brother in MO, informing me of an opening for an apprentice electrician at the shop he was working for and have been working as an electrician since then.

In 1990 I was working out of local 14436 Steelworkers, which was in the process of disbanding, I was making a fairly good wage but still had no pension benifits. Through a freind i heard of a shop that was in the process of being organized by Local 124 IBEW, I immediately went to that shop and applied for a job. i accepted a position with that shop soley due to the understanding that I would be organized into the IBEW. The organizational process I went through with that shop into the IBEW was completely civilized and neither I nor anyone I know was coerced or intimidated in any way. It would not have been nesassary to coerce me to join a union since without union benifits including a decent pension, there is no real future or sense of security for a construction worker in my opinion.

I firmly believe I made the right decision in joining the union since in the last five years my lifestyle and general peace of mind have been vastly improved, and i would gladly make the same decision again.

respectfully,

Dan McCready

P.S. I was working for Copper Electric out of Kearney Mo. when I was organized into the IBEW.

11/20/95 MON 14:28 [TX/RX NO 7529] ☑001

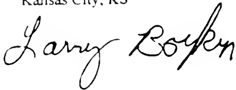
November 21, 1995

Dear Sir:

I have been an electrician for 20 years. I was a union electrician once before and I had to get out due to bad grades. I worked several years as a non-union electrician, doing that time I had no health insurance and could not pay for it myself. I am glad to be back in the union where I am not asked to bring tools and a truck. The union was very good to me before and the organizers are great. I was contacted 6/1/95. There is more going for me than just a paycheck working back in the union.

Sincerely,

Larry Boykin
4543 Rowland
Kansas City, KS



Introduction

Good morning, Mr Chairman and members of the subcommittee My name is Bill Love My associate Richard Oberlechner and I thank you for giving us the opportunity to be with you this morning to testify on behalf of SKC Electric SKC Electric has been in business over 15 years right here in Johnson County, Kansas We employ approximately 125 people We are the largest electrical contractor in this county

I learned the industry as an electrician working with my tools Although, I have never been a member of a labor union, I have always respected an individual's right to organize and bargain collectively In the last 4 years, our employees have been the subject of two very intense organizational drives by the IBEW (International Brotherhood of Electrical Workers) The overwhelming majority of our employees, around 90%, have rejected the Union's advances and have chosen to remain union-free During these organizational drives, the Union pays "salts" a weekly salary, in addition to their SKCE salary, to support their cause. We respect the decisions of individuals to choose what is best for them In some cases, people have left SKCE to join the Union and then come back However, since our employees choose not to be represented by a collective bargaining agreement, the IBEW is still determined to undermine our business

Step #1 - The IBEW is abusing our government agencies, primarily the NLRB office across the street, and our laws to create financial hardship upon SKCE.

The IBEW Special Project Department publishes in the organizers training manual, *"Action capsule five is simply a confirmation of the organizer's intent to use the National Labor Relations Act and the NLRB against the employer at every viable opportunity. Once a charge has been filed and investigated by NLRB agents with the cooperation and assistance of the organizer, the employer must provide its own defense at its own expense. Generally speaking, contractors are entrepreneurial craftsmen. They are not qualified by training or experience to handle legal filings or defenses.* ***Legal fees can become substantial financial drains within short periods of time."***

The IBEW began by showing up at our office in multiple vehicles, in mass groups of 10 - 20 people, with video-cameras trying to get our receptionist to make an improper statement so they can file an unfair labor practice charge with the NLRB We have charges pending because we didn't hire anybody, at all I fail to see why we must defend charges, and pay legal expenses, simply because our firm wasn't hiring any electricians whatsoever when they applied.

Subsequent to this, we have hired union members and those who aren't union members We hired union members and we received unfair labor practice charges, we hired non-union members and we received unfair labor practice charges

We didn't hire one of the primary union-organizers and he filed an EEOC age-discrimination complaint against us It just so happens we have hired individuals much older than he, however, we must still defend this charge

We had an unfair labor practice charge filed because a "salt" wired the lights in a bathroom to come on with an adjoining office The foreman asked the "salt" to go fix his error and he was shocked in the process, although not hurt. He accused us of *"trying to murder him"*, although he was a trained electrician and he was trained on OSHA lockout - tagout procedures We must still defend this charge

At a new pasta manufacturing plant, picketers were instructed to limit their activities off the premises **by the owner**, which is perfectly legal. This meant the picketers were required to stand at the **end of a dead end street** SKCE was served with an unfair labor practice charge for ".. picketing activities are confined to public streets where they are exposed to an unreasonable risk to their personal safety." This charge was dropped shortly after a reporter from the *Kansas City Star* investigated However, I don't feel we can, or should, rely upon the media to bring "common sense" to labor - management relations in this Country.

We currently have over 30 such issues pending in all of our charges. However, we have not violated the NLRA and we have NOT been found guilty of any such violations. Our first hearing is scheduled next January You would not know this by reading correspondence coming out of the NLRB and IBEW offices For example, I have included the following exhibits.

- Exhibit #1 - IBEW Handbill distributed regarding work at the FAA in Olathe, KS
- Exhibit #2 - IBEW Handbill distributed defacing President Truman
- Exhibit #3 - IBEW Handbill distributed around the Catholic Archdiocese
- Exhibit #4 - NLRB proposed settlement agreement as drafted by the IBEW

As you can see by Exhibit #4, they have used the NLRB office to give the official impression that we are guilty The first time I saw this document, a customer showed it to me I remind you we have not been found guilty and the overwhelming majority of our employees have chosen not to have union representation.

Enclosed is a copy of the latest issue of the Local #124 IBEW *Electrogram*, Exhibit #5, where it states, "*Now that the NLRB has come back to life after the Town and Country decision and two federal shutdowns, we will begin to see the heat going way up on our yet unorganized shops. There are some seven non-union companies with 28 ULP's pending. For the remainder of '96, Chris, Jim and the various complainants will be spending many, many hours at the NLRB offices and in the courtroom GET UM FELLAS!!!*" This cost the Union no legal expenses, us taxpayers fund this stuff I ask you, aren't we a litigious enough of a society?

Step #2 The Union is taking these ULP charges to damage our creditability with our customers and employees.

The IBEW sends letters, with copies of all of the charges, to customers in the hopes of taking our business away, thus not allowing us to keep our employees fully employed. They tell them they may want to hire a *"respectable contractor."* See the following exhibits:

- Exhibit #6 - IBEW letter address to Jacobson's Stores
- Exhibit #7 - IBEW letter to Mr Claud, contractor for a new regional shopping mall

Not only does the IBEW take these phony charges and attempt to destroy us economically; they also send these to our employees, attempting to undermine confidence in their company I remind you, we have not been found guilt of any of these violations

Step #3 - The Union is taking these ULP charges to call strikes by salt employees to weaken our company.

The IBEW has taken these NLRB charges to call numerous ULP (Unfair Labor Practice) strikes against our firm IBEW Special Project Department publishes in the organizers training manual, "*Imagine the following scenario: (1) the employer commits a ULP; (2) the organizer files a charge and strikes the job; (3) the employer subcontractors the work (4) as soon as the subcontractor gets the job manned and operating, the organizer makes an unconditional offer on behalf of all striking employees to return to work; (5) the employer spends a couple of weeks talking to his attorneys before reinstatement is offered; (6) the subcontractor is removed from the job to make room for the strikers; (7) the organizer files a charge demanding back pay plus interest for the period of time between the unconditional offer to return to work and the employer's offer of reinstatement; (8) the subcontractor sues the contractor for cost recovery, damages and breach of contract; (9) the employer commits another ULP and the organizer strikes the job again; (10) this time the employer can't find a subcontractor, so he hires replacements; (11) as soon as the job is operational, the organizer makes another*

unconditional offer to return to work; (12) this time the employer fires the replacements and offers immediate reinstatement to the strikers; (13) as soon as the replacements are gone and most have other jobs, the organizer calls an economic strike; (14) this time the employer can't get a subcontractor or sufficient replacements for strikers, so he offers to sign the union's standard agreement; (15) the union advises the employer that the standard agreement is not available and proposes scale plus $2.00 per hour; (16) the owner removes the employer from the job and hires a union contractor; (17) the union initiates the man; (18) the employer declares bankruptcy; (19) etc." The employer declares bankruptcy it states! They bankrupt the contractor with the help of the U S Government Is that what they have planned for SKCE? I can tell you not, however, some of my peers aren't, and won't be, so fortunate

A disturbing example here in Kansas City is Pat Hagerty at Prefab Steel A year ago he employed 22 workmen He had a building steel structure pulled to the ground, threats in his mailbox, thugs following his wife and kids around and a mountain of legal bills with the NLRB and the EEOC he could not overcome Last month he terminated the employment of all his building erectors This is not what you would expect in a democratic, free-enterprise society

Summary

There are those that might say, "See the system works, SKCE is still successful and is still in business" Well, SKCE has spent over $30,000 00 in legal bills thus far, and we haven't even been to a hearing We will probably spend over $100,000 00 defending these allegations However, just because we can, this doesn't mean smaller contractors can I feel that it is important to note, nobody is saying that NLRB shouldn't be available to both labor and management in bona-fide situations It is the phony charges, and the abuse of the system for intentional financial harm that is unfair I have personally talked with NLRB board agents that, off the record, agree

The unfortunate part of all this, is that this activity is supported and funded by the U S Government We are away from our jobs today because it is important that we restore some "common sense" back to our labor and management relations in this country so that the rights of the 88% majority of the non-signatory, private employees are protected Thank you for allowing us to speak to you

WHAT A TRACK RECORD!!

South Kansas City Electric is working at the
Federal Aviation Administration
South Kansas City Electric currently has multiple
UNFAIR LABOR PRACTICES
filed against them by their
EMPLOYEES.

OPEIU-320

EXHIBIT # 1

TRUMAN

would have been ashamed!

SOUTH KANSAS CITY ELECTRIC, an electrical contractor, is working on the Truman Library.

SOUTH KANSAS CITY ELECTRIC has been charged with committing multiple Unfair Labor Practices against its employees.

Do you think a pro-labor, pro-worker, pro-American like Harry would have approved?

EXHIBIT # 2

Just Rhetoric or Doctrine?

On May 2, 1991 ***Pope John Paul II*** *published his encyclical Dentesimus Annus. This encyclical was published in honor of the 100th anniversary of Pope Leo XIII's social encyclical Rerum Novarum. About Centesimus Annus Pope John Paul II writes,* ***"I wish first and foremost to satisfy the debt of gratitude which the whole church owes to this great pope and his 'immortal document.'"***

In Rerum Novarum, Pope Leo XIII writes, "Every worker has the right ***to a just wage.*** *If through necessity or fear of a worse evil the workman accepts harder conditions because an employer or contractor will afford no better, he is made the victim of* ***FORCE AND INJUSTICE."***

Pope ***John Paul II*** *offers modern day support by writing,* ***"A workman's wages should be sufficient to enable him to support himself, his wife, and his children."***

Rockhurst College *is using an electrical contractor,* ***South Kansas City Electric,*** *to perform electrical work on its new science building.* ***South Kansas City Electric*** ***does not pay its employees the prevailing wage for electrical work in the Kansas City area and has committed numerous Unfair Labor Practices (as defined by the National Labor Relations Act) against their employees.***

These employees are being made the victim of FORCE AND INJUSTICE.

---- Why? ----

The employees of ***South Kansas City Electric*** *are the only building craftsmen on this project that are providing their labor and expertise under these unjust conditions.*

Both ***Pope Leo XIII*** *and* ***Pope John Paul II*** *teach fairness for working people. They do not teach it is right to use workmen who are exploited by substandard wages and unfair labor practices.*

We are asking the Board of Jesuits and Rockhurst College to stop exploiting workers by rewarding contractors which do not pay the prevailing wage in Kansas City and commit unfair labor practices against their employees--such as South Kansas City Electric.

EXHIBIT # 3

opeiu-320

FORM NLRB—4724
(10-70)

NOTICE TO EMPLOYEES

Cases 17-CA-17877
17-CA-17877-2
17-CA-17877-3
17-CA-18082
17-CA-18212

POSTED PURSUANT TO A SETTLEMENT AGREEMENT
APPROVED BY A REGIONAL DIRECTOR OF THE
NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT

Section 7 of the National Labor Relations Act, as amended, gives employees the following rights:

To organize themselves,
To form, join, or assist unions,
To bargain collectively through representatives
of their own choosing;
To act together for the purpose of collective bargaining
or other mutual aid or protection;
To refrain from any or all of these acts.

WE WILL NOT do anything which interferes with, restrains, or coerces our employees in the exercise of these rights, and more specifically·

WE WILL NOT discriminate against our employees, because they engage in activities on behalf of the International Brotherhood of Teamsters Local 534 (the Union) or any other labor organization.

WE WILL NOT threaten our employees with discharge, or issue written warnings to them because they engaged in union and/or other protected concerted activities.

WE WILL NOT threaten our employees with unspecified reprisals, or more onerous working conditions because they engaged in union and/or other protected concerted activities

WE WILL NOT threaten to engage in the surveillance of our employees, and WE WILL NOT more closely supervise our employees because they engaged in union and/or protected concerted activities

WE WILL NOT prohibit our employees from discussing working conditions with other employees.

WE WILL NOT discharge our employees because they engaged in union and/or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act

WE WILL offer Hayward Ray, Jr full and immediate reinstatement to his former position of employment without prejudice to his seniority or other rights and privileges, and **WE WILL** make Hayward Ray, Jr. whole, with interest, for any losses in wages and benefits he may have suffered as a result of his discharge

EXHIBIT # 4

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act, as amended

WE WILL offer Clarence Russell Gould full and immediate reinstatement to his former position of employment without prejudice to his seniority or any other right or privilege previously enjoyed, and **WE WILL** make him whole for all time lost for days rained out on October 28, October 31, November 1, November 4, and November 9, 1994, and for any loss of wages or other benefits he may have suffered as a result of his discharge on November 10, 1994.

WE WILL expunge from our records any reference to the October 27, 1994, reprimand and November 10, 1994, discharge of Clarence Russell Gould and not rely upon either as a basis for any personnel action in the future regarding him and notify him in writing of the foregoing

WE WILL offer Stanton Douglas Gilliam full and immediate reinstatement to his former position of employment without prejudice to his seniority or any other rights or privileges previously enjoyed and **WE WILL** make him whole, with interest, for any loss of wages or benefits he may have suffered as a result of his constructive discharge on November 7, 1994, and as a result of being denied a raise on October 5, 1994

WE WILL expunge from our records any reference to the November 7, 1994 constructive discharge of employee Stanton Douglas Gilliam and not rely upon that as a basis for any personnel action in the future regarding him and notify him in writing of the foregoing

WE WILL offer jobs, to the extent available, to Michael Damico, Laurence Stewart, Brandon Stewart, Grant Stewart, Woodrow Farmer, Robert Fritz, Matt Mapes, Michael Potter, Gary Ping, Todd P Black, Matt Hayes, Karen Cochran, Pete Cooper, Rudy Chavez, Clifford J. Liberty, Nancy K. Grisham, Christine M. Matarese, Robert Roosevelt, Jim Beem, Charles Burton, Clinton Klinge, Jeffrey Jacks, Bob Busby, Sean Sales, Ron DeGraeve, Chad Reynolds, Jim Higgins, Steve Fabish, Mike Erickson, Allan Ward, Glenn Mallott, Bill Ward, Don Atkinson, Jr., Roger Lake, Bob Mapes, Dave Bahr, Gary Bly, Larry Jackson, Danny Melloway, Phil Mook, George Ortman, Pat Vienhage, Norman Beers, Jeff Miller, Frank Nurski, Jack Busby, Jim Rodriguez, Pete Raya, and Ralph Hood, and **WE WILL** make them whole for any losses, plus interest, they may have suffered as a result of our failure to hire them

day now There is some concern on the part of the Building Trades because of the recent mating of Utilicorp and KCPL Our questions center on the status of I-Tan II. We were assured there would be no effect except possibly a 550 megawatt generator instead of a 750. Look for a 1997 start

No real new news on the 401(k). To reiterate, the plan year has been moved to coincide with the IRS tax year to better facilitate ADP testing This will create a short "year" from September 1st to December 31st when the change takes place, and you will receive a statement that will reflect this

The allocation formula will change as far as the distribution of dividends and/or interest. The administrative fees will come out of the yield and the rest will distribute evenly by percent This will keep a new plan participant from losing his entire contribution to administrative fees

As pertains to Reynold's Electric, Sachs Electric will complete the airport job, as they were joint venturing anyway and Broadway has picked up the rest of the work The hands, those that wanted to, were transferred in the name of job continuity

Organizing continues to chip away Now that the NLRB has come back to life after the Town and Country decision and two federal shutdowns, we will begin to see the heat going way up on our as yet unorganized shops. There are some seven non-union companies with 28 ULPs pending For the remainder of '96, Chris, Jim and the various complainants will be spending many, many hours at the NLRB offices and in the courtroom GET UM FELLAS!!!

Here's the latest attempt by ABC to circumvent our qualified applicants and exploit a whole new group It seems that out of the kindness of their hearts and purely for the good of the little tikes, (of course that goes without saying) there have been "apprenticeship classes" established in Shawnee Mission schools to provide real world experience for the kids If you happen to reside in this school district, please be so kind as to call your school board and tell them how dangerous this little idea of ABC's would be for high school students Explain how ABC operates and how they have exploited workers of all ages since their inception.

Lindell commended those who stepped up to the plate and helped out with the Independence Council races and once again reminded us to get registered and ready. To that end many of our Members are to become deputy registrars and will be able to register voters on jobs, at the Hall and in the neighborhood

Want to be a politician? Do you think you have what it takes? Energy, commitment and a belief in the principles of Organized Labor? Then you may be just what we are looking for! If we look east to our Brothers in St Louis, we see they have four state representatives that are Members of Local 1 You think that might be some clout? Our local Building Trades are looking to duplicate their efforts by running our own Members, not somebody who says they have Union beliefs but someone who LIVES them. Think about it, you prospective candidates, and contact your Business Manager for details.

We saw a film tonight about the benefits of the Davis Bacon Law It was very informative and will be distributed to every member of the Missouri Legislature to stave off the latest repeal effort

UNFINISHED BUSINESS

None

NEW BUSINESS

Tom Livingston requested entry fee money not to exceed $1,000 for the AFL-CIO Bass Tournament Entry is $100 per boat and should more than 10 124 boats enter the tourney, the money will be split evenly The event is the 27th of April at the Kalfran Lodge. For more information contact the Hall (942-7500) or Tommy (228-3824). Motion passed

John J Sullivan reminded us of the wonderful contributions that Moxie has made over the years and asked the Membership to chip in to the tune of $1,500 and the cost of a retirement luncheon. Motion passed

Chris Heegn requested $100 to help pay the cost of Davis-Bacon tapes to be distributed to Missouri Legislators. Motion Passed

Dan Kiefer requested $460 to field 2 - 4 person Teams at the MDA Rock-A-Bowl Motion passed

Paul Rushton requested $100 for the Tri-County Scholarship Fund This scholarship is awarded to a Member or Member's child on a luck of the draw lottery All the applications are put in a hat and the winner is drawn. Motion passed

Joel Womack requested the Local purchase and distribute 20 tickets to the BUY AMERICAN Night at the Blades game Saturday, February, 24th. They are to be raffled in pairs at tonight's meeting Motion passed

Dave Payne requested that the Building Committee see that the drinking fountains in the Hall lobby be repaired President Liston concurred.

GOOD OF THE UNION

Brother Heegn spoke on the importance of the Davis-Bacon as far as the well being of all workers is concerned He pointed out the importance of little Davis-Bacons concerning local projects and promised to expand distribution of the tapes to include our city and county officials

Jerry Mook reminded the Members of the years of dedicated service Brother Chuck Neeland has given as an instructor prior to his leaving for greener pastures Thanks Chuck

Vice president Bill Petrie pointed out the raffle tickets being sold to raise money for our Members who are currently severely injured and looking at substantial time off If you are interested, please call the Hall or Brother Petrie (942-5798)

Jerry Mook is pleased to announce that I-70 Speedway will host a 124 Night Saturday, May 18th This will be a buy one get one promo and should be a great time. Tickets will be available at the Speedway, show your dues receipt for discount See you at the races

50/50 drawing paid $49 00 Ralph Rodriguez was our winner

NEWLY RETIRED

Hubert D Altis
Ronald "Bucky" L. Casselman
Jess H Reynolds
John M Ritter
Keith W Tuttle, Disability 1/94

ATTENTION GOLFERS

The 6th Annual Brian and Jeff Petrie Golf Tourney will be held June Ist at Minor Park Golf Course. If you are interested please contact Bill Petrie (942-5798) or the MDA office (931-7750) for more information. This is a four person scramble so teams are encouraged but individuals are also welcome.

EXHIBIT # 5

08/08/95 TUE 14:47 FAX 816 942 8805 I.B.E.W. LOCAL 124 002

FAXED

August 8, 1995

Ms. Linda Barmlage
Jacobson's Store, Inc.
3333 Sargent Road
Jackson, MI 49201

Dear Ms. Barmlage:

We have been advised, and are very disappointed to learn, that South Kansas City Electric (SKCE) is being considered as a subcontractor for electrical work on the Jacobson's Store, Inc. in Leawood, Kansas.

You may be interested to know that SKCE Is the subject of numerous unfair labor practice charges in Region 17 of the NLRB. (Copies of Charges enclosed.)

The purpose of this letter is to advise you of the pending labor disputes with SKCE and that affected employees and/or this organization may well exercise their rights to publicize the existence of same through picketing and other forms of lawful publicity in conjunction with SKCE's presence on the Jacobson's Store In Leawood, Kansas.

I am also enclosing other information pertinent to this situation.

If you have any questions in this regard, please communicate with the undersigned.

Sincerely,

Jim Beem
Director of Organizing

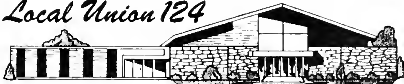
Chris Heegn
Director of Organizing

JB:CH:el
opeiu-320

Enclosures

EXHIBIT # 6

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

IBEW 

December 26, 1995

RECEIVED
DEC 2 1995
[illegible] CONSTRUCTION

Mr. Ron Claude
1311 South Fountain
Olathe, KS 66061

Dear Mr. Claude:

We have been advised, and are very disappointed to learn, that **South Kansas City Electric** is being considered as a subcontractor for the electrical work on **The Great Mall of the Plains Shopping Mall** in Olathe, Kansas. Enclosed is a packet of information which we feel may be invaluable to your final selection in obtaining a respectable contractor to perform your electrical work

South Kansas City Electric is the subject of numerous **Unfair Labor Practice Charges** filed with Region 17 of the National Labor Relations Board. South Kansas City Electric has also had charges filed through the **Kansas Human Rights Commission** and the **Equal Employment Opportunity Commission** (EEOC) alleging violation of the Age Discrimination in Employment Act (ADEA). In addition to these other alleged violations against their employees we have enclosed documents from the **State of Kansas Employment Security Board of Review** decision concerning the unjust termination of their employees. Another interesting set of documents are those which were set before the **Missouri Court of Appeals, Western District by the State of Missouri Department of Labor and Industrial Relations, Division of Labor Standards** alleging **Prevailing Wage Law violations** by South Kansas City Electric.

The purpose of this letter is to advise you of not only the pending labor disputes in which South Kansas City Electric is involved, but that affected employees and/or this organization may well exercise their rights to **publicize** the existence of violations through picketing and other forms of lawful publicity in conjunction with South Kansas City Electric's presence on all of their electrical projects. We hope you will take the time to review all of the enclosed information which should provide an overview of the manner in which South Kansas City Electric conducts its business

The IBEW is interested in protecting the rights of employees whose employer continually participates in illegal activities such as **discrimination, termination, threats and harassment.**

If you have any questions in this regard, please communicate with the undersigned

Sincerely,

Jim Beem — Christopher Heegn

Directors of Organizing

enclosures

JB lla

PO BOX 8727 • 301 EAST 103RD TERRACE • KANSAS CITY MISSOURI 64114 • 816-942-7500 • FAX 816-942-8805

EXHIBIT # 7

Statement

of

David R. Meyer

Blue Springs, Missouri

Presented

to the

Committee on Economic and Educational Opportunities

House Committee on Small Business

April 12, 1996

In March, 1977, Roger Meyer drove into Blue Springs, Missouri, in his rented U Haul trailer, with his wife and one year old daughter. He pooled his $7,500.00 from the sale of his home in California, with the $7,500.00 I had borrowed from my grandmother. Thus was the beginning of Meyer Brothers Building Co.

During the next two years, we each took the grand total of $2,400.00 out of the company. In 1978 we hired our first employee. Since that time, Roger and I are the only persons in our company to ever miss a paycheck. We have had to place second mortgages on our homes and do a lot of other creative things to insure that every employee of Meyer Brothers has always received their check and benefits on time.

We now have fifty employees whose benefits include a comprehensive health insurance plan, paid holidays, paid vacations and a 401 (k) retirement plan that we contribute to. We even make short term no interest loans to employees that run a little short from time to time. In 1983, we had an employee nearly lose his life. He was off work for over a year. We supplemented his work comp benefits (against our attorney's advice) to help him support his wife and two young children. Our philosophy is that our people are our most important resource.

We have had problems with the unions from the beginning. We have had numerous pickets, threats and many jobsites vandalized and extensively damaged. We have always been able to handle most of the situations we have faced. The irony of it is that they have never formally tried to organize our employees. Their intent has always been to create financial hardship sufficient enough to "drive us out of business."

Our most serious problems began towards the end of 1994. In December of 1994, the Family Life Center we were building for the RLDS church was "ink bombed" - a method they use by filling beer bottles or baby food jars with printer's ink. One month later another of our jobsites was ink bombed, oil and anti freeze poured on the concrete floor,

windows broken, several pieces of equipment with holes jabbed in the radiators, gas tanks filled with sugar and on and on. The total damage was over $10,000.00.

One month later, a union organizer filled out an application for employment at our office. We were not aware that he was affiliated with the union at that time. We were not hiring anyone at that time. On March 29, 1995, Mike Bright, the union organizer, came into our office and talked with our field supervisor. He made the statement that he was going to organize our iron workers and left the premises. The next day Bright came into our offices with Pat Masten of the carpenters union. They entered the front door with a video camera and began intimidating the two ladies we had at the front desk. The early morning of April 3, 1995, our office building was ink bombed, causing almost $5,000.00 in damage. The next day my wife took a call at the office in which the anonymous caller stated "Sorry for the bath, we will do a better job on Roger and Dave's houses".

That same week, several other merit shop contractors had buildings ink bombed. Pat Haggerty, a general contractor and steel erector, had all of the structural steel on a small building he was erecting down the street from our offices pulled down to the ground causing several thousand dollars in damage. It is my understanding that he is getting out of the steel erection business.

A Chili's Restaurant, under construction by a merit shop contractor, on 39th Street in Independence was burned to the ground in June or July of 1995. The damage was estimated at several hundred thousand dollars. Most jobsite damage has been minimal since that incident.

The technique they are now using to financially damage merit shop contractors has been through the use of the services of the National Labor Relations Board. I can personally attest to this method also.

On January 17, 1996, our company ran a help wanted ad for experienced metal building labor in the Kansas City Star. The ad read that applications were by appointment only and ran for approximately one week. We had many calls regarding the ad. By January 31, Danny Doherty, who was doing the interviewing and hiring, had made conditional job offers to approximately six applicants. One of the applicants was a Richard Christopherson. On January 31, a Jeff Brown came in. He informed our receptionist that he had talked to Danny, who had told him to come in and fill out an application. Danny informed our receptionist that he was no longer interviewing but to allow Brown to fill out an application. Brown filled out the application and left.

Two hours later, Brown, Christopherson and four others came into the office stating they wanted to fill out applications for employment. They smelled of alcohol and were very intimidating to our receptionist who called Danny to the front desk. Danny informed the group that we were no longer taking applications since all of the openings had been filled.

On February 5, 1996, we received notification from the NLRB that unfair labor practices had been filed against us by this group. We had not hired anyone since January 31, nor did we need to. We contacted the NLRB and informed them that we would be willing to accept their applications if they would contact us individually to schedule an appointment. We were trying to handle them the same as all of the other applicants. They refused our offer and said they wanted to pursue the charges against us.

We have given our statements to the NLRB regarding this matter and have tried repeatedly to determine the status of the charges and to resolve the charges. Their method now is to drag this on as long as they can. They try to get back pay damages awarded to the applicants. The longer it takes to resolve the charges, the more back pay it will cost us if they can win the case through the NLRB.

Just three days ago, on April 9, as I was beginning a meeting at my office with Kevin Godar, Executive Director of the Heart of America Chapter of the Associated Builders

and Contractors, fifteen ironworkers crowded into our small reception area requesting to apply for a job. They had video cameras and recording devices. Although our discussion was cordial, I am certain that another unfair labor practice charge is being filed.

At this point, I have no idea how much our legal fees will be. Our neighbors and friends at Enterprise Interiors have spent well over $20,000.00 to defend themselves and their case is not settled yet. From everything I have seen and read about these types of cases, we could easily incur legal bills of $10,000.00 or more.

Unions once served a useful purpose and do so still today in some cases. We have had several employees who were once union members. We have also had several leave our company to go to the promise of higher wages and benefits only to find out they were being sold a bill of goods. A couple of those people have come back for their old jobs. In the past, we would not have had a problem hiring certain union members. We have had them before. It is very different today with the practice of "salting". We are being forced by the federal government to hire union paid employees to come into our companies and totally disrupt our operations.

The unions are not doing this to organize our employees, they want to put us out of business. The NLRB is their newest weapon. All they need to do is stroll into the nearest NLRB office, fill out a form and watch "Uncle Sam" take over from there. They do not incur attorney's fees or any other expenses. They sit back and watch as we are forced to jump through hoops because of their frivolous charges.

What has happened to our FREE ENTERPRISE system? We can no longer hire whom we want, when we want. I am not afraid of the unions organizing our employees. If we treat them well, they do not need the union. They are better off dealing directly with the owner of the company than through a third party that is living off their hard earned wages.

Please put us back on a level playing field. We can hold our own there. We are not rich, fat cats taking advantage of the little people. We are the little people. Risking everything we own to keep our businesses operational, to support our families and to provide a decent living for our employees and their families. Right now it is David facing not one, but two Goliaths. The unions with their large coffers and the NLRB. It is very frightening to think of what may happen if changes are not made soon. Small businesses are the backbone of our country. Please do not stand by and watch the small businesses and our FREE ENTERPRISE system be destroyed by the unions and a tax supported branch of our government. We need to have Representative Fawell's proposed bill HR 3211 passed quickly.

Introduction

Mr. Chairman, members of the subcommittee, my name is Richard Oberlechner. I thank you for the opportunity to be with you today. I am presently an employee of the SKCE organization. I have worked in the electrical construction industry since 1970. I received my electrical training in the U.S. Navy and at various trade schools. I am a master electrician, and have worked at every level of the electrical industry from apprentice, electrician, apprenticeship instructor and company owner.

Personal Background

Upon my honorable discharge from the U.S. Navy in 1969, I went to work for Fishbach & Moore, one of the largest electrical contractors in the United States. I saw first hand how a Union could run a company out of town when it wanted. I later worked for L.K. Comstock, another large national contractor, and again saw the Union have their people drag their feet (take longer than it should) and again L.K. Comstock left town. In the 1980's I managed Overland Electric, a union company. When contract negotiations broke down with the IBEW, to serve our customer's, we hired non-union replacements. The union filed charges with the NLRB. The NLRB ruled the union had negotiated in bad faith and the union strike was not legal, instead of coming back to the bargaining table, the union left our company. However, they targeted our customers and cost the company many contracts. In 1988 I went to work for South Kansas City Electric.

Today's Focus

I am here to testify on behalf of a large number of my coworkers and myself. We would like to make it clear that we are tired of the harassing tactics, both on a company basis and against us individually. We sense the IBEW's salting practices, combined with the abusive use of the NLRB and our laws, has the potential to hurt the economic status of our company, and jeopardize our livelihood

Recent First Hand Experience

I recently had personal one-on-one contact and disappointment with the IBEW and their salts. I am working on a large hospital in St. Joseph, MO. We had productive discussions with Local IBEW #545 as we attempted to employ their members on the this project. We had reached an agreement when they informed us they could not work side by side with our non-union people. We could however use the union workers if all the non-union workers were removed from the project. This would obviously be unacceptable to my fellow SKCE employees and myself.

We recently had two IBEW salts, David Morgan & Rick Thompson assigned to work our project. We needed the work force, and we were glad to see them. They had both worked with me on previous projects, and were very hard and dependable workers. Since the previous time we had worked together, Dave and Rick had become union employees and

were receiving weekly Union salting salaries. St. Joseph is an hour north of here and they did not want to work in St. Joseph. We talked to both of them when they started to work and explained we needed the help getting this project done and they were the first available electricians My past impressions of Dave and Rick's hard work were certainly no longer the case. This time it was as if both of them were working for someone else. They deliberately did not follow instruction, continuously talked too, harassed, and disrupted their fellow workers; but, most of all they did not get any where near the production they had in the past. Every one of the other workers, six of us total, complained about their actions, the complaints ranged from, 1.) They would not leave people alone so they could work, 2.) They were dragging their feet, 3.) They were not getting anything done. Dave and Rick bragged about receiving checks from the IBEW as well as our employer. They were out to get SKCE one way or the another. The inference was always there, that if our employer did not become part of the unions group then they would put us out of business.

To shorten what could be a long story. Dave Morgan arrived at the project site one morning He started walking back and forth, carrying a picket sign that read, SKCE had committed unfair labor practices. I ask Dave what was the problem and he would not talk, only pointing to the sign. I ask if this was personal or who should I call to find out what needed to be done to clear this matter. Again all Dave would do was point to the sign and say nothing. I ask one last time saying there is no information, phone number or name on the sign. Please tell me whom I may call to rectify this misunderstanding. Dave only stood there and pointed to the sign. I am not aware that of SKCE committing any unfair labor practices. I have always found that when reasonable people sit down and discuss their differences, we can always work things out. This was obviously not their intention to work things out, this is a disruption tactic. This caused lost time and wages for the other building trades, as they would not cross the picket line. Dave and Rick have now gone out on an ULP strike; as I understand, is one of the Union's salting practices.

In Summary

1. We feel something should be done for those of us that do not want to organize, So we may maintain our freedom to work for whom ever we chose.

2. We feel something should be done so the NLRB is used for its original purpose and not these frivolous charges. Maybe if the charges filed are found to be frivolous or not true the filer should pay the legal cost.

3. We feel it should be illegal to use the NLRB forms as real until they have been agreed and signed by both parties.

SKCE is one of the best companies for whom I have ever worked. I have personally received tens of thousands of dollars in bonuses and profit sharing. We are concerned. SKCE may be unable to continue being a good provider if they must spend all of this money defending, frivolous or not true charges. We do not want our future jeopardized for the monetary gain of others.

STATEMENT OF JAMES K. PEASE, JR., ESQ. TO THE COMMITTEE ON ECONOMIC OPPORTUNITIES AND THE HOUSE COMMITTEE ON SMALL BUSINESS April 12, 1996, Overland Park, Kansas

My name is Jim Pease. I am an attorney with the law firm of Melli, Walker, Pease & Ruhly, S. C. in Madison, Wisconsin. I primarily practice in the area of labor and employment law representing management. I represent several small and medium sized construction contractors in Wisconsin. I am appearing here on my own behalf.

I am here to speak out against a union strategy which uses the National Labor Relations Act (hereinafter "NLRA") to force targeted employers to hire paid union organizers controlled by the union. That strategy is called "salting". In effect, that strategy uses the Act as a sword rather than as a shield.

Origin of the Term "Salting"

Though paid union organizers have been planted on the payrolls of targeted employers in the past, the sophisticated salting strategies being implemented today are of quite recent origin.

As admitted by Mike Lucas, one of the developers of the unions' salting strategy, "salting" originates from the practice of placing valuable minerals in a worthless mine to make the mine appear enriched in order to defraud a prospective purchaser. Sullivan Electric Company (Administrative Law Judge's Decision), JD (NY)-04-95, Case Nos. 26-CA-16107 and 16157, 1995 NLRB Lexis 82 (Feb. 1, 1995), at p. 3. Copy of decision attached as Exhibit A. Because the "salting" strategy used by the unions attempts to make

an agent of the union falsely appear to be capable of being a bona fide employee of the targeted employer who was intended by Congress to be protected by Section 7 of the NLRA, the practice of union "salting" is analogous to that used in mining fraud. In fact, salts, one of whose purposes is to inflict so much financial pain on the targeted employer that it signs a union contract to avoid being driven out of business, are incapable of becoming a bona fide employee of the targeted employer because of the conflict of interest imposed on them by their obligations to the union.

Salting Resolutions

An example of the obligations of a salt are found in the salting resolutions of the International Brotherhood of Electrical Workers in National Labor Relations Board v. Town & Country Electric, Inc., 516 U.S. ___, 133 L. Ed. 2d 371, 116 S. Ct. ___ (November 28, 1995). A copy of those salting resolutions are attached as Exhibit B. Under that salting resolution, the only purpose a salted organizer may have while on the targeted employer's payroll is to support the union's effort to unionize the targeted employer. The salt must both advocate unionization and vote for the union in a National Labor Relations Board (hereinafter "NLRB") election. If the salt fails to do so, the salt is subject to court-enforceable fines. In other words, the salts the unions want protected by the NLRA, are prohibited by the salting resolutions from exercising the rights the NLRA is intended to protect.

The only way salts can effectively exercise the rights provided employees by Section 7 of the Act, is if they first terminate their relationship with the union. Thus, as long as the salting relationship exists, the salt has no freedom of choice for the NLRA to protect.

Salts' Primary Task Is Inflicting Financial Pain on the Employer

While they are acting as paid union organizers, salts have basically two tasks. One task is to try to persuade employees of the targeted employer to become represented by the union. That effort is frequently unsuccessful either because the employees realize that the union's area contract would put their employer out of business, or because those employees have had bad experiences with unions. The salts' second task, and, frequently, their primary task, is to cause sufficient financial pain for the targeted employer, that the employer is forced to sign the union's area agreement in order to avoid being put out of business. There are several illustrations of how salts inflict financial pain on targeted employers.

For example, in a case reported in the "General Counsel's Report," issued November 28, 1994, Daily Labor Report (BNA), No. 226, D-1, D-2, D-3 (Nov. 28, 1994) (copy attached as Exhibit C), the union directed the "salts," who had been planted with a nonunion electrical contractor, to go on strike and then, one hour later, unconditionally offer to return to work. Thereafter, the salts engaged in a slowdown when they returned to work. They also

reported to work late and stood around. When the slowdown caused the employer to fall behind schedule, the salts circulated and submitted to the employer a petition in which employees demanded a $3.00 per hour increase in pay effective immediately. When the employer refused the increase, the union told the employer it would "stop the games" if the employer would sign a bargaining agreement with the union.

Shortly thereafter, several of the employees, led by the salts, went out on strike, and then, twenty minutes later, unconditionally offered to return to work. Later that month, a "salt" demanded that the employer provide employees with health insurance benefits and threatened that employees would strike if the employer refused. When the employer didn't accede to that demand, the employees went on strike. Two hours later, the employees made an unconditional offer to return to work. Shortly thereafter, the employer discovered that work materials had been hidden above ceiling tiles and behind walls, and that unknown employees had engaged in substantial miswiring.

The employer claimed that the above course of conduct caused it to lose over $100,000, and forced it to go out of business. Instead of recognizing that the salted organizer had a disqualifying conflict of interest, the General Counsel decided the case solely on the basis that the salts had engaged in unprotected activity.

Other examples of the type of control that is exercised by a union over its "salts" for the purpose of inflicting financial pain

on the targeted employer, can be found in an article by Wharton School Professor Emeritus Herbert R. Northrup titled, "'Salting' the Contractor's Labor Force: Construction Unions Organizing with NLRB Assistance," published in the Journal of Labor Research, Vol. XIV, Number 4, Fall, 1993, pp. 475-479, a copy of which is attached as Exhibit D.

Purpose of NLRA is to Protect Employee Freedom

Unions argue that they need the salting strategy in order to effectively implement their "right" to organize employees under the NLRA.[1] That argument is based on a fundamental fallacy. The NLRA protects the freedom of employees to choose whether or not they want to be represented by a union. It does not protect a union's right to organize. The Supreme Court held in the Lechmere, Inc. case (502 U.S. 527 (1992)), that, ". . . the NLRA confers rights only on employees, not on unions or their nonemployee organizers." It is this same fallacy which characterizes salting, i.e., that the union's "right" to organize is of paramount importance and enables a union to contend that its agent, who is engaged in the economic equivalent of war against the targeted employer, is entitled to be treated as a bona fide employee of the targeted employer. In fact, the salted organizer is, in effect, a wolf in sheep's clothing who

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[1] See quote from IBEW President John Barry in a Detroit Free Press article commenting on the U.S. Supreme Court's November 28, 1995 decision in the Town & Country Electric case, in which Mr. Barry refers to the union's "right to organize." A copy of the article is attached as Exhibit E.

is incapable of becoming a bona fide employee of the targeted employer because of a disqualifying conflict of interest.

Supreme Court's Town & Country Electric Decision

The United States Supreme Court recently considered the sophisticated salting strategy in the Town & Country Electric case. Though presented with a broad range of issues relating to salting, the Court chose to issue a very narrow decision. (See comments of former Chairman of the NLRB, Ed Miller, in the publication attached as Exhibit F.)

In the Town & Country Electric case, the Supreme Court only decided the "threshold" issue of "whether the Board may lawfully interpret [the definition of "employee" in 29 U.S.C. § 152(3)] to include company workers who are also paid union organizers." 133 L. Ed. 2d at 376.

The Supreme Court resolved the interpretation issue by examining whether there were any circumstances in which a paid union organizer could be an employee of the targeted employer. The Court concluded that because it was possible that there could be certain circumstances in which a salted organizer could be treated as an employee of the targeted employer within the meaning of the law of agency, i.e., where the targeted employer would not "lose control over the worker's normal workplace tasks" (Id. at 381), the NLRB may "lawfully" construct the word "employee" so it does not exclude paid union organizers. Id. at pp. 376, 382.

The Supreme Court left open the issue of when salted paid union organizers should not be treated like other company employees. Id. at pp. 381-382. More specifically, the Court left open the issue of whether Town & Country's conduct violated the NLRA, as amended. It stated:

> Nor do we express any view about any of the other matters Town & Country raised before the Court of Appeals, such as whether or not Town & Country's conduct (in refusing to interview, or to retain, "employees" who were on the union's payroll) amounted to an unfair labor practice. *See*, 34 F. 3d, at 629.

Id. at 381-382.

The Supreme Court's analysis suggests that there are situations in which it would be inappropriate to treat a paid union organizer like other company employees. These are situations where it can be shown that the targeted employer "**might** lose control over the worker's normal workplace tasks." Id. at 381 (emphasis added).

Salting Imposes Incompatible Obligations

The law of agency to which the Supreme Court referred, provides that a person may not simultaneously be the agent of two masters who impose incompatible obligations on that person, i.e., the services required by one master interfere with the services required of the agent by the second master. A copy of Restatement (Second) of Agency § 226 (1958) and the comment to that section are attached at Exhibit G.

An analysis of the salting resolution in the Town & Country Electric case, which I believe is representative of the obligations

of salts being used in salting strategies across the country, shows that it does impose obligations on the salted organizer which are incompatible with a bona fide employment relationship with a targeted employer. This analysis recognizes that the obligations of the salt go far beyond the narrow task of talking to employees of the targeted employer during nonworking time.

By requiring the salted organizer to be on the payroll of a nonsignatory contractor only for the purpose of working for the union's organizing campaign, the salting resolution prevents the salted organizer from having another purpose, e.g., serving the targeted employer's interests. The conflict between the obligations imposed by the union's salting resolution and the right of the targeted employer to expect the salted organizer to wholeheartedly work for the interests of the targeted employer, is made more apparent by the specific provisions of the salting resolution.

The union's salting resolution requires that the salted organizer obtain the specific approval of the union in order to work for the targeted employer. It also requires the salted organizer to promptly and diligently follow the directions of the union throughout the time the salted organizer is on the targeted employer's payroll. The salting resolution dictates that the union's directives must be followed without regard to whether they conflict with those of the targeted employer.

The union's salting resolution also requires that the salted organizer immediately leave the targeted employer's crew when so

directed by the Union. Nothing in the salting resolution implies that it makes any difference what sort of employment relationship the salted organizer has with the targeted employer. Even if a binding written employment agreement exists between the salted organizer and the targeted employer that requires the salted organizer to work for the targeted employer for a specific term, pursuant to the terms of the union's salting resolution, the salt's paramount duty to the union requires the salt to ignore that contractual obligation to the targeted employer and immediately terminate its employment with the targeted employer when so ordered by the union. In short, the salting resolution requires the salted organizer to be solely devoted to the union's organizational purpose and does not permit any conflicting obligation to the targeted employer, even in the form of a written employment agreement between the salt and the targeted employer, to interfere with the salted organizer's obligation to the union. The salting resolution requires the salted organizer to be the arm, eyes, ears and voice of the union on the targeted employer's crew, and to ignore the salted organizer's obligations to the targeted employer and ignore the interests of the targeted employer. The obligations imposed by the union's salting resolution prevent the salted organizer from wholeheartedly serving the interests of the targeted employer.

Targeted Employer Can't Control Salts

A salted organizer under the control of a union salting resolution is virtually impossible for the targeted employer to control because the salted organizer is obligated to do whatever is necessary to further the union's organizing campaign. For example, based on the primary obligations imposed by the salting resolution, the salted organizer would have no alternative but to ignore any rule of the targeted employer prohibiting soliciting activity during working time. Cf. Town & Country Electric, Inc., supra.

Because the salting resolution only permits the salted organizer to work on the targeted employer's crew for a very limited time and to spend that time pursuing the union's organizational purpose, discipline is not an effective tool in protecting the targeted employer's legitimate interests in the conduct of salted organizers. The salted organizers are not dependent upon the targeted employer for employment, since the salting resolution only permits them to remain with the targeted employer for a limited period while they perform a limited service, and therefore, being fired is not something the salted organizer aspires to avoid, since being fired by the targeted employer would make the salted organizer a hero among fellow union members and also among the unionized employers who employ the union's members. For similar reasons, salted organizers do not fear, and in fact, may even relish, a negative reference from the nonsignatory employer.

The existence of a salting resolution also hinders the targeted employer's overall control of the salted organizer. For example, the targeted employer cannot prevent the salted organizer from performing shoddy or incorrect work, misusing tools and equipment, or from simply wasting time. Indeed, since the primary purpose of the salted organizer's time on the targeted employer's crew is to organize the employees on that crew for the union, employment by the targeted employer affords the salted organizer the opportunity to further the union's organizing campaign, for example, by using work time to talk to crew members about why they should unionize.

The salting resolution obligates the salt to create dissension and discord among employees of the targeted employer who oppose unionization, prospectively causing those members of the crew to leave the job or quit. If the salt effectively pressures the employees opposing unionization to leave the employer, that result would remove opposition to unionization from the targeted employer's crew and may prevent the employees who left from voting in a representation election held among the targeted employer's employees.

In summary, under the salting resolution, the targeted employer has no effective means of control over the salted organizer. And, the obligations of the salt to the union require the salt to defy the targeted employer's efforts to control the salt, and require the salt to instead spend working time persuading employees to become unionized and pressuring those employees

opposed to unionization either to change their position or leave the employer's employ so they won't vote against the union in any representation election that is held among the targeted employer's employees. I believe that the obligations imposed upon salted organizers by the IBEW's salting resolution described above are typical of the obligations, written and unwritten, imposed upon salted organizers being used by unions throughout the country in their salting strategies today. Indeed, those obligations are incompatible with a bona fide relationship with the targeted employer, disqualifying the salted organizer from the protections of Section 7 of the NLRA with respect to the targeted employer.

Salts of Striking Unions Do Have a Disqualifying Conflict of Interest

The NLRB has recognized that salted organizers may have obligations which disqualify them from the protection of the NLRA. In Sunland Construction Co., Inc., 309 N.L.R.B. 1224, 1231 (1992), the NLRB held that an employer had no obligation to hire a paid organizer of a striking union because the organizer's conflict of interest would have prevented him from "wholeheartedly" providing services to the targeted employer. The NLRB stated:

> . . . [G]iven the conflict between an employer's interest . . . in operating during a strike and a striking union's evident interest in persuading employees *not* to help it operate, we find that the Respondent has a 'substantial and legitimate' business justification for declining to hire a paid agent of the Union for the duration of the strike. (citation omitted)

The NLRB went on in Sunland to explain, in footnote 41, that because employees have the statutory right to organize, and that there is a way to engage in that activity without interfering with the targeted employer's control of employees during working time, they may be able to engage in organizing activity while wholeheartedly working for the targeted employer. The NLRB said:

> It is in the matter of conflicting interests that this issue differs from the issue of whether an employer can refuse, when there is no strike, to hire an applicant simply because of his or her status as a paid union organizer. As explained above, given the statutory protection for forming and joining unions, it cannot properly be said that there is any inherent conflict between carrying out the duties of an employee and operating as a paid union organizer. The aim of inducing fellow employees to join a union is entirely consistent with being a competent employee who obeys work rules such as those time-and-place restrictions on union solicitation that are lawful under Republic Aviation Corp. v. NLRB, *supra*, and its progeny. Thus, although we would not permit an employer to presume generally that paid organizers will be disloyal employees, we see no problem with a presumption that someone who is being paid by the organization that is seeking to induce employees to withhold services would not be inclined wholeheartedly to provide services for the duration of the organization's effort.
>
> Employees who are not on a striking union's payroll are another matter. They may well still support the union as a bargaining representative even though they have abandoned the strike and returned to work. See NLRB v. Curtin Matheson Scientific, 494 U.S. 775, 781 (1990). But, because they are not obligated to the union as paid agents, it cannot necessarily be presumed that they will be seeking to further the union's object of depriving the employer of employee services during the strike. Thus, in finding that the Respondent could decline to hire Creeden during the strike, we do not suggest that employers have carte blanche to

> refuse to permit prounion employees to return to work during a strike or to hire them as strike replacements.

309 N.L.R.B. at 1231.

The implication of that holding is that where it can be shown that the union's control over the organizer will, in fact, conflict with the targeted employer's control of the organizer so that the organizer would not be inclined to wholeheartedly provide services to the targeted employer, then a disqualifying conflict exists and the targeted employer has no obligation under the NLRA, as amended, to hire the organizer.

All Salts Controlled By a Union Should be Treated the Same

As described above, salted organizers subject to the control of a union similar to that imposed by the salting resolution in the Town & Country Electric case, have obligations which are as much in conflict with those of the targeted employer as a salt of a striking union. As pointed out by Professor Herbert Northrup in "Union Corporate Campaigns and Inside Games as a Strike Form", in Volume 19 of the Employee Relations Law Journal, No. 4/Spring 1994, pp. 507-549, copy enclosed as Exhibit H, and as confirmed by the testimony presented to this Committee and the examples referred to hereinabove, the "inside strategies" used by unions today are a form of a strike that can impose financial pain on the targeted employer that is as great or greater than the economic pain imposed upon a struck employer. Therefore, salted organizers have a

disqualifying conflict of interest and it is unreasonable to require targeted employers to hire them.

The Problem

The problem faced by employers is that the NLRB has interpreted the Supreme Court's decision in the Town & Country Electric case as a sweeping endorsement of its practice of ignoring the conflicts of interest of salted organizers except when they are acting on behalf of striking unions. This will inevitably lead to litigation, as illustrated by the hundreds of salting cases in the NLRB's pipeline which existed even before the Supreme Court's decision and the "Spring Offensive" expected of several unions, including the IBEW. Employers faced with company-busting liability will capitulate to the charges brought against them and sign the union agreements sought by the salting unions. One example is the case of Sunland Construction, which was faced with enormous backpay liability exposure as a result of the NLRB's decision in the companion case to Town & Country Electric. Sunland Construction ended up settling that and other related litigation with the Boilermakers' Union for $2.1 million, $1.6 of which went to employees and the remaining $500,000 went to the Union directly. Part of the settlement agreement also consisted of the company agreeing to recognize the Union as the representative of boilermaker craft workers and to sign regional contract agreements. See BNA's Daily Labor Report, September 20, 1994, p. d8 attached hereto as Exhibit I.

The real losers will be the employees of those targeted employers who will be forced by the unions' coercive salting strategy to become represented by a union without being able to exercise the choice protected by Section 7 of the NLRA, particularly if the union has the employer sign a voluntary recognition agreement, as is the standard practice of unions in Wisconsin. Once an employer signs a voluntary recognition agreement, the employees are barred from filing a decertification petition, even if they are among that very small group of employees who have the knowledge, initiative and fortitude to pursue decertification. Thus, the employees are locked into representation by a union they may not want.

Unions seek to justify this coercion by asserting or assuming that employees are always better off when represented by a union. Unfortunately for employees, that is becoming increasingly untrue. Unions, particularly those in the construction industry, insist that all employers sign their area contracts.[2] Yet, in those construction markets where most of the work is done by nonunion contractors, a union area contract can impose labor cost obligations on a previously nonunion contractor that can, in effect, price that employer out of the market in which it has been working. Employees working for that employer would be worse off if the union imposed its area contract on their employer and they were

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[2] See the IBEW's "orange book", which I believe was written by Mike Lucas, attached at Exhibit J. On page 30 it states, "The usual situation in construction is that the union cannot or does not wish to bargain. The union usually wants the target employer to sign its basic construction agreement. . . ."

forced to become unionized. Once employees become aware of that fact, they often vote against unionization if they are given a chance.

Conclusion and Solution to the Problem

The basic problem is that the NLRB is failing to play its role as a neutral referee and, instead, through its failure to recognize the conflicts of interest imposed on salted organizers, has become an advocate for unionization without regard to the freedom of choice of employees. By doing so, the NLRB is acting contrary to the policies and intent of the NLRA.

This is not the first time that the NLRB has abandoned its role as an impartial referee to become an advocate of unionization. After Congress passed the NLRA in 1935, the NLRB made the same mistake. In 1947, Congress was required to step in and bring the NLRB back in line. It did so by adding express language to Section 7 of the NLRA that expressly stated the right of employees to refrain from engaging in collective activity. Congress was also compelled to correct the Supreme Court's misinterpretation of the NLRA when that Court held that supervisors were included within that Act's definition of "employee." See discussion in Nationwide Mutual Insurance Company v. Darden, 503 U.S. ___, 117 L. Ed. 2d 581, 588-591 (1992).

It is once again time for Congress to enact legislation to restore the balance in labor relations and to return the NLRB to its intended role as an impartial umpire in the competition for

employee preference between employers and unions. I believe that objective is achieved by Representative Fawell's Bill, H.R. 3211. I urge its swift passage by Congress.

1995 NLRB LEXIS 82 printed in FULL format.

Sullivan Electric Company and International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 474

Case Nos. 26-CA-16107, 26-CA-16157

NATIONAL LABOR RELATIONS BOARD

1995 NLRB LEXIS 82

February 1, 1995

ALJ: [*1]

RAYMOND P. GREEN

ALJ-DECISION:
DECISION

Statement of the Case

Raymond P. Green Administrative Law Judge. This case was tried in Memphis Tennessee on October 11, 12 and 13, 1994. The charge in 26-CA-16107 was filed on March 25, 1994 and the first amended charge in that case was filed on June 14, 1994. The charge in 26-CA-16157 was filed on April 21, 1994 and the first amended charge in that case was filed on June 14, 1994. The Complaint was issued on June 16, 1994 and alleged. n1

n1 On December 6, 1994, the Union filed a Motion to Amend the Complaint to allege 9 other employees as discriminatees under Section 8(a)(3) of the Act. This Motion is denied as the issuance of a Complaint or its amendment to include new substantive allegations is within the exclusive control and authority of the General Counsel pursuant to Section 3(d) of the Act. The situation in Kaumagraph Corp., 313 NLRB 624, 625 (1993), is distinguishable because in that case, the Charging Party argued for remedies not sought by the General Counsel and did not seek to amend the Complaint to allege different violations of the Act.

1. That on January 12, 1994, Ronnie Gann the company's superintendent told employees [*2] that the company did not want any union people on its job site.

2. That on January 13, 1994, Gann told employees that the company did not want employees organizing for the Union.

3. That on February 25, 1994, Gann threatened employees with discharge because they engaged in a lawful strike.

4. That on February 25, 1994, Gann threatened employees with loss of overtime because they supported the Union and engaged in a lawful strike.

5. That on February 25, 1994, supervisor Jack Jackson Jr. threatened employees with physical harm because they engaged in a strike.

6. That on February 25, 1994, the Respondent discharged but then reinstated with written warnings, employees Gene P. Summerall Jr., Michael Jackson and

EXHIBIT A

Bill Scoby because they engaged in a lawful strike.

7. That on February 25, 1994, the Respondent threatened its employees with the loss of overtime work because they engaged in union activities and engaged in a lawful strike.

8. That on February 25, 1994 the Respondent transferred Gene Summerall to an isolated area of the job site.

9. That on February 28, 1994, the Respondent refused to hire Billy Powers.

10. That on March 29, 1994, Gann threatened employees with [*3] discharge because they engaged in a lawful strike and supported the Union.

11. That on March 29, 1994, Jackson caused loose gravel to be scattered on an employee because he engaged in a strike.

12. That on March 29, 1994, Jackson threatened an employee with physical harm because he engaged in a strike and supported the Union.

The Respondent, in addition to denying the allegations, contends that Powers was not an employee because he never intended to take the job and was directed to the job by the Union in order to engage in a strike and not to work. The Respondent also contends that the warnings issued to Summerall, Scoby and M. Jackson were rescinded and at best were de minimus violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

Findings of Fact

I. Jurisdiction

The employer is a corporation, with its main office located in Nashville, Tennessee where it is engaged in performing electrical work in the construction industry. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) [*4] of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

(a) The Salting Program

Since about 1986 the International Union of Electrical Workers, (IBEW), has embarked on a campaign to deal with the erosion of union jobs and the increase in open shop jobs in the construction industry. As part of that program, local unions and their organizers were given training by the International Union in something which is called the "salting program." In this program, the Union, which normally prohibits its members from taking jobs with non-union contractors, makes an effort to get both its paid organizers and its out of work members employed by non-union electrical contractors at construction sites where those contractors have made successful bids. n2

n2 For a description of the salting programs of the IBEW and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB), see the Journal of Labor Research Volume XIV, Number 4, Fall 1993 authored by Herbert R. Northrup of The Wharton School, University of Pennsylvania. See also an article by Michael J. Bartlett, Beth C. Wolffe and Gretchen M. White in the May 1994 Labor Law Journal. "Sunland Construction Company: Are union organizers necessarily bona fide applicants?" [*5]

In my one previous encounter with the IBEW's salting program, in Falcone Electric Corp., 308 NLRB 1042, (1992), I stated:

It seems obvious to me that the goal of this program was twofold. (1) To get Local 3 members employed in Local 363 shops if possible and (2) to gather evidence to make our unfair labor practice charges against any employer who indicated by word or deed its refusal to hire Local 3 members because of their affiliation with that Union.

After hearing the evidence in this case, I think that the goals of the salting program are somewhat different. The International Union under the direction of Michael D. Lucas, the Executive Assistant to the International President, is involved in training organizers of the various locals in the salting program. As part of that training process, the International has at least 2 booklets, one of which was placed into evidence and which is entitled "Salting As Protected Activity under the National Labor Relations Act." In pertinent part, this booklet states:

Placing (salting) union members in nonunion jobs for the purpose of organizing is a tactic which has gained a great deal of popularity and respectability . . . in the building [*6] and construction industry. We derived the term from the process of "salting" mines in order to artificially enrich them by placing valuable minerals in some of the working places. The organizing potential in nonunion bargaining units is likewise artificially enriched by "salting" valuable craftsmen in some of the working places. n3

n3 I wonder if the Union is aware of the irony of the salted mine analogy. The purpose of salting a mine is to defraud a prospective buyer or investor. Here, the employer is claiming that the Union's attempt to salt the job site by inserting members on the job, is similarly a fraudulent scheme to get people on the job who do not really intend to become employees.

* * *

Since ULP charges are good only if guilt can be proven, many unscrupulous nonunion employers are able to avoid the consequences of their unlawful actions. For this reason, I have also taught that law-breakers can often be stung by using falsified job applications designed to conceal union employment and/or membership until after an initial cadre of salts have been hired. . . .

* * *

Regardless of how it may actually be applied in the real world, by proscribing discrimination [*7] or reprisals, the law, in theory, protects job applicants who openly avow their union sympathies, background, or membership. And in certain situations and circumstances, job applicants are urged to do just that and bring NLRB charges against any employer who violates

these proscriptions. . . .

[After describing a covert operation to place salts with a company by a local Business Manager, Mr. Lucas described the goals attained as]:

The addition of several high-priced, non-productive journeymen (attorneys) to . . . payroll;

The exposure of [the employer] to substantial back pay and interest liability plus fringe benefit accruals, if any;

The exposure of [the employer] to its own employees, its customers, and the community as an alleged labor law violator;

The exposure of [the employer] to the publicity and record making aspects of a trial on the issues and a probable conviction;

The eventual placement on the payroll and job of a substantial number of Local 934 member-organizers;

The education of substantial numbers of tradesmen and Local Unions in some of the myriad ramifications of salting.

* * *

It is not uncommon to receive calls from local unions that have covertly placed [*8] salts and are suddenly at a loss as to how to proceed. The answer is, first to gather needed information and then, when appropriate, to come out into the open. . . .

If the employer is large or is in a hiring mode . . . a time may come when the Local will want to openly send salts to make application, or to submit job applications by cover letter, or even to have applications delivered by a union official.

If the employer is small and seldom hires additional craftsmen, a time may come when the Local will want to expose its covert salts by a letter to the employer with a copy to the NLRB. . . .

The point is that the covert placement of salts or the enlistment of current employees is often only the initial step in a salting program and is only the beginning of the organizing effort in any event.

The employer should be watched closely for the commission of even minor ULPs and evidence, including affidavits, should be carefully accumulated . . . A time may come when the Local will want to pull its salts and supporters out on a minority ULP strike to encourage the hiring of temporary replacements, set the stage for an unconditional offer to return, and for further actions; (See Union [*9] Organization in the Construction Industry, Applying Economic Pressure, Economic and Unfair Labor Practice Strikes, Never Drag Up-Always Strike, Creating the ULP Strike, and ULP Strikes as Harassment; the Orange book).

In conjunction with the salting program, the local unions, including the present one, are encouraged to enact resolutions which, in effect, exempt their members from union discipline if they accept jobs with non-union companies

under the auspices of the salting program. In substance, such a resolution permits the local's members to accept such jobs but on condition that they must leave the company's employment immediately upon notification by the Union. n4

n4 This type of resolution was the basis of the Eighth Circuit's opinion in Town & Country Electric v. NLRB 147 LRRM 2133 (8th Cir., 1994), that employee-members of a union who were sent to apply for work at a non-union contractor were not employees within the meaning of the Act and therefore could be refused employment.

Considering the facts of this case, my previous decision in Falcone Electric supra, and other decided cases involving the IBEW, n5 it seems to me that the International's salting [*10] program is subject to a variety of different interpretations and applications depending upon local circumstances. In broadest outline, it seems to me that the salting program has the following objectives which can be separate or overlapping. These are:

1. To put union members on a job site so as to enable the Union to organize the company's employees in order to gain recognition either voluntarily or through a Board election or;

2. To get union people on the job and create enough trouble by way of strikes, lawsuits, unfair labor practice charges and general tumult, so that the non-union contractor walks away from the job or;

3. If number 2 doesn't work, to create enough problems for the employer by way of unfair labor practice charges, Davis Bacon, OSHA or legal allegations requiring legal services so that even if the employer doesn't walk away from the job, he will be reluctant to bid for similar work in the local area ever again.

n5 Town & Country Electric v. NLRB 147 LRRM 2133 (8th Cir. 1994); Wilmar Electric Service v NLRB 968 F.2d 1327 (D.C. Cir. 1992); Bay Control Services, Inc. 315 NLRB No. 7 (1994).

(b) The HealthSouth Project

Sullivan Electric Company [*11] works as an electrical subcontractor in the building and construction industry. Although headquarted in Nashville, Tennessee, it has performed work in many different states including Michigan, New York and New Jersey and has operated on particular job sites with and without contracts with locals of the IBEW. In the present case, the company bid for and was accepted as the contractor for the installation of the fire alarm and electrical system at the HealthSouth Rehabilitation Hospital in Memphis Tennessee. The General Contractor was Robbins and Morton. The project involved the construction of a 3 story building, (plus basement), of some 95,000 square feet. For this job, Sullivan intended to operate as a non-union contractor.

Sullivan commenced work at the site in September 1993 and although it was scheduled to complete its work by mid-April 1994, it did not finish until about August 1994. At the beginning, Sullivan manned the project with 3 of its regular employees, Ronnie Gann as the superintendent, Jack Jackson Jr. as the foreman and Thomas Scott as a leadman. The other employees were people who either were transferred from other Sullivan projects or were local people from [*12] Memphis who were hired specifically for the job in question. (However, from time to time, the company has sent down other full time employees to do

work on the weekends or when bottlenecks were encountered).

On September 28, 1993, Lee Jolly, an Assistant Business Agent of Local 474 went to the company's job site office with 9 other union members and filled out job applications. These job applications, which listed union officials as references, were left with Gann's wife. No further contact was made between the Union, the company and these individuals until March 1, 1994 when the Union filed an unfair labor practice charge alleging that Sullivan Electric unlawfully refused to hire the 10 individuals who allegedly applied for work in September 1993. Those charges were thereafter withdrawn, presumably because the Regional Office concluded that the allegations lacked merit.

As noted above, the company in manning jobs, will generally use a number of its own regular employees plus local people. From the company's point of view, it uses electricians, apprentices and helpers. When using local people, as opposed to people who are regular employees of the company, it hires them for [*13] the life of the job at $ 12 per hour or less if it can.

However, in certain localities including Memphis, there are local ordinances which require an electrical contractor to hire one "journeyman" for every three "apprentices." Thus, an electrical contractor working on a public project, must meet this ratio of journeymen to apprentices and must pay a journeyman at the rate of $ 13 per hour. In this context, the definition of a journeyman is one who has a journeyman's license and who, if hired as a journeyman, must be paid at least $ 13 per hour. This does not mean that other people who are not defined by the Code as "journeymen" are not capable of doing the same work or conversely that a journeyman cannot work as an apprentice and get a lower rate. Indeed, in the present case, some of Sullivan's regular employees who do not have a Memphis journeyman's license, got paid more than $ 13 per hour and did the same work. Conversely there were people who had Memphis journeymen licenses who accepted jobs with the company as apprentices and worked at $ 12 an hour and who did the same kind of work that a journeyman would do. In this context, the term "journeyman" has two separate [*14] meanings. In one, it means a person who has the requisite skills to do electrical work at a full level of competency. In the other, it means one who has a Memphis license.

Gene Summerall testified that he applied for work on January 12, 1994 and was interviewed by Ronnie Gann. He testified that he told Gann that he had resigned from the IBEW in 1992 and that Gann responded that the company didn't need any union trouble; that the plumbers were already having union trouble; and "they didn't need no union people on the job."

Gann testified that when saw that Summerall's application indicated that he was a member of the IBEW, he asked if Summerall was still active, whereupon Summerall replied that he was tired of the bullshit. n6 Gann denied, however, that he told Summerall that he did not want any union people on the job. Summerall, who had Memphis journeyman's license, was hired by Gann at $ 13 per hour.

n6 Summerall's application, (Respondent Exhibit 8) indicates that from October 1988 to September 1992, he worked at various jobs under contract with IBEW, Local 474.

Michael Jackson testified that he also applied for work at the company in January 1994. He states that when [*15] he was interviewed, Gann noted

that Jackson had formerly been in the Glazier's union and asked why he got out. Jackson testified that when there was discussion of the fact that Jackson listed an affiliation with the IBEW on his application, Gann said; "I don't care if you're with the IBEW or not . . . as long as you're not a union organizer." n7 As a result of this interview, Jackson was hired as an apprentice at $ 7 per hour. He thereafter received a raise to $ 8 per hour.

n7 Such a statement indicates that Gann, at least to some extent, was knowledgeable of the then existing state of the law, wherein some of the Circuit Courts had held that union business agents and organizers who applied for jobs at non-union employers could not be considered to be employees within the meaning of the NLRA. In this regard, Gann testified that he, along with other company superintendents, had received training from the company's lawyers regarding what they could and could not do under the National Labor Relations Act.

Another employee of the company who figures in this case was Bill Scoby who was hired on October 5, 1993. He was hired as an electrician at $ 11 per hour. (Apprentice rate). [*16]

On or about February 25, 1994 two events occurred, whose proximity in time, indicates that they probably were connected.

On this date, a picket line was established at the job site ostensibly by a Plumbers Union. This picketing lasted from 7 a.m. to 8:30 or 9:00 a.m. Summerall, Jackson and Scoby refused to cross the picket line whereas the other employees of Sullivan went to work. According to Scoby, at some point in the morning, he was told by Gann that there were replacements coming up from Nashville. According to Jackson, when this was relayed to him by Scoby, they went to the union hall where they received instructions from Jolly to make immediate unconditional offers to return to work. n8 In this respect, Summerall testified that he was given a tape recorder to record the offers when they were made to Gann.

n8 According to the testimony of Summerall he went to the union hall right after refusing to cross the picket line and prior to when the other two arrived with the message that they had been replaced or discharged. Summerall testified that he went to see Lee Jolly to discuss his legal rights.

At some point on the morning of February 25, Summerall, Jackson and [*17] Scoby returned to the job site and were put back to work. However, all three men were issued written warnings for refusing to cross the picket line. Summerall and Jackson testified that they were told by Gann that if they received 3 written warnings they would be discharged. However, these warnings were thereafter rescinded on March 29, 1994. (I have no doubt that the warnings were rescinded after the company consulted its attorneys and discovered that they raised a legal problem).

On the same day, (February 25), the Union held a "COMET" meeting with some of its members to instruct them regarding its organizational program including the salting program. It was at this meeting, according to Billy Powers and David Smith, two members of Local 474 who had Memphis journeyman licenses, that they were advised/and or urged by Lee Jolly, to make job applications at Sullivan.

Smith and Powers went to the company on the morning of February 25, filled out job applications and were interviewed by Gann. When they went, they both wore union buttons and listed union officials, including Lee Jolly, as their references. (In accordance with instructions in the IBEW's manual, they clearly were [*18] seeking to demonstrate company knowledge of their union affiliation in case they were not hired). According to Powers, Gann said he wanted journeymen and said that the company paid $ 13 to $ 14 per hour. Powers states that after the interview, Gann said that he would check their references and get back to them.

Gann testified that he interviewed the 2 men on February 25, asked about their qualifications and learned that they had journeymen's licenses. He testified that he did not make any commitment to hire them and certainly made no commitment to hire them as journeymen at $ 13 or more per hour.

Gann testified that on February 26, he called the Union and told the person there to have Powers and Smith come to the job site on Monday morning. In this regard, Winston Hawkes Jr., an Assistant Business Manager of Local 474, testified that he spoke to Gann on February 26; that he told Gann that Powers and Smith were good journeymen electricians whose hire he recommended; and that Gann responded that he, (Hawkes), should have them report to the job site on February 28, 1994.

On Monday, February 28, Smith did not report to the job site, but Powers did. There is no dispute that when [*19] Powers spoke to Gann, the latter said that he had decided that he didn't need any journeymen, but instead needed apprentices. Powers then left without inquiring about an apprentice job or how much the company was willing to pay. As such, Powers never asked about the apprentice position and he left before Gann could offer him such a job. Gann testified that he would have hired Powers as an electrician at $ 12 an hour if given a chance to make such an offer.

As of the week ending March 4, 1993, Sullivan employed 20 people at the site. Of these there was 1 laborer, 12 people who were labeled as electricians, helpers or apprentices who were paid at $ 12 per hour or less, and 6 people including Gann who were paid at $ 13 per hour or more. n9 As we know that Ronnie Gann, Rodney Grant and Gene Summerall had Memphis licenses, and as local people paid at $ 13 per hour were likely to be journeymen within the meaning of the Memphis Code, the payroll records for this period, (GC Exhibit 9(b)), indicates that there were at least 5 journeymen to 12 apprentices which is well within the 1 to 3 ratio required by the Code. (Indeed if the total complement of workers during that week was 20, then [*20] having 5 people with a journeyman's license would have satisfied the Code if the remaining 15 were all considered as apprentice electricians).

n9 The electricians who were paid $ 13 or more per hour were Temple Jay Brett, Rodney D. Grant, Donald Jackson, Jack Jackson Sr., and Gene Summerall. Ronnie Gann, who was the Superintendent and who obtained a Memphis license, was paid at $ 17.50 an hour and Jack Jackson Jr., the foreman was paid at $ 13 per hour.

The point is that if the company was within the Memphis Code's required 1 to 3 ratio, it would have made little or no sense for Gann to offer to hire an electrician at the journeyman rate if he could pay an electrician, (even one having a journeyman's license), at the apprentice rate. Indeed, the facts of

this case show that after the non-hiring of Powers, all other electricians hired until March 25, 1994, were hired at the apprentice rate of $ 12 or less even if they had Memphis journeyman licenses.

It seems to me that Gann, although he did not offer Powers a journeyman's job, did not refuse to hire him for that particular position because of his union membership. Moreover, there is no evidence that Gann would have refused [*21] to hire Powers for any job, because Powers left before any other offer could be made. As Powers testified, his position was that he would have refused to accept any offer other than a journeyman's job at $ 13 or $ 14 per hour.

The Complaint alleges that on or about February 25, the Respondent by Ronnie Gann, threatened employees with the loss of overtime. In this regard, Michael Jackson, (one of the three who didn't cross the picket line), testified that on February 25, he was told by Rodney Grant, (not Ronnie Gann), that overtime was cut out for him, Summerall and Scoby. Jackson testified, however, that he went to the job site on Saturday, February 26 and worked that day which was an overtime day. During direct examination of Summerall, the General Counsel asked him a series of questions in a futile attempt to have him testify about statements made to him regarding overtime. Finally, the General Counsel called Rodney Grant as a witness and he denied that he ever made any statements regarding the loss of overtime. Grant testified that after being hired as a journeyman electrician in November 1993, he was thereafter promoted to a foreman. However, this record is not clear [*22] as to whether Grant's authority was sufficient to make him a supervisor within Section 2(11) of the Act. n10 Nevertheless, even assuming that he was either a supervisor or a conduit for management, it is my opinion that this allegation of the Complaint is unproved.

n10 The Company, in its Brief, asserts that Grant was not a supervisor within the meaning of the Act.

The General Counsel alleges that after the strike on February 25, Summerall was isolated from the other workers because of his union activities. The evidence shows that after February 25, 1994, Summerall, after having been warned for his refusal to cross the picket line, wore a union button at the job site. (In late March there was also an occasion when he distributed union leaflets). The evidence also shows that about a week after February 25, 1994, Summerall was assigned to work on the 3rd floor, running conduit by himself while the rest of the electricians worked on the other floors of the building. He continued to work by himself in this area for about 6 weeks. In support of the contention that Summerall's assignment was motivated by anti-union considerations, Grant testified that soon after February 25, [*23] 1994, and on several other occasions in March 1994, General Foreman Jack Jackson Jr., stated in his presence, that he was going to kick Summerall's ass. Grant also testified that on one occasion in March 1994, Gann told him that the company's attorneys said that he (Gann) had to get rid of Summerall but to be very careful about doing it.

Jack Jackson Jr. did not testify and therefore did not rebut the remarks attributed to him by Grant. Also, although Gann was questioned at length by all parties, he never denied the above alleged statement attributed to him by Grant.

The company argues that it only needed one man to do the conduit work on the third floor and that Summerall, who was good at this work, was chosen for this

reason. The Respondent notes that there were generally about 20 electricians working in a large building at any given time and that accordingly, it was not surprising that they often worked by themselves. Respondent's Counsel points out that Summerall conceded that 2 other electricians, Tom Scott and Leroy Newton worked by themselves. He also points out that Michael Jackson testified that before February 25, 1994, he worked by himself about 50% of the time. [*24] Finally, he notes that Grant testified that most of the electricians worked by themselves at one time or another.

I am willing to assume, based on the written warning issued to Summerall and the unrefuted testimony of Rodney Grant, that the company harbored animus against Summerall stemming from his refusal to cross the picket line on February 25, 1994. However, that does not automatically prove that the assignment which required Summerall to work by himself on the third floor, was motivated by discriminatory reasons. Presumably, the theory is that the company wanted to isolate him so that Summerall would not be able to talk to the other electricians about the Union. Nevertheless, there is no evidence that the company made any attempts to interfere with Summerall's right to communicate with other employees during break time or other non work time. Nor, given the testimony of Grant, Jackson and Summerall himself, is there much evidence to show that he was treated much differently from other electricians who also had to spend much of their time working by themselves. Therefore on balance, I shall find that the company has met its burden of showing that the decision to assign Summerall [*25] to work on the third floor was based on legitimate business considerations apart from its animus against him for engaging in union activities. Wright Line 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

The remaining allegations of the Complaint relate to events allegedly occurring on March 29, 1994, which as noted above, is the same date that the company rescinded the warnings to Summerall, Scoby and Jackson.

Gene Summerall testified that on one occasion during the latter part of March 1994, he was engaged in passing out union handbills at the gate to the job site. He testified that while at the gate, Jack Jackson Jr. accelerated his car so that gravel was sprayed onto him. In this regard, Rodney Grant testified that Jackson told him that he had "slung gravel" all over Summerall and had he been a little quicker he might have gotten him with the car.

As noted above, Grant testified that on several occasions in late February and March 1994, Jackson told him that he wanted to kick Summerall's ass. He also testified that in March, Gann told him that the company needed to get rid of Summerall but that he would have to be as careful [*26] as possible in doing it.

In view of the fact that the above allegations were essentially undenied I shall conclude that they constitute (1) threats of bodily harm, (2) an attempt to commit bodily harm and (3) a threat of discharge which, although directed at Summerall, was said to Grant who, according to the company, was a non-supervisory employee. Inasmuch as I conclude that these acts and statements were made in relation to Summerall's union activity, and were made to discourage Summerall and other employees, (including Grant), from engaging in such activity, I shall conclude that they constituted violations of Section 8(a)(1) of the Act. See Fairhaven Properties Inc., 314 NLRB 763, 769 where the Board held that the reckless driving of a vehicle in a manner intended to intimidate

a striker, is a violation of Section 8(a)(1) of the Act.

III Discussion

It seems to me that the events of February 25, 1994 were orchestrated by the Union in an attempt to provoke and entrap the employer into committing unfair labor practices. I have no doubt that the picketing and the refusals to cross the picket line were pre-planned by the Union with the hope and expectation that the employer [*27] would fire these employees for refusing to cross the line. (Summerall, upon seeing the picket line, immediately went to the union hall where, among other things, he was given a tape recorder to use when he and the others were sent to ask for their jobs back). I also have little doubt that on that same day, the Union dispatched Powers and Smith to make applications to the Employer with the hope that they would be refused employment.

The company, relying on the Court's decision in Town & Country Electric v NLRB 147 LRRM 2133 (8th Cir. 1994), argues that Powers was not an employee within the meaning of Section 2(3) of the Act and therefore could not have been discriminated against in violation of Section 8(a)(1) & (3). However, irrespective of the state of the law on this issue, it seems to me that Powers was never refused employment to an available job because having heard from Gann that the company was not hiring journeymen at $ 13 or $ 14 per hour, he didn't stick around long enough to find out if he could get a job as an electrician at the apprentice rate of $ 12 per hour. In this connection, I believe Gann's testimony that he never offered Powers, (or Smith), a job as a [*28] journeyman, (as defined by the Memphis Code), directly or through the Union when Gann spoke to Hawkes on February 26, 1994. Thus, the evidence failing to establish that the company refused to employ Powers for an available job, I conclude that there was no violation of the Act in this regard.

On the other hand, there is no dispute about the fact that the company issued written warnings to Summerall, Jackson and Scoby because they honored a picket line. Although I am of the opinion that this scenario was a ruse designed to entrap the company, the fact that it was successful, should not obviate the fact that the company violated the Act in this respect. n11 In Redwing Carriers Inc. 137 NLRB 1545 (1962), enfd. 325 F.2d 1011 (DC Cir. 1963), the Board held that employees honoring a picket line are engaged in protected concerted activity and may only be discharged by the employer "only to preserve efficient operations of his business, and . . . only so it could immediately or within a short period thereafter replace them with others willing to perform the scheduled work. . . . See also chapter 21, Section IV A., of The Developing Labor Law, edited by Charles J. Morris. However, [*29] the alleged statement that the company had replacements on the way, is not construed by me as being an unlawful threat inasmuch as the company would have been within its rights in replacing the people who refused to cross the picket line.

n11 In Dee Knitting Mills, Inc., 214 NLRB 1041, 1050 (1974) the ALJ, rejected the company's argument that it had been "set up" and "entrapped" into committing a violation by the Union's orchestrated conduct.

The company, citing Passavant Memorial Area Hospital 237 NLRB 138 (1978), contends that even if the warnings violated the Act, no Order should issue because they were withdrawn and, at best, should be considered as de minimus. I don't agree. As noted in Passavant, a Respondent may "under certain circumstances relieve himself of liability for unlawful conduct by repudiating

the conduct." The Board noted that in order to be effective, the repudiation must be "timely," "unambiguous," "specific in nature to the proscribed illegal conduct," "free from other proscribed illegal conduct," that "there must be adequate publication of the repudiation to the employees involved and there must be no proscribed conduct on the employer's [*30] part after the publication." Additionally, the Board stated that "finally . . . such repudiation or disavowal of coercive conduct should give assurances to employees that in the future their employer will not interfere with the exercise of their Section 7 rights."

The General Counsel alleges that the during the hiring interviews of Summerall and Jackson, (on or about January 12, 1994), Gann violated the Act by saying that he didn't need any union trouble or union people on the job. This was credibly denied by Gann and I note that Michael Jackson testified that Gann said, "I don't care if you're with the IBEW or not . . . as long as you're not a union organizer." In this respect, I think that Gann's remark was not meant to imply that he would refuse to hire an employee who organized for the Union, but rather that he would not hire a person who was employed by the Union as an "organizer." As such, the statement should not, in my opinion, be construed as a threat made to these 2 job applicants that the company intended to refuse to hire them because of their union affiliation or activity.

I have already noted above my other conclusions regarding the allegations of the Complaint and [*31] need not trouble the reader with further reiteration.

Conclusions of Law

By issuing written warnings to employees who honor a picket line, the Respondent violated Section 8(a)(1) and (3) of the Act.

By telling employees who received the above noted warnings that they would be subject to discharge upon receiving three warnings, the Respondent threatened employees with discharge in violation of Section 8(a)(1) of the Act.

By threatening an employee with discharge, with physical harm and by attempting to cause such harm to an employee because he engaged in union activity, the Respondent violated Section 8(a)(1) of the Act.

The acts of Respondent described above, affect commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The Respondent has not violated the Act in any other manner as encompassed by the Complaint.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended n12

n12 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall,

as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes. [*32]

ORDER

The Respondent, Sullivan Electric Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing written warnings to employees because they honored a picket line.

(b) Threatening employees with discharge because they honor a picket line or because they engage in other union activities on behalf of the International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 474.

(c) Threatening employees with physical harm or attempting to cause such harm because they engage in union or other protected concerted activity.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove from its files any reference to the unlawful disciplinary warnings issued to Gene Summerall, Bill Scoby and Michael Jackson and notify them in writing that this has been done and that the warnings will not be used against them in any way.

(b) Post at its facility, in Nashville Tennessee and at any current job sites located in Memphis Tennessee, copies of the [*33] attached notice marked "Appendix." n13 Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

n13 If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board

An Agency of the United [*34] States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

(a) Issuing written warnings to employees because they honored a picket line.

WE WILL NOT threaten employees with discharge because they honor a picket line or because they engage in other union activities on behalf of the International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 474.

WE WILL NOT threaten employees with physical harm or attempt to cause such harm because they engage in union or other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify Gene Summerall, Bill Scoby and Michael Jackson that we have removed from our files any reference to their warnings dated [*35] February 25, 1994 and that such warnings will not be used against them in any way.

Sullivan Electric Company

(Employer)

Dated By

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104-3627. Telephone 901-722-2687.

JOB SALTING
ORGANIZING RESOLUTION

WHEREAS: Local Union # 292 is committed to organizing all unorganized craftsmen working in our jurisdiction, and;

WHEREAS: A continual organizing program is the lifeblood of all building and construction trades unions because it is the only proven method of maintaining control of the constructio labor pool, and;

WHEREAS: The first obligation of the members of the local union is to organize the unorganized in order to maintain and secure our wages, benefits, and other conditions of employment, and;

WHEREAS: The success of any organizing drive depends upon the support of each and every union craftsman, both on and off the job; therefor, be it

RESOLVED: That the Business Manager be empowered to authorize members to seek employment by nonsignatory contractors for the purpose of organizing the unorganized, and be it further

RESOLVED: That unemployed members shall report to the Business Manager for the purpose of assisting as needed in the organizing program, and be it further

RESOLVED: That the Business Manager shall maintain records of all members authorized to seek employment by nonsignatory employers including date (s) of authorization, date (s) of employment., and all other pertinent information, and be it further

RESOLVED: That such members, when employed by nonsignatory employers, shall maintain their position (s) on the out-of-work list, and be it further

RESOLVED: That such members, when employed by nonsignatory employers, shall promptly and diligently carry out their organizing assignments, and leave the employer or job immediately upon notification, and be it further

ESOLVED: That any member accepting employment by a nonsignatory employer, except as authorized by this RESOLUTION, shall be subject to charges and discipline as provided by our Constitution and Bylaws.

Adopted by the Local Union and entered into the minutes of the membership meeting this 14th day of June, 1988.

[signature]
RECORDING SECRETARY

R-4(c)

EXHIBIT B

JOHN J. SLIPY JR.
BUSINESS MANAGER
FINANCIAL SECRETARY

LOCAL UNION 343

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

IBEW

P.O. BOX 166
ROOM 305, VALLEYGREEN SQUARE, LESUEUR, MINNESOTA 56058
TELEPHONE: (612) 665-6485

RESOLUTION

WHEREAS: The I.B.E.W., Local Union 343 is committed to organizing all unorganized craftsmen working in our jurisdiction, and

WHEREAS: A continual organizing program is the lifeblood of all building and construction trades unions because it is the only proven method of maintaining control of the construction labor pool, and

WHEREAS: The first obligation of the members of this local union is to organize the unorganized in order to maintain and secure our wages, benefits, and other conditions of employment, and

WHEREAS: The success of any organizing drive depends upon the support of each and every union craftsman, both on and off the job; therefore; be it

RESOLVED: The the Business Manager and/or Assistant be empowered to authorize members to seek employment by nonsignatory contractors for the purpose of organizing the unorganized, and be it further

RESOLVED: That unemployed members shall report to the Business Manager and/or Assistant for the purpose of assisting as needed in the organizi program, and be it further

RESOLVED: That the Business Manager and/or Assistant shall maintain records of all members authorized to seek employment by nonsignatory employers including date(s) of authorization, date(s) of employment, an all other pertinent information, and be it further

RESOLVED: That such members, when employed by nonsignatory employers, shall maintain their position(s) on the out-of-work list, and be it further

RESOLVED: That such members, when employed by nonsignatory employers, shall promptly and diligently carry out their organizing assignments, a leave the employer or job immediately upon notification, and be it further

JOHN J. SLIPY JR.
BUSINESS MANAGER
FINANCIAL SECRETARY

LOCAL UNION 34

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKER

IBEW

P.O. Box 166
ROOM 305, VALLEYGREEN SQUARE, LESUEUR, MINNESOTA 56058
TELEPHONE (612) 665-64

page 2

RESOLVED: That any member accepting employment by a nonsignatory employer, except as authorized by this RESOLUTION, shall be subject to charges and discipline as provided by our Constitution and By-Laws, and be it further

RESOLVED: That during such employment an amount equal to the monthly charge for our health care be forwarded in his name to pay his monthly premium. This sum will be taken out of the Local Union General Fund.

Submitted by,

John J. Slipy, Jr.
Business Manager
Local Union 343, I.B.E.W.

11-28-94 (No. 226) D - 1

BNA's Daily Reporter System

DAILY LABOR REPORT

FULL TEXT SECTION

REPORT OF THE NLRB GENERAL COUNSEL

EMPLOYER INTERFERENCE WITH PROTECTED ACTIVITIES

Employer Refusal to Allow Union Videos On Nonwork Time

In an interesting case requiring application of traditional concepts to modern technology, we concluded that an employer's refusal to permit its employees to show union-promotional videos on nonwork time in a nonwork area violated Section 8(a)(1) of the Act.

In November 1993 the Union began an organizing campaign among the Employer's approximately 45 employees but ultimately lost a representation election. During the campaign employees distributed literature and discussed the issues among themselves in the Company lunchroom during the 11:30 a.m. to noon lunch period. All employees have the same lunch period and are not paid for that time. Also during the campaign the Employer showed five half-hour long, anti- union videos in the lunchroom immediately after the lunch period, on Company time. The employees assumed they were required to attend because they were being paid for the time the videos were being shown.

After one of the showings one of the employees on the Union's organizing committee asked the Employer if he could bring in pro-union videos to show the employees at lunch time in the lunchroom. The Employer agreed, provided it could first screen the videos "to make sure nothing bad was on the tape." The employee checked with the Union, and pursuant to its instructions, informed the Employer that it could view the videos along with the employees and that if it found something wrong with the message on them the organizing committee would stop showing the video and remove the TV/VCR from the work place. The employee also told the Employer that the Union was willing to bring in its own equipment and if necessary, would even provide a battery-operated TV/VCR. The employees would be free to watch or not, to stay in the lunchroom or not. (Only four or five employees regularly ate lunch in the lunchroom.) The Employer ultimately refused to permit the employee to show the videos.

It was first determined that a union campaign video should be considered the modern-day equivalent of campaign literature; thus, the case was viewed as one involving distribution of literature rather than one involving union access to an employer's premises. While it is clear that non-employee union organizers, absent circumstances not present here, may lawfully be barred from an employer's premises, it is equally well established that an employer may not prohibit employees from distributing union literature in nonwork areas during nonwork time without a showing that a ban is necessary to maintain plant discipline or production. *Sahara Tahoe Hotel*, 292 NLRB 812, 813 (1989); *Minneapolis-Honeywell Regulator Co.*, 139 NLRB 849, 851 (1962). It is also clear that "break time is an employee's time, not company time." *Anderson Co.*, 305 NLRB 878, 880 (1991)

In the instant case, the employee's request was to show union promotional videos in nonwork areas during nonwork time and he even offered to bring in a battery-operated TV-VCR so as not to use the Employer's electricity. The Employer did not contend that its ban on showing the videos was necessary to maintain production or employee discipline and did not refuse outright the employee's request to show the videos. Rather, the Employer demanded the right to review the tapes in advance to determine if the contents met with its approval. However, the requirement of predistribution clearance of union literature is unlawful. *Middletown Hospital Assn.*, 282 NLRB 541, 552-553 (1986). Finally, there was nothing to suggest that the material the employees wished to show would not fall within the scope of the "mutual aid or protection" clause of Section 7 of the Act. See e.g., *Trover Clinic*, 280 NLRB 6 (1986).

Accordingly, we concluded that the Employer's refusal to permit showing of the videos violated Section 8(a)(1) of the Act.

Unlawful Employer Interrogations Despite Assurances of Non-reprisal

The Board and courts have recognized that an employer may legitimately interrogate employees on matters involving their Section 7 rights, despite the inherent danger of coercion, where the purpose is either to verify a union's claim of majority status, or to investigate facts concerning issues raised in an unfair labor practice complaint. In order to minimize the coercive effects, such interrogation is considered privileged only if the following safeguards are met: (1) the employer must communicate to the employee the purpose of the questioning, assure him or her that no reprisal will take place, and obtain participation on a voluntary basis; (2) the questioning must occur in a context free from hostility to union organization and not itself be coercive in nature; and (3) the questioning must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. *Johnnie's Poultry Co.*, 146 NLRB 770, 774-775 (1964)

In one case, we decided that an employer had exceeded the limited privilege of interrogation contemplated in *Johnnie's Poultry*. In this case, two striking employees had been terminated for allegedly vandalizing a non-striker's car. Their terminations were the subject of pending unfair labor practice charges, while criminal charges brought against them based on the same alleged misconduct were scheduled for immediate trial.

A week before the trial a reinstated striker who the Employer apparently believed had some knowledge of the incident was summoned to the plant manager's office for questioning. The manager provided the employee a form to sign which advised that he was being questioned solely for the purpose of investigating and defending pending unfair

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EXHIBIT C

labor practice charges; that the information obtained would be used solely for such purposes; that his participation was strictly voluntary; and that no reprisal would be taken against him if he refused to participate or as a result of the information provided. After signing the form, the employee was asked numerous questions about the strike misconduct that had taken place, whether any Union officials had taken part in such conduct and whether he himself had participated. When asked if he knew whether the two charged employees had vandalized the car, the employee responded no, that he had no knowledge whatsoever as to who may have been responsible for the incident.

On the day before the trial, the employee was again called into the manager's office and asked to sign a second form identical to the first one. The employee was then asked, inter alia, if the two charged employees had been on the picket line the night the car was vandalized. He replied that he knew one of them had been, but could not recall if the other had also been there that night. He was asked whether he knew when the criminal trial was scheduled to start and whether he was going to testify at the trial. The employee responded that he knew the two employees had been charged, but stated that he had no knowledge when the criminal trial was scheduled to take place and denied that he had been asked to testify at the trial.

Later that day the employee once more was summoned to the plant manager's office. On this occasion he was not asked to sign a third consent form, no one provided him the *Johnnie's Poultry* assurances and, for the first time, he was interrogated by a different company official. Again, he was questioned about the night the car was vandalized. He was asked what shifts he had worked on the picket line and what shifts the two charged employees had worked. When he denied knowing what shifts the two charged employees had walked the picket line, he was asked to explain how he could have been on the picket line all night when the vandalism took place and not know the names of the other pickets or whether the two charged employees had been on picket duty that night.

Notwithstanding that the Employer gave the *Johnnie's Poultry* assurances, we concluded that the questioning of the employee violated Section 8(a)(1) of the Act in four particular respects:

First, the questioning of the employee as to whether he himself or union officials had been involved in strike misconduct violated the *Johnnie's Poultry* prohibition that "the questions not exceed the necessities of the legitimate purpose by prying into other union matters... or otherwise interfering with the statutory rights of employees." The Employer's questioning went beyond the area of permissive inquiry because neither the employee, the Union or any Union official was party to pending unfair labor practice charges.

Second, the Employer, after providing *Johnnie's Poultry* assurances and interrogating the employee on the second day, was not deemed privileged, in the circumstances presented, to interrogate the employee a second time on that same day without again providing *Johnnie's Poultry* safeguards. On that date, the employee was first questioned by one interrogator and returned to work for several hours before being questioned by a second official. The latter's questions were not designed to elicit additional or new information, but rather were repetitive of questions asked of him earlier and were primarily aimed at compelling the employee to recant his earlier statements. Thus, assuming, without deciding, that assurances need not be repeated in every case where questioning is interrupted or later resumed, such a defense was not deemed available where, as here, the renewed questioning appeared calculated at extracting a retraction from the employee and did not constitute a mere resumption of a recessed earlier session.

Third, irrespective of whether the individual sessions may have been privileged, the Employer's interrogation of the employee three times in less than a week, in the manner occurring here, was deemed to transgress the safeguard that the questioning not be itself coercive in nature. Thus, at each session, the employee was asked essentially the same questions about the same incidents, his veracity questioned, and the Employer endeavored to get him to recant or contradict earlier statements. Such a course of conduct coerced and intimidated the employee in the exercise of his right to strike and picket and was therefore violative of Section 8(a)(1).

Finally, we concluded that the Employer had violated Section 8(a)(1) Act by asking the employee whether he intended to testify at the criminal trial of the two employees. Such questioning went beyond the area of permissive inquiry since it was not intended to elicit information the Employer could use in defending against the pending unfair labor practices. Such questioning was therefore not privileged.

Unprotected Intermittent Strike Activity By Paid Union Organizer Employees

In another case, we considered whether striking employees had been lawfully discharged for engaging in unprotected intermittent strikes.

The Employer, an electrical subcontractor, had never had a collective-bargaining relationship with a union. In December 1993, the Employer obtained a new construction contract and advertised for electricians. The Union immediately began to organize the Employer via a "salting" campaign.

The Union sent several members to apply for jobs with the Employer. When these "salts" were hired, they received supplemental payments from the Union to raise the Employer's nonunion wages to Union scale. In return, the "salts" were required to encourage other employees to join the Union. The "salts" soon succeeded in persuading a substantial number of employees to join the Union. On January 20, 1994, the Employer discharged the leading "salt" for repeated absenteeism and lateness.

On January 24, the Union directed the "salts" to go on strike at 7:30 a.m. At that time, approximately ten Union members notified the Employer that they were going on strike to protest the lead "salt" employee's discharge. These employees then struck and picketed with signs reading "unfair labor practice" and "on strike.". One hour later, at 8:30 a.m., they unconditionally offered to return to work. The Employer required each of them to sign a written disciplinary warning before returning to work.

Organizing activity continued, and by the end of January all the employees were Union members. During this time, the employees initiated a work slow-down, coming in late and standing around talking. The Employer fell many weeks behind on the job and began hiring additional temporary employees to improve production.

On February 1, a Union representative presented the Employer with a petition which stated: "We the undersigned employees feel like we need a $3.00 per hour raise, effective immediately." The petition was signed by nine employees. When the Employer refused the requested raise, the Union

stated that it "would stop the games" if the Employer would sign a bargaining agreement.

On February 2, at 7:00 a.m., approximately eight employees struck and picketed the Employer, allegedly in response to the Employer's rejection of the requested pay increase. They carried the same picket sign used in the first strike. At 7:20 a.m., however, these strikers offered unconditionally to return to work. The Employer required them to sign written warning notices before they returned to work.

Sometime after the February 2 strike, the Employer met with the Union and offered to sign a "this job only" project agreement. The Union rejected this offer. On February 16, a "salt" employee told the Employer that it needed to sign a bargaining agreement with the Union.

On February 24, at the Union's direction, a "salt" employee told other employees that he was going to ask the Employer for health insurance coverage and that they would strike if the Employer refused. The Employer did reject the request and, at 12:30 p.m., approximately fifteen employees left work and picketed with the same sign used in the previous strikes. At approximately 2:30 p.m., the strikers unconditionally offered to return to work. The Employer kept the strikers waiting while it called to hire temporary employees for additional help. After obtaining the temporary employees, the Employer told the strikers that they had been replaced. The charges in our case alleged that the Employer unlawfully discharged the employees because of their strike activity.

Shortly thereafter, the Employer discovered that work materials had been hidden above ceiling tiles and behind walls, and that unknown employees had engaged in substantial, intentional miswiring. The Employer claimed that it lost over $100,000 on the job because of slow-downs, strikes, and sabotage. The Employer's bonding company completed the job, and the Employer went out of business.

We decided that the employees were lawfully discharged for having engaged in unprotected intermittent strikes.

Employees may not be discharged or otherwise discriminated against for engaging in concerted work stoppages to protest working conditions. *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962). However, a refusal to work will be considered unprotected intermittent strike activity when "the stoppage is part of a plan or pattern of intermittent action which is inconsistent with a genuine strike or genuine performance by employees of the work normally expected of them by the employer." *Polytech, Inc.*, 195 NLRB 695, 696 (1972); *John S. Swift Co., Inc.*, 124 NLRB 394, 396 (1959); *Embossing Printers, Inc.*, 268 NLRB 710, 723 (1984), enfd. mem. 742 F.2d 1456 (6th Cir. 1984). Recurrent strike activity is considered to be an unprotected intermittent strike where (1) there are more than two separate strikes, or threats of repeated strikes, *Chelsea Homes, Inc.*, 298 NLRB 813, 831 (1990); *Robertson Industries*, 216 NLRB 361, 361-362 (1975), enfd. 560 F.2d 396 (9th Cir. 1976); *Crenlo, Div. of GF Business Equipment, Inc.*, 215 NLRB 872, 878-879 (1974), enfd. 529 F.2d 201 (8th Cir. 1975); and (2) the activity is not responsive to distinct employer actions or problems, but rather is part of a strategy to use a series of strikes in support of a single goal, because this would be more crippling to the employer and/or would require less sacrifice by employees than a single strike. *Pacific Telephone and Telegraph Co.*, 107 NLRB 1547 (1954) ("hit and run" work stoppages designed to "harass the company into a state of confusion," also using the appearance and disappearance of pickets); *John S. Swift Co., Inc.*, 124 NLRB at 396 (employees' tactic of refusing to work overtime to force employer concessions in bargaining); *Embossing Printers, Inc.*, 268 NLRB at 723 (employees' leaving work three different times, to attend union meetings regarding contract negotiations, found not separate responses to new problems).

In our case, the strikes appeared to have been orchestrated by the Union as part of a plan to harass the Employer into either signing a contract with the Union or going out of business. Each work stoppage, lasting less than two hours, insured an impact on production while precluding the Employer from replacing the striking employees. Although each work stoppage allegedly was in response to a distinct action by the Employer, the evidence indicated that all were in support of a single goal — getting the Employer to either sign a bargaining agreement or cease doing business. The Union admitted as much when it told the Employer that the "games would stop" if the Employer would sign a contract. In addition, the evidence of unprotected substantial slowdown and sabotage activities supported the conclusion that the Union was engaged in an aggressive campaign to use the unprotected conduct of partial strikes to achieve its goals. The Union's campaign ultimately succeeded in closing down the Employer.

We further decided that, since the striking employees had to have known that they were participating in a strategy of intermittent strikes, each employee's conduct was unprotected regardless of whether he or she engaged in one, two, or all three of the unprotected stoppages. As the Board stressed in *Pacific Telephone*, supra, 107 NLRB at 1550, the employer there, faced with intermittent strikes that were totally disrupting its business, "was not required to pause during the heat of the strike to examine into the degree of knowledge of each [striker], all of whom were [acting on behalf] the same Union. It was sufficient ... that each of the [strikers] was a participant in the strike strategy. .." 107 NLRB at 1551-1552. Accordingly, we decided to dismiss the charges.

Discipline of Union Steward for Refusing to Cooperate with Employer Investigation

In another case considered during this period, we concluded that an employer could not lawfully discipline a union steward for refusing to provide it with a written account of an employee's conduct witnessed as a result of her performance of her duties as steward.

The Employer's plant manager had requested the steward to attend a meeting, along with an employee and the employee's supervisor, concerning possible discipline of the employee. At the end of the meeting the employee was terminated and the group left the office. As they walked into the adjoining hall, the employee allegedly told the plant manager that he was "a rotten, no good bastard, [and if the employee] had his money right now [he'd] drag [the manager] outside and kick his ______" The plant manager told the supervisor and the steward that he wanted statements from them setting forth what the employee had said. When the steward objected she was advised that she would be subject to discharge if she did not provide the statement. The steward thereupon submitted the statement as directed.

We concluded that the threat of discharge unlawfully interfered with the individual's protected right to serve as union steward. Although the discharged employee's intemperate remarks may not have been protected, the steward would never have witnessed the outburst but for her role as steward. The outburst, which occurred as the parties were leaving the plant manager's office, was not viewed as separable from the events for which the steward's attendance had been required, but rather, was considered as part

"Salting" the Contractors' Labor Force: Construction Unions Organizing with NLRB Assistance

HERBERT R. NORTHRUP*
The Wharton School, University of Pennsylvania, Philadelphia, PA 19104

The sharp decline in construction union membership during the last twenty years has led to a number of programs by these unions and unionized contractors to reverse their losses of members and business. The union activities have included several novel approaches designed both to narrow the cost gap between unionized and "open-shop" (largely nonunion) construction as well as to regain members. This article deals with one such program, "salting," that is, the placing of union organizers or members in a nonunion facility to disrupt, to increase the costs of, or to organize the open-shop contractor. Union salting programs are examined, using actual cases to demonstrate how they work in practice, and policies of the National Labor Relations Board, on which the success of salting is heavily predicated, are analyzed.

I. *Introduction*

Union membership decline has permeated the private sector ever since World War II, and especially during the past two decades, with unionization in the private sector estimated by the U.S. Bureau of Labor Statistics to have fallen from a high of 35.5 percent of the labor force in 1945 to a low of 11.5 percent in 1992.[1] The AFL-CIO building and construction unions have contributed to this decline. In 1973, these unions had 40 percent of the construction labor force as members; by 1992, this proportion was only 20 percent. Meanwhile, the construction labor force had increased by almost one million persons.[2]

The decline of union membership has, of course, resulted from the loss in the unionized contractors' share of the market for construction primarily because of uneconomic labor costs. In the first nationwide study of the market penetration of "open-shop" (primarily nonunion) construction, this author and a colleague estimated that in 1975, "it appears likely that the open-shop builders are in the majority and probably control 50 to 60 percent of the total work."[3] A second study made nine years later concluded

> that the dollar volume of construction produced by unionized craftsmen is not likely to exceed 30 percent of the total. . . . During the years since 1970, open shop construction has increased in the sectors and regions in which it has historically

EXHIBIT D

> dominated. At the same time, sectors and regions which traditionally have been union strongholds have been significantly penetrated by the open shop.[4]

No study of this nature has been published since 1984, but based on regular monitoring of the field, the open-shop share of the construction dollar has probably stabilized at 75-80 percent.[5]

In response to this decline, construction unions and unionized contractors have developed a host of economic and political initiatives designed to bolster or protect their memberships and businesses. Many contractors have either broken with unions and now operate open shop, or have developed or purchased an open-shop company and now operate "doublebreasted," that is, have two separate concerns, one unionized, one open shop, so that they can bid and operate successfully on jobs depending on the competition and the market orientation in a given sector or area.[6] Unions and contractors have negotiated agreements removing or modifying numerous restraints to productivity and flexibility of operations, although many such restraints remain in agreements in some localities.[7] Likewise, the economic terms of agreements have been dramatically downsized since 1980. In 1992, construction wage and benefit increases averaged 2.4 percent for the first year and 2.9 percent for the second year in multi-year agreements. In contrast, such increases in 1981 exceeded 10 percent, a basic reason for the decline of unionized construction.[8]

The construction unions, however, have determined that economic actions are insufficient to regain their market share. They have, therefore, embarked on a direct action and political drive in an attempt to reverse the loss of market and membership (see Exhibit 1). This article examines the methods, reactions, and public policy aspects of a key component of the union reaction, "salting," or placing union organizers and members in open-shop projects to disrupt, to increase the costs, or to organize the project.

II. *Salting in Practice: The Key Union Programs*

There is nothing novel about a union "planting" staff or adherents as hires within a company for the purpose of unionizing that company. Unions have done this from time to time for many years, and sophisticated nonunion establishments are surely alert to the practice. What is new is a systematic program for this purpose by the construction unions involving sizable numbers of persons. Two such unions, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers (IBB) and the International Brotherhood of Electrical Workers (IBEW), have developed and are practicing this technique consistently, and others, including the United Brotherhood of Carpenters and Joiners (UBCJ), are also actively pursuing this approach. Moreover, most construction unions whose members could be utilized on a job may attempt to salt the company involved, often led by the one of these key unions. The AFL-CIO Building & Construction Trades Department has now adopted salting as an organizing policy.

Exhibit 1

New Organization Tactics of Construction Industry Unions

The following tactics are being utilized by construction unions either to bolster sagging membership or to harass and to make profitable fulfillment of construction contracts difficult for open-shop contractors. Often more than one tactic is used in a particular campaign.

1. *Salting* — Having union members or organizers take jobs with open-shop contractors to organize workers, or to harass or disrupt contractor operations.
2. *Job Targeting* — Tracking open-shop contractor successful bids or jobs, and subsidizing unionized contractors to win bids and jobs by paying part of wages and benefits from various pooled funds. Litigation is now in process concerning the legality of this tactic.
3. *Environmental Scams* — Tracking open-shop contract bids, establishing environmental "front" organizations and combining with friendly existing ones to protest and to delay award of contracts on environmental grounds to open-shop companies while encouraging such awards to unionized ones. This program has achieved considerable success in California and is spreading.
4. *OSHA Scams* — Creating inspection harassment by demanding inspections, charging safety or health violations, and other measures to slow a project. Harassments often conducted by salters.
5. *Union-Only Project Agreements with Government Bodies* — Sought by organized labor to freeze out open-shop contractors on large infrastructure jobs. The legality of this practice has been affirmed by the U.S. Supreme Court.
6. *Corporate Campaigns* — Using such tactics as legal harassment, pressure on lenders, creditors, users, and government agencies; coalitions are formed with other liberal/left groups and combined with OSHA and EPA scams. See Perry, *Union Corporate Campaigns* (Philadelphia: Wharton Industrial Research Unit, University of Pennsylvania, 1987).
7. *Mass Picketing and Violence* — Utilizing illegal and destructive activities which violate all pertinent laws to frighten open-shop builders and users from operating nonunion. See Northrup, *Open Shop Construction Revisited,* pp. 351-71, and references in text to International Falls actions.
8. *State Licensing and Inspection Laws* — Utilizing such laws to limit the use of subjourneymen, to declare open-shop craftsmen incapable, and otherwise to restrict open-shop work. See use by IBEW salters at Boise project in International Falls described in text.
9. *Local Prevailing Wage Ordinances* — Inducing local governments to enact Davis-Bacon-type ordinances which make union job rates and conditions required for public and private construction in a local jurisdiction, thus eliminating effective open-shop conditions.
10. *Restrictions on Open-Shop Training* — Preventing, usually by administrative action, nonunion training programs from receiving state approval, and therefore acceptance under state prevailing wage laws. Used to prevent open-shop construction expansion and utilization in state government-financed work.

Source: Revised and expanded from "Union Pressure Tactics Target U.S. Construction Owners," The Business Roundtable, January 8, 1993.

The IBB Program. The decline of process construction and shipbuilding in the early 1980s severely affected the IBB. Its membership decreased by nearly 60,000 from its 1981 all-time high of 147,270 to less than 90,000 by 1986.[9] Membership declined an additional 24,496 by December 1990.[10] To stem these losses, the IBB restructured its organizing department and initiated its "Hire-In-And-Fight-Back" program. This program began earlier as an experiment in North Carolina, where construction unionism is very weak,[11] and then spread to other parts of the country with Fight Back "Membership Awareness Programs" given to IBB's construction members throughout the country. A special insert in its journal, entitled "Boilermaker Organizer," further publicized Fight Back and acquainted the membership with the open-shop company targets of the campaign.

Typically, a Fight Back campaign is organized against a nonunion builder who employs a substantial number of workers in the IBB's jurisdiction. Other construction unions are invited to participate, and often one or a few craftsmen are assigned to seek jobs with the open-shop builder. They report on the situation on the job, and if the opportunity exists or can be made, may file complaints with the federal Occupational Safety and Health Administration (OSHA), state counterparts, or environmental agencies to harass the open-shop contractor.

Then the main thrust is made. Union members, sometimes 100 or more if the job is sizable, suddenly appear at the job gates demanding employment. This tactic frequently disrupts work, snarls traffic, interferes with materials delivery and egress and ingress of employees, and causes confusion among contractors not schooled in countering such actions. Since power facilities, chemical, and other process construction which employ boilermakers are usually located outside urban areas, police protection and traffic management are often meager. Although the IBB claims that its members are schooled to avoid violence, disruption not only of the facility being harassed, but also of the area can occur.[12]

At this stage, the contractor may pass out applications which the unionists fill out with their qualifications, and (most recently) with the statement that they desire employment so that they can organize the facility. The purpose is to create a situation in which anyone not hired can charge the employer with a violation of §8(a)(3) of the National Labor Relations (Taft-Hartley) Act, which forbids "discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . ." Such charges have been highly successful, as discussed below.

This program is often begun when a job is nearing completion. The real purpose then is not organization, but rather disruption to prevent the open-shop contractor from meeting his schedule of work and completion, and the filing of numerous discrimination-for-not-hiring charges with the NLRB in the hope of collecting large back pay sums.

These tactics are designed either to make it very difficult for the open-shop contractor to employ qualified craftsmen or to force him to operate union. The former

could occur if there are few nonunion craftsmen in the area. The contractor may become fearful of hiring craftsmen who are or have been union members. These include the large percentage of the latter who often take jobs that are nonunion rather than "sit on the bench" at union headquarters waiting, often vainly, for unionized jobs to materialize.

The costs of fighting Fight Back can be substantial. These include loss of production from disruptions and resulting increased interest charges and the unhappiness of the owner if the job is not completed on schedule; legal fees; and government inspections, hearings, etc. Here the object of Fight Back is to increase the contractor's costs, and often the owner's as well, so that a decision will be made to sign up with the union, either on the current job or on future ones. Moreover, the IBB has made this objective very clear by making several of the large-process industry contractors public targets and by attempting to institute Fight Back wherever they operate.

If the contractor employs a number of "salting" craftsmen, an attempt at organizing may be made. No large number of NLRB elections have resulted, however, and according to IBB's own records, the victory rate has not been high. Even if the unions win such elections, negotiations can often be dragged out till the project is completed.

The unions have other tactics. For example, their supporters may suddenly quit the job at a critical time, their productivity can drop, or absenteeism may suddenly rise. If discharged for such activities, they file additional NLRB charges, which even if dismissed, cost the contractor time and money — and that is the purpose.

Fight Back is, therefore, not as much an organizing program to enroll nonunion employees as one to gain more work for IBB and other union members, even though increased membership is a stated objective. Organizing for the construction unions historically has meant signing up the contractor and providing him with unionized employees through the union hiring hall. In many cases, this has caused the loss of work for nonunion employees rather than their enrollment in the union. Fight Back's methods can lead to either, but seem thus far to result much more in traditional organizing of the contractor rather than any substantial enrollment of new members.

The IBEW Program. Like all construction unions, the IBEW has lost members since the early 1970s when its membership peaked at over one million. Today, its membership is estimated at less than 900,000.[13] In the construction division, the decline has been steady. The annual surveys of the National Electrical Contractors Association (NECA) show that in 1972, for the total United States, 37 percent of the 12,241 inside electrical employers dealt with the IBEW; by 1989, only 15 percent of the 58,644 did so. For employees, 55 percent of the 327,441 were IBEW members in 1972; by 1989, only 29 percent of the 542,597 were IBEW members.[14] Given the severe recession in construction since 1989, it is likely that there has been further erosion in IBEW's construction membership.

No sustained effort to halt this membership erosion was initiated till 1986[15] when a newly elected administration reorganized its education and organizing activities

and established a "Special Products Department" to bring nonunion electricians into the union. The goal of this department was stated as, "In Union Organization of the Construction Industry Is The Organization and Maintenance of a Loose Monopoly of The Manpower Pool."[16]

The IBEW salting program, which was developed within this context, places greater emphasis on organizing by individuals and on stressing union membership than does the IBB's. It is also combined with the IBEW's other programs, particularly the job targeting program (see Exhibit 1), so that it is sometimes difficult to determine whether salting or targeting has achieved the claimed results.

In its organizing statement, the IBEW devotes considerable space to salting. It states that salting permits the union to gather information on the open-shop contractor's wage rates and conditions of employment, possible OSHA or environmental alleged violations, Davis-Bacon compliance, character and capability of employees and their possible dissatisfactions, and potential internal pro-unionists and volunteer organizers. Salters are told to find those on the job whom the union "can trust to report and testify against union members who are surreptitiously working for nonsignatory [open-shop] employers," and those who can "report and testify to employer unfair-labor-practices" before the NLRB.[17]

Additionally, IBEW local unions are advised to enact a salting resolution designating the business manager or some other official as responsible for determining targets for salting, for sending union members to salt targets, and for leaving the contractor and the salting job or striking immediately on notification of the salting manager. Salters are given detailed instructions on making notes at all times, what to note, and how to process complaints to government agencies.[18] These instructions, which are reproduced as an appendix, make it very clear that salters who do not abide by instructions are subject to union discipline, which may include fines and expulsion from the union.

The IBEW program also provides detailed instructions about bringing employees of open-shop contractors into the union. Competent craftsmen are to be given membership promptly; where there is a doubt as to competence, an examination can be given; subjourneymen are to be placed in the apprentice program and given credit in terms of hours or years in light of their experience; or if the union permits, as some locals now do, the use of subjourneymen, former open-shop employees can be slotted into such membership categories, but the IBEW admits that this trend to provide union-approved subjourneymen categories "is not widespread enough to have a meaningful impact."[19]

The IBEW organizing manual makes clear its concern with organizing the open-shop contractor's employees rather than just following the traditional construction union role of exerting political and economic pressure to compel the substitution of a unionized contractor and existing IBEW members for the open-shop contractor. This is set forth in its organizing manual. It explains therein that leaving the open-shop contractor and his employees nonunion also leaves this group free to continue

to compete against union operations. Therefore, it urges a change of past policies into one of "bringing them in." The case studies below, however, do demonstrate that disruption of the open-shop contractor is utilized and can be very effective.[20]

The IBEW salting program, often combined with other approaches, has had successes in a number of areas,[21] but the record seems to indicate that the success has been less in organizing than in winning NLRB cases or harassing open-shop contractors. The *IBEW Journal*, issued monthly, contains reports from local unions, tells of awarding "salting pins" to members involved in successful salting activities, but there are few reported organizational victories.[22] One problem may be the continued recession in construction, which keeps unemployment high, and the reluctance of members to admit more workers to their locals. An unknown factor, of course, is the extent to which jobs have been awarded to union contractors that might have gone open shop in the absence of the IBEW program.

III. *Salting in Practice — Some Cases*

The IBB and the IBEW programs demonstrate that salting works in a number of ways: the unionization of an open-shop contractor which may displace employees or bring them into the union; the open-shop contractor and his employees may be displaced by a unionized contractor and union members; unfair labor practice charges may be filed by union salters not hired; and employed salters may disrupt the contractor's operation by various tactics, including quitting in unison. The following cases, based on information from industry, union, government, and personal investigation illustrate these possibilities.

Organizing and Disrupting an Open-Shop Electrical Contractor. Ed Rosendin Electric in Federal Way (near Seattle), Washington, is a small electrical contractor organization which in the early 1980s approached an IBEW local union with the idea of becoming unionized. The union was then uninterested because of the small size of the operation, and the question of which IBEW local had jurisdiction. The operation continued to operate open shop and to grow. In 1990, the company employed workers who were salters. Organization and a union victory by one vote in an NLRB election followed after which several salters left the company.[23]

Negotiations for a contract between Rosendin and the IBEW local occurred over a full year. The big issue was wage rates, for the company feared loss of its customer base of small service work. At the final negotiations, the company agreed to pay the union rate for government operations subject to the Davis-Bacon Act, but demanded a lower rate for its small commercial and service customers. The union refused a two-tier wage structure. Following the lapse of one year without a contract, employees petitioned for a decertification election, and the union was decertified. Thus, salting did not win new members on a permanent basis, but clearly cost the company considerable expense.

Mass Action by Carpenters. The UBCJ has developed an organizing strategy termed "Return-to-the-Basics" which appears to be modeled on IBB's Fight Back. In April 1990, an open-shop contractor, Hensel Phelps, won a bid to build a new state office building in Olympia, Washington. Since this was the first of a series of buildings on the drawing boards, and it was unusual for an open-shop company to gain such a contract from this state, the construction unions led by the UBCJ were aroused.[24]

The UBCJ organized a coalition of unions both in and outside of the construction industry, which packed public meetings, held rallies, and made many charges, mostly spurious, that the contractor did no training, did shoddy work, was utilizing mostly out-of-state residents,[25] and was breaking OSHA and environmental regulations. By organizing a community movement in an area where unions are relatively strong and politicians listen carefully to union demands, the UBCJ was able to obtain the subcontracts for unionized concerns. Additionally, the UBCJ has salted a number of jobs and attempted similar pressure activities at other locations in the state and is trying to induce various city councils to legislate that only "responsible" contractors, i.e., union contractors, be allowed to bid on jobs. No claims of success have been made as of early 1993.

An IBEW Salting Failure. Vos Electric, an open-shop contractor, was chosen as the electrical subcontractor for work on the Union Camp Corporation paper mill in Franklin, Virginia. In November 1991, Vos advertised for journeymen and helpers, and the IBEW local union business agent had many of his members apply. Vos hired seven of these, but rejected thirty-two for whom unfair labor practice charges were filed with the NLRB. On December 7, 1992, the NLRB affirmed the administrative law judge's decision to dismiss these charges.[26]

The Board found that Vos rejected those who sought much higher rates than the company was paying because Vos believed that these workers would become unhappy and quit when better jobs appeared; that the thirty-two claimants never sought an interview, which Vos required before hiring; and that Vos utilized former employees to the extent possible in staffing the job. The case generally showed what a contractor must do to avoid being penalized for not employing salters. Even in winning the case, Vos had to spend considerable time and money defending its actions.

IBEW's Harassment by Salting at International Falls. In 1989, Boise Cascade Company awarded the general contract for expansion of its paper-making operation in International Falls, Minnesota, to the large open-shop contractor, BE&K, after the Minnesota construction unions declined to offer the company a project agreement which would permit it to employ both unionized and open-shop contractors.[27] The unions then began a program of harassment and violence that culminated in a "march" on the facility by bus loads of union adherents from both within and out-of-state, which caused destruction of about $2 million worth of property, injuries to a small number. and mild jail sentences for the perpetuators of the crime. Additionally, numerous law suits and NLRB charges were filed, most of which have now been settled.

These attacks on Boise and BE&K were made because the job was not 100 percent union; in fact, a majority of the work and subcontracts were initially being awarded to unionized contractors, but BE&K was forced to import workers to perform many of these operations, or to subcontract them to open-shop firms, because the unions refused to work on the project for several months.[28]

From the inception of the dispute, Michael D. Lucas, the originator and director of the IBEW's salting program, urged that BE&K be attacked by salting rather than by public agitation and strikes. He took personal charge of the IBEW effort, beginning in 1990. His memoranda to J. J. Barry, IBEW President, explain how destructive a salting program can be to a contractor's work schedule, and how the IBEW can use restrictive licensing laws and the NLRB, as well as other state and federal legislation and governmental agencies, to achieve its purposes.[29] On March 28, 1990, Lucas wrote Barry:

> I put our people through organizing school and we started salting. On February 6, 1990 we pulled our first one-day economic strike with 26 strikers. On February 7th when we returned, they isolated some of our people by putting them in the pit. They also fired three of our people over a period of time for various pretexts such as loafing, refusing transfer to nights, etc.
>
> On Monday we filed NLRB charges on isolation and the discharges. Now we are getting ready to stage our first ULP [unfair labor practice] strike — this time for a much longer period.
>
> There are 280 people in BE&K's electrical crew including supervision. Out of these, 62 have Minnesota licenses. Forty of these licensed men are ours. State law requires a ratio of one license for every two non-licensed. *The inspectors show up when we want them.* [Emphasis added.] Without our 40, there will be 240 on the electrical crew with 22 licenses. Interesting!
>
> We won't take all 40 of ours. We will leave a couple of sleepers so that they can swear to what happens inside during our strike.
>
> Willmar Electric [a large Minnesota open-shop electrical contractor] is on the job also. We only have one salt on his crews. . . . Now that Willmar President John Chapin is ABC National President, I have a special interest in him. [Associated Builders & Contractors (ABC) is the large national open-shop contractors' association.]

On April 3, 1990, Lucas again reported to Barry:

> On Friday morning the ULP Strike banners went up. . . . Thirty-six of our salts, all with Minnesota State Electrical Licenses, stayed out. Four undercover salts, also licensed, stayed in to observe. That left BE&K with 27 licensed men in an electrical crew of approximately 240 including supervision. Minnesota State Law requires one license for every two unlicensed. The State Electrical Inspectors were denied entry to the job on Friday.
>
> . . . .

The third Lucas report to Barry, dated April 6, 1990, stated in part:

> When the strikers returned, they were segregated . . . and . . . debriefed. . . . They were told that their three day absence was in violation of the company's attendance policies and were asked to sign a warning slip acknowledging that further absences would be grounds for discipline or discharge. Every man refused to sign but was given a copy of the warning which noted their refusal.
>
> The four salts we left inside report that the unlicensed men spent . . . [three days] sitting on gang boxes doing nothing because their Journeymen were on strike. Additionally, they spent Wednesday likewise engaged since their Journeymen were being debriefed.
>
> . . . .
>
> During the strike we had a number of our members make application for work. On Monday they hired three members of Local Union 343 and one member of Local 1426. These men crossed the picket lines like the good nonunion fellows they represented themselves to be . . . . [On] April 9th, two more members of Local Union 292 are reporting to work. This will bring the number of licensed electricians on the job to 69 which will allow them to legally work an unlicensed complement of 138. Forty-six of these licensed men are ours. . . .
>
> Unknown to BE&K, one of their foremen is ours. He was initiated Wednesday night. We now have a list of all BE&K electrical employees with dates of hire and believe we can show unlawful refusal to employ approximately 100 of our members. This NLRB case is being prepared at the moment and hopefully will result in substantial liability.

In the fourth and final communication, dated May 4, 1990, Lucas returned to the union's use of Minnesota's restrictive licensing legislation:

> The Minnesota law requires unlicensed men to be directly supervised by a licensed man. As a result of multiple affidavits signed by our licensed IBEW salts stating that they didn't supervise anyone and a showing of flagrant violation of the 1.2 ratio, on . . . April 26th, City Attorney Joe Boyle accompanied by law officers went onto the job and impounded BE&K's files, computer discs, etc. These are locked up in the jail and are being studied by two men from the State Electrical Department. Charges should be brought shortly.
>
> The NLRB has had an attorney and one field investigator working almost full-time out of Local 295's organizing office taking statements on multiple ULP charges. I anticipate formal *Complaints and Notices of Hearing* to issue soon.
>
> The Minnesota state law regulating high pressure pipe fitters requires three licensed men to each apprentice. [This law was enacted after BE&K was awarded the Boise Cascade job.] Boise Cascade obtained a federal injunction preventing enforcement of the 3:1 ratio in February. That injunction is being lifted by the court so there will have to be a big change in crew make up soon. The UA [United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry] has assigned an organizer to our office in International Falls and he has his members ready to make application for employment to engage in the same activities we are using. Our guys are teaching him.
>
> Our next (third) strike on the electrical is scheduled to take place on Monday and Tuesday, May 7th and 8th.

Despite all this harassment, BE&K finished the work at International Falls on time and within budget. It clearly was, however, required to spend large sums defending itself against the unions and state and government agencies, which combined to drive up its costs by literally uniting with the union to harass BE&K. The extremely restrictive state licensing laws, which were obviously designed to prevent the use of subjourneymen for semi-skilled work, rather than to protect the public, were eventually voided in court cases.[30] The Minnesota legislature, following the riotous and destructive behavior of a union mob, passed a law limiting the role of guards in labor disputes![31]

OSHA charges against BE&K were brought and settled.[32] The NLRB, which earlier had issued complaints against two Michigan local construction unions in connection with the riots,[33] but yet clearly unmindful of the extent and purpose of the IBEW and UA harassment, issued a complaint in behalf of IBEW and UA local unions against BE&K, which also was settled.[34] An attempt of the Minnesota Building Trades Council to claim that it actually had a contract with Boise was settled for some legal fees.[35] As the following discussion demonstrates, the NLRB, and unfortunately the courts, seem to be unable to determine the distinction between protection of the rights of employees to organize and to join unions, and harassment of employers by unions which have not won the support of a majority of employees, or whose members are more interested in damaging employers than organizing employees.

IV. *The NLRB and Salting — Union Use and Voter Eligibility*

It is quite clear from these cases that the NLRB plays a big role in the unions' salting strategy. The blunt memoranda from Michael Lucas, the IBEW salting chief, also clearly demonstrate that salters are often not interested in permanent employment. Rather, they frequently are devoted to harassment, destruction of productivity, or even in the case of a very successful open-shop builder like BE&K, elimination of the company itself unless it changes its ways and agrees to unionization. Yet the failure of the NLRB, and usually the courts as well, to treat salters as anything but ordinary workers or employees seems at least contrary to the goal of the Taft-Hartley Act to insure employees representation of unions of their own choosing, or the right to reject such representation.

Changing Construction Union Utilization of the NLRB. Historically, the construction unions have not utilized the NLRB for organizing purposes. Rather they have organized "top down" by signing up the contractor and supplying the manpower which they have tried to control by apprentice regulations, hiring hall restrictions, and the requirement that supervisors be union members. As a result, very few construction representation cases were processed by the NLRB until recently. This changed considerably as a result of two developments: a new approach by the NLRB to pre-hire agreements, and the desire of unions to organize the growing nonunion sector now dominating the industry.

The Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, although devoted primarily to controlling various improper and undemocratic union practices, also amended the Taft-Hartley Act by strengthening restrictions on union secondary boycotts and by providing special legal treatment for construction union practices. Thus, §8(f) of the Taft-Hartley Act was added to legalize so-called "pre-hire agreements" in the construction industry. Such agreements establish the union as the bargaining representative of the contractor, even though no majority status has been demonstrated by an NLRB election or other means. Pre-hire agreements also govern terms and conditions of employment even for those not as yet hired.[36] In 1987, the NLRB in the so-called *"Deklewa"* decision provided that a contractor cannot repudiate a pre-hire contract once agreed to prior to its expiration date, but that such an agreement will not preclude a representation election during its tenure. Moreover, this decision declared that when the agreement expires, and the union has not demonstrated majority status, it will enjoy no presumption of such status.[37]

The *Deklewa* decision induced the construction unions to request NLRB representation elections after signing pre-hire agreements in order to preclude losing bargaining rights during or after the termination of such agreements. Since many unionized contractors did not object, the unions easily won a high percentage of such elections, usually between 55 and 60 percent, as compared with 43-49 percent for union victories in all representation elections.[38] Additionally, the construction unions were encouraged by these results to utilize the NLRB in their organizing tactics.

NLRB Voting Eligibility for Construction Workers. Because work in the construction industry can be intermittent and workers may be employed by several contractors during any one year, the Board has made special arrangements for determining eligibility to vote in construction industry representation elections. In a case decided in 1961, and modified six years later,[39] the NLRB ruled that all unit employees would be eligible to vote in an election if they had been employed for at least 30 days or more within the 12-month period immediately preceding the eligibility date established for the election, or if they had some employment in that period and had been employed 45 days or more within the 24-month period immediately preceding the eligibility date. Employees who voluntarily quit or were discharged for cause prior to the completion of the last job for which they were employed are not eligible to vote under this so-called *Daniel* formula.

Contractors always objected to the *Daniel* formula on the seemingly obvious grounds that the Board's attempt to include all possible eligible personnel virtually insured the inclusion of personnel who for either their own or contractors' reasons would never again be employed by the employer involved. Salters who were no longer employed are certainly in this group.[40] Unions, quite correctly from their point of view, supported this formula.

In 1991, the NLRB (by a 3-to-2 majority) crafted a slightly different formula which sought to confine eligibility "when employment with the employer for a period of less than 90 days is concerned . . . in order to assure that voters are limited

to those with a reasonable expectation of future employment with the employer."[41] This revision pleased few. A public hearing found construction employer groups arguing that there should be no special formula for construction since there is such variation in the industry, but rather that the Board should follow its general industry policy of setting an eligibility date and confining voting rights to those employed or on appropriate leave at that time. Unions argued for retention of the *Daniel* formula unless it was shown that the contractor's work force was stable.[42] The Board then decided to return to its *Daniel* formula while admitting that it was unsatisfactory.[43] Thus, salters and others who have left a construction company after a job continue to be permitted to vote despite the likelihood that many would never be employed by the contractor again.

V. *The NLRB and Salting: Should Salters Have All Employee Rights?*

The viability of the union salting process depends on rulings of the NLRB that salters, including paid union organizers, are, insofar as the Taft-Hartley Act is concerned, in little different status from regular employees or job applicants, particularly in processing charges of unfair labor practices. The Board argues correctly that the Act provides no distinction between union organizers, paid or voluntary, and others who have been employed or are seeking employment, and that the definition of employees in the Act, which has been affirmed in many decisions by the Supreme Court, is very broad.[44] Therefore, the Board holds that it has no authority to distinguish organizers or salters from other employees, or to limit their rights.

Yet over the years, the Board has considered special problems of a host of different types of employees, such as those with confidential duties, part-time workers, those related to owners or managers, etc., none of whom are specifically mentioned in the Act.[45] Like many government agencies, the NLRB often finds authority to make such rulings when it seems to its members to be appropriate, and often declares it has no authority to act when its members determine that no action is in accord with their thinking and desires.

The Board thus chooses to ignore such activities as those of the IBEW at International Falls and those of the IBB which the Administrative Law Judge (ALJ) found in the *Sunland* case discussed below. In these cases, the purpose of the salting was to damage the company, not to unionize it by the normal process of enrolling employees and requesting an NLRB election. Yet the Board even in such cases has declined to utilize its broad discretion and instead has found that refusal to employ salters, or to maintain them as employees when their concerted disruptive actions become apparent, violates the Taft-Hartley Act.

On the other hand, if a representation vote is ordered by the Board, paid union organizers "frequently are excluded from voting, either as 'temporary' employees, or because their interests sufficiently differ from those of their co-workers."[46] Thus, paid union organizers are protected employees even though they are under union

control and jurisdiction, and even though they may not be allowed to vote in a representation election, but unpaid union organizers (salters), also subject to union orders and control, can and do vote in NLRB elections. Such policies seems both unrealistic and inconsistent.

Pre-Salting Decisions. In 1963, the NLRB ruled that an employer violated the Act when an employee who admitted being a paid union organizer was discharged.[47] The Court of Appeals, Sixth Circuit, refused to enforce this decision, ruling that a paid union organizer is not a bona fide employee under the Act.[48] The Board, however, refused to accept this case as precedent and continued to rule as it did prior to this court opinion.[49]

The H.B. Zachry Case. Zachry is a large open-shop construction company which litigated the first key case, and one of the few salting cases in which management has prevailed. The company declined to employ a paid IBB organizer, who had previously worked for the company, and had been discharged, and who testified that his union supervisor had instructed him to apply to Zachry for the organizing purposes. The organizer had also previously been discharged on the former Zachry job, and the Board had ruled that this was an unfair labor practice. The NLRB then ruled that the company violated §8(a)(3) in not employing him in this case.[50]

On appeal, the Court of Appeals, Fourth Circuit, declined to enforce the Board's order.[51] It ruled that the organizer would also be working full time for the union at the same time that he would purportedly be working for Zachry; would be supervised by, and responsible to the union; would be paid by the union as well as by Zachry; and was not a bona fide job applicant since he already had one, but instead was seeking entry to Zachry to fulfill his union job responsibilities. Thus, the court stated that if it ruled otherwise, it would be favoring the union over the company in an adversarial relationship.

NLRB and Court Cases Favoring Salters. The *Zachry* case was the high point of management's legal opposition to salting. Since then, most NLRB cases[52] and cases ruled on by three courts of appeal[53] have been decided in favor of the proposition that paid union organizers who salt must be treated no differently from any other employees in terms of protection against alleged discrimination under the Taft-Hartley Act. Moreover, the NLRB, after a public hearing,[54] declined to alter its posture in this regard, although it did hold that in case of a strike, the employer had no obligation to employ a union organizer. One Board member also did suggest that if the company had a non-discriminatory policy against employing temporary employees, that might be applied against employing paid union organizers. It follows from these rulings that salters who are not paid union organizers are certainly also protected as employees.[55]

VI. *Conclusion*

The Board's policy in refusing to distinguish salters from workers desiring employment without ulterior motives has been succinctly criticized by ALJ Joel A. Harmatz,

in an opinion dealing with the IBB Fight Back program as experienced in the *Sunland* case.[56]

> I hold no illusions that there was genuine interest in securing organization of an employee majority on this project as contemplated by §9 of the Act. Thus, it is fair to infer that the Union was well acquainted with boiler outage work, and . . . must have known that the St. Francisville project was only about two months short of scheduled completion when the initial group of applications [by IBB salters] were submitted. . . . The implication should have been clear to all; i.e., the organization of this short term project was too impractical to be a realistic goal. . . .
>
> [I]n formulating this plan, the Union would have been mindful that outage jobs are awarded pursuant to competitive bidding, that cost-wise, they are labor intense, that the price is fixed, and that completion delays are unacceptable. For these reasons alone, it was foreseeable to a reasoned certainty that this "merit shop [open-shop] employer" in such circumstances would avoid hiring those commended by the organizers. . . . There is little doubt in my mind . . . that backpay, rather than bona fide organization, was the cornerstone of . . . [IBB] strategy.

Judge Harmatz then expressed his view of the public policy issues raised by the IBB salting program:

> It is not farfetched to regard the "strike back" [Fight Back] strategy as built upon a form of entrapment reminiscent of other "blackmail" devices which in 1958 led to enactment of §8(b)(7) strictures on recognition picketing.[57] It is true that neither picketing, nor secondary activity was directly involved here. Instead, the employee protections of §8(a)(3) were central ingredients of a scheme whereby an unorganized employer would be pressured to capitulate, go out of business, or face recurring union sponsorship of mass applications in the midst of future projects. *From my perspective, a serious question arises as to whether, through the complaint in this proceeding, the Board has been conscripted as an unwitting conspirator in the effort to achieve union goals . . . through pressures, rather than through the statutory procedures designed to assure that compulsory bargaining begins with procedures preserving freedom of choice.* (Emphasis added.)

Judge Harmatz then declared that he was compelled by NLRB controlling precedent to find that the employer had violated the Act, and to order backpay for salters who had been refused employment. He did so after noting that there was "little question" that through mass applications, the union was attempting "with the Board's imprimatur" to force the employer either to accept an exclusive union hiring hall, or to confront the Board and its remedial authority. He added: "Were this tactic invoked genuinely to obtain representation. through free expression by an employee majority, the case might be viewed differently. However, as matters stand, concern exists that the mass applications were key to the Union's effort to manipulate the statutory process as a source of pressure, to further private, institutional goals."

Little need be added to the dicta of Judge Harmatz, but change in the near future such as he is suggesting is most unlikely. given the record to date and the indications that appointees by President Clinton to the Board, and probably to the courts as well, will be favorable to at least the current approach to this problem.

Will Salting Reverse Construction Union Decline? The remaining question is whether salting will reverse the downward trend of construction union membership. This membership fall has been relatively slight since 1988 after a steep decline during the previous sixteen years. The President's plan to spend extensively on infrastructure should help union membership, especially if the neutralization program of Davis-Bacon regulations, adopted during the previous twelve years, is reversed.[58]

Large commercial and industrial construction, however, is much more important for construction union employment than is highway and heavy work which the President would stimulate. Unfortunately for the unions, a major source of their job control, high-rise urban office buildings, are in a serious slump because of overbuilding that could last for the rest of the decade, while home building, which is 90-95 percent open-shop, has been expanding substantially since mid-1992.[59] Industrial construction may be more likely to increase, but that may well depend on whether the Clinton Administration's expansionary programs are not offset by the higher taxes to be levied against the very corporations and individuals who must be counted on to invest in expansion.

One must, therefore, conclude that the economic situation is more important than any tactic in determining construction union growth or decline. Nevertheless, salting has proved to be a clever tactic indeed. It has been costly to open-shop contractors, and promises to continue to be so; it has permitted the unions to utilize the NLRB for this purpose, thus making the marginal costs for the unions very near zero; and it has probably won the unions some members and work that they would not otherwise have gained. Now that the AFL-CIO Building & Construction Trades Department has inaugurated its program, a form of stepped-up salting that uses rank-and-file union members specially trained for its "Construction Organizing Membership Education Training (COMET)" program, more salting use seems certain.[60] Nevertheless, as Judge Harmatz has so well explained, salting appears to have resulted in what surely seems to be a perversion of public policy.

APPENDIX

Instructions to Salters

[IBEW logo] International Brotherhood of Electrical Workers

Local Union [blank]

Dear Sir and Brother,

You are presently working under the "Salting Program of IBEW Local Union [blank] and have responsibilities to Local Union [blank] by doing so. The enclosed forms will explain what those responsibilities are and what you must do to be allowed to continue to work and be protected under the "Salting Resolution."

If you do not see fit to abide by the provisions of the "Salting Resolution", the oppertunity [*sic*] afforded you will be revoked and appropriate action taken.

The "Salting Program" can be a very effective tool against the non-union element, but like any other tool, it only works as well as we make it work.

Please read the enclosed forms carefully and do what is asked of you. If you have any questions, call [blank] or myself and we will gladly answer them.

Fraternally yours,

[blank]

L.U. [blank] IBEW

RESPONSIBILITY OF "SALTS" IN [blank] JURISDICTION

1. Make sure all salt information sheets are mailed ON TIME!
   A) They are to be post marked every Friday.
   B) If we do not received them by the following Friday, THEY ARE LATE!
2. Immediate notification of any HIRING! (Local Union [blank])
3. Save all pay stubs and forward copies to Local Union Office.
4. Keep a pocket memo pad.
5. Take notes from beginning
   A) Date and time you applied
   B) Who you talked to
   C) Topics discussed
6. Keep notes while working
   A) Don't be obvious when taking notes
   B) Write information down while fresh in your mind.
   C) Write down names and classifications of co-workers
   D) If possible get addresses, phone numbers, social security numbers, ect. [*sic*]
   E) Vehicle license numbers of those you can't get better information on.
   F) Note any mention of "union".
   G) Note anything of possible value said in conversation.

7. Gather information
   A) Copies of company policy if applicable
   B) Copies of safety policy
   C) Copies of time cards
   D) Copies of company news letters
   E) Employee list
   F) List of jobs
   G) Names of competent journeyman, [*sic*] if any.
   H) Names of any who express interest in the union
   I) Employee complaints
      1) short checks or hold checks
      2) late paydays
      3) poor wages
      4) unfulfilled promises
      5) unpaid overtime or compensation time
      6) lousy supervision
      7) poor treatment
      8) any other gripe
   J) Background of co-workers, may be former or present IBEW members
   K) Number and type of company vehicles
   L) Obvious traits of owners or managers
      1) expensive cars
      2) life styles
      3) personal problems
8. Watch out for the following and take very specific, clearly written notes with names of all persons involved. These are questions that supervision cannot ask and are the heart of unfair labor practice charges.
   A) Management can't ask a person during a hiring interview about his union affiliation or how he feels about unions.
   B) They can't ask if you have signed an authorization card at any time.
   C) They can't tell employees they will be fired or punished or in any manner be discriminated against if they engage in legal union activities.
   D) They can't ask about union business like: who attended meetings, what was said, who said what, ect. [sic]
   E) They can't say that unionization will cause anyone to be laid off because they can't compete or for any other reason connected to becoming unionized.
   F) They can't tell employees that unionization will do away with present company benefits.
   G) They can't say that the company will not deal with the union.
   H) They can't threaten employees with shutting down the company to avoid unionization.
   I) They can't layoff or fire employees known to be engaged in union activity so as to weaken the union's strength or discourage participants.
   J) They can't discipline an employee for union activity.

SALT FORM

1. Name ______________________________ Card No. ______________
2. Current Address ____

   ____
   City   State   Zip Code

   Telephone ____
3. Contractor ____

   Wage of Salt ____
4. Job Location ____

   ____
5. Hours Worked: Straight Time ________________ Overtime ________________
6. Persons worked with: ____

   ____
7. Attitude of Employees toward IBEW: ___________________________

   ____
8. Have you been provided with material, tools and information to let you do the job? If not, what has been the problem? ___________________________________
9. In your opinion, is this Salting effort being productive? ________________

   Explain your answer. ____

   ____

   ____

NOTES

*Professor Emeritus of Management; formerly, Director, Industrial Research Unit, and Chairman, Labor Relations Council.

[1]Union membership data are published annually in the Bureau's monthly journal, *Employment and Earnings*, usually in the January, but sometimes in the February, issue.

[2]Data on the construction work force are also reported in *Employment and Earnings*.

[3]Herbert R. Northrup and Howard G. Foster, *Open Shop Construction*, Major Industrial Research Unit Studies, No. 54 (Philadelphia: The Wharton School Industrial Research Unit, University of Pennsylvania, 1975), p. 351.

[4]Herbert R. Northrup, *Open Shop Construction Revisited*, Major Industrial Research Unit Studies, No. 62 (Philadelphia: The Wharton School Industrial Research Unit, University of Pennsylvania, 1984), pp. 27-28.

[5]These author's estimates are based on regular monitoring of association, contractor, and union contacts and their publications. For case studies in one area in which union construction virtually collapsed, and in another in which union control has largely been maintained, see Herbert R. Northrup, "Arizona Construction Labor: A Case Study of Union Decline," *Journal of Labor Research* 11 (Spring 1990): 161-80; and idem, "The Status and Future of Unionized Construction in New Jersey," *New Jersey Building Contractor* 4 (December 1990): 9-12.

[6]For a discussion of doublebreasting, see Herbert R. Northrup, "Construction Doublebreasted Operations and Pre-Hire Agreements: Assessing the Issues," *Journal of Labor Research* 10 (Spring 1989): 215-38.

[7]The Construction Labor Research Council, the research institute of the industry, has placed "terms and conditions" costs in unionized construction at $2.04 per hour, and reported that, although "the percentage cost of contract terms and conditions have been generally downward since the early 1930s . . . absolute costs have risen as the industry wage and fringe rate has increased." See "Cost of Terms and Conditions in Collective Bargaining Agreements," *Construction Labor Research Council*, March 1992, p. 2. See also the study prepared by the Research Council for the Associated General Contractors Basic Trades Committee, "Cost Reducing Modifications to Construction Collective Bargaining Agreements," August 1992.

[8]See "1983 Construction Labor Trends and Outlook," *Construction Labor Research Council*, February 1983, p. 3; and "Wage and Benefit Settlements in Construction," idem, December 1992, pp. 2-3.

[9]*Boilermakers and Blacksmiths Reporter*, July-August 1986, p. 3.

[10]*Report of the International Officers and the International Executive Council to the Twenty-Eighth Convention of the . . . [IBB]*, Las Vegas, NV, 1991, p. 235. (Hereinafter cited as IBB, 1991 Officers Report.) The total membership data for 1991 show an increase over 1986 because the 1991 figure includes the affiliated cement workers, which the 1986 total cited does not.

[11]See Northrup, *Open Shop Construction Revisited*, note 4 above, pp. 302-303.

[12]This description of Fight Back is based on that which appears in IBB, 1991 Officers Report, pp. 84-94, supplemented by interviews with contractors and data from various NLRB and court cases, union and contractor publications, and other sources cited in this article.

[13]See *Officers' Report to the 34th Convention of the . . . [IBEW]*, St. Louis, MO, 1991 p. 63. The chart on page 63 shows membership just above 900,000 in 1991. Given the impact of the recession, the current estimate is for a lesser figure.

[14]National Electrical Contractors Association, Annual Survey, 1972-1989. No such data have been published since 1989, apparently because NECA is revising its data collection and processing operations.

[15]For the attitude of the previous IBEW administration toward meeting open-shop competition, see Northrup, *Open Shop Construction Revisited*, note 4 above, pp. 120-24.

[16]*Union Organization in the Construction Industry*, Journeymen Edition (IBEW Special Products Department, duplicated, no date, probably 1990 or 1991), p. 2.

[17]Ibid., p. 28.

[18]Ibid., p. 29.

[19]Ibid., pp. 15-28.

[20]Ibid., pp. 11ff.

[21]Issues of *Cockshaw's Construction Labor News + Opinion* occasionally carry such reports, but the key successes seem attributable to job targeting rather than to salting. See, e.g., the March 1992 issue, p. 3. Organizing successes are occasionally also reported in the *IBEW Journal*. See, e.g., the issues of January-February 1992, p. 24; and December 1992, pp. 29-30.

[22]See, e.g., *IBEW Journal*, February 1993, p. 39; December 1992, pp. 24-25; and the cases summarized below.

[23]This case is based on the story in the *Independent Electrical Contractor*, 2nd Quarter 1992, pp. 4-5. This journal is published by the Independent Electrical Contractors, Inc., an association of open-shop electrical contractors. The one-vote NLRB union victory was attributed to the NLRB policy of allowing anyone to vote in construction NLRB elections who worked for the contractor a certain number of hours within a 24-month period. This policy is discussed in the next section of this article. The NLRB case number for the certification of the IBEW is 19-RC-12204 (December 26, 1990); and for the decertification of the IBEW, 19-RD-3000 (February 20, 1992).

[24]See "Organizing Takes Teamwork," *The Carpenter* (May-June 1992), pp. 20-24. Information in this publication of the UBCJ has in the main been verified.

[25]This charge that open-shop contractors import huge numbers of out-of-state workers is a standard one by the construction unions. This claim is usually not only false, but also the construction unions typically do the importing. Both unionized and open-shop contractors bring a coterie of supervisors and some key craftsmen to a job. Open-shop contractors, who use subjourneymen to perform semi-skilled work, can train the local population by their "block training" methods to perform such work, thereby increasing jobs for local persons. On the other hand, unionized contractors are not permitted to utilize subjourneymen in most heavily unionized areas, are allowed only apprenticeship training which requires four or five years to complete, and must use journeymen to do semi-skilled work. They must, therefore, depend on "travelers" supplied by the union hiring hall when the local supply is depleted, as it often is because of restrictive union membership practices. The net result is little training afforded local personnel beyond regular apprenticeship under union conditions and substantial importation of skilled personnel who leave as the job is being completed. In New York City, for example, when the building boom of the 1980s began to recede, the travelers were the first to go. One report noted: "Given all the out-of-state license plates . . . he had seen at city building sites, Professor Drennan wonders about the impact of the decline in new construction on local workers. . . ." (Richard Levine, "As Towers Top Off, Construction Boom Fades in New York," *New York Times*, July 2, 1990, p. A1.)

[26]*Vos Electric, Inc.*, 309 NLRB No. 117 (December 7, 1992).

[27]Boise wanted this type of "merit shop" agreement in order to contract with BE&K to install the paper machine, and to be able to employ a large number of local residents in the International Falls area, as it was committed to do by state aid. It would have been impossible to do the first and difficult to do the second with an all-union contract demanded by the unions, which either preclude or inhibit the employment of subjourneymen. The area is very depressed as a result of the depletion of the iron mines, but is also (for the same reason) extremely pro-union. As one who has researched in the paper industry for more than forty years, the author can affirm that BE&K is considered a premier installer of paper machines, not only by Boise, but also by several other major paper companies.

[28]The facts of this case are found in numerous news reports, and in the *Construction Labor Report* (Bureau of National Affairs, Inc., — BNA), which is a weekly report of construction labor matters, throughout late 1989, and 1990-1991, with reports of case settlements in 1992 as well. For a concise and accurate report of the mob destruction, see also, *Cockshaw's Labor News + Opinion*, September 1989, p. 1; and "33 Plead Guilty to Charges Stemming from Riot at International Falls," *Construction Labor Report* 36 (April 18, 1990): 144-45. For the refusal of the Minnesota Building Trades Council and its constituent unions to work on the project, see "Minn. Trades Refuse to Man Work at Mixed Boise-Cascade Project," *Construction Labor Report* 35 (August 2, 1989): 558; "Minn. Unions Likely to Continue Strike Following Boise-Cascade, BE&K Meeting," *Construction Labor Report* 35 (October 11, 1989): 765-66; and "State Continues Boise I-Falls Probe; Safety Inspection Draws Large OSHA Fine," *Pulp & Paper Weekly*, January 15, 1990, pp. 4-5. This last article referred to a fine against Boise, which was later greatly reduced, and to the fact that the unions had gone to work under contracts that had been awarded six months before. By then, nonunion employees had done much of the work originally awarded to unionized firms that had been struck.

[29]The memoranda from Lucas to Barry cited herein are in the author's possession.

[30]See *BE&K Construction Co. v. Puelston*, No. 3-90-CV409, (U.S.D.C., D. Minn., Aug. 6, 1990; 36 Const. Lab. Rpt. 615, Aug.15, 1990). In this case, the court took note that BE&K's operation was a high quality one with a safety record far better than the state average. In April 1991, BE&K and the Minnesota Attorney General agreed to drop all charges against the company in which the company was alleged to have violated the electrical licensing law and the State and the City of International Falls sued the company while BE&K brought suit to have the electrical code declared void. It was apparent that the authorities had no case. Thereafter, a federal appellate court found that the plumbing code, enacted in 1990 to restrict the use of helpers and apprentices, was preempted by the Employment Retirement Income Security Act (ERISA). See *Boise Cascade Corp. v. Peterson*, 939 F.2d 632 (8th Cir. 1991). Such licensing laws have long been pushed by unions in order to limit the ability of contractors to employ strikebreakers, and for years also to preclude Blacks and other minorities from competing for jobs in the crafts. It is very common for inspectors under these laws to be union members and former union officials. For background, see Sumner H. Slichter, *Union Policies and Industrial Management* (Washington, DC: Brookings Institution, 1941), pp. 47-50; and Herbert R. Northrup, *Organized Labor and the Negro* (New York: Harper & Brothers, 1944), pp. 23-26.

[31]"Minn. Governor Signs Bill Limiting Role of Security Guards in Labor Disputes," *Construction Labor Report* 36 (May 2, 1990): 187-88. Maine previously had enacted a similar law, also sponsored by unions which participated in rioting and violence during a labor dispute at International Paper Company's plant in Jay, Maine. See Edmund A. MacDonald, "Unions Support Security Licensing," *The Lewiston (Maine) Daily Sun*, April 7, 1987; and "Kany's 'Goon' Bill Signed into Law," *Waterville (Maine) Sentinel*, May 28, 1988.

[32]See article from *Pulp & Paper Weekly*, note 28 above. Charges and fines, later substantially reduced and settled, were also levied against BE&K by OSHA despite the finding of a federal court (note 30 above) that BE&K's safety record was superior to the average for construction companies in the state. Moreover, BE&K has been awarded OSHA's highest award, and at the International Falls project, BE&K's OSHA recordable incident rate for the electrical craft was 2.15, compared to the Minnesota average of 12.45. Hubert H. Humphrey, III, state attorney-general, sued the company charging that the company's electrical employees were in danger of losing their lives. See *Construction Labor Report* 36 (August 1, 1990): 555-56; (August 15, 1990): 615-16; and (September 26, 1990): 739-40.

[33]See *Construction Labor Report* 36 (December 19, 1990): 1041.

[34]"Labor Board Issues Complaint Against BE&K at International Falls," *Construction Labor Report* 37 (March 3, 1991): 74-75; and "Minneapolis Electricians Announce Bias Settlement on BE&K Project," *Construction Labor Report* 38 (October 28, 1992): 920-21. BE&K and a subcontractor settled with the NLRB by paying $250,000 to be distributed among thirty-seven electricians, and an additional $55,000 was paid by a subcontractor to four pipe fitters. BE&K found this cost less than would be further litiga-

tion, and clearly the NLRB General Counsel was also anxious not to litigate what was quite apparently an outrageous charge, given the purpose, character, and conduct of the IBEW salting.

[35]"Minnesota Building Trades, Boise Cascade Settle Breach Suit Over Paper Mill Project," *Construction Labor Report* 38 (June 3, 1992): 337. Boise had employed a unionized contractor to attempt to obtain a project agreement that would permit it to contract on a merit-shop basis. This contractor signed an agreement with the unions which required an all-union work force, and Boise rejected it. The unions sued for substantial millions, and attempted to prove that Boise was bound by this agreement. As evidence developed and depositions were taken, the union case dissolved. After vainly attempting to obtain an agreement with Boise that it would henceforth build all union, the unions settled for a relatively small payment.

[36]Additionally, the 1959 amendments permitted construction unions and contractors, where state laws did not prohibit it, to negotiate compulsory union agreements applicable after seven days, whereas the provision for all other industries is after thirty days. §8(f) also provided other benefits to construction unions and §8(e) exempted these unions from hot cargo proscriptions. See Northrup, "Construction Double-breasted . . . ," note 6 above, pp. 230-31.

[37]*John Deklewa & Sons*, 282 NLRB 1375 (1987); *affirmed sub nom., International Association of Bridge, Structural and Iron Workers, Local 3 v. NLRB*, 843 F.2d 770 (3rd Cir. 1988); *cert den.*, 488 U.S. 889 (1988).

[38]Data from the NLRB election reports compiled by the Bureau of National Affairs, Inc.

[39]*Daniel Construction Co.*, 133 NLRB 264 (1961), as modified in 167 NLRB 1078, 1081 (1967).

[40]In the *Rosendin* case, the contractor believed the union's narrow victory in the first NLRB election was attributable to salters who were no longer, and never again would be, employed.

[41]*S.K. Whitty & Co.*, 304 NLRB No. 102 (August 27, 1991). The Board's revised formula for this case included all employees within the unit "(1) who have been employed for at least two periods of employment cumulatively amounting to 30 days or more in the 12-month period immediately preceding the eligibility date, or (2) who have had some employment in the 12-month period and have had at least two periods of employment cumulatively amounting to 45 days or more in the 24-month period immediately preceding the eligibility date, or (3) who have had one period of employment of ninety days or more in the 12-month period immediately preceding the eligibility date." Those terminated for cause or who quit prior to the completion of their last job remained ineligible.

[42]The positions of the various parties at the hearing are summarized in *Construction Labor Report* 38 (April 15, 1992), pp. 154-56.

[43]*Steiny and Company, Inc.*, 308 NLRB No. 190 (September 30, 1992).

[44]This posture has been elaborated most clearly in *Sunland Construction Co.*, note 55, below, which also cites key Supreme Court cases in support of the broad definition of "employee."

[45]See generally, John E. Abodeely, et al., *The NLRB and the Appropriate Bargaining Act.* Labor Relations and Public Policy Series, No. 3, rev. ed. (Philadelphia: The Wharton School Industrial Research Unit, University of Pennsylvania, 1981); the *Sunland* and *Town & Country* cases, note 55, below; and *The Developing Labor Law*, 3rd ed. (Washington, DC: Bureau of National Affairs, 1992), pp. 421-24.

[46]*Town & Country Electric, Inc.*, 309 NLRB No. 181 (December 16, 1992).

[47]*Elias Brothers Big Boy, Inc.*, 139 NLRB 1158 (1963). The author is indebted to Judd H. Lees, "Hiring the Trojan Horse: The Union Business Agent as a Protected Applicant," *Labor Law Journal* 42 (December 1991): 814-20.

[48]*Elias Brothers Big Boy. Inc. v. NLRB*, 327 F.2d 421, 427 (6th Cir. 1964).

[49]See Lees, note 47 above, p. 815, especially his note 9 for the cases involved.

[50]*H.B. Zachry*, 289 NLRB 117 (1989).

[51]*H.B. Zachry Co. v. NLRB*, 886 F.2d 70 (4th Cir. 1989).

[52]The only exceptions have been cases, as in *Vos*, described above, in which the employer was shown not to have discriminated against union salters but to have followed his regular hiring policies, or in which the salters failed to comply with hiring policies previously in effect.

[53]*Willmar Electric Service, Inc. v. NLRB*, 968 F.2d 1327 (D.C. Cir. 1992); *cert. den.*, 113 Sup. Ct. 1252, (1993); *Escada (USA) Inc. v. NLRB*, 970 F.2d 898 (3rd Cir. 1992); and *Fluor Daniel, Inc. v. NLRB*, 976 F.2d 744; *hearing en banc den.*, 980 F.2d 1449 (11th Cir. 1992).

[54]The hearing was held on March 18, 1992. A summary of the proceedings is found in *Daily Labor Report* No. 54 (March 19, 1992), pp. A-14ff.

[55]*Sunland Construction Co., Inc.*, 309 NLRB No. 180 (Dec. 16, 1992); and *Town & Country Electric, Inc.*, 309 NLRB No. 181 (Dec. 16, 1992).

[56]Note 55, above, "Decision of the Administrative Law Judge," dupl. opinion copy, pp. 32-35.

[57]Judge Harmatz is here referring to union picketing a facility where another union had been certified as exclusive bargaining agent. The employer was then faced with breaking the law by recognizing the picketing union when he was required by the Act to deal exclusively with the certified union, or losing business because of the picketing. (Note added.)

[58]On this point, see Herbert R. Northrup, "The 'Helper' Controversy in the Construction Industry," *Journal of Labor Research* 13 (Fall 1992): 422-35.

[59]"The number of housing starts increased by 20 percent to 1.2 million units in 1992. Public works construction increased slightly, led by strong spending for highways and schools. The decline in private nonresidential construction was largely attributable to high vacancy rates for commercial buildings in most cities, as well as tighter lending standards for real estate development. . . ." From "Construction Outlook for 1993," *Construction Review* 38 (Fourth Quarter 1992): iii.

[60]"Building Trades Embrace 'Comet' Organizing Program," *Construction Labor Report* 39 (April 28, 1993): 231-32; William G. Krizan, "Building Trades Plan Big Organizing Drive," *Engineering-News Record*, May 3, 1993, pp. 6-7; and "On the COMET Trail," *IBEW Journal*, May 1993, pp. 14-15. In May 1993, the IBEW began referring to its salting program as COMET activity. See *IBEW Journal*, May 1993, pp. 18-19, 26-27.

MI LABOR EMP. DISC. TEL:313-256-3179 Dec 01 55 7:46 No.001 P.02

JANA MENEFEE/Detroit Free Press

of new side air bags, designed to era — the early '50s.

s decided, is the i. stration Tuesday, first automaker so-called combi- t air bag that pro- ead and torso of -seat passengers trucks. tion from head- ven. The govern- driver and pas- all 1998 model minivans, pickups chicles. ounted side air ew federal rules more protection to avoid contact , door pillars and during crashes. nt U.S. govern- s, head injuries ccidents account for more than 15,000 fatal or serious injuries a year.

Helen Petrauskas, vice president of environmental and safety engineering, said 60 percent of side-impact crash deaths occur because the person's head has flopped through the window, sometimes coming in contact with an onrushing telephone pole, tree or truck hood.

"We've looked at the data and decided you have to protect the head," Neil Ressler, vice president of Advanced Vehicle Technology, said after the 10,000th crash test in Ford history evaluated a prototype of head-and-torso-protecting side air bag.

Ressler said Ford will introduce the new air bag across its full range of cars and light trucks in Europe

See CRASH, Page 2E

and customers paid by check or credit card.

...task to convince consumers."

The number to call to place orders is 1-800-653-6320.

Union organizers protected by ruling

Companies can't fire them, high court says

BY AARON EPSTEIN
Free Press Washington Bureau

WASHINGTON — In a decision hailed by unions and condemned by employers, the Supreme Court ruled unanimously Tuesday that federal law protects labor organizers who seek or get jobs for the purpose of unionizing workers.

The ruling is expected to encourage an expansion of organized labor's growing practice of "salting" nonunion workplaces with union loyalists and paid organizers.

Until now, salting tactics have been confined largely to unions in the construction industry.

Building trades unions have used the salting program of the International Brotherhood of Electrical Workers as a model to step up pressure on nonunion contractors. The contractors, in turn, have accused the unions of harassment, provocation and espionage.

The union court victory comes at a time when recently elected AFL-CIO leaders, responding to a steady decline in union membership and dues, are promising more aggressive programs to organize workers.

"With this sanction from the Supreme Court, we can expect other unions to latch onto this as a great organizing tactic," said Mona Zeiberg, a lawyer for the U.S. Chamber of Commerce. "We could now see it in manufacturing, service industries and retail.

"This decision puts employers in an incredibly bad position," she said. "It requires them to hire paid agents of the union."

Replied John Barry, president of the electrical workers: "Many employers in this country seem to feel that they can twist the law like a pretzel to keep their workers from forming unions. Yet, they scream foul when a union uses the law to the fullest to protect its right to organize."

Herbert Northrup, who has written extensively about salting tactics in the construction industry, predicted that the court ruling "will have a devastating effect on small construction employers."

Now employers are likely to press Congress to enact legislation that would remove paid organizers from the protection of the National Labor Relations Act, said Northrup, a professor emeritus of management at the University of Pennsylvania's Wharton School of Business.

The act gives "employees" — a word that includes job applicants — the right to form unions and to bargain collectively with employers. Agricultural workers, supervisors, independent contractors, domestic workers in a home and people employed by a parent or spouse are specifically exempt.

The narrow legal question before the Supreme Court: Does a company's worker qualify as an "employee" if he or she also is paid by a union to organize

See UNION, Page 2E

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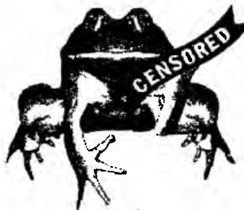

ANCIAL
DLINES

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Economy watch . . .

■ Construction of new homes declined in October for a third straight month. Housing starts fell 3.7 percent to a seasonally adjusted 1.34 million annual rate. It was the largest drop since starts plunged 6.1 percent last March.

■ The Conference Board's Consumer Confid...

AMWAY HAS A SHAQ ATTACK

Amway Corp. has teamed up with basketball superstar Shaquille O'Neal to launch its entry into the growing energy bar market. The Nutrilite Shaq Bar is Amway's first celebrity-identified high-carbohydrate, low-fat energy bar. The Shaq Bar, featuring the Orlando Magic star, is being launched in the United States in December and other countries in 1996. The bar will be manufactured by the Nutrilite Division of Ada, Mich.-based Amway. Nutrilite makes vitamins and food supplements, plus health-oriented snacks, beverages and

EXHIBIT E

Dec 01 55 7:47 No.001 P.03
TEL:313-256-3179
MI LABOR EMP. DISC.

Some senators contend that television stations will be getting a chunk of the nation's airwaves worth as much as $70 billion — even though it is no

Jerry Pearlman, the recently retired chairman of Zenith, said the new sets could be available about two years from now, if broadcasters get the channels to make the service available.

company officials were not able to say late Tuesday how many pills went to consumers after failing tests.

Tuesday's admission of guilt by

tion of three of its drugs after the investigation, but others, including Dilantin, remain on the market and have been certified as safe again by the FDA.

Union organizers protected by court ruling from firing

UNION, from Page 1E

the company? The court's answer was "yes."

Management organizations insisted that such a worker cannot lawfully serve two employers at the same time.

"It is wrong to compel employers to hire union agents who inherently serve a different master," declared lawyers for the National Association of Manufacturers, the nation's largest industrial trade association.

But Justice Stephen Breyer, writing for the entire nine-member court, said the law permits a person to serve two masters so long as service to one doesn't mean abandonment of the other.

"Common sense suggests that as a worker goes about his ordinary tasks during a working day, say, wiring sockets or laying cable, he or she IS subject to the control of the company employer, whether or not the union also pays the worker," Breyer observed.

He said union organizing, done for pay during nonworking hours, "would seem equivalent to simple moonlighting," which the employer has no legal right to prohibit.

The case, National Labor Relations Board vs. Town & Country Electric Co., began in 1989 when the nonunion company, based in Appleton, Wis., advertised for electricians to work at the Boise Cascade paper mill in International Falls, Minn.

The company's employment agency, saying it sought nonunion workers, refused to interview 10 members of the International Brotherhood of Electrical Workers, including two full-time organizers. But the agency interviewed Malcolm Hansen, and hired him despite its correct suspicion that he was a union member.

Once on the job, Hansen began soliciting coworkers to join the union. Some employees informed Town & Country supervisors, who promptly fired Hansen. He was paid both by the company and by the IBEW, which made up the difference between the company pay and the union scale.

Hansen and the spurned IBEW members filed a complaint with the National Labor Relations Board, claiming they were victims of unlawful discrimination based on their union membership.

The board found the company guilty of unfair labor practices but a federal appeals court held that paid union organizers weren't "employees" entitled to legal protection.

In siding with the NLRB, the Supreme Court concluded that the word "employees," as used in the federal labor law and congressional reports, is broad enough to include paid union organizers. The case now returns to the appeals court for a decision on the union's unfair labor practice claim.

Lawyers for Town & Country and other employers argued that paid organizers, in contrast to other workers, would readily quit without notice, disparage their bosses and perhaps engage in sabotage.

But any worker finding a better job could quit, and any dissatisfied worker could be disruptive or commit unlawful acts against the company, Breyer replied.

He said employers could remedy the problem of sudden resignations by offering fixed-term contracts or negotiating notice requirements.

> "Many employers in this country seem to feel that they can twist the law like a pretzel to keep their workers from forming unions. Yet, they scream foul when a union uses the law to the fullest to protect its right to organize."
>
> JOHN BARRY, electrical workers president

New air bags concentrate on protecting head

CRASH, from Page 1E

and North America in about two years. He did not estimate how much the additional protection would add to the cost of a car.

No supplier contracts have been signed yet. "We're working with all major restraint system suppliers," he said. "This is too big a job for any one company."

Ford will offer a seat-mounted, torso-protecting side air bag on some cars, reportedly the Lincoln Continental and Mark VIII luxury coupe, as soon as the 1997 model year.

Sweden's Volvo already equips cars with seat-mounted air bags that protect the torso during side crashes. Germany's Mercedes-Benz has begun offering a door-mounted torso bag. BMW will offer a torso-protecting side air bag next year and add a head-protecting bag in 1997.

The government measures the severity of injuries on a scale that assesses the likelihood of serious injury or death. In the kind of crash Ford simulated Tuesday, the combined torso and head air bag reduced the so-called head injury criteria, or HIC, from 4,169 to 482.

A head injury count of 1,000 causes serious injury or death in one of six passengers in a side impact accident, the government says.

MODITIES

	Dec.	1317	+ 1.0
	Mar.	1321	+ 1.0
igar	Mar.	10.81	— .16
igar	May.	10.67	— .13
Juice	Jan.	124.40	+ 1.85
Juice	Mar.	127.35	+ 1.56
	Dec.	84.95	— .60
	Mar.	84.20	— 1.10
	Dec.	112.60	— 2.30
	Mar.	109.30	— 2.65
	Dec.	44.25	— .30
	Feb.	47.00	— .17
ies	Feb.	53.42	+ .07
ies	Mar	53.62	+ .07
	Dec.	67.87	+ .45
	Feb.	68.00	+ .40
	Nov.	5.20	— .4
	Dec.	5.20	— .4
	Jan.	416.30	+ .50
	Apr.	416.30	+ .70
	Nov.	388.30	+ 3.60
	Dec.	387.90	+ 3.00
	Nov.	1.36	— .25
	Dec.	1.31	— .80

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A MINUTE
MICHIGAN, OHIO

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6F DETROIT FREE PRESS/WEDNESDAY, NOVEMBER 29, 199[illegible]

2E DETROIT FREE PRESS/WEDNESDAY, NOVEMBER 29, 1995

MICHIGAN MEMO

DOW INVESTMENT: Dow Chemical Co. has agreed to buy all of the shares of Polisur SA and an additional 21-percent stake in Petroquimica Bahia Blanca in addition to the stake a Dow-led consortium has already acquired. Dow Chemical, of Midland, said it is paying a total of $193.4 million for Polisur and the additional interest in Petroquimica, Argentine petrochemical companies. A Dow Chemical spokesman said that as a result of the combined acquisitions, Dow Chemical will hold more than 50 percent of Petroquimica, although he couldn't pro- [illegible] Dow Chemical

ations have been sticky because the price being offered is too low. If the sides don't arrange an agreement soon, Kmart said it may delay selling the unit. Kmart spokeswoman Shawn Kahle said Kmart repaid the debt "because we had the funds available to do that. We are continuing to evaluate the strategic alternatives available to us with respect to our Kmart Canada unit."

SUPPLIER NAMED: United Technologies Automotive, a subsidiary of United Technologies Corp., [illegible] been named a full-service [illegible] of electrical systems by [illegible] The certification [illegible]

Chrysler tak[illegible]

BY MIKE BRENNAN
Free Press Business Writer

When Jerry York [illegible] quality of vehicles [illegible] Corp. last month [illegible] ley's blood boil.

Pawl[illegible] heads [illegible] [illegible] York[illegible]

Wisconsin State

INSIGHT Labor Law Reports

December 1995 / No. 486, Issue 111 / Part 2

SCt: Union Salts are employees

Boon to unions or business as usual?

CAN A WORKER be a company's "employee," within the terms of the National Labor Relations Act, if, at the same time, a union pays that worker to help the union organize the company? Yes, said the U.S. Supreme Court, upholding a decision of the National Labor Relations Board.

Only weeks after oral argument, the Court unanimously ruled that paid union organizers are "employees" as defined in the NLRA and, therefore, entitled to the full protection of the Act. When seeking employment with nonunion employers, union organizers may not be denied a job or, once hired, discriminated against solely because of their union affiliation

Experts react. When asked to predict how the Court might decide the issue, INSIGHT Panel of Experts members Professor CHARLES CRAVER, George Washington University National Law Center, and management attorney FRANK MAMAT, with the Detroit firm of Clark, Klein & Beaumont, agreed that the Court might very well stop short of including the full time paid union organizer on the basis of divided, or dual, loyalty. [See the August issue of INSIGHT.] Both expressed surprise that the decision was swift and unanimous.

"I was absolutely shocked when I read the decision," said Craver. "I was surprised that it was unanimous and that the Court, in such a strong decision, said that full time paid union organizers are entitled to the full protection of the NLRA.

"This is one of the most significant decisions for union organizing since the NLRA was enacted. It gives unions greater access to the employment setting than they have ever had *Lechmere* is now irrelevant except for unions that can not afford paid organizers," suggested Craver.

"Initially, I felt that this result would be the correct decision. When you think about it, the court's logic was impeccable. The definition of employee says that it is not limited to employees working for a particular employer. However, the more I thought about it and the decision in *Lechmere*, I decided that a Court as conservative as this one would not go that far.

"The full time paid union organizer is not as easy to cover as an unpaid union salt and even a salt that is paid the difference between the union and nonunion wage rates by the union. Full time paid union organizers present a different situation and I do not think the Court fully appreciated that. As a result of this decision, trained professional organizers, receiving monetary support from the union, will be inside the plant.

"Far less fearful of employer retaliation than most employees during an organizing campaign, they will stretch their right to proselytize to the limit. In fact, the union would probably be just as happy if they were terminated because there would be an 8(a)(3) violation and the union might even get a bargaining order,"Craver suggested.

What surprised Mamat, after talking with people who were at the oral argument, was their impression from the justices' comments that the Court was somewhat hostile toward the employer's argument from the outset. "I thought that there would be at least one or two supporters of an employer's right to select

INSIDE

The year draws to a close with a unanimous decision from the U.S. Supreme Court that some say is a major victory for union organizing. In *NLRB v. Town & Country Electric, Inc.*, 131 LC ¶11,443, the Court held that paid union organizers are "employees" as that term is defined in the NLRA.

This month, members of INSIGHT's Panel of Experts share their views on the decision:

- CHARLES B. CRAVER, Merrifield Research Professor of Law, George Washington University National Law Center;
- JOEL A. D'ALBA, Partner with Asher, Gittler, Greenfield, Cohen & D'Alba, Chicago, Illinois, which represents unions in the public and private sectors;
- MATTHEW W. FINKIN, Albert J. Harno Professor of Law, University of Illinois at Urbana-Champaign College of Law;
- FRANK T. MAMAT, management attorney and member of the Labor and Employment Group, Clark, Klein & Beaumont, P.L.C., Detroit, Michigan;
- EDWARD B. MILLER, Of Counsel, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Illinois, and former NLRB Chairman; and
- J.D. THORNE, management attorney, Officer and Director, Petrie & Stocking, S.C., Milwaukee, Wisconsin.

The case was the subject of the August INSIGHT, No. 468, Issue 107.

EXHIBIT F

employees who are not only qualified but loyal as well," he said

"Apparently none of the justices saw it that way They took a strict constructionist view of what 'employee' means as defined in the NLRA and never got beyond that

"I am more surprised that the decision was unanimous, with no concurring opinions, and that it took only approximately six weeks to decide There were no scholarly or even interesting footnotes that could have possibly distinguished some of the issues that were raised. It is a very stunning decision from that perspective I was surprised that Justice Thomas did not dissent or write a concurring opinion

"Some members of the management bar have speculated that the case was not a 'sexy' case and that was why it was decided so quickly It seems to me that the case dealt with some pretty fundamental issues of freedom of choice and workers' rights. I expected something like a five to four decision," Mamat said

Professor MATTHEW FINKIN, College of Law, University of Illinois at Urbana-Champaign, suggested that the Court could not have ruled otherwise "It is perfectly clear from the language of the statute that union organizers were meant to be covered by the term "employee" and that coverage did not depend on any particular employment relationship," he stated. "When the NLRA was enacted, an amendment was suggested by one of the statute's drafters in the event that it was necessary to make clear that 'union organizers' were statutory employees The amendment was never offered because it was not deemed necessary

"The arguments for restricting the definition were so threadbare that I would have been shocked if the decision had gone the other way. Given the divisions in the Court on labor issues, the fact that it was unanimous is a testament to how weak the arguments on the other side were," Finkin suggested.

Facts of the case. Pursuant to a salting resolution, members of two locals of the IBEW were authorized to work nonunion for organizational purposes. They were to be compensated for wage and benefit differentials from a union fund established for that purpose. The resolution also required members to leave the job site once organizing ceased

Twelve union members responded to an advertisement, including two full time paid union organizers One member was interviewed, after which the others were told that the job was nonunion. A second member was hired but was fired two days after he began work

Reaffirming its position that paid union organizers are employees, the Board found that the employer had unlawfully discriminated against the union members. It ordered the employer to offer employment to the terminated union member and the members who had been denied interviews and to make them whole for any losses suffered.

> **"Fear of being fired for union activities — a very real deterrent for most employees — is simply not a deterrent for paid union organizer employees."**
>
> **Charles Craver**

The Eighth Circuit's decision. The Eighth Circuit refused to enforce the Board's order. Applying common law, the court held that the two paid union officials could not be employees because of an inherent conflict of interest. Because the applicants could only work nonunion for organizational purposes and could be ordered to leave the job, they were under the union's control and, thus, could not be employees, reasoned the court.

The Supreme Court's opinion. Several arguments favored the Board's decision, noted the Court, reversing the Eighth Circuit. The statutory language is broad enough to include workers whom a union also pays for organizing The Board's interpretation of "employee" was consistent with several of the Act's purposes, among them the right of employees to organize for mutual aid without employer interference, and the Court's interpretation of the term "employee" in other cases

The Court dismissed the employer's argument that the organizer's service to the union was inherently adverse to the employer's interests. "Town & Country's common-law argument fails, quite simply, because, in our view, the Board correctly found that it lacks sufficient support in common law....Common sense suggests that as a worker goes about his ordinary tasks during a working day... he or she is subject to the control of the company employer, whether or not the union also pays the worker. The company, the worker, the union, all would expect that to be so. And, that being so, that union and company interests or control might sometimes differ should make no difference," reasoned the Court.

Citing an example of a city detective who, searching for clues, finds employment as a waiter and searches customers' pockets while waiting tables, the Court concluded that "union organizing, when done for pay but during nonwork hours, would seem equivalent to simple moonlighting, a practice wholly consistent with a company's control over its workers as to their assigned duties."

Experts respond

Is paid union organizing during nonwork hours really "the equivalent of simple moonlighting" as the Court characterized it? Did the Court adequately address the problem of divided, or dual, loyalty?

Both Craver and Mamat agreed that the decision misses the mark. "It was disap-

Labor Law Reports
Insight

Editor
Martha B. Pedrick, J.D.

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pointing to read the decision written by a justice with a reputation for intellectualism and scholarship such as Justice Breyer's," responded Mamat "The example he used, in my opinion, only helps the employer's argument. A waiter who searches restaurant patrons' pockets is clearly disloyal Once the word is out that your pockets will be searched when you eat at that restaurant, business will suffer.

"The Court failed to squarely address the situation where the masters' interests are hostile to each other. In this case, one employer essentially wants to destroy the other. Most people would not even put a neutral person in that position, let alone a salt who is there to do his primary master's — the union's — bidding.

"It is incredibly naive to assume that someone who goes to work with the intention of organizing the company he works for is not disloyal. I think it shows that the Court doesn't have the vaguest idea of what the real world is about and that Justice Breyer didn't fully grasp what is really going on.

"The NLRA gives employees the right to organize but it also gives them the right to be free from those activities. That right should also inure to the benefit of the company to be free from such activities. It is not inherently illegal to try to find employees who agree with the employer that the company should be nonunion.

"The Court is incorrect when it says that an employer has no legal right to require that, as part of his or her service to the company, a worker refrain from engaging in protected activity. An employer has the right to impose a not overly broad no-solicitation, no-distribution rule and does not have to pay someone to handbill or try to convert workers on working time. Clearly it would be lawful to fire someone who violated such legitimate work rules.

Simultaneous employment. Craver agreed that the decision was somewhat naive. "Contrary to what Justice Breyer described, this is very different from a moonlighting situation where an employee works for one employer part of the day and for another employer a different part of the day," he explained. "The paid union organizer works simultaneously for the employer and the union but the employer is totally unaware of the organizer's employment relationship with the union

"Prior to this decision it was assumed that an employer could safely ask whether an applicant worked for someone else and if so, exclude that applicant from consideration pursuant to a policy of not hiring someone who works for another employer. I question whether a rule that says that employees may not moonlight applies to this situation

"When a union organizer is working for the employer, he or she is simultaneously working for the union. Outside of normal working hours, the organizer is working for the union only marginally," Craver pointed out.

Possible exceptions? Did the Court go farther than it had to? Since the case involved paid union organizers, Craver pointed out, the Court had to decide that issue "Justice Breyer's points on the issue of dual loyalty are well taken He seems to be saying that if the union interferes with the organizer/employee's work performance, the employer could do something about that," he noted

"If the organizer fails to comply with valid no-solicitation, no-distribution rules, he could be disciplined Other than that, I have the impression that Justice Breyer assumed that the union would be controlling the organizer/employee during non work time.

"However, it seems to be a blanket rule. I don't know whether it might allow for an exception in a situation where an employer possesses a lot of trade secrets and the union represents many of the employer's competitors A good example would be the UAW's efforts, which so far have been unsuccessful, to unionize the Nissan Corporation in Smyrna, Tennessee. If UAW salts were employed, they could conceivably pass along trade secrets to Nissan's competitors

Possible implications for NLRB action

Does the decision give the NLRB a green light to proceed with changes in Board procedures currently under consideration, some of which have been criticized as being overly favorable to unions in the organizing arena?

EDWARD B. MILLER, Of Counsel, Seyfarth, Shaw & Fairweather, and former NLRB Chairman, suggested that the only encouragement to the Gould Board's desires to make union organizing easier would be the Court's emphasis on the latitude it will allow the Board in interpreting the statute and its reference to portions of the law's legislative history reciting its purposes of "protecting the right of employees to organize" and "encouraging and protecting the collective bargaining process." These are phrases frequently invoked by Chairman Gould as supporting both his views about needed "labor law reform" and about how he interprets the existing law, noted Miller.

But none of that should surprise any careful observer of the Court's decisions. Even though this Court is regarded as a relatively conservative Court, it has continued to grant very substantial deference to the NLRB's interpretation of the law and often refers to its alleged "expertise." With respect to the purposes of the Act, the Court in this decision was also careful to note that the NLRA grants specific sets of rights to *employers* and employees, Miller emphasized.

This is the same Court that decided *Lechmere*, and thus showed its respect for employers' rights. So, I don't think the more pro-union members of the NLRB can rely on this decision as encouraging adventures into new procedures designed to grant new rights to unions at the expense of limiting or forfeiting established employer rights, he observed.

"This will make the corporate campaign look like child's play. Actually, the two — the corporate campaign and salting — will go hand-in-hand Once the organizer is sent in, the union could gain access to information regarding OSHA, EEO and environmental violations, all of the information that unions have been using so successfully in their corporate campaigns.

"What is so insidious about this, from the employer's perspective, is that typically, employees who are considering reporting violations to federal or state authorities consider whether that action might hurt their own economic situation

Unanswered questions

Professor MATTHEW FINKIN, College of Law, University of Illinois at Urbana-Champaign, notes the Court's cryptic observation at the close of the decision that it is only deciding the issue of whether paid union organizers are employees and is making no judgment on whether an employer's refusal to interview or hire union organizers was an unfair labor practice. "That may be an excess of caution on the Court's part as to an issue that was not directly presented. It may also be that the comment was included to keep the decision unanimous. I'm not sure what the Court meant," he said.

"Member Raudabaugh, in an earlier Board decision, suggested that if an employer had a neutral policy forbidding moonlighting, that would raise no issue under the NLRA. It may be that the Court was referring to that earlier suggestion.

"Is that realistic? Some employers have such a policy, but a great many do not. These days, many employees are economically driven to work more than one job. It remains to be seen how realistic it is for employers to adopt such a policy and, more importantly, uniformly enforce it. It is also an open question whether such a neutral policy, but adopted to forestall unionization, would be tainted by that motive," suggested Finkin

EDWARD MILLER added, "The decision is careful to leave open the question of what employers may do to minimize the harm which these 'employees' may do to an employer's business. Indeed, it even leaves open whether refusing to hire or retain salts would be an unfair labor practice.

"While prudence might suggest that firing them just because they are strong union adherents would not be a defensible measure, some control over any of their activities which are inconsistent with the loyalty normally expected of all employees would appear to be permissible. I suspect that we may see much said and written about how far such control may go and still receive the blessing of the Board or, more to the point, the Supreme Court," concluded Miller.

JOEL D'ALBA, with the Chicago firm of Asher, Gittler, Greenfield, Cohen & D'Alba, reported that unions that are organizing aggressively see the decision as a useful tool to avoid the burden created by the Court's decision in *Lechmere*. "The decision in *Town & Country* gives unions added organizing power to gain access to work sites. Gaining access to the workforce by face-to-face contact inside the work areas may prove to be a more efficient way to organize employees," he observed.

D'Alba agrees with Miller that the Court's failure to decide the merits of the refusal to hire unfair labor practice filed against the employer leaves that issue wide open. "On remand, that aspect of the case dealing with hiring union salts or terminating them opens up possibilities to challenge company screening mechanisms used to reject employee applicants who have demonstrated proclivities or sympathies for unions," he suggested.

Union organizers will be unconcerned about that This may result in greater numbers of charges being filed with regulatory agencies, Craver suggested

Alternative Remedies. Craver and Mamat agreed that the Court's discussions of "alternative remedies" for employers' concerns and what they can do to protect themselves does not amount to much "As a practical matter, employers who spend significant amounts on training lose that when these individuals quit early. High turnover will increase amounts spent for training.

"Justice Breyer mentions employment contracts that impose a penalty for an early exit, although it is not clear what that penalty would be. However, most employers are not willing to give up the employment-at-will doctrine," he observed

Mamat agreed with the Court that the problem of quitting without notice is not unique to paid union organizer employees. "It is a real problem with any employee, as the Court aptly points out. So, the suggestions the Court offers — fixed-term contracts and negotiating a notice period — could be applied to all employees. But they do not address the nonunion employer's real concern which is how to avoid hiring the union organizer in the first place," he suggested.

Practical implications

Is the decision in *Town & Country* a great victory for unions? Or is it business as usual for employers who have never been able to lawfully determine an applicant's union sympathies, before or after *Town & Country*? Craver suspects that unions will view it as a victory.

"If I were the AFL-CIO today, I would be licking my chops trying to figure out how I could hire a huge number of people to work in this capacity. As a result of this decision, for the first time in history, employers will be legally required to subsidize union organizing.

"The union will presumably make up the difference between what the person earns working for the target firm and working as an organizer. For example, if the organizer wage is $35,000 and the

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organizer is paid $30,000 by the target firm, the union only has to pay the difference of $5,000. The employer is actually paying most of the organizer's wages!

"One of the problems unions have had is the lack of financial resources to hire full time union organizers. Now, for the same amount of money, they can probably hire five people to do the work that they would only have been able to hire one to do before this decision.

"That does not mean that this is inappropriate. As Justice Breyer pointed out, these people are exercising their statutory right. Workers have the right to unionize. Unions have the right to send people in to help that process. In that sense, I don't think the decision was at all incorrect. But I don't know that the Court was fully aware of the decision's ramifications," Craver suggested.

Remedies. What effect might the decision have on remedies? Craver noted numerous questions that will arise if union organizers are unlawfully fired, such as whether they get full back pay or whether back pay should be curtailed because they would have left after the election.

"Should they be reinstated? How will Board bargaining orders be affected? One could argue that firing the organizer does not have the same chilling effect on regular employees because they know the organizer is an outsider anyway," he suggested.

Elections. Will the decision affect the success rate of union elections? Craver doesn't think there will be a huge increase in the percentage of elections that unions win. "Currently they win around 48 or 49 percent of Board elections. I would guess that the percentage might increase to 60 or 65 percent which is not insignificant.

"It is possible that if the proposed mergers among the larger unions take place and the merged union takes on some of the larger corporations like Nissan, it may successfully organize them by sending in a couple dozen organizers. This decision may be very significant in the next decade if unions are to stem their decline," he predicted.

No major change. Mamat's opinion is that while the decision may clarify the issue, it does not make a fundamental change in the law. "The management community has lived with this decision at the Board and lower court levels," he said. "Unfortunately, now there is very little legal or intellectual support for some of the opinions that had been expressed in dissenting and concurring opinions in the lower federal courts before *Town & Country* was decided.

"The bottom line is that this decision does not give union salts any more rights than they had prior to the decision. Employers have never been able to lawfully ask applicants if they are union supporters or how they would vote in a union election. Once you found out someone was a union organizer, unless he or she was doing something that violated a legitimate work rule, you could not lawfully fire the employee because of his or her union activities," noted Mamat.

"The bottom line is that this decision does not give union salts any more rights than they had prior to the decision."

Frank Mamat

Even more troublesome than salting is the practice in the construction industry known as "stripping." "It is a significant problem we have been struggling with but have not yet resolved," Mamat said.

"Stripping occurs when a union lures away, or 'strips' experienced, nonunion employees out of the nonunion workforce. Typically, a union business agent offers a nonunion employee the same job at a higher rate of pay with a unionized company," he explained.

"The unions' theory is that if you can't get rid of nonunion competition by organizing it, or by burdening it with the expense of defending frivolous NLRB claims, the third best alternative is to destroy the competition by taking away enough of its key employees so that it can't complete its contracts. I know of a number of companies in the construction industry that have gone out of business in the past year because of this practice."

Psychological victory. "Despite all the gnashing of teeth by employer groups, the only *real* victory for unions in *Town & Country* is the psychological victory of having 'won' their position quickly and unanimously. What does the case actually provide union organizers? Nothing more than a quick rush of adrenalin!

"That is not to say that the decision is good for nonunion companies, but only that five years from now, if the unions haven't come up with a more appealing package to 'sell' to nonunion employees, the percentage of organized workers will be half of today's all-time low figure of about 15 percent.

"It is interesting that figures released by the Bureau of Labor Statistics about two months ago showed that, in the past year, the greatest membership losses occurred in the IBEW and three construction unions in the AFL-CIO. If salting — supposedly begun by the IBEW's COMET program — is so successful, why is the union continuing to lose so many members?" Mamat asked.

Advice for employers

Mamat suggests that the decision in *Town & Country* forces employers to be a lot more "street smart" as well as much more organized when it comes to employee relations generally. "Only those employers that are willing to invest the time to do that will survive," he stressed.

Hiring policy. "Employers can not continue to hire by word of mouth. They need a complete hiring policy that is more than an employment application taken from a preprinted pad at an office supply store.

"For example, a hiring policy must provide that an employee will be discharged for making false statements on or omitting information from an employment application. That is a neutral crite-

ria for terminating an employee As long as it is applied evenhandedly, it is not objectionable Employers must also spend time learning correct hiring and interviewing strategies.

"A paid union organizer who is terminated for failing to indicate that he is a paid employee of the IBEW, or worked as an organizer for the IBEW in the past, on an employment application that requires an applicant to list his five previous employers will present an interesting case.

Work rules. "If the organizer does disclose that information and is hired, the next step is to have employee handbooks with well-thought out work rules, including no-solicitation, no-distribution rules. These rules must be regularly and evenhandedly enforced and employers must train their supervisors to be supervisors.

"It may be that the Court's acknowledgment of the lack of evidence of any 'acts of disloyalty' in the case is an opening for employers to use their handbooks and work rules to paint loyalty and disloyalty as broadly as possible There is no way to make a disloyalty argument unless a company has written, tight work rules that employees have knowledge of and have signed off on

"Another possible bone thrown to employers in the decision is the Court's suggestion that paid organizers may be disenfranchised from voting in an actual NLRB election they caused to happen because they do not share the same community of interest with other employees in the unit." Mamat suggested ■

Staying union free: self-assess vulnerability

In light of the decision in *Town & Country* and the apparent importance being placed on organizing efforts by the new AFL-CIO leadership, J.D THORNE, a management attorney with the Milwaukee firm of Petrie & Stocking, S.C., advises employers who want to remain union free to self-assess their vulnerability by asking themselves the following 10 questions:

- If a union organizer asked an employee to sign a union authorization card, how long would it take for a supervisor to be made aware of it?
- Would the employee know that it is management's opinion that unions are not necessary for employees to have input into their wages and working conditions? How would an employee know this? Is it communicated in the employee handbook?
- Is a work rule prohibiting solicitation of employees during working hours in working areas published? Is it enforced for all kinds of solicitations, not just union solicitations?
- Does management personally communicate face-to-face in small group meetings with employees from time to time to keep them up to date on changes in the business?
- If layoffs or reductions-in-force are necessary, is there a policy in place and communicated to employees to handle them?
- Does the company ever admit a hiring mistake by allowing employees it would fire to resign and providing them with severance pay and/or outplacement services when appropriate?
- Does the company involve its employees in safety training programs?
- Does the company promote from within whenever possible? Do employees know what to do to apply for job openings and promotions? Do employees receive training to improve their skills and ability?
- Are supervisors trained in union prevention skills? Would they know what to say to an employee who asked them about unions? *Would they know what not to say?*
- Has management thought about what it would do if it learned that a union was trying to organize the company?

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Illustration:

1. A, a social guest at P's house, not skilled in repairing, volunteers to assist P in the repair of P's house. During the execution of such repair, A negligently drops a board upon a person passing upon the street. A may be found to be a servant of P.

Comment:

b. In determining whether or not one rendering gratuitous assistance to another is a servant, the purpose for which the former acts may be important. Thus, if a car is stalled in traffic and another driver gets out of his own car to assist in pushing the car to the curb, such driver is presumably not a servant of the owner of the first car if his purpose is to remove an obstruction to his own progress down the street.

c. The fact that one assists another, does something for his benefit, or submits himself to the control of such other does not constitute such person a servant of the other. There must be consent or manifestation of consent to the existence of the relation by the person for whom the service is performed, as stated in Section 221.

Illustrations:

2. A, a servant of P without power to employ assistants, is assisted by his friend B in doing work for P. In this work B is not P's servant. As to whether or not P is liable for B's acts done under the direction of A, see Comment *e* on Section 241.

3. A, a servant of P without power to employ assistants, secures the gratuitous services of B. P sees B assisting A and says nothing. P may be found to have consented to B's services as his servant.

§ 226. Servant Acting for Two Masters

A person may be the servant of two masters, not joint employers, at one time as to one act, if the service to one does not involve abandonment of the service to the other.

Comment:

a. Independent service for two masters. Since one can perform two acts at the same time, it is possible for each act to

See Appendix for Reporter's Notes, Court Citations, and Cross References

be performed in the service of a different master, although ordinarily the control which a master can properly exercise over the conduct of the servant would prevent simultaneous service for two independent persons. Likewise, a single act may be done to effect the purposes of two independent employers. Since, however, the relation of master and servant is dependent upon the right of the master to control the conduct of the servant in the performance of the service, giving service to two masters at the same time normally involves a breach of duty by the servant to one or both of them. A person, however, may cause both employers to be responsible for an act which is a breach of duty to one or both of them. He may be the servant of two masters, not joint employers as to the same act, if the act is within the scope of his employment for both (see § 236); he cannot be a servant of two masters in doing an act as to which an intent to serve one necessarily excludes an intent to serve the other. A subservant necessarily acts both for his immediate employer and the latter's master, who is also his own master. See § 5(2).

Illustrations:

1. P employs A to drive P's truck, directing him to obey the orders of B, who has hired the truck by the hour for advertising purposes, in the management of colored lights used upon the truck for lighting the display installed thereon. In the driving of the truck, A is P's servant; in the management of the colored lights, A is B's servant. If A injures T by negligently running into him because he dims the headlights in order to make the colored lights more conspicuous, both B and P are subject to liability to T. If A injures T as a result of an explosion caused by the materials used in producing the colored lights, B alone is subject to liability.

2. P employs A by the day as a messenger boy, authorizing him to use a bicycle in performing his duties. B also employs A on the same terms. Neither knows of the employment by the other. A, having packages to deliver to the same destination for both P and B, places them on his bicycle and negligently runs into T while on the way to deliver them. Both P and B are subject to liability to T.

3. P engages B to build a house for him for a fixed sum, B to employ his own servants. A is employed by B

as a carpenter and also (with B's consent or without it) by P as a general inspector on a fixed salary, to inspect the work as it progresses. While A is measuring a cupboard which he has just built to be sure that the measurements are as specified, he negligently injures T. In doing this, A is the servant of P or B, but not of both.

Comment:

b. Where two masters share services. Two persons may agree to employ a servant together or to share the services of a servant. If there is one agreement with both of them, the actor is the servant of both at such times as the servant is subject to joint control. If, however, it is agreed that control shall alternate, the actor is the servant only of the one for whom he is acting at the moment.

Illustrations:

4. P and B set up a bachelor apartment and employ a chauffeur, A, it being understood that A is to receive half his wages from each of them, and is at all times to obey the orders of either of them. A, while driving negligently in a borrowed automobile to deliver P's suit to the tailor, injures T. A is the servant of P and of B at the time.

5. A railroad agrees with a telegraph company that each will separately pay A, one for his work as station agent, the other for his service as telegram dispatcher. While A is selling tickets, he is the servant of the railroad; while he is sending commercial telegrams he is the servant of the telegraph company.

§ 227. Servant Lent to Another Master

A servant directed or permitted by his master to perform services for another may become the servant of such other in performing the services. He may become the other's servant as to some acts and not as to others.

Comment:

a. Service in relation to a specific act. Whether or not the person lent or rented becomes the servant of the one whose immediate purposes he serves depends in general upon the factors stated in Section 220(2). Starting with a relation of serv-

Union Corporate Campaigns and Inside Games as a Strike Form

HERBERT R. NORTHRUP

Weakened by declining membership, unions now utilize "corporate campaign" and "inside game" tactics instead of walkouts. The former strives to pressure companies from the outside, but has been effective mainly on companies that sell directly to the consumer; the latter aims to disrupt both production and the relationship between line management and workers. A combination of the two can be very successful for the union, especially if the management does not understand that an "inside strike" is in effect, but can destroy both the company and the workers' livelihood if not effectively countered. Utilizing information from union adherents as well as from press and journal articles, this article demonstrates with numerous examples how corporate campaigns and inside games work under carefully orchestrated programs and how they affect companies and employees and concludes that they must be considered a form of strike that should be reacted to and carry the risks as such by management, employees, and regulators including the National Labor Relations Board.

The weakness of unions in maintaining successful traditional strikes has caused them to develop substitute pressure methods against employers. The most widely used of the new techniques are the "corporate campaign," which is designed to generate outside pressure on companies, and the "inside game," which concentrates on creating pressures within the target facility, or a combination of the two. This article examines the purpose and tactics involved in corporate campaigns and inside games, utilizing as sources wherever possible the reports of union officials and adherents. The article concludes that particularly the inside game and the combination corporate campaign-inside game are in fact forms of strikes and should be treated under law and public policy as such.

CORPORATE CAMPAIGNS—DEFINITION AND DEVELOPMENT

Corporate campaigns were developed prior to inside game strat-

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EXHIBIT H

egy, and are the initial step in the union-coordinated programs that substitute for traditional strikes.

Nature of Corporate Campaigns

The AFL-CIO Industrial Union Department (IUD) defines a corporate campaign as one which

> applies pressure to many points of [corporate] vulnerability to convince the company to deal fairly and equitably [from the union's point of view] with the union . . . . It means vulnerabilities in all of the company's political and economic relationships—with other unions, shareholders, customers, creditors, and government agencies—to achieve union goals.[1]

Perry quotes another definition which was made by an attorney for the chemical company BASF in May 1986:

> Since . . . June 1984 . . . OCAW [Oil, Chemical, & Atomic Workers] has engaged in an intensive course of conduct maliciously intended to injure and interfere with BASF in its business, trade, and reputation. This course of action has been described by OCAW as a "coordinated campaign" or "corporate campaign." Its express purpose, as described by [the] OCAW President . . . is to make the consequences to BASF for the lockout "as unpleasant, disagreeable, and expensive as possible." *OCAW has stated its intent to precipitate a crisis . . . in employee, customer, and public confidence—and loyalty."*[2]

Perry notes that corporate campaigns attempt to seize the "high ground" and to redefine issues beyond the initial labor-management dispute:

> The possibility that corporate campaigns can and will be used to gain a measure of control by unions over management decisions not subject to the obligation to bargain in good faith, except as to their effects, is potentially . . . significant . . . . Should that potential be realized, it would provide unions a far greater measure of control over managerial capital investment/disinvestment than they enjoy under the current definition of the scope of the obligation to bargain in good faith.[3]

Richard Leonard, who directs corporate campaigns for OCAW, adds this:

> A part of what a corporate campaign does is not only to organize our side, but to disorganize management . . . . Companies are by

definition organized. They operate by command . . . .

When we turn their tactics around and disorganize management, we find that as this takes place, it has the reverse effect of organizing ourselves . . . .[4]

According to Ray Rogers, who claims to have initiated corporate campaign strategies:

"we develop a campaign strategy that has a beginning point A and an end point Z. Point Z is total defeat or annihilation of your adversary." In reality, few, if any, campaigns reach point Z. "You have got to develop a plan such that you feel totally confident that if you proceed from Point A towards Point Z, there is a breaking point or point of compromise, a Point C. But there has to be an escalation of the fight, you have to create more tension . . . ."[5]

In *A Troublemaker's Handbook*, La Botz affirms the Rogers upscaling of a labor dispute in which a corporate campaign is utilized by declaring that such campaigns "are effective when they inflict costly consequences on the target company or its allies."[6]

Early Corporate Campaign Activities

Initially, corporate campaigns concentrated upon such pressure points as individual board of directors members who might be vulnerable to pressure because of other relationships, company executives who could be shocked by picketing of their homes, political figures who might pressure the company to agree to union demands, and other newsmaking activities. Additionally, attempts were made to reduce company stock prices by agitation on Wall Street, exaggerated claims that companies were experiencing various production or sales problems, and attempts to influence brokers and investment bankers. Pressure was also put on customers and vendors to reduce their business, or cease it altogether, with the target company. Examples of such actions are set forth below as part of the analysis of the inside game and the combination inside game and corporate campaign in which they also play a part.

From their inception, union corporate campaigns have endeavored to use their union international relationships to hurt the public image and sales of targeted companies that had multinational operations or significant sales overseas. For these endeavors, unions sought assistance from their affiliations with international trade union secretariats (ITSs), European-headquartered organizations that affiliate unions in particular industries all over the world and provide a forum for an exchange of

information and occasionally mutual support on common problems.[7] For example, the United Automobile, Aerospace, and Agricultural Implement Workers (UAW) is affiliated with International Metalworkers' Federation (IMF), the largest of the ITSs.[8] The IMF has regularly issued press releases in support of the UAW since the Caterpillar controversy began,[9] and the UAW has credited Industriegewerkschaft Metall (IG Metall), the huge German metal workers' union, and a major affiliate of the IMF, with pressure on Daimler Benz management that in 1992 permitted a claimed favorable strike settlement at a Daimler-owned Freightliner plant in North Carolina.[10]

Use of union-friendly persons or organizations to harass management is a feature of union corporate campaigns:

> Management's kind of power requires that it be the ultimate authority in the workplace. But the union can challenge that authority by pointing out that there are other authorities: a local priest, minister, or rabbi can ask to talk to management about the congregation's concerns about the company. The NAACP or NOW may want to talk to the company about its equal employment policy. Greenpeace may be concerned about toxic dumping, or the local block club may want to stop the company's trucks from driving down the side streets at night. A Congressperson may visit the agency to find out how the taxpayers' dollars are being spent, or an alderperson may want to know if the company has kept the promises it made when it got the tax abatement. *When other authorities are brought in, management's weight is diminished, and the union's weight is relatively greater.*[11]

Federal and state government agencies are often induced to assist campaigns to harass companies. La Botz explains:

> Both public institutions and private companies are subject to all sorts of laws and regulations, from the Securities and Exchange Commission to the Occupational Safety and Health Act, from the Civil Rights Act to the local fire codes. *Every law or regulation is a potential net in which management can be snared and entangled.* A complaint to a regulatory agency can cause the company managerial time, public embarrassment, potential fines, and the costs of compliance. One well-placed phone call can do a lot of damage.[12]

Unfair labor practice charges are filed with the National Labor Relations Board (NLRB),[13] safety complaints with the Occupational Safety and Health Administration (OSHA), and charges generated with the Environmental Protection Agency (EPA), sometimes by cooperating "public interest" groups. Expensive litigation and bad publicity for

corporations frequently result. The International Paper Company, which was the target of a corporate campaign during strikes in 1987 and 1988, was still the subject of OSHA and EPA charges in late 1993.[14]

In mid-1993, the United Steelworkers (USW) announced a corporate campaign against Bayou Steel in La Place, Louisiana, where a strike of several months has been in progress, but the company has continued to operate. George Becker, then USW vice-president, and currently president, told a press conference:

> There are other players in our society who can have and have had significant influence in helping resolve labor conflicts . . . . [He then cited] Bayou's investors, creditors, customers and state and local governments as concerned groups that could bring pressure on the company.[15]

Telephone and electric utility companies are especially vulnerable to political pressure because they must seek rate adjustments before state public utility commissions. The Communication Workers of America (CWA) utilized this tactic in the 1989 strike against NYNEX in New York State:

> Because the Public Service Commission (PSC) determines the amount of the company's revenues, it proved to be a major pressure point during the strike. That's why we formed a coalition with religious, student, senior citizens, and community organizations, the state Consumer Products Board, and N.Y. Attorney General's office to oppose the rate hike. We distributed hundreds of thousands of flyers and gathered over 100,000 petition signatures against it. The involvement of major figures such as Ralph Nader and Jesse Jackson helped convince the company that its public image was in serious jeopardy . . . .
>
> Finally, years of activism in the State Capitol paid off when 130 members of the New York State Legislature—over 60% of the entire Senate and Assembly—agreed to be listed in full page ads in the New York Times and Albany Times-Union opposing any rate increase during the strike. Company officials realized that, if the strike continued, their political relationships would be destroyed and their rate increases would never be passed.[16]

A problem for unions during an overt strike, which a corporate campaign can address, is the idleness of employees and their tendency to use this spare time to ruminate or to worry. This in turn adds pressure on union officials to end the walkout. In reviewing its strike of 1989 at NYNEX Company, the CWA noted:

> But, despite its great aura of excitement and success, *the City Hall rally also pointed up the fundamental shortcomings of most mass meetings held by unions, including those followed on a regular basis in Boston. The problem, as usual, was that the stirring speeches generally contributed very little to meeting the over-riding organizational imperative of the strike—namely, giving people something to do other than just to applaud and picket.*[17]

Ray Rogers mitigated this union problem during the 1987-88 strike by the United Paperworkers International Union (UPIU) at the Jay, Maine, plant of the International Paper Company. Rogers kept the strikers busy taking them on bus caravans around the country, instituting rallies and other public relations activities, which gave them false hope and took their minds off their wage losses.[18]

Union Successes, Failures, and Increased Sophistication

Despite some successes, Perry found that union victories were largely limited to companies like Campbell Soup and Sara Lee that sell brand-name products directly to consumers or that are service-oriented, and are thus very sensitive to union-generated bad publicity. Early corporate campaigns had but limited success when directed at companies that do not sell the bulk of their products to consumers, such as Louisiana-Pacific or Phelps Dodge, with the exception of a company like General Dynamics which is subject to political pressure as a government contractor,[19] or foreign-owned companies, like Toyota Motor, the managements of which feel quite vulnerable to charges that they are not operating "in a proper American manner."[20]

As corporate campaigns evolved, they became more sophisticated than earlier ones directed by Ray Rogers. Expert consultants, such as Kamber Associates, Washington, DC, Robert W. Moore, President of Creative Marketing, Inc., Wilmette, Illinois, and Ray Abernathy of Abernathy and Mitchell, Washington, DC, have been retained by unions to assist in directing communications to various groups, such as investment bankers, shareholders, and university professors and students, which are couched in language suitable to each group. Other unions, as well as the IUD, have specialists in such programs either on their staffs or retained as needed to assist in these activities.

These communications also include those to employees designed to ensure employee support of programs that could severely damage a company and thereby result in considerable job losses. Of prime importance for this analysis is the fact that most sophisticated corporate campaigns today are combined with an inside game. Such a combination corporate campaign and inside game at Eastern Airlines, as an

example, in which the services both of Kamber and Moore were utilized, induced several thousand college-educated pilots to refuse to cross a picket line, thereby accomplishing the objective of their union, the Air Line Pilots' Association (ALPA), to force Frank Lorenzo and his management out of the industry, but at the same time shutting down Eastern and destroying the pilots' jobs. For the great majority of these pilots, there were no other available jobs of similar compensation or status.[21]

INSIDE GAME—DEFINITION AND EARLY PRACTICE

The inside game was developed because of the limited success of corporate campaigns. As stated by the president of the AFL-CIO Food and Allied Services Department:

> This is where comprehensive organizing programs come into existence and why I say not a corporate campaign. A corporate campaign, per se, is too narrow in focus. When I say comprehensive campaign, I am talking about having the widest possible net and scooping up everything . . . .[22]

In 1986, the IUD published its booklet, *The Inside Game—Winning with Workplace Strategies*, the foreword of which stated that is was designed "as a partner to the earlier [corporate campaign] publication," and that:

> This new booklet . . . explores the use of tactics within the workplace . . . . It is a guide to organizing workers to fight on their own behalf where they work—whether it's in a plant or a hospital, a retail store or an office, a construction site or an agency of government.[23]

The tactics utilized in the inside game include efforts to convince employees to impede or to disrupt production by slowing the work pace, refusing to work overtime, refusing to do work without receiving minute instructions from supervisors or management even though such instruction has not heretofore been required, filing mass charges with government agencies, and mass grievances, castigating management and supervision both within and without the plant, engaging in "work-to-rule" slowdowns, sick outs, hit-and-run strikes, and generally attempting to build a climate in which reasonable worker-management relationships, worker-management cooperation, and normal quality and quantity of production cannot exist. Where there is an integrated combination of the corporate campaign and the inside game, the tactics are designed to increase the potential that employees will be willing

to participate in the inside game and to inhibit the normal operation of the workplace.

Early Inside Game Cases—Union Victories and Their Impact

The UAW has been very active and experienced in instituting and supporting inside game activities, and is currently using these tactics at plants of Caterpillar, Inc., after the collapse of its 1991-92 traditional strike there. Apparently the first major use of these tactics was by Jerry Tucker, the dissident UAW activist, and head of the UAW "New Directions" movement, during a six-month period in 1981-82. He was then on the staff of Region 5, UAW, in St. Louis, and instituted the inside game at the Moog automobile products plant in that metropolitan area. According to union-oriented reports, after six months of inside game activities, the company completely surrendered, giving the union its full demands.[24]

This was followed in 1983 by similar action at Schwitzer in Rolla, Missouri, another automobile parts manufacturer, again resulting in claimed UAW success in winning its demands. UAW use of the inside game followed at three aerospace plants, LTV Vought (now Vought Aerospace) and Bell Helicopter in Texas, and McDonnell Douglas in California, where in all three cases, the reports indicate less than a full union victory.[25] Since then, the USW, the CWA, the United Food & Commercial Workers (UFCW), the Allied Industrial Workers (AIW), now merged into the UPIU, various unions of public and hospital employees, ALPA, and other airline unions, including the International Association of Machinists and Aerospace Workers (Machinists), the Allied Pilots Association (APA), representing pilots at American Airlines, various flight attendant unions, as well as others, have also utilized the inside game.

Just like other forms of strikes, inside games can have short-term union successes and long-term adverse consequences for employees, as well as for unions. The effectiveness of the inside game has resulted not only in claimed union victories, but also in severe damage to some companies and employees, as was the case at Eastern Air, which shut down completely. At Moog, there seems little doubt that the inside game originally achieved its purpose. Automobile parts manufacturers are under intense pressure to produce a quality product on schedule, and are thus quite vulnerable to union efforts to interfere with production schedules or quality. Additionally, Moog had a major market share of the coil spring and auto parts businesses, and was reluctant to risk this.

After the initial union success, a new management at Moog took

action to reduce company vulnerability. In 1984, the entire coil spring operation was moved to Pontotoc, Mississippi, which has remained a nonunion operation. In February 1985, following the inside game experience, Moog signed a second three-year contract with the UAW which required hourly increases of $2 per hour and other improvements, but after the signing, Moog laid off a sizable number of short-term employees who had been employed to build inventory in case a strike should occur. Then later, Moog moved its distribution business from St. Louis to Smithville, Tennessee, where also it has not been unionized.

Except for the layoff of the temporary workers hired prior to the 1985 negotiations, Moog did not lay off any employees as a result of plant moves, but ceased hiring except for an occasional skilled worker. Today, there are approximately 240 hourly employees at the St. Louis operation as compared with 550 ten years earlier.[26]

At Schwitzer, the UAW tactics also won substantial gains in contracts during the 1980s, but by 1991 the company found that these costs made it noncompetitive. It sought wage concessions and more rule flexibility from the union, but the local union refused any such movement. Schwitzer then announced that it would close the Rolla, Missouri, plant and transfer production to a new facility to be built in Gainesville, Georgia. The local union initiated a new inside game, but Schwitzer closed the Rolla plant at an earlier date, outsourced production, and moved operations to Gainesville, which now operates nonunion.

Neither the long- nor short-term effects at Vought and Bell of the inside game seem to have been as severe as those at Moog and Schwitzer. Vought was better prepared for the inside game, and by suspending workers who refused to work overtime, was able to break that ban. After sixteen months without a contract, and a company claim of no lost production, a compromise agreement was reached.[28]

The UAW local unions involved rejected Bell Helicopter's offer on June 12, 1984, and then instituted an inside game. When some employees refused to work overtime, they were discharged. A mass demonstration followed. The company suspended the demonstrators for one month. The demonstration followed a series of slowdowns and "hit-and-run" work stoppages which the company declared were designed to produce chaos and to disrupt operations. Previously, Bell management had notified the UAW locals and international union that "the continuing course of work stoppages, walkouts, sitdowns, slowdowns, and refusal to work overtime" would no longer be tolerated, and that a new disciplinary procedure would be implemented. A three-year contract was signed

in September 1984, ending the three-month dispute.[29]

At the McDonnell Douglas plant in Long Beach, California, a four-month strike in 1983-84 was ended when a sizable number of employees crossed the picket lines, the company announced it would permanently replace the strikers, and the membership voted, contrary to the local union leadership's recommendation, to accept the imposed company offer which the unionists had earlier rejected.[30]

When this contract expired in 1987, the UAW local union instituted an inside game strategy. The company reacted by discharging 300 employees involved in slowdowns, but later substituted ten-day suspensions for all but the leader of the local and fifteen other "hard core cases."[31] Meanwhile, in a second union membership election ordered by the U.S. Labor Department after the first had been beset with irregularities, the membership voted out the local leadership who had instituted the inside game and the earlier strike, and the dispute was then settled. Nevertheless, the company stated that production had been slowed "pretty severely."[32]

In 1991, the UAW local union at Long Beach, advised by Jerry Tucker, "embarked on their second in-plant solidarity campaign in as many rounds of contract negotiations," but the local union admitted it was not really active in the plant.[33] After the company declared negotiations at an impasse in July 1991, and then modified its proposals, the membership in October 1991 approved a new four-year agreement on a third vote.[34] Meanwhile, McDonnell Douglas has lost a significant share of the commercial airline business to Boeing and Airbus.[35]

The adverse consequences of inside game activities have prompted Professor David Lewin to question their viability:

> The difficulty with in-plant actions such as working to the rule, Lewin said, is that if the effort is successful, it will cause a decline in productivity and have a negative impact on the employer's business *just as a strike will. An action that "harms the company will harm the workers, too, over the long term . . . ."*[36]

INSIDE GAMES—TACTICS IN PRACTICE

Tactics practiced during the inside game may seem disparate and unconnected, but in fact, each tactic is part of a considered whole designed to gain employee support for the overall program of damaging production and employee-management relationships.

The Significance of "Symbolic Demonstrations"

Inside game tactics often commence with "symbolic demonstra-

tions of solidarity through such actions as mass wearing of buttons, arm bands and T-shirts,"[37] then move to more direct tactics. According to the *Manual* of the Service Employees International Union (SEIU):

> The key is escalation—implementing tactics one at a time. In the area of job action, for example you can start with something mild like days when all workers wear the same color clothing, move to one minute moment of solidarity, then to a work to rule campaign where every one does only the bare minimum required by the existing contract, and finally to some form of work stoppage if needed.[38]

Other practitioners of the inside game agree:

> Although a campaign often begins with "what may seem like tame tactics . . . the wearing of arm bands or buttons is not as tame as it seems," . . . [according to Joseph Uehlein, who directs corporate campaign and inside game policy for the IUD]. "An office full of employees tapping pencils in unison when a supervisor walks through can be quite intimidating," another union representative said.[39]

The UAW filed charges[40] with the NLRB against Caterpillar, some of which were settled,[41] charging violations of Sections 8(a)(1) and (3) of the National Labor Relations Act (NLRA)[42] when the company prohibited the wearing of certain buttons and signs on apparel. Dress and the wearing of special buttons, shirts, and so forth, are not, however, just expressions of free speech, but rather as shown here, the first step in a well-orchestrated whole of inside game tactics designed for the purpose of, as the SEIU *Manual* notes, "Pressuring the Employer."[43] Further, such seemingly innocuous tactics, according to the SEIU, have significant results:

> **It builds members' confidence and commitment . . . .**
>
> By escalating tactics, you don't ask them to make a leap of faith all at once. Instead, you start with an activity that is relatively easy to organize and has little risk—but that shows workers that organized action is possible.
>
> Once workers have taken part in one campaign activity, many will begin to see the campaign and the union as their own. If management responds to, say, a petition or rally by refusing to negotiate reasonably, workers will begin to see this as an insult to *them* rather than a response to "the union." Filled with increased confidence and emotional commitment, they will be ready to try the next step.[44]

CWA tactics also illustrate this point:

> Bargaining unit members wore red every Thursday from the beginning of contract talks in mid-June until expiration in early August. Standing in place, tapping, and other similar tactics unified the members and let the company know that we would not retreat from our opposition to cost shifting.
>
> As expiration drew closer, we escalated our tactics. We picketed outside work locations before starting the workday with signs that said "Just practicing," and then marched into work in unity. We worked to rule. We forgot our ID cards at major locations where cards must be presented to gain entrance.
>
> About ten days before expiration, we picketed with signs that said "Just Practicing" and then marched in seven minutes late. We knew we'd struck a nerve at the company when, instead of docking employees for a quarter hour of lateness, nearly 100 were given one-day suspensions for participating in illegal job actions, and thousands more received warnings. In some locations, supervisors began to threaten workers with warnings and suspensions if they refused to stop tapping at their desks or standing in place.[45]

Sometimes union buttons, signs, and so forth may be directed to hurt sales. At Koch PTI, the UAW pushed the display of such insignia as "No Contract, No Peace" buttons and signs, particularly when customers were scheduled to visit the plant.[46]

Loading the Grievance Machinery and Confronting Supervisors

Inside game tactics encourage employees to file as many grievances as possible,[47] and to do so collectively, for example, to convert a single grievance into one for a whole department. At Caterpillar's Aurora, Illinois, plant grievances in the final stage before arbitration rose from 22 to 336 after the UAW instituted its inside game.[48] The common purpose is to disrupt operation, to clog the grievance procedure, and thereby to tie up workers and management in unproductive endeavors on company time. Employees are also sometimes advised to use grievances to interrupt production by marching in a body to a manager's office, or confronting a supervisor at his desk, trying to fluster him, or to induce him to take a hasty, overt action while production suffers. Thus the SEIU *Manual* states:

> Where possible, large numbers of members affected by a problem can go together to present a mass grievance, further demonstrating solidarity to both management and the members themselves.[49]

La Botz emphasizes this tactic:

> Grievances must of course be filed, but they should be fought for by:
>
> - Making them **visible and public**, so that the members are aware of what is taking place.
> - Making them **collective, group grievances** involving as many members as possible.
> - Making them **active**, involving the members themselves in various actions.
> - Making them **confrontational**, so that members are mobilized to face the company officials who are causing their problems and who have the power to resolve them.[50]

The SEIU *Manual* is in accord, recommending the filing of grievances "over every possible contract violation."[51] One aim is to upset line management and increase the tensions between workers and supervisors by constant bickering of this nature.

A closely allied tactic is the "Group Protest." It may involve holding meetings in the middle of the plant during the lunch period, between shifts, or some other "convenient" time, pushing "workers' rights," encouraging grievances, belittling management, and promoting insolent behavior that just falls short of obvious insubordination, but can have the same effect.[52]

A related tactic is to end all relationships with supervisory employees in order to coerce them not to oppose or to discipline employees who are engaged in inside game activities and to further worker-management alienation:

> **Stop talking to supervisory personnel** except when it would be a clear act of insubordination not to respond to a question or directive. Workers cut off such contacts as engaging in small talk on the job, sharing rides to work, or eating together during breaks.[53]

Creating and Maintaining a Warlike Atmosphere

Union literature is couched in emotionally charged rhetoric and fighting or warlike terminology both in corporate campaign and in inside game activities in order to create and to maintain an atmosphere of conflict. Frank Powers, a former United Mine Workers (UMW) official, states: "You find out how you can hurt the company and you do guerrilla tactics."[54] Buddy Davis, a USW official, defines "guerrilla" as "a hit-and-run event to embarrass, pressure and cajole a company into a contract."[55] The IUD's Joseph Uehlein has declared that the "primary objective" of the inside game is "[m]obilizing the

membership into a fighting force."[56]

La Botz emphasizes that a corporate campaign "requires the most serious analysis of the *enemy*"[57] (that is, management), and that in an inside game, this warlike attitude underlies and expands the handling and goal of grievances:

> The contract is a kind of historical record of the achievements of the union, a sediment left behind by past organizing drives and strikes. It institutionalizes the victories of the past, *and establishes the minimum that a worker should be able to expect from that employer.*
>
> It is a mistake, however, to view the contract as a sacred document . . . . It was the result of a struggle between the employer and the union . . . which eventually resulted in a compromise . . . . *We were at war and a cease fire was called and a truce reached—until the conflict breaks out again.*[58]

Given this interpretation, peaceful union-management relationships are merely truces between battles, and everything depends upon force and fighting. It is, therefore, advocated that one ignore the contract in handling alleged grievances, but instead attempt to expand it by direct action as part of the inside game, and seek to gain advantages that are not covered by it.

> Since the contract is the sediment of *past* struggles, it can tell you only what the balance of forces between management and labor was . . . years ago, not what it is today. Winning a grievance or any other shop floor struggle depends on the balance of forces today . . . .
>
> In any case many of the same tactics can be used whether or not the issue has a basis in the contract language. The union's fundamental shop floor tools are economic pressure and political pressure.[59]

Other examples of this warlike terminology in union inside game activities are not difficult to find. The UAW has erected signs in the neighborhood of Caterpillar plants, and widely publicized them, stating that "YOU ARE ENTERING A WAR ZONE CATERPILLAR VS. ITS UAW EMPLOYEES."[60] Similar claims have been made by the AIW in Decatur, Illinois.[61] Union officials involved in these activities talk of "war," "battle," and use other warlike terminology. They accuse the company of "raping" the employees, having no consideration of human rights, and as will be discussed below, no desire or consideration for safe and healthy plant operations or of protection for the environment.[62]

This warlike literature and speech is often directed either at the company's chief executive or at other particular company officials,

lawyers, or consultants. La Botz notes that "[s]ometimes the campaign will personalize the enemy by focusing on specific management figures or board members, holding individuals responsible for corporate practices."[63] The SEIU *Manual* states that unions should "**target people who control the decisions** . . . . You have to figure out who really holds the power and tailor your tactics to affect them."[64]

Solidarity reported on a strike at the Ampco Chicago plant:

> UAW members, furious over mismanagement and takebacks, last month picketed the Milwaukee homes of owners Robert M. Darling and F. Joseph Happel. They also chartered a bus to demonstrate at the Chicago office of [Ampco CEO Patrick G.] Ryan, noted for being the Chicago CEO whom Mayor Richard Daley "admires and trusts the most."[65]

The CWA report on the 1989 strike at NYNEX states that

> a daily picketing vigil was maintained by CWA members at the Westchester County, N.Y. home of NYNEX Chairman William Ferguson. Ferguson, his family, and neighbors were greeted every morning by strikers who often wore masks made of blown-up photos of the NYNEX CEO's own face . . . .[66]

Sometimes this pressure on top executives proves successful. ALPA was instrumental in ousting Richard Ferris as chairman of United Airlines by combining with Wall Street "raiders," belittling his policies, and threatening a leveraged buyout.[67] Declaring that his union was "at war" with Eastern Airlines, and that its chairman, Frank Lorenzo, was a "predatory animal," the then president of the Machinists declared in 1988 that the union "will continue fighting, even if the battle ultimately causes the company to collapse."[68]

A strike in 1989-90, supported by ALPA, and preceded by a massive inside game and corporate campaign,[69] did indeed cause Eastern to shut down permanently, costing the jobs of nearly 10,000 mechanics, baggage handlers, and cleaners represented by the Machinists, 3,400 pilots represented by ALPA, and nearly 15,000 other employees.[70] Charles Bryan, the president of the Machinists district covering Eastern, stated that the permanent shutdown of the carrier provided a "sense of relief" to striking members of the union because "they feel they have been liberated in a way."[71]

According to John (Jack) Bavis, the chairman of the ALPA's Eastern Air Council until he was deposed for advocating that the strike be called off,[72] and currently the chief mediator of the National Mediation

Board:

> what had started out as a struggle to keep Mr. Lorenzo from selling Eastern's assets to bolster other parts of his airline empire became a personalized confrontation in which some union leaders were determined to get rid of Mr. Lorenzo at any cost. At its forefront was Charles Bryan, the head of the machinists union [at Eastern] and a onetime ally of Eastern.[73]

There are many other examples of this personalized approach in inside game strategy. By inducing unionized breweries to cut off Ravenswood Aluminum as an aluminum supplier for their beverage cans, and making much of the fact in widespread communications that Ravenswood was controlled by Marc Rich, the fugitive commodity trader, in a personal campaign against him, the USW was able to induce Rich to remove the company chief executive, and to win job reinstatement for its members after a long strike.[74]

The AIW has centered much of its A.E. Staley campaign against both the management of Staley and its controlling corporation, Tate & Lyle.[75] The UAW has attempted to direct its campaign against Caterpillar's chief executive, but without much success.[76] The UAW did gain some notoriety for this approach when the company banned apparel with the insignia, "Permanently Replace Fites." After the UAW filed an NLRB charge, however, Caterpillar announced it would no longer discipline employees for wearing T-shirts with this slogan,[77] and the publicity virtually disappeared.

Along with anti-chief executive communications, both corporate campaign and inside game practitioners often attempt to picket the headquarters of the company and the homes of the chief executive and of other key management personnel, as well as of members of the company board of directors. This can be both a nuisance to the picketed company and its nonunion and nonstriking personnel, and particularly when the picketing is extended to homes, an annoyance to them, to their families, and to their neighbors.

Members of the AIW picketed the Piatt County courthouse in Montecello, Illinois, where the Staley president resides, wearing placards pictured with his portrait and signs stating, "WARNING! LARRY PILLARD MAY BE HAZARDOUS TO YOUR HEALTH!" They then distributed fliers throughout the area.[78] To mark the third year of their strike, Colt Firearms strikers from Hartford, Connecticut, held a press rally in April 1988 in front of the Manhattan home of the Colt chairman, David Margolis, and then marched down Park Avenue to the company headquarters where they left a letter for him.[79]

Use of Ridicule

The attempt to personalize a labor dispute between workers on one hand and the chief executive on the other, which is a feature both of the inside game and the corporate campaign, is conducted by unions not only in terms of warlike communications, but also in terms of attempted ridicule.[80] In fact, ridicule is a favorite tactic utilized in the inside game, not only against the chief executive but also directed at management and supervisors. Cartoons, sometimes crude, of management can be circulated. The UAW's slogans on apparel, buttons, and signs stating "Permanently Replace Fites," chief executive of Caterpillar, is an example. Management statements can be taken out of context in order to be ridiculed. Such ridicule can be put in handouts, on apparel, on plant bulletin boards, or on cards, as well as in union papers.

The purpose of denigrating management is to lower the esteem in which management is held, to cause the employees to lose respect for management, and to turn employees against management even at the cost of their own jobs. Moreover, it is probably easier to destroy loyalty to management than it is to destroy loyalty to the enterprise, especially where long-service employees are involved. Thus, employees could be persuaded to believe that the management is bad, and yet still not emotionally forsake their desire to remain attached to the company. Attacks on individual management personnel may also be intended to induce management to overreact, and thereby force management either to withdraw a discipline or be overturned by an arbitrator or by the NLRB, which in turn permits the union to claim a "victory."

Ridicule is also utilized, however, to attract employee support. The SEIU *Manual* urges union tacticians to ask, **"Will the tactic be fun for members to carry out?"** and points out that "Of course most tactics involve hard work, but if a lighter side is built in, members will look forward to each new activity."[81]

Ridicule goes hand and hand with work-to-rule ("Running the Plant Backwards"), slowdowns, and other forms of sabotage described below. It may also be utilized in the same manner against workers who do not follow union inside game direction and policy as a means of isolating them and pushing them toward cooperation with the inside game players.

"Work-to-Rule"—The Capstone of the Inside Game

Employees are encouraged "to work to rule." This involves considerably more than simply following work rules in an orderly, intelligent fashion. Rather it has come to mean doing the minimum

possible, doing nothing without minute direction from supervisors, denying or evading personal responsibility for doing the job, wasting as much time as possible, reducing effort from the normal expected and heretofore applied activities, taking no initiatives to handle problems—in effect leaving one's brains, training, and normal work practices out of the job. In other words, to "work-to-rule" is actually to create a slowdown although unions consistently deny that a slowdown is in process when advocating work-to-rule.

Sometimes there may be rules that are obsolete, and employees are encouraged to follow them in order to claim that they are obeying orders despite their knowledge that the rule is obsolete and inefficient, and has been abandoned in normal practice. In a well-publicized article, a worker at Caterpillar's Decatur, Illinois, plant described how he installed hoses backwards because of long-abandoned instructions which had not been corrected in the company manual.[82]

The SEIU *Manual* emphasizes the significance of work-to-rule:

> In many cases, the most powerful workaday tactic is for members to do only what they are required to do by the union contract and no more. In some workouts, this means that workers . . . .
>
> - **Follow supervisors' instructions to the letter**, even when those instructions are wrong or the supervisor has mistakenly left out key steps.
> - **Do not make any suggestions** or take it upon themselves to solve problems that come up. They wait until the supervisor tells them what to do.
> - **Insist on following all of the employers' rules**. For example, let's say that to please its insurance company the employer has posted safety rules which say that "no employee shall lift excessive loads."
>
>   Workers may now decide to strictly enforce this rule, insisting on being provided with lifting devices or having other workers pulled off their jobs to help with excessive lifting.
> - **Report every equipment problem and insist that it be taken care of** before work can proceed.[83]

These tactics are intended to escalate management problems and "can throw any workday into a frenzy," according to Joseph Uehlein of the IUD. Uehlein also believes that such tactics do not necessarily rule out an eventual traditional strike, but that working-to-rule ensures that union members will be "more solidified and more militant" if a walkout ensues.[84]

Airline unions have long been masters at the work-to-rule aspect

of the inside game. In 1989, such a concerted slowdown at United did considerable damage to the company:

> Throughout the summer, United's service has been a disaster—with about four out of ten of its flights arriving late or cancelled. The carrier recorded its worst on-time performance since the Department of Transportation started keeping track two years ago—and has ranked consistently at or near last place among airlines . . . .
>
> [Weather and other factors have contributed to this situation,] but the biggest cause has been a slowdown by United's pilots union [ALPA] in protest of management demands for contract concessions.
>
> The pilots campaign . . . involved . . . taxiing slowly for take-off, ordering elaborate maintenance checks between flights and flying with so much fuel that planes were slowed by their weight.
>
> Under still another tactic . . . the pilots purposely arrived more than 15 minutes late: the point at which the transportation department marks a flight late in the monthly on-time statistics it releases to the public. Because of the time wasted by the delays, many pilots exhausted the monthly overtime they were allowed to work under government regulations [causing crew shortages and further delays] . . . .[85]

Work-to-rule may mean the refusal to operate equipment not specifically covered by an agreement. In 1989, United's ALPA represented pilots who refused to operate a new longer-range model of the Boeing 747-400 in protest against the parties' failure to achieve a new contract. This cost United money every day since the new jet was scheduled to operate with smaller pilot crews and is particularly suited to United's vast Pacific runs. A pilot termed this action as "another way to put pressure on the company to arrive at a contract . . . ."[86]

Such work-to-rule activities as described herein are not designated, particularly by their perpetuators, as slowdowns, but are in fact slowdowns. Workers are paid to do a job based upon their training and knowledge, and not to "leave their brains behind" and to act as ignorant automatons who suddenly require direction at every step of the work process. Interestingly, the fact that "work-to-rule" is a slowdown is being recognized as the practice grows more widespread. In October 1993, Briggs & Stratton Corporation, the small engine manufacturer headquartered in Milwaukee, obtained an injunction in federal district court against a former AIW local union (now UPIU) as a result of a work-to-rule union effort which was found to be a slowdown. The local union denied a slowdown was in place, but the company stated that it began on August 31, and that as of the end of October, production was behind 50,000 engines.[87]

Likewise, in November 1993, following a breakdown in negotiations to acquire a controlling interest in United Airlines, ALPA advised its members "to do your absolute best to safely perform every aspect of your job on the ground and in the air," and the "Machinists told its members to strictly follow to the letter every maintenance and work rule."[88] Although the unions "insisted this was not a slowdown,"[89] the Associated Press reported, "At United, a De Facto Slowdown Is Underway"[90] and "Refused Offer Sparks Slowdown at United,"[91] the *Wall Street Journal* headlined, "Travelers Face Slowdown at United Air As Rival American Resumes Most Flights,"[92] and the *New York Times* editorialized "as American's flight attendants were returning to work, employees at United began a work slowdown to protest management's decision to sell off parts of the company."[93] In December 1993, after negotiations were resumed, the *Wall Street Journal* reported that "if an agreement was not reached . . . [the Machinists advised that it] would orchestrate a campaign to disrupt United service during the busy Christmas season."[94]

Work-to-Rule and Sabotage

Work-to-rule practices, or "Running the Plant Backwards," as one pro-union author termed it,[95] can lead to overt sabotage: failing to turn off or on equipment, putting a wrong chemical mix in a vat, failing to tighten bolts, not putting a part on equipment, producing excessive scrap, failing to heat materials properly, and a host of other activities that are difficult to detect and to assign responsibility for in any resulting sabotage.

A recent example of this work-to-rule = slowdown = sabotage allegedly occurred at the A.E. Staley plant in Decatur, Illinois, where since September 1992, the AIW (now part of the UPIU) has been conducting, in combination, a corporate campaign led by Ray Rogers and an inside game led by Jerry Tucker. The inside game had been very successful because it is relatively easy for workers to destroy productive efficiency in a chemical process. Staley manufactures corn sweeteners which require a delicate and unchanging continuous process of ingredients, temperature, and fluids that if altered, as union adherents apparently did, destroy production and result in costly waste.

On June 27, 1993, Staley management locked out its 740 hourly employees, charging that union adherents had meddled with an effluent discharge system that threatened the loss of Staley's discharge permit and could cause an order by the local sanitary district to shut the plant down. Additionally, company management accused unionists of "altering tank identification labels, contaminating products,

tampering with locks, and closing certain valves which then shut down equipment."[96] Charging that "a root cause of these problems is the acts of sabotage, vandalism, and other acts of disruption motivated by your in-plant strategy," and that the lockout was "necessary to protect company assets and the reliability of shipments from Decatur to our customers," company officials advised the AIW local union that the plant would be kept operating "to meet customers' needs," and would be operated by nonunion salaried employees and by additional management employees recruited from other Staley plants while union employees would be locked out until an agreement was reached.[97]

Union officials denied the sabotage charge, pointing out that no employee had been so charged,[98] but the point of the lockout was that the damage was being done in a manner that made identification of the culprits extremely difficult. Besides losing their paychecks, the lockout has required these employees to pay $320 per month in order to maintain their health insurance.[99] The locked-out employees were, however, deemed to be eligible for unemployment compensation.[100]

On July 12, 1993, Staley announced that it would hire temporary replacements to take over production in order "to relieve management personnel working in the plants and allow them to go back to their previous responsibilities."[101] As of mid-October 1993, Staley had employed about 225 temporary replacement workers, with the balance of the workforce made up of "management workers and employees from Staley's other Illinois operations."[102] Whereas production had been reduced by approximately 30 percent during the inside game period, the company now claims that it is setting production records with a smaller labor complement.[103] In mid-October 1993, the company's executive vice president reported that "hourly employees continue to be locked out of Staley and no new negotiations with the union have been planned."[104] Meanwhile, Tucker and Rogers have claimed that they have recruited 100 Staley locked-out employees to seek support from unions that represent employees at plants that use Staley syrup.[105]

Refusals to Work Overtime

A favorite tactic of the inside game is to refuse overtime work. At Central Illinois Public Service Company (CIPS), members of the International Brotherhood of Electrical Workers (IBEW) refused to work overtime, between April 25 and May 20, 1993, forcing CIPS to utilize managerial employees to respond to customer emergencies outside of regular hours. Overtime call outs answered by IBEW members declined from approximately 300 on April 18 to zero on May

16 as a result. The IBEW had also authorized a strike which the company feared would occur "at a very difficult time." Hence, CIPS locked out the IBEW-represented employees on May 20, 1993.[106]

On June 14, 1993, the company reached an agreement with a second union representing its employees, the International Union of Operating Engineers (IUOE). It then called off the lockout, as the IUOE declined to return while the IBEW lockout was in effect.[107] Negotiations resumed with a federal mediator involved, and the IBEW continued its refusal to work overtime. Two IBEW members who declined overtime were disciplined after refusing to respond to what the company termed an emergency, and in retaliation, the IBEW members walked out on September 16 for a day's protest.[108] In late 1993, a tentative agreement was rejected by the membership.[109]

Refusals to work overtime are often not popular with employees because they reduce potential earnings. Companies have broken such work boycotts simply by assigning the work to management personnel and explaining to unionized employees how much money they lost. Such overtime boycotts are also clearly a refusal to obey instructions, and can be interpreted as partial strikes, opening the employees to serious discipline.

Other Inside Game Direct Strikes

Inside game activities can include actual strikes, usually hit-and-run or "rolling affairs," such as one-day affairs affecting key departments, or walking off the job, as occurred at Bell Helicopter,[110] by refusing overtime and supporting those who do, or using strikes disguised as sick calls ("sick outs"), sometimes hourly sit-downs, or other such disruption. In November 1993, the UAW struck Caterpillar over a weekend to protest the discharge of a union official who allegedly struck a supervisor.[111]

At A.E. Staley, 150 members of the AIW skipped two twelve-hour shifts after a worker was discharged and several more threatened with discharge for alleged "improper handling of chemicals," and for signaling other employees via two-way radio that they were about to be disciplined. When about one-half the employees then held a meeting and reported one hour late for an additional shift, they were refused entry by the company so that this stoppage lasted thirty-two hours.[112]

Such actions by a few key personnel can be very disruptive. In the Schwitzer case, Tucker, the leader of the inside strategy, claimed:

> things were looking a little grim [for the union] until the five tool and die makers took matters into their own hands. They announced that

> they no longer intended to work Monday, Wednesday, or Friday of each week. The company knew they couldn't hire replacement diemakers and by Wednesday afternoon . . . [the dispute was settled on union terms.][113]

In a few cases, such as during the United Mine Workers (UMW) 1989-90 strike against Pittston, inside games have featured sit-down strikes and seizure of company facilities. Such actions are not protected by the NLRA.[114] The Virginia Supreme Court affirmed a fine of $52 million imposed by a lower court for repeated contempt of court. The fines were imposed largely because the UMW ignored orders to cease its violence during the strike against persons and property, but the fines also included penalties "for a four-day occupation of a coal-processing plant." The U.S. Department of Justice has urged the United States Supreme Court to uphold the fines.[115]

Employees who fail to participate in the slowdown are sometimes mistreated in a variety of ways: their work, automobiles, lockers, or lunches can be vandalized; they are given the silent treatment and excluded from all social activity; their homes, spouses, or even children can be rudely treated; and they can be ridiculed as "lacking the manhood to stand up for their rights," or "sucking around management for favors." Such employees may be put in a "cone of silence," that is, surrounded by others who talk among themselves but act as if the dissident was not present and ignore him if he speaks; the nonconforming person and his family may be stalked and harassed in that manner; union adherents may keep a record of the activities and work of the nonconformists, attempt to find evidence of a misdeed or failed work, and turn it into the company, then alleging favoritism if no discipline is applied; stewards may file grievances claiming the nonconformist is not doing his proper or fair share, and attempt to make the foremen and superintendents' lives even more miserable if they do not take action against that individual. Finally, if the targeted person attempts to seek work elsewhere, an attempt may be made to blacklist him or to seek persons working in the facility which employs him to continue the harassment.[116]

Ending Union-Management Cooperation

Inside game adherents push for the elimination of all cooperative labor-management activities, such as quality control programs, and in addition, seek to eliminate cooperation on such community work as contributions to the United Way or other charitable endeavors. The claim is that workers must "choose sides," and that working with

management in any manner reduces the propensity for them to join in "solidarity actions," and therefore to participate in corporate campaign and inside game activities. In turn, according to such reasoning, the effect must inevitably hurt employees. The gist of such claims is that management is not fit to live with even for such seemingly desirable goals as improving plant competitiveness and supporting community welfare programs.[117] In both the current disputes at A.E. Staley and Caterpillar, actions to end union-management cooperation and joint welfare activities have been instigated by the unions.[118] Such reasoning provides an additional aspect of the manner in which the inside game attempts to destroy not only cooperation with management, but also any loyalty or respect for, or relationships to managers.

Utilizing OSHA

A principal tactical goal of the inside game is to enmesh management in a host of charges before government administrative agencies. In such situations, one finds numerous charges made to the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), the NLRB, and other governmental agencies, as well as state legislators and congressmen. Often times, complaints are signed by a whole department, especially to OSHA, and press releases or union brochures and pamphlets are issued to emphasize that the plant is an unsafe place to labor,[119] or even that it should be shut down.

During the 1987-88 strike at International Paper's large Jay, Maine, facility, the UPIU local union and allies in state and local governments and in environmental organizations made repeated charges that the mill was "unsafe," and that the state should force the company to shut it down. When the strike was called off, many union officials, having high seniority, were recalled to their jobs. Since then, no demands to close the mill as "unsafe" have been voiced.[120]

Employees sometimes walk off the job claiming unsafe practices, and even if the claims are not substantiated, production is disrupted. Production can also be interrupted as OSHA inspectors investigate the claims. If the company is found to have any unsafe practices, however minor, the union can trumpet the "unsafe" condition to the press.

The purpose of charging an employer with violations of some regulatory agency's rules is well stated by the SEIU *Manual*:

> Moreover, even if the violations are completely unrelated to bargaining issues, your [union's] investigations may give management added incentive to improve its relationship with you. Management officials may find that . . . the employer now is facing . . .

- Extra expense to meet regulatory requirement or qualify for necessary permits and licenses.
- Cost delays in operations while those requirements are met.
- Fines or other penalties for violating legal obligations.
- Damage to the employer's public image, which could jeopardize political or community support, which in turn could mean less business or public funding.[121]

The proponents of corporate campaigns and inside games clearly recognize the tactical potential of safety and health issues. The UAW has a pamphlet entitled *Health and Safety for Inside Strategies*, and provides special instructions to employees in plants where inside game activities have been instigated. Special attention is given to maintenance personnel who can roam the plant looking for situations in which possible OSHA violations can be charged, and to toolroom employees who might be able to disrupt major portions of a plant by refraining from work because of alleged unsafe situations.[122]

La Botz has a full chapter devoted to health and safety which stresses its value to organizing, urges the use of mass grievances, press releases and publicity, walkouts over safety, and other practices in which the inside game can be furthered by utilizing the health and safety issue. The chapter concludes by listing twelve "action questions" directed toward effective methods of organizing and utilizing health and safety for the inside game.[123] Emphasis on health and safety is found also in the Shostak book,[124] in the Eisenscher pamphlet,[125] and in the SEIU *Manual*.[126]

Airline pilots find safety an especially powerful weapon because no scheduled carrier can fly if the pilot finds a safety problem. At the time that Eastern was struck in 1989, dozens of its planes were grounded because of alleged safety problems charged by ALPA's safety tactics, which were severely criticized by the U.S. Secretary of Transportation and the Federal Aviation Authority.[127]

In late 1990 and early 1991, the APA at American Airlines commenced a "safety campaign" which warned pilots and the public to be careful of alleged violations. There followed so many safety allegations that American was forced to work mechanics overtime and to hire extra ones in order to check the alleged problems, most of which were apparently more imaginary than real.[128] In December 1990, American won a temporary restraining order designed to prohibit the continuation of "sick outs" and slowdowns (working-to-rule) that caused the cancellation of scheduled flights during the busy Christmas season.[129] The union president responded to the order by cautioning the membership not to seek unnecessary maintenance or engage in

"work-to-the-book" practices, but then told the pilots not to forget that "the responsibility for the safe operation of aircraft is yours."[130] This statement appears to be a disguised invitation to use safety as a pressure tactic. During the flight attendants strike of November 1993 at American Airlines, the carrier filed a defamation suit against the union and its advisors, Abernathy & Mitchell, alleging that they had stated that "American's operations jeopardize the safety of the flying public."[131]

Although OSHA administrators have generally seemed sympathetic to union claims of unsafe conditions,[132] in one case an administrative law judge accused employees of General Dynamics and a union organizer for a coalition of shipbuilding unions of "exploiting" OSHA's citations "by using the charges as a rallying point in a campaign to unionize" a company facility.[133]

Utilizing Environmental Laws and Regulations

Environmental protection legislation and administrative regulations provide inside game activists with opportunities similar to OSHA. Coalitions with environmental groups such as the Sierra Club, Greenpeace, and others are strongly advocated by most unions.[134] Sudden discoveries of foul air, questionable dumping of allegedly toxic materials, and other such claims are made the subject of complaints to the EPA, and once initiated can continue for many years. Again, this can lead to charges, attempted agency fines, litigation, and then, like OSHA action, to bad publicity and union "proof" to employees and the public that the plant has become a bad place to work, and that management is untrustworthy, and unworthy of cooperation or being in charge. Five years after the UPIU terminated a three-plant strike against the International Paper Company, unions, as part of a program begun during the strike, have continued to seek EPA penalties against the company even in plants that were not involved in the strike.[135] During the six-year lockout by BASF of its workers in Geismar, Louisiana, the OCAW emphasized health and safety matters as a tactic. Signs such as "Is BASF the Gateway to Cancer Alley" were put up, and sometimes successful efforts were made to have state or federal agencies fine the company for alleged environmental violations.[136]

District 51 of the Plumbers Union, and its associated local unions in the San Francisco Bay area, have utilized EPA litigation, or threats thereof, extensively in order to gain construction work that construction users would otherwise have awarded to open shop (nonunion) builders. Financed by a checkoff of fifteen to fifty cents an hour from their members' wages, this organization has raised millions of dollars,

employed counsel and environmental experts, and taken full advantage of the complexity and availability of appeals under California's complicated environmental laws to threaten, or to instigate, environmental appeals to administrative agencies, and occasionally to courts, in order to hold up permits for construction. Since delays are extremely costly, and can even thwart a construction project altogether, District 51 has often won its objectives. Moreover, if the user agrees to utilize union labor, then District 51 and its allies support the permit application and pressure its political friends to do so also. This program is now spreading to other areas.[137]

Complaints to the NLRB

Complaints to the NLRB are a standard ploy of the inside game. Management reaction to union activities, like holding meetings on work time, deliberately trespassing on company property, claiming unsafe conditions, or other such questionable activity is frequently made into a charge to the NLRB and can often result in a complaint. If the Board issues a complaint, the union sometimes declares that the Board has "found the company guilty of an unfair practice." Such union propaganda may reach the press, and be useful in convincing employees of the need to fight management. In addition, as in the case of OSHA and EPA complaints, one effect is to cause management to spend time and money in nonproductive activities, thus reducing potential profits. The filing of unfair labor practices is a standard tactic in nearly all inside game cases that have been examined, and is urged as a tactic by all publications supporting inside games.[138]

Use of Other Governmental Regulation

Another tactic aimed at government intervention is to pressure government agencies which are customers of the target company. The vulnerability of General Dynamics to a corporate campaign because of its government contracts has already been noted.[139] Similarly, companies like Beverly Enterprises, the elderly and disability care home operator, have been hit by unions lobbying against any contributions or tax relief from local or state governments.[140] Although this tactic is standard in corporate campaigns, it is also advocated by proponents of inside games and has been particularly utilized by public and hospital workers' unions,[141] and by unions such as the CWA, which as noted above,[142] have successfully lobbied state public service commissions and legislatures to delay, to suspend, or to reject rate increases.

Although most of the well-known companies which are targets of corporate campaigns and inside games pay far more than minimum

wages, the Fair Labor Standards Act (FLSA) and similar state laws have been utilized by unions in a number of campaigns, particularly their overtime and child labor provisions, the regulations for which can be quite complicated and costly if not rigidly followed. For example, Nordstrom, the Seattle-based department store chain, which emphasizes consumer service, permitted some of its employees to deliver packages or otherwise serve customers in off hours. While in a contract dispute with the company, the UFCW, which had long represented employees in the Seattle and Tacoma stores, reported this activity to the Washington State Department of Labor. The Department found that the employees should be paid for these activities, and after the UFCW filed a class action suit, Nordstrom settled for approximately $15 million, plus about one-half again as much for attorneys' fees.[143] UFCW, however, was also a loser. Employees at the Seattle Nordstrom stores decertified the union in a NLRB election by a vote of 1,022 to 407; then at the Tacoma store, the UFCW gave up representation rights rather than contest a decertification vote.[144]

In another UFCW action after a failed organizing campaign, Food Lion, Inc., a Belgian-owned supermarket chain operating in the Southeast, paid $16.2 million for overtime and child labor violations. This involved mostly failure to adhere to restrictive hour and work regulations for teenagers.[145]

As noted above in the discussion of the 1989 CWA strike at NYNEX operations,[146] unions are often successful in gaining friendly legislators to intervene in cases, either by holding hearings in which the company is criticized and its alleged misdeed publicized, or by passing rulings desired by the unions. In meatpacking, congressional hearings relating to safety have aided the UFCW's organization drives.[147]

Like other such tactics which hurt a company, such legislative actions can seriously also damage employees economically. During the 1986-90 UAW strike at Colt Firearms in Hartford, Connecticut, the state senate passed a resolution urging the federal government to cease utilizing Colt as the supplier of the M16 rifle. This occurred when a Belgian-owned South Carolina plant bid lower for the work. Additionally, the UAW lobbied state and municipal police forces to take their revolver business elsewhere, and numerous ones did so. Then, the UAW engineered a buyout of Colt financed in part by the Connecticut government, the employees, and managers. The striker replacements were discharged, and the UAW members returned to work under the new ownership. Without the M16 production, and with the diminished revolver business as a result of the boycott, Colt, however, was soon in difficulties. It was forced to lay off 20 percent of its work force in

December 1991, and then to file for bankruptcy in March 1992.[148]

During the strike, Philip A. Wheeler, the UAW's assistant regional director and the strike leader, stated: "We would rather see Colt out of business than have a factory full of scabs."[149] Following the filing for bankruptcy, he stated: "I hope the employees will have a portion of the new company after it comes out of restructuring."[150] "Animosity and antagonistic behavior of many of the parties" have thwarted reorganization.[151]

Unions utilize other agencies as pressure points. For example, through direct ownership, or that of pension plans, they often have representatives at company annual meetings where they can speak about alleged poor company labor policies. The Carpenters' union frequently does this, usually complaining about the use of nonunion construction labor. Unions also file complaints with the Securities and Exchange Commission (SEC) alleging various shortcomings, such as issuing "misleading" reports.[152]

Exaggerating the Results

Union officials who have engaged in corporate campaigns and inside games are very likely to term them successful regardless of whether they achieved the desired results, as well as to ignore long-term adverse results. This is in accord with the advice in the SEIU *Manual* which suggests that victory be claimed over any issue available. It recommends that campaigns involving workplace issues be pursued with the filing of petitions and organizing protest actions. Then, it notes that the union should "claim victory if the employer agrees to a solution."[153]

In contrast to unions, companies generally remain silent unless their opinion is requested. Company officials usually see no purpose in discussing union tactics after the fact even if they dispute union claims.

In a speech at the UAW's 1993 convention, President Owen Bieber stated that the UAW had successfully waged inside games at three companies: Rockford Powertrain and Lennox Industries, both located in Illinois, and Cooper Manufacturing, an Iowa company. An enterprising reporter attempted to contact these companies about their experience, and reached Rockford and Cooper.

A spokesman for Rockford was reported as saying that "he was not aware of any strategies that hampered the company while union employees worked without a contract," and that the company "didn't miss an order or shipment." He further reported that a contract acceptable to both parties was agreed upon after seven weeks.[154]

The Cooper spokesman was even more emphatic in contradicting

Bieber's report, stating: "I don't know what (Bieber) is talking about . . . . Frankly, I think it's incredulous."[155]

CONCLUSION

A strike is a withdrawal of labor. Its purpose is to induce the employer to alter its position, and to settle a dispute over terms and conditions of employment on terms more satisfactory to the union than management had heretofore been willing to do. The combination corporate campaign and inside game is in fact also a withdrawal of labor using different tactics for the same purpose as a strike, and therefore is a thinly disguised form of strike. It is a strike in-place.

The tactics discussed in this report are a carefully orchestrated whole from the wearing of distinctive apparel or buttons to "work-to-rule" slowdowns, refusing overtime, and running strikes. Union success in operating the inside game, especially when it is combined with a corporate campaign, is a comprehensive program, and therefore depends upon a total strategy. The objective of this strategy is to withdraw labor by such techniques as working-to-rule, which is effectively a slowdown, refusing to work overtime, which is effectively a partial strike, and other methods which reduce productivity, denigrate management, and thereby make management less effective and influence customers to refrain from buying. Various other techniques are designed to impair productivity, efficiency, and product quality, thereby hurting both quality and quantity of production, reducing sales, threatening customer relations, and damaging the company reputation—all aspects of strikes.

At the same time, management control is threatened, and management tenure is cast in doubt. Management is forced to spend time and money responding to union tactics and government investigations and charges; giving assurances to shareholders, customers, dealers, investment bankers, government officials, and other constituencies; and designing strategies for the protection of the company. This reduces management's ability to tend to the other basic duties for which it is employed.

What the corporate campaign-inside game combination seeks to do is to undermine the relationship between line management and employees so that they cannot work together in a productive and effective manner. The policies enunciated herein strive to make management and employees as antagonistic toward each other as possible. If this is accomplished, effective production is impaired.

This trashing of the management-employee relationship can be more destructive of the enterprise than the trashing of equipment because it may well take longer to rehabilitate effective relationships

than to rebuild machinery. The corporate campaign-inside game combination may, therefore, have impacts that are more damaging than those that emanate from a traditional strike.

Fundamentally, the union aim is to create a strike situation without an overt work stoppage—that is, a strike in-place. Management is then faced with the need to prevent that situation from coming to fruition without sacrificing the essential job of operating the plant efficiently, safely, and profitably.

The basic contrast between a traditional strike and a combination corporate campaign and inside game, if successful, is that in the latter case, workers continue to receive paychecks and unions are not called on to pay strike benefits, unless employees are discharged. Thus, one object of the combination corporate campaign-inside game combination is to force the company to subsidize a strike against itself.

The corporate campaign-inside game combination can be a powerful union weapon if employees are willing to put their own jobs and their company's future at risk. What is involved has been succinctly put by Michael Eisenscher, who masterminded an "inside strategy" against the PacTel InfoSystems subsidiary of Pacific Telesis. He calls his study "Creative Persistent Resistance (CPR)—Strategic Options—A Primer for Unions Taking the Strike Inside."[156] This is indeed what the inside game is—a strike conducted within the plant. It becomes more potent when combined with a corporate campaign which, among its other objectives, is designed to gain employee and public sympathy for the union and its inside actions.

Other union supporters acknowledge that the corporate campaign-inside game combination is analogous to a strike action. Thus, Jerry Tucker, who claims to be the originator of the inside game, states:

> In-plant, alternative activities require the same commitment to concerted action and solidarity as strikes. And, in some ways, are more difficult, although less economically punishing, to conduct. Workers will tell you that it's much harder to look the boss in the eye on a "work-to-rule" program than it is to carry a picket sign a couple of times a week.[157]

According to an analysis of the current UAW activities at Caterpillar by Jack Metzgar, an experienced pro-union student of comprehensive corporate campaigns:

> These new union tactics take awhile to develop and bear fruit, but over the long term they can put tremendous pressure on a company's ability to manage itself.[158]

The SEIU *Manual* states that the basic purpose of the corporate campaign-inside game combination must be "**Costing the Employer Money.**" Employees about to undertake an inside game should ask themselves whether they can "reduce productivity" or "increase costs."[159]

The inside strike in combination with the corporate campaign can be properly considered only if such comprehensive programs are understood for what they are, that is, a strike in fact, especially by management, but also by all corporate constituencies including government agencies. Moreover, the inside game-corporate campaign form of the strike is still a strike even if it does not achieve the union objectives and is, from the union point of view, unsuccessful. This is true of any strike. For example, an ordinary strike in which employees leave the premises and picket the company facility where they were employed is still a strike even though large numbers of employees may cross the picket lines and return to work in defiance of the union leadership.

As a strike, the corporate campaign-inside game combination must be understood as such and treated as such if the company targeted is to deal with its consequences and to continue as a viable organization. Likewise, employees should recognize the combination corporate campaign-inside game for what it is, namely, a form of unprotected partial strike which may result in discipline, discharge, or even the elimination of their jobs. And, of course, government regulators should understand this also.

NOTES

1. Industrial Union Department, AFL-CIO, *Developing New Tactics: Winning with Corporate Campaigns* (1985), at 1.

2. Quoted by Charles R. Perry, *Union Corporate Campaigns*. Major Industrial Research Unit Studies No. 66. (Wharton Industrial Research Unit, University of Pennsylvania,1987), at 2-3. (Emphasis supplied.) For other summaries of corporate campaigns and their results, as well as an extensive bibliography, see Paul Jarley and Cheryl Maranto, "Union Corporate Campaigns: An Assessment," 43 *Ind. & Lab. Rel. Rev.* 505 (July 1990).

3. Id. at 4.

4. Quoted in Dan La Botz, *A Troublemaker's Handbook. How To Fight Back Where You Work—and Win* (A Labor Notes Book, 1991), at 134.

5. Id. at 128.

6. Id. at 127.

7. For the background of the ITSs and their largely failed efforts to engage in effective multinational bargaining, see Herbert R. Northrup and Richard L. Rowan, *Multina-*

tional Bargaining Attempts. Multinational Industrial Relations Series, No. 6 (The Wharton School Industrial Research Unit, University of Pennsylvania, 1979). A recent demonstration of support for an American union by a foreign one was the twenty-four-hour strike by the Australian coal miners' union against coal properties owned by the British conglomerate Hansen, whose American subsidiary, Peabody, was struck by the United Mine Workers. See "Miners in Australia Walk Out To Support UMW Strikers in U.S.," *Wall St. J.*, June 4, 1993, at A3, col. 3. Similar international cooperation with foreign unions is attempted during inside game activities.

8. Background on the IMF is found in R.L. Rowan, H.R. Northrup, and R.A. O'Brien, *Multinational Union Organizations in the Manufacturing Industries.* Multinational Industrial Relations Series, No. 7a (The Wharton School Industrial Research Unit, University of Pennsylvania, 1980), at Chapter II.

9. See, e.g., "Caterpillar Locks out 6,000 UAW members To Slash Wages," *IMF News*, No. 13, 1991, at 1. This article states: "The IMF is informing all affiliates organizing Caterpillar workers worldwide about the dispute." Issues No. 3 and No. 4 of the *IMF News* also contain articles on the first page in support of the UAW's version of the Caterpillar dispute.

10. "Solid in the South," *Solidarity* [UAW journal], Jan.-Feb. 1992, at 8. The chief of IG Metall until his recent resignation was a member of the Daimler Benz supervisory board at the time of this strike.

11. La Botz, note 4 at 127-28. (Emphasis in original.)

12. Id., at 127. (Emphasis in original.)

13. See, e.g., "Quaker Chemical: Perseverance Wins a Pact," *Solidarity*, July 1993, at 21, in which it is stated: "They also tried their hands at a mass grievance. 'It worked great . . . .When a guy got fired, everybody left the floor for a good 45 minutes to an hour.'"

14. Corporate campaign use of OSHA and EPA has been very costly to the company, and is now being pressed by the Carpenters' union, which is attacking the company for using a nonunion (open shop) construction firm. See, e.g., Allan R. Gold, "Maine Paper Mill Settles Charges," *N.Y. Times*, July 29, 1988, at B7, col. 3; Steve Cartwright, "IP Strikers Gave Investigators Tips about Alleged Violations," *Kennebec (Maine) J.*, Aug. 12, 1988, at 1, col. 1; "EPA Halts IP's Sales to U.S. Agencies," *Pulp & Paper Week*, May 25, 1992, at 4; "IP in Trouble Again: $2.2 Million Fine," *Pulp & Paper Week*, July 20, 1991, at 2; "Maine Mill To Pay $1.3 Million, Adopt Safe Procedures under OSHA Settlement," *Daily Lab. Rep.* (BNA), No. 13 (Jan. 22, 1993), at A-6; "Carpenters' Union Asks Labor Department to Take Tough Stand on International Paper," *Daily Lab. Rep.* (BNA), No. 114 (June 16, 1993), at A-2; and "BE&K Hits Safety Snag," *Eng. News-Record*, Dec. 13, 1993, at 12.

15. "USWA Widens Bayou Campaign," *Steelabor* [USW journal], July/Aug. 1993, at 9.

16. *Holding the Line in '89. Lessons of the NYNEX Strike* (Labor Resource Center, n.d.), at 28.

17. Id. at 22. (Emphasis in original.)

18. See, e.g., David Anderson, "IP Union Outlines Corporate Strategy," *The Lewiston (Maine) Daily Sun*, Apr. 14, 1988, at 1, col.1; *idem*, "IP Union To Protest in Portland," *The Lewiston (Daily) Sun*, Apr. 21, 1988, at 1, col.3; Steve Cartwright, "IP Strikers To

Picket Boston Bank," *Morning Sentinel*, Apr. 27, 1988, at 1, col. 1; and Ned Porter, "Jay Strikers Spreading Message to Bangor Area," *Bangor Daily News*, Jan. 14, 1988, at 4, col.1.

19. Perry, note 2 at Chapter VII. Even at J.P. Stevens, the seminal corporate campaign case, the union "victory" was largely political rather than substantive because the union won an extremely weak contract which provided only limited arbitration rights and minor wage increases, and failed in the main objective of a multi-plant contract covering facilities not then organized. For a realistic analysis of the Stevens campaign, see Terry W. Mullins and Paul Luebe, "Symbolic Victory and Political Reality in the Southern Textile Industry," *3 Jour. Lab. Research* 81 (1982).

20. Toyota succumbed to demands that it build its plant with union crews even though the area where it was being built, Lexington, Kentucky, was largely nonunion, or "open shop," in construction, and the costs of so doing were estimated as much as 25 percent higher than would have been the case if the original open shop contractors had been retained for the work which they commenced. The key action by the construction unions which led to Toyota's surrender was a proposed demonstration at the Japanese embassy in Washington, D.C., scheduled for the anniversary of the Japanese attack on Pearl Harbor. Thus far, however, attempts of the UAW to unionize Toyota's production and maintenance employees have been completely unsuccessful. See "Toyota Project Enters Final Lap," *Eng. News-Record*, May 5, 1988, at 27; and "Toyota Plant Negotiates with Unions," *Boilermakers Blacksmiths Reporter*, Nov.-Dec. 1986, at 1.

21. "Former Eastern Pilots File Suit Charging ALPA with Blacklisting," *Daily Lab. Rep.* (BNA), No. 12 (Jan. 21, 1993), at A-11; "Former Eastern Flight-Deck Officers File Suit in Federal Court Against ALPA," *Daily Labor Rep.* (BNA), No. 103 (June 1, 1993), at A-12; and "Creating Awareness," *Air Line Pilot* [ALPA journal], Special Issue, Summer 1989, at 14.

22. Bob Harbrant, "Comprehensive Campaigns," in Ken Gagala (ed.), *Union Power in the Future—A Union Activist's Agenda* (Labor Studies Program, New York State School of Industrial and Labor Relations, Cornell University, 1987), at 136.

23. Industrial Union Department, AFL-CIO, *The Inside Game: Winning with Workplace Strategies* (1986), at foreword page.

24. La Botz, note 4 at 117. See also, Id. at 34; Jack Metzgar, "In-Plant Strategies: 'Running the Plant Backwards' in UAW Region 5," *Labor Research Review*, Fall 1985, at 35; and Jerry Tucker, "In-Plant Strategies," in Gagala, note 22 at 151.

25. See La Botz, note 4 at 120; IUD, note 23 at 37, 40; and "Douglas Aircraft Reinstates 300 Workers Suspended for Slowdown," *Daily Lab. Rep.* (BNA), No. 116 (June 18, 1987), at A-2.

26. See "Officers of United Auto Workers Local 282 Say They Were Betrayed by Moog Automotive, Inc," *United Press International*, Feb. 8, 1985; and Dave Fusaro, "UAW Fears Moog's New Facility Will Reduce Work Force," *Metalworking News*, Apr. 2, 1990, at 5. Information was also obtained in a telephone interview with the Moog department of human resources, July 12, 1993.

27. Telephone interview, personnel department, Schwitzer, June 7, 1993.

28. La Botz, note 4 at 23, seems to exaggerate the union success at Vought. For more detailed, and it is believed more accurate, summaries of the controversy, see "UAW

Prepares To Strike Vought," *United Press International*, June 29, 1985; and "UAW Ratifies Contract 13 Hours after Strike Begins," *United Press International*, June 30, 1985.

29. See La Botz, note 4 at 121, for the union view of this inside game activity; and for press coverage and the key company statement, see "Bell Helicopter Statement Regarding Labor Situation," *Southwest Newswire, Inc.*, Aug. 2, 1984; "Bell Helicopter, Unions Agree To Talk," *United Press International*, Aug. 21, 1984; and "UAW Members Accept Contract Offer from Bell Helicopter," *United Press International*, Sept. 14, 1984.

30. "Douglas Aircraft Hires Replacement of Strikers," *N.Y. Times*, Feb. 2, 1984, at A12, col. 4; Jeff Bailey and John Curley, "McDonnell Sets Pact with Local Workers," *Wall St. J.*, Feb. 10, 1984, at 4, col. 3; and "Auto Workers Vote To End Aerospace Strike; Accept Terms Imposed by McDonnell Douglas," *Daily Lab. Rep.* (BNA), No. 29 (Feb. 13, 1984), at A-6.

31. "Douglas Aircraft Reinstates 300 Workers Suspended for Slowdowns," *Daily Lab. Rep.* (BNA), No. 116 (June 18, 1987), at A-2.

32. "Incumbent Local President Ousted in UAW Election at Douglas Aircraft," *Daily Lab. Rep.* (BNA), No. 172 (Sept. 8, 1987), at A-7.

33. "Growing Numbers of Unions Adopting In-Plant Actions To Avoid Strikes," *Daily Lab. Rep.* (BNA), No. 151 (Aug. 6, 1991), at C-4.

34. "McDonnell Douglas Declares Impasse," *Daily Lab. Rep.* (BNA), No. 141 (July 23, 1991), at A-16; and "UAW Members Ratify Contract with McDonnell Douglas Plant," id., No. 211 (Oct. 31, 1991), at A-13.

35. See, e.g., Jeff Cole, "McDonnell Finds It Ever Harder To Cope in Airliner Business," *Wall St. J.*, Jan. 28, 1993, at A1, col.1.

36. "Growing Numbers of Unions . . . ," note 33 at C-1. (Emphasis supplied.) Lewin is Director, Institute of Industrial Relations, University of California, Los Angeles.

37. Id. at C-4.

38. Service Employees International Union, *Contract Campaign Manual* (n.d.) at 3-4. Hereinafter cited as SEIU *Manual*.

39. "Growing Numbers of Unions . . . ," note 33 at 4.

40. These were designated Charge Nos. 33-CA-9876-1, 2, 3, and 4.

41. "NLRB, Caterpillar Agree on Settlement of Some Unfair Labor Practice Charges," *Daily Lab. Rep.* (BNA), No. 226 (Nov. 26, 1993), at A-5.

42. 29 U.S.C. §151 et seq.

43. SEIU *Manual*, note 38, at 3-1.

44. Id. at 3-4. (Bold and emphasis in original.)

45. *Holding the Line in '89*, note 16 at 9.

46. Information from the company; and "One Day Longer," *Solidarity*, July 1993, at 25. Such signs can get ugly or repugnant. One at Koch showed a worker at a doctor's office with the proposed contract sticking up his rear. The NLRB declined to issue a complaint about this incident after the company banned it.

47. See, e.g., "Quaker Chemical . . . ," note 13.

48. Robert L. Rose and Alex Kotlowitz, "Back to Bickering. Strife Between UAW and Caterpillar Blights Promising Labor Idea," *Wall St. J.*, Nov. 23, 1992, at A1, col. 1.

49. SEIU *Manual*, note 38 at 3-9.

50. La Botz, note 4 at 11. (Bold in original.)

51. SEIU *Manual*, note 38, at 3-9.

52. La Botz, note 4, at 15.

53. SEIU *Manual*, note 38 at 3-11. (Bold in original.)

54. Stanley Franklin, "As Strikes Strike Out, Unions Try Other Tactics," *Chicago Tribune*, Sept. 27, 1992, at 10.

55. Id. at 8.

56. "Growing Numbers of Unions . . . ," note 33 at 4.

57. La Botz, note 4 at 139.

58. Id. at 12. (Emphasis supplied.)

59. Id. at 12. (Emphasis in original.)

60. A copy of this sign can be found in *Solidarity*, Nov. 1992, at 32. Caterpillar recently acquired the land adjacent to one of its plants where such a sign was erected by the UAW, and had the sign removed.

61. See Reid Magney, "Governor Sees No 'War Zone' in Illinois," (Decatur, IL) *Herald & Review*, June 28, 1993, at A4, col. 1.

62. An examination of the UAW literature during the current situation at Caterpillar and that of the AIW in the current dispute at A.E. Staley illustrate this pattern of union utilization of harsh warlike terminology in communications.

63. La Botz, note 4 at 127.

64. SEIU *Manual*, note 38 at 3-6. (Bold in original.)

65. *Solidarity*, Sept. 1993, at 17.

66. *Holding the Line in '89*, note 16 at 16.

67. John Koten and Judith Valente, "United Air Gets Purchase Offer by Pilots Union," *Wall St. J.*, Apr. 6, 1987, at 1, col. 1; "Rising UAL Turmoil Threatens Ferris's Job as the Chief Executive," *Wall St. J.*, Apr. 17, 1987, at 1, col. 1; Laurie P. Cohen and Judith Valente. "Coniston To Seek Control of Allegis [UAL] Board, Says It Would Sell All or Part of Concern," *Wall St. J.*, May 27, 1987, at 2, col. 1; Agis Salpukas, "Allegis Adding $3 Billion of Debt To Shield Itself Against Takeover," *N.Y. Times*, May 29, 1987, at A1, col. 3; and "The Unraveling of an Idea. How Dick Ferris' Grand Plan for Allegis Collapsed," *Bus. Wk.*, June 22, 1987, at 42.

68. Marilyn Geewax, "IAM Chief: Fight To Go on Even if It Brings Eastern Down," *Atlanta Constitution*, Apr. 22, 1988, at 1C, col. 1.

69. Id.; and "Creating Awareness," note 21.

70. Agis Salpukas, "A Fierce Struggle Kills Eastern Air," *N.Y. Times*, Jan. 20, 1991, at 22, col. 1. Employment data are those at Eastern prior to the strike.

71. "Eastern Shutdown Provides Sense of Relief, Machinists' Leader Says," *Daily Lab. Rep.*, No. 15 (Jan. 23, 1991), at A-10.

72. Agis Salpukas, "Eastern's Pilot Union Outs Chief," *N.Y. Times*, Sept. 9, 1989, at 29, col. 1; and Bridget O'Brian, "Eastern Airlines Pilots Recall Head of Union," *Wall St. J.*, Sept. 11, 1989, at A4, col. 3. In fact, ALPA later called off its sympathy strike, as did the flight attendants, but the Machinists held on to the bitter end. See "Pilots, Flight Attendants End Walkout at Eastern," *Aviation Week and Space Technology*, Dec. 4, 1989, at 33.

73. Salpukas, note 70.

74. Peter T. Kilborn, "Union Shows How To Fight in West Virginia," *N.Y. Times*, May 8, 1992, at A12, col. 1; and "How the USW Hit Marc Rich Where It Hurts," *Bus. Wk.*, May 11, 1992, at 42.

75. See, e.g., the pamphlets distributed in the Staley campaign by the AIW entitled, "Deadly Corn" and "Crisis in Decatur."

76. A few articles early in the Caterpillar-UAW strife attempted to personalize the dispute, e.g., between Fites and the UAW secretary-treasurer, Bill Casstevens, but such publicity died down rather early. For examples, Robert R. Rose and Alex Kotlowitz, "Caterpillar Chairman and Strike Leader Share One Common Trait: Stubbornness," *Wall St. J.*, Apr. 10, 1992, at B6, col. 1; and "Caterpillar' Don Fites: Why He Didn't Blink," *Bus. Wk.*, Aug. 10, 1992, at 56.

77. "Controversial T-Shirts OK at Caterpillar," *Daily Lab. Rep.* (BNA), No. 86 (May 6, 1993), at A-17.

78. Ted Kleine, "AIW Pickets Staley President's Turf," (Decatur, IL) *Herald & Review*, July 10, 1993, at A4, col. 1.

79. "Labor Targets Demonstration at Home of Margolis," PR Newswire (UAW press release), Apr. 11, 1988; and "Colt Strikers Protest," *Newsday*, Apr. 14, 1988, at 48.

80. See, e.g., La Botz, note 4 at 13, and the cartoons throughout the publication.

81. SEIU *Manual*, note 38 at 3-6. (Bold in original.)

82. Louis Uchitelle, "Labor Draws the Line in Decatur," *N.Y. Times*, June 13, 1933, at F1, col. 3. Although this is a good example of what unions mean by working to rule, it is doubtful if this story is accurate because the worker, by his admission, would have subjected himself to discipline, or even discharge. It is believed that he had not been working in the described job for some months when he gave the interview. The UAW had this article reproduced and distributed it widely.

83. SEIU *Manual*, note 38 at 3-10. (Bold in original.)

84. "Growing Numbers of Unions . . . ," note 33 at 4.

85. Asra Q. Nomani, "United Air's Performance Has Taken Big Dive, Hurt by Pilots' Union Action," *Wall St. J.*, Sept. 18, 1989, at A4, col. 1. See also, Randall Smith and Judith Valente, "Can UAL Pilots Bury Their Old Animosities as Firm's Co-Owners," *Wall St. J.*, Sept. 18, 1989, at A1, col. 1.

86 Carl H. Lavin. "New Jet, Left Idle, Symbolizes Pilots' Dispute with United," *N.Y. Times*, July 9, 1989, at 18, col. 3. This ALPA action would appear to be a clear violation of the Railway Labor Act, which both forbids unilateral action of the parties until they are released by the National Mediation Board, and further requires that "minor disputes," that is, grievances or contract interpretation disagreements, be referred to compulsory arbitration if not settled by the parties. See Herbert R. Northrup, "The Railway Labor Act—Time for Repeal?," 13 *Harv. Jour. of Law and Public Policy*, 441, 451-61, and 470-78 (Spring 1990). Apparently, United was too fearful of further ALPA action to avail itself of the several legal remedies available in this situation.

87. *Briggs & Stratton Corp. v. United Paperworkers Int'l Union Local 7232*, U.S.D.C., E.D. Wis., No. 93-C-1087, complaint filed 10/7/93, preliminary injunction issued 10/29/93; and "United Paperworkers To Appeal Ending Slowdown at Milwaukee Manufacturer," *Daily Lab. Rep.* (BNA), No. 210 (Nov. 2, 1993), at A-3.

88. Susan Hightower, "Airline Returning to Normal," *Phila. Inquirer*, Nov. 24, 1993, at C1, col. 1.

89. Id.

90. Id.

91. David Dishneau, "Refused Offer Sparks Slowdown at United," Associated Press dispatch, *Phila. Inquirer*, Nov. 23, 1993, at C2, col.3.

92. James S. Hirsch and Michael J. McCarthy, "Travelers Face Slowdown at United Air as Rival American Resumes Most Flights," *Wall St. J.*, Nov. 24, 1993, at A4, col. 3.

93. "The Airline Settlement: Not a Solution," editorial, *N.Y. Times*, Nov. 25, 1993, at A26, col. 1.

94. Michael J. McCarthy, UAI and Two Biggest Unions Negotiate a Sweetened Offer for Majority Stake, *Wall St. J.*, Dec. 16, 1993, at A2, col. 3, A8, col. 6.

95. Metzgar, note 24.

96. "Staley Locks Out Union Workers Claiming Acts of Vandalism, Sabotage," *Daily Lab. Rep.* (BNA), No. 124 (June 30, 1993), at A-6; and Gary Minich, "Staley Locks Out AIW," (Decatur, IL) *Herald & Review*, June 28, 1993, at A1, col. 1.

97. Id.; and Louis Uchitelle, "800 Workers Locked Out by Staley," *N.Y. Times*, July 29, 1993, at D6, col. 1.

98. Id.

99. "Losses in Benefits Total $320 a Month," (Decatur, IL) *Herald & Review*, June 30, 1993, at A4, col. 3.

100. Although Illinois does not provide for unemployment compensation during strikes, it has by administrative action paid such compensation to strikers or locked-out employees when the affected plant is operating at a near capacity rate.

101. "A.E. Staley Will Hire Replacements for Locked-Out Workers in Illinois," *Daily Lab. Rep.* (BNA), No. 133 (July 14, 1993), at A-2. When the company announced that replacements would be hired, the president of AIW Local 837 intimated violence would result: "If they really hire replacement workers, it will be an emotional event, no doubt . . . . We have advocated non-violence, but we are concerned and the community police and city governments are very worried about the situation." To which the

company replied: "Given the fact that these are temporary replacements—and the jobs were advertised that way—any potential for violence should be minimized." (See above citation.)

102. "A.E. Staley Settles Union Charges of Unlawful Surveillance of Employees," *Daily Lab. Rep.*, No. 198 (Oct. 15, 1993), at A-7.

103. Staley management published its production records for 1993 as compared with 1991-92 in its publication, *KEYNOTES*, August 4, 1993. This showed a precipitous decline in productivity in 1993 with a substantial increase in surcharges and penalties paid to the Sanitary District of Decatur, which it charged were attributable to a list of acts of sabotage also published in this issue. In the August 18th issue, following the lockout, the company reported the highest grind in the history of the company.

104. "A.E. Staley Settles Union Charges . . . ," note 102 at A-8.

105. "Tempo Update," *Chicago Tribune*, Tempo sec., at 1.

106. "Why After 90 Years in Business, Did CIPS Lock Out Union Employees," company advertisement, *Journal Star* (Peoria), June 29, 1993; and "CIPSCO Profit Falls in Quarter," *Journal Star* (Peoria), Aug. 10, 1993, at B1, col. 4. CIPSCO is the acronym for the holding company, CIPS for the operating utility.

107. "1 Union Still Locked Out at CIPS, While Another Settles," *Journal Star* (Peoria), June 17, 1993, at A3, col. 1; and "Illinois Utility Ends Employee Lockout; No Contract between Company and Union," *Daily Lab. Rep.* (BNA), No. 165 (Aug. 27, 1993), at A-7.

108. United Press International dispatches, "Union Members Walk Off Jobs Following Overtime Dispute," Sept. 16, 1993; "Electrical Workers End CIPS Walkout," Sept. 17, 1993; "Labor Relations Improve at 2 Utilities," Oct. 15, 1993; and "Utility Says Union Members Refuse Emergency Assignments," Oct. 4, 1993.

109. "IBEW Reaches Tentative Pact with Power Company," *Daily Lab. Rep.* (BNA), No. 234 (Dec. 8, 1993), at A-17; and "IBEW Members Reject Proposed Contract from Central Illinois Public Service Co.," id., No. 241 (Dec. 17, 1993), at A-10.

110. See note 31, and accompanying text.

111. Robert L. Rose, "UAW Ends Strike Against Caterpillar After Three Days," *Wall St. J.*, Nov. 15, 1993, at A4, col. 6; and "Caterpillar Workers Strike To Protest Unfair Labor Practices," *Solidarity*, Dec. 1993, at 17, col. 1. (Bold in original.)

112. Gary Minich, "Protest Idles Staley Workers," (Decatur, IL) *Herald & Review*, June 17, 1993, at A1, col. 1; and Minich, Staley Opens Gates to Union," id., June 18, 1993, at A1, col. 1.

113. Tucker, in Gagala, note 22, at 157.

114. In *Fansteel Metallurgical Corp. v. NLRB*, 306 U.S. 240 (1939), the U.S. Supreme Court determined this issue.

115. "Justice Department Files Brief Supporting $52 Million in Fines Against Mine Workers," *Daily Lab. Rep.* (BNA), No. 184 (Sept. 24, 1993), at A-7.

116. Most of the skimpy literature on this sort of union activity relates to treatment of those who have crossed picket lines, but the situations are certainly analogous and the same types of harassment are found. Moreover, in some instances, e.g., Caterpillar

in 1992-93, a strike preceded the inside game activity and during the strike there was significant picket line crossing. See "About 300 Caterpillar Strikers Have Crossed Picket Lines, Company Says," *Daily Lab. Rep.* (BNA), No. 67 (Apr. 7, 1992), at A-10.

An excellent description of such harassment is found in the decision, *Lee Rakestraw, et al. v. United Airlines, Inc., and Air line Pilots Assoc'n, Int'l*, 765 F. Supp. 474 (D.N.D.Ill. 1991); reversed on other grounds, 989 F.2d 944 (7th Cir. 1992); cert. denied, 114 Sup. Ct. 286 (1993). See also, "Caterpillar Helps Employees in Suits Against UAW," *Daily Lab. Rep.* (BNA), No. 99 (May 25, 1993), p. A-18; "Former Eastern Pilots File Suit Charging ALPA with Blacklisting," *Daily Lab. Rep.* (BNA), No. 12 (Jan. 21, 1993), at A-11; "Former Eastern Flight-Deck Officers File Suit in Federal Court Against ALPA," *Daily Lab. Rep.* (BNA), No. 103 (June 1, 1993), at A-12; Gregory T. Davis, "Strike Is Over, But Violence Is Not," *Rumford (Maine) Times*, Feb. 25, 1987, at 3, col. 4 (after a strike at a Boise Cascade paper manufacturing plant); and "The scabs are going to be gone . . . ;" "It's going to be difficult to work in that plant; we can make it work if we can overcome the problems." (comments of union officials after strike end at Ravenswood, West Virginia, aluminum plant with agreement that permitted picket line crossovers to be first hired for jobs after strikers were rehired), *Steelabor*, May/June 1992, at 8, col. 1. The late Peter Nash, then labor counsel to Ravenswood, however, advised this author that, as of July 9, 1993, the company has employed only replacement workers as jobs open, that despite a few cases, their integration has gone well, that 360 of the 1,400 person work force come from this group, and that until the approximate 350 additional replacement employees who desire employment and have agreed to waive any litigation against the company are hired, no one else will be hired unless special skills are needed that are not found among the replacements. (Telephone interview, July 9, 1993). If the Ravenswood situation continues to work out in this manner, it will be, in this author's experience, an unusual one.

117. See, e.g., La Botz, note 4 at Chapter V, which explains how to utilize various techniques to destroy the usefulness of such programs or to withdraw from them. The same author at 15 cites "Pulling out of United Way" as a technique to embarrass management.

There is a large literature by union adherents which denigrates employee involvement, union-management cooperation, quality circles, teamwork, and other cooperative programs. See, e.g., Arthur B. Shostak, *Robust Unionism* (ILR Press, Cornell University, 1991), at 221; Kim Moody, *An Injury to All* (Verso, 1988), at 187; Mike Parker, *Inside the Circle: A Union Guide to QWL* (South End Press, 1985); and Mike Parker and Jane Slaughter, *Choosing Sides: Unions and the Team Concept* (A Labor Notes Book, 1988).

118. At Staley, the AIW boycotted the fifth annual "Cabin Fever" party of the Staley Employees Activity Committee which was "wholly planned and organized by the employee committee and not connected to the Staley Management." ("AIW To Boycott Company Party," [Decatur, Ill] *Herald & Review*, Mar. 14, 1993, at A7, col. 4) At the Aurora, Illinois, plant of Caterpillar, UAW ". . . officials who once pushed cooperation canceled joint programs and urged their members to join in a work-to-rule campaign to slow production." (Rose and Kotlowitz, note 48.)

119. The union literature in the current A.E. Staley situation is particularly virulent in regard to safety and health matters, terming the operation "Dangerous and Dirty," issuing a pamphlet entitled "Deadly Corn," etc. (copies of documents in author's possession). OCAW utilized the health and safety issue throughout the sixty-six-month

long lockout at the BASF Geismar, Louisiana, plant, although the settlement terms were largely those desired by the company. OCAW put continued pressure on state safety officials, put up road signs warning of the dangers in the plant, and put pressure on the company's German management much like at this time the AIW is attempting to pressure Tate & Lyle, the British owners of Staley.

120. See, e.g., Peter Jackson, "Inspection Reveals No Reason for Shutting Down IP Mill," *Kennebec (Maine) J.*, Mar. 9, 1988, at 1, col. 1.

121. SEIU *Manual*, note 38 at 3-21.

122. Copies of the document in author's possession. One such pamphlet stated on the cover that "All Skilled Tradesmen, E-[executive] Board Members, Stewards, Safety Comm. **Are Scheduled to Attend!**" (Bold in original.)

123. La Botz, note 4 at Chapter 4.

124. Shostak, note 117 at Chapter 3.

125. Michael Eisenscher, *Creative Persistent Resistance* (CPR) (the Author, 1990), n.p.

126. SEIU *Manual*, note 38 at 3-21, in which safety and health is listed first among areas which "can be investigated."

127. See ALPA's account of the program, "Creating Awareness," note 21; Laurie McGinley and Paulette Thomas, "U.S. Finds Eastern, Continental Safe, But Cautions Labor Conflict Poses Risks," *Wall St. J.*, June 3, 1988, at 3, col.1; Christopher P. Fotos, "FAA Officials Say Eastern Safety Matches That of Other Airlines," *Aviation Week and Space Technology*, Aug. 7, 1989, at 80; and "Reality Check," *Bus. Wk.*, Oct. 25, 1993, at 6, which points out that "Many of Eastern's safety violations occurred before he [Lorenzo] bought it in 1986."

128. "American Airlines Wins Injunction Against Sickout, Job Actions by Pilots," *Daily Lab. Rep.* (BNA), No. 250 (Dec. 28, 1990), at A-6.

129. *American Airlines, Inc. v. Allied Pilots Ass'n*, et al., U.S. D.C., N.D. Texas, Fort Worth Div., Case No. CA-4-90-986E (Dec. 26, 1990).

130. *Daily Lab. Rep.* (BNA), No. 250 (Dec. 28, 1990), at A-6.

131. "Transportation Secretary Urges American To Make Strike-Delay Information Available," *Daily Lab. Rep.* (BNA), No. 223 (Nov. 22, 1993), at A-11.

132. In Philadelphia, the former regional director of OSHA was more than sympathetic to union demands for inspections. He was convicted of ordering arbitrary inspections and citations against nonunion building contractors after accepting bribes from the also convicted head of the local Roofers' union. See "Prison Sentence for Former OSHA Official in Philadelphia Upheld by Third Circuit," *Daily Lab. Rep.* (BNA), No. 142 (July 25, 1988), at A-3.

133. "OSHRC Judge Charges 'Exploitative' Use of Case, Proposes To Exclude Worker Group," *Daily Lab. Rep.* (BNA), No. 51 (Mar. 16, 1988), at A-9.

134. See Lin Nelson and Anne Rabe, "A Matter of Time: Building a Labor-Environment Coalition in New York State," 2 *New Solutions* 25 (Fall 1991). This journal is advertised as one of "Environmental and Health Policy," and according to its declaration, the publisher is an officer of OCAW, and it is published "in association with" OCAW. It is believed to be funded by grants from the U.S. Occupational and Health

Administration, which underwrite a considerable portion of union OSHA activities.

135. As pointed out in note 14, complaints to the EPA have been widely utilized against International Paper Company as a result of strikes in 1987-88, and more recently because the company has utilized nonunion ("open shop") construction companies. See, e.g., "[Maine] Senate Puts Off Action Calling for IP closing," *Bangor Daily News*, Feb. 24, 1988, at 1, col. 1; "IP's Environmental Problems Stacking Up," *Pulp & Paper Week*, Apr. 22, 1991, at 4; and "Carpenters' Union Asks Labor Department To Take Tough Stand on International Paper," *Daily Lab. Rep.* (BNA), No. 114 (June 16, 1993), at A-1.

136. See, e.g., Frances Frank Marcus, "Labor Dispute Ends with Ecological Gain," *N.Y. Times*, Jan. 3, 1990, at A16. Although the OCAW claims, and this article accepts, that OCAW's stress on environmental actions finally won the union reinstatement of all employees who desired to return, the company notes that the strike was settled only after the NLRB decision that the lockout was legal was affirmed by the courts, and that it had previously offered reinstatement on the same terms that the union finally accepted.

137. See "Northern Calif. Pipe Trades To Expand Successful Market Recovery Program," 36 *Construction Lab. Rep.* (BNA) 611, (Aug. 15, 1990); "Unions File Environmental Suit Against Union Oil of California," 38 *Construction Lab. Rep.* (BNA) 500 (July 15, 1992); "Plumbers Oppose Oregon Port Project on Environmental Grounds," 38 *Construction Lab. Rep.* (BNA) 286 (May 13, 1992); "Pipe Trades' 'TAMETIC' Program Aimed at the Industrial Company," 38 *Construction Lab. Rep.* 159 (Apr. 15, 1992); and "Refineries Retooling To Create Bay Area Jobs," *Daily Lab. Rep.* (BNA), No. 175 (Sept. 13, 1993), at A-15.

138. See, e.g., La Botz, note 4 at 44. In the current Caterpillar and Staley situations, numerous complaints and charges have been filed, and hearings in regard to Caterpillar are already underway.

139. See Perry, note 2 at Appendix III.

140. Id. at Appendix II.

141. See, e.g., IUD study, note 23 at 30; and La Botz, note 4 at 15, 72.

142. See note 17 and accompanying text.

143. Gregory A. Patterson, "Nordstrom, Inc. Sets Back-Pay Accord on Suit Alleging 'Off the Clock' Work," *Wall St. J.*, Jan. 12, 1992, at A2, col. 2.

144. "Seattle Area Nordstrom Employees Reject Continued Representation by UFCW," *Daily Lab. Rep.* (BNA), No. 140 (July 22, 1991), at A-11; and "UFCW Ends Nordstrom Campaign in Northwest," *idem*, No. 153 (Aug. 7, 1992), at A-14.

145. Kevin G. Salwen, "Food Lion To Pay Big Settlement in Labor Case," *Wall St. J.*, Aug. 3, 1993, at A3, col. 3; and "Food Lion To Pay $16.2 Million in Record FLSA Settlement with DOL," *Daily Lab. Rep.* (BNA), No. 148 (Aug. 4, 1993), at AA-1. Three other supermarkets have been fined in this regard, Publix Super Markets, Great Atlantic and Pacific Tea Company, and Winn-Dixie. Public and Winn-Dixie operate nonunion. Winn-Dixie noted that some violations were for permitting teenagers to toss paper into nonoperating cardboard balers. See *Daily Lab. Rep.* (BNA), No. 144 (July 29, 1993), at A-6; No. 157 (Aug. 17, 1993), at A-8; and No. 206 (Oct. 27, 1993), at A-16.

146. See note 16 and related text.

147. See Charles R. Perry and Delwyn H. Kegley, *Disintegration and Change: Labor Relations in the Meat Packing Industry*. Labor Relations and Public Policy Series, No. 35 (The Wharton School Industrial Research Unit, University of Pennsylvania, 1989); and "How OSHA Helped Organize the Meatpackers," *Bus. Wk.*, Aug. 29, 1988, at 82.

148. "Colt Workers Strike Gunmaker," *United Press International*, Jan. 24, 1986; "Union Leaders Call for Boycott as Strikers Mark 1st Anniversary," *Associated Press*, Jan. 24, 1987; "Connecticut Legislators Seek Federal Ban on Colt Contracts," *United Press International*, Jan. 28, 1987; "Army Drops Colt as Producer of Rifle," *N. Y. Times*, Oct. 3, 1988, at B4, col. 2; Kim S. Martin, "4 Years Later, Colt Strikers Are Part Owners," *Phila. Inquirer*, Feb. 28, 1990, at 5-D, col. 1; Frank Swoboda, "Colt Firearms Sold in UAW-Led Buyout; Connecticut Aids Deal for Strike-Torn Firm," *Wash. Post*, Mar. 23, 1990, at 50, col. 1; "Colt Lays Off 20 Percent of Its Work Force," *Associated Press*, Dec. 3, 1991; and Michael Remez, "Colt's Files for Chapter 11 Protection; Colt's Turns to Bankruptcy Court; 925 Jobs, State Money at Stake," *Hartford Courant*, Mar. 20, 1992, at A1, col. 1.

149. For this statement of Wheeler, see "Army Drops Colt . . . ," note 148; and *Fortune*, Nov. 7, 1988, at 16.

150. For this statement of Wheeler's, see Remez, "Colt's Files for Chapter 11 . . . ," note 148.

151. "Colt's Manufacturing Company," *Wall St. J.*, Dec. 15, 1993, at B4, col. 4.

152. See, e.g., "Union Files SEC Complaint Alleging Misleading Report," *Wall St. J.*, Sept. 23, 1993, at A4, col. 4.

153. SEIU *Manual*, note 38 at 3-10.

154. Bob Bouyea, "Impact of In-Plant Tactics Questioned," *Journal-Star* (Peoria), June 17, 1992, at 2, col. 1.

155. Id.

156. See note 125 for citation to Eisenscher's work.

157. Tucker, in Gagala, note 22 at 149.

158. Jack Metzgar, letter to editor, *Bus. Wk.*, Sept. 7, 1992, at 12. Metzgar is the author of the article, "Running the Plant Backwards in UAW Region 5," cited in note 24.

159. SEIU *Manual*, note 38 at 3-6.

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DAILY LABOR REPORT

SEPTEMBER 20, 1994

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SECTION: CURRENT DEVELOPMENTS.

TITLE: SUNLAND SIGNS UNION CONTRACTS, BOILERMAKERS DROP ULP CHARGES.

Sunland Construction Co. Inc. and the International Brotherhood of Boilermakers have signed an agreement resolving a long-running organizing dispute, the parties announced Sept. 16. Under the terms of the agreement, approved by the National Labor Relations Board, the union agreed to withdraw unfair labor practice charges in various cases pending before the board, and the company agreed to recognize the union as the representative of boilermaker craft workers and to sign regional contract agreements.

Under the terms of the settlement, Sunland also agreed to pay $ 500,000 to the international union for organizing and legal expenses, union sources explained, and $ 1.6 million to 245 workers who became victims of alleged employment discrimination when Sunland refused to hire them because they were union members. The effective date for disbursement of the funds is Oct. 1, according to union sources.

Sunland, an industrial construction firm based in Houston, had been a target of the Boilermakers' "Fight Back" organizing campaign since 1988, according to Bill Creeden, director of organizing for the international union. The campaign was focused on organizing workers at Sunland projects in Alabama, Arkansas, Louisiana, and Mississippi, he said. "We wanted to bring them back into the [union] fold," he said.

The settlement includes matters addressed by the NLRB in 1992 (142 LRRM 1025) in a ruling in which the board reaffirmed its policy that paid union organizers are "employees" entitled to protection under the National Labor Relations Act.

Sunland agreed to sign a national recognition agreement and the Boilermakers' southeastern and south central regional contract agreements as well as the petrochemical and food processing rider to the south central states' agreement as part of the settlement. The company also agreed to work under local or regional Boilermaker agreements if the company takes on work in other parts of the country. Under the agreements, Sunland agreed to recognize the union as the exclusive representative for boilermaker craft workers, while workers employed by Sunland in other crafts will remain nonunion, a settlement negotiator explained. Other crafts used by Sunland on its projects are carpenters and pipe fitters, according to sources involved in the settlement.

"This is what we wanted when we started--a contract," said Creeden.

Included in the settlement is a statement that no violations of the law are admitted and that the settlement offers an end to protracted and expensive litigation.

EXHIBIT I

DAILY LABOR REPORT, SEPTEMBER 20, 1994

Sunland is the wholly owned merit shop arm of Babcock and Wilcox of Barberton, Ohio.

LANGUAGE: ENGLISH

UNION ORGANIZATION

IN THE

CONSTRUCTION INDUSTRY

IBEW Special Projects Department
1125 15th Street, NW
Washington, DC 20005

EXHIBIT J

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UNION ORGANIZATION IN THE CONSTRUCTION INDUSTRY

An intelligent discussion of organizing in the construction industry demands an understanding of common industry practices and problems.

Most craftsmen in the construction industry are part of a constant ebb and flow of employees from employer to employer and from job to job. They may be employed by a dozen different contractors over a relatively short period of time or, as the exception, they may be employed by a shop contractor or on a large project for several years. Craftsmen who work together on one job may not work together again for long periods of time or maybe never again.

Economic considerations prohibit the continued employment of craftsmen during periods when the contractor has no work. As the contractor's work is completed, excess craftsmen are returned to the construction labor market for prospective employment by other contractors whose work is just beginning or is increasing. Therefore, no single contractor can be identified as their employer in the usual sense or usage of the word. Instead, the construction labor market consists of a pool of craftsmen from which all of the contractors in the trade draw their labor based on need, training or experience, and availability.

It is readily apparent that **common practices and problems in the construction industry prohibit union organization based on definite employers with stable work forces of identifiable employees even though this is the commonly used organizational procedure in most other industries**. Instead, union organization in the construction industry must be directed toward recruiting, initiating, and controlling a meaningful majority of the craftsmen who make up the construction industry labor pool from which all contractors draw their employees. Historically, successful organization has followed craft jurisdictional and geographical lines. Once organization is accomplished, if a contractor then utilizes this pool of craftsmen who are members of their union, the union will then represent a majority of the contractor's employees and may require effective collective bargaining.

The union which controls a meaningful majority of the qualified construction manpower in its geographical or craft jurisdiction will obviously control its work. This basic truth has remained constant throughout the entire history of our American construction unions and will continue constant into the foreseeable future.

THE GOAL, THEN, IN UNION ORGANIZATION OF THE CONSTRUCTION INDUSTRY IS THE ORGANIZATION AND MAINTENANCE OF A LOOSE MONOPOLY OF THE MANPOWER POOL.

TOP-DOWN/BOTTOM-UP

There are two basic ways to organize construction bargaining units; (1) top-down and (2) bottom-up.

Under some circumstances, it is possible for the union to accomplish its immediate organizational objectives without recruiting the support of, or taking into membership, the employees of nonsignatory contractors. Thus, **top-down organizing has as its primary focus the construction owner/user and the construction employer.** It requires a program which may include selling the advantages of union construction over nonunion construction (quality, speed, price, etc.); applying financial and/or political pressure; boycotting the owner's or user's product or business; joining forces with special interest groups (environmentalists, senior citizens, consumer groups, etc.) to oppose the owner's or user's objectives (construction permits, power company rate increases, government regulations, etc.); picketing; selling the advantages of being able to bid all work instead of just nonunion work; and other creative and effective methods.

Bottom-up organizing is directed at the craftsman, rather than the owner/user or contractor, and envisions recruiting and taking into membership all who are employed in the construction industry. This approach is sometimes considered to be old-fashioned since it was the method used in the original organization of the building and construction trades unions. Properly employed, it results in the formation and perpetuation of a loose monopoly of qualified tradesmen. Thus it ensures control of the work and allows for imposition of uniform industry standards.

When unions control a meaningful majority of the construction labor pool, top-down organizing works well simply because many contractors cannot obtain an adequate supply of craftsmen except through union hiring halls. When unions allow their majority control to erode, as has happened in the recent past, contractors no longer need union craftsmen and **top-down organizing becomes difficult if not impossible.** Bottom-up organizing then becomes the only viable choice in most situations.

CUSTOMERS AND MANPOWER
(The vital ingredients)

What does a journeyman take with him when he leaves his employer to start his own business? The obvious answer and the first indispensable ingredient, other than the knowledge and experience stored in his head and hands, is **customers.** Once the customers necessary to a fledgling business are acquired, growth is possible only through expansion of that customer pool.

In the typical sweat-equity firm, as the contractor becomes more successful and expands, more and more time is devoted to obtaining, cultivating, and retaining customers. Thus, the capitalistic journeyman-turned-employer confronts a shrinking ability to personally estimate jobs, visit job sites, or run work. This heightens the demand and necessity for the second indispensable ingredient, **qualified manpower.** Obtaining and retaining it becomes vital to success as the contractor becomes more and more reliant upon others to oversee and perform the actual construction responsibilities.

Simple common sense should tell us that, if **customers** and **qualified manpower** are indispensable to success, the most effective organizing methods and the most necessary research activities center on these two items. **Deny the contractor his customers and/or his qualified manpower, and he immediately ceases to be a factor in the industry.**

Effective bottom-up organizing makes top-down organizing possible in many instances. Imagine that you are an architect, engineer, general contractor, construction manager, owner, or some other party with a direct stake in the

development and completion of a particular construction project and that you know without doubt, if you build nonunion or if you use a particular open-shop employer, the job will experience aggressive organizing efforts. Certainly this would give the union powerful leverage in convincing you that a quality, timely, and economical job should employ organized labor.

The construction organizer has witnessed firsthand the fears, frustrations, and costs resulting from delays and faulty work. He knows that contractors who do not, or cannot, avoid or cope with these problems are not successful. Getting future work is often directly dependent on delivering quality work, within budget, and on time.

Experienced construction owners and users demand that contractors minimize quality, budget, and time problems; therefore, reputation is essential. Since owners or users often have the right to terminate or replace contractors at will, effective and aggressive organizing efforts can determine whether contractors are allowed to finish particular jobs, earn profits, obtain additional work, or even remain in the jurisdiction or industry. From the organizer's perspective, achieving any or all of these negative results is next preferable to obtaining signed collective bargaining agreements.

Unlike industrial unions, unions representing craftsmen engaged in the primary construction industry maintain apprenticeship and training programs, operate hiring halls, and engage in other activities typical of a labor broker. Their function is to supply craftsmen to contractors. Thus, by making life difficult for nonsignatory contractors, unions protect their members.

Organizing in the building trades requires different thinking and tactics than organizing in the industrial fields. What industrial organizer would base initial research for a campaign on how to strike an employer, if necessary, as a desirable organizing goal? What industrial organizer would think in terms of providing permanent alternative employment to target bargaining unit employees as a successful tactic? What industrial organizer would attempt to organize a monopoly of qualified industrial workers? The answer, of course, is that none would. On the other hand, the construction organizer who does not think in these terms is untrained and naive at best.

So little bottom-up organizing took place in the building trades for so many years that the necessary tactics and skills ceased to be passed on in our unions' nonwritten, on-the-job-training tradition. Coupled with the confusion caused by various industrial organizers, labor education centers, universities, and others who eventually tried to fill the void with well-meaning attempts to apply unworkable industrial organizing law, tactics, and methods to the construction industry, many construction organizers have been encouraged in wrong-headed or futile directions.

RESEARCH
(How much and when?)

Competent union organizers obtain as much information as possible about the employer to be organized before undertaking a campaign. The data sought covers a wide range of items including the physical nature of the job site, the business of the employer, sales, profits, return on investment, nature of ownership, personnel data on executives, labor history of the employer including union contracts from other locations if any, identity of major competitors, locations of jobs and number of employees, job classifications and wage rates, starting and stopping times for each shift, number of paid holidays and pay when worked, paid vacation entitlement, seniority application, contributory and/or noncontributory insurance and pension plans, shift premium, overtime pay, health and safety programs, etc.

In addition to acquiring data concerning the employer, the organizer learns as much as possible about the employer's work force such as ratio of skilled to semi-skilled and unskilled workers, and the sexual and racial composition. This information will be valuable in planning the types of appeals and, at the proper time, the literature which will be most effective during the campaign.

All the information an organizer can gather regarding the employer and workers is potentially valuable. A good organizer conscientiously and methodically goes about gathering bits and pieces of information wherever and whenever available. In the construction industry, however, the average contractor employs less than ten men and remains in business for a relatively short period of time. For employers of this size and volatility, data on sales, profits, return on

investment, personnel data on executives, labor history, or other like items may not exist or may be impossible to obtain.

Since the mere expense and disruption caused by a well-conducted organizing campaign can cause a contractor that is unwilling to honor union standards to leave the jurisdiction or industry, whether an industry employer is profitable or has extensive financial backing may be immaterial to the decision to undertake an organizing effort. **One of the major differences between construction and industrial organizing is that the construction organizer's first concern is to police a geographical trade jurisdiction**, i.e., to make sure the work is performed under union standards and to prevent nonsignatory employers from operating there.

Since formal research is often unneeded in the construction industry to decide that an organizing campaign should be undertaken, it is difficult to decide in advance how much research is needed and whether the time needed to do it will be better spent on the actual job of organizing. Research must not replace action or be used as an excuse to postpone action.

The two most important items of research in most construction organizing campaigns revolve around the employer's (1) **customers** and (2) **qualified manpower**. The single most important item of research, in building **monopoly** control of an entire geographical trade jurisdiction, is identification of qualified manpower.

SALT THE JOB
(What to do!)

Encouraging and assisting union members and sympathizers to seek and obtain nonunion jobs for the purpose of organizing, what we now call **salting**, is an old and well-established organizing tactic which has been used by the building and construction trades from their earliest history. It is effective for many reasons, several of which are as follow: (1) a continual organizing program is the lifeblood of any union because it is the only way to maintain control of the construction labor pool; (2) through members or sympathizers on the job, the organizer gains access to valuable information on customers, evaluation of

employee skill and ability, employee addresses, wage rates, job classifications, overtime pay, holiday pay, vacation pay, pension and insurance coverage, shift premiums, OSHA safety and health violations, the progress or lack of progress on the job, shoddy work, code violations, Davis-Bacon compliance, the chief complaints and/or dissatisfactions of the employees, etc.; (3) placing union members on unorganized jobs eliminates an equal number of jobs for nonunion tradesmen; (4) unemployed members can use the work; (5) the organizer can use these salted members to form the nucleus of his Volunteer Organizing Committee and supply needed leadership on the job; and (6) the organizer has members on the job whom he can trust to report and testify against union members who are surreptitiously working for nonsignatory employers, report and testify to employer unfair labor practices, etc.

Generally, the most accurate and fastest information on customers is obtained through salts. Remember that the average size contractor in the United States is less than ten men. Dunn and Bradstreet is not out chasing these guys and Thomas Register is not writing them up. And, although the organizer might get some financial information from the local bank, it is doubtful they have a customer list, or a potential customer list, ranked by value.

Customers come in many guises and forms. They may be owners or general contractors on projects that are well known to the organizer. They may be owners or general contractors on projects that the organizer is not even aware of, especially since an increasing amount of work is negotiated rather than bid. They may be repeat users who simply call the only contractors they know and ask for prices. They may be retail establishments, shopping centers, warehouses, real estate management firms, etc., who deal with one contractor only. Just as important as knowing who a particular contractor's customers are is the ability to rank those customers in terms of revenue produced, continuing business, and other values.

Identifying the potential customers of a target contractor on a continuing basis is often as important as identifying current ones, especially if the organizer has, or can develop, the ability to target this work through funded or unfunded target programs (Kansas City Plan, Elgin I, Elgin II, etc.), can effectively discourage these potential customers from using the target contractor, can encourage fair contractors to seek this work, and so on.

Information on qualified manpower, other than license or test results, must usually come from direct evaluation on the job. The efficient way to obtain it is through the use of salts who are qualified to make these judgments.

Manpower, especially in the unorganized segment of the industry, comes in at least as many shapes and sizes as customers. It is important for the organizer to know who the target contractor is relying on and if that reliance is justified. Just as important is identification of unrecognized or unappreciated workhorses. Who is qualified? Who is regular and reliable? Who has a bottle or drug problem? Who is a self-starter? Who can handle men or run work? Who is liked or disliked? Who is a former union member or thinks he has gotten a bad deal from the union at one time or another? Who is pro-union?

The union's ability to persuade nonmember craftsmen to support organizing and to become union members is clearly improved by having salts employed on nonunion jobs. The ability to engage in aggressive organizing efforts, affecting the productivity of both craftsmen and management, and to engage in other protected concerted activity, such as unfair labor practice strikes, is also clearly enhanced.

Although salting has always been an effective organizing tool, any problems with its use usually revolve around (1) maintaining the integrity of the union's bylaw provisions prohibiting work for nonsignatory employers or (2) "agency" of salted employees under the National Labor Relations Act.

Occasionally a union member will file charges against a fellow member who is found to be working for a nonsignatory employer only to discover that the union authorized such nonunion employment for purposes of organizing. In these instances, such charges are usually found to be without merit. The danger is that other members who are rightfully charged with working for nonsignatory employers might be able to escape discipline through appeal to the courts claiming unequal or discriminatory treatment under the union's bylaws.

The courts recognize a union's right to make its own rules and determine its own conditions of membership but only so long as those rules and conditions are applied equally to all members. Since enforcement of a union's bylaws requires a uniform interpretation and application, it is not permissible to use one interpretation now and a different interpretation later nor to enforce the provisions

against one member but not another. Therefore, the union should determine well in advance how its bylaws will be interpreted to apply to working for nonsignatory employers and should then apply that interpretation uniformly to all.

To protect its bylaws, and also to assure that salting is done in a systematic and controlled atmosphere, adoption by the local union of a salting resolution, setting forth the conditions under which working for nonsignatory employers is permissible, may sometimes be desirable. A salting resolution is not intended to be part of the local union's bylaws. It is simply a resolution adopted by the membership making certain interpretations, granting specific authority, and defining responsibility.

For example, a salting resolution, in its lead language, may confirm the obligation of every union member to organize the unorganized and to cooperate fully in support of an organizing program. The real meat, however, is in the language controlling the employment of union members by nonsignatory employers on unorganized jobs. As a minimum, a salting resolution should designate the business manager, local union organizing director, or some other union official or committee as being responsible for (1) approving organizing targets for salting, as well as (2) sending union members to these targets for employment purposes and should require that such members (a) promptly and diligently carry out their organizing assignments, and (b) leave the employer or job immediately upon notification (see Exhibit A).

Once the salting program is in operation, any member who fails to cooperate should be notified to leave the salted job or employer immediately and, if failing to comply, should be charged with the appropriate violations of the union's bylaws. As a defense, a charged member may try to use the fact that other members are working for nonsignatory employers with the full knowledge and acquiescence of the union and without being prosecuted. In a situation such as this, a properly adopted and applied salting resolution can help protect the integrity of the union's bylaws by defining the circumstances under which working for nonsignatory employers is permissible.

Occasionally, a salted member may be viewed as an "agent" of the union. However, the NLRB will consider an agency finding only if it is alleged by the employer and will require that the employer meet strict guidelines and standards of proof. While agency is to be avoided if possible, it is not something to fear or

avoid at all costs. For example, while Job Stewards are agents, their actions have not put unions out of business. On the contrary, unions could not operate efficiently without them. The same holds true for **salted members.** In many cases unions could not organize efficiently or successfully without them. In short, the threat of agency is not a big deal when the ability to organize outweighs the liability. A search of NLRB case records will confirm that agency findings applied to **salted members** are few and far between.

Regardless of whether or not the union chooses to adopt a **salting resolution,** members participating in an organizing program should be given preliminary training along with a list of unorganized jobs and shops where they are to seek employment. At prearranged times, the organizer should meet with and completely debrief each of these members on all employment applications and interviews. Employment by a nonsignatory employer should be reported immediately.

In addition to being an old and well-established organizing tactic, **salting is protected activity under the National Labor Relations Act.** The Act makes it an unfair labor practice (ULP) to discriminate against employees "in regard to hire or tenure of employment to encourage or discourage membership in any labor organization". Violation of this provision, however, is the most common ULP.

One real problem may be trying to get nonsignatory employers to hire union members since job applications will usually reveal a history of employment by union contractors and probable union membership. Of course, **refusal to hire because of union membership is an unfair labor practice** (ULP) if it can be proven. Sometimes a local union or building and construction trades council will send dozens of qualified members to apply for employment with a nonsignatory employer while wearing buttons or other insignia identifying them with the union. If none are hired, ULP charges alleging refusal to hire because of union affiliation are filed seeking back pay plus interest. If some are hired, these **salted members** are used as employee organizers.

In making application for employment, members may be completely honest and candid about their previous work experience and union membership or may deny union membership or sympathies. Each method has its particular advantages, disadvantages, and uses.

If a member is completely candid and honest, the employer may quickly surmise from the previous employment listed on the job application form that the applicant is a union member and may violate the law by refusing to hire for that reason without openly saying so. In these cases, the organizer should keep a close watch on the employer to determine if less experienced nonunion employees are being hired, in which case, after ascertaining all the facts, the organizer should file appropriate 8(a)(1) and 8(a)(3) charges with the NLRB seeking employment and back pay plus interest by alleging that the employer refused to hire because of union membership and/or previous employment by union contractors. Once a charge is filed, the NLRB will require that the organizer provide the evidence necessary to establish a prima facie case.

The organizer may be able to sting a law-violating employer by placing a nucleus of covert salts on the job. This will facilitate evidence gathering since these salts will then be able to ascertain and testify to the identities, dates of hire, and qualifications of newly hired nonunion employees. Since the organizer will also be required to show employer knowledge of union affiliation or activity, the organizer may wish to instruct all additional job applicants to wear union buttons, jackets, caps, or other obvious insignia; to pointedly tell the prospective employer that they are union members; or to even write it on their job applications. If the employer should openly question a job applicant about his union activities, employment, or membership, the organizer should immediately prepare an affidavit setting forth these facts for later use in an NLRB charge.

If members falsify their employment applications and deny union membership, or if the union cannot show employer knowledge of union membership or sympathy, there is usually little the organizer can do about it if these applicants are not hired.

A common procedure is to salt the job with one or two members using any method that works. Once these members are on the job and can gather information, observe employment, etc., the organizer may instruct additional applicants to be honest and candid regarding their union membership or sympathies, depending on what tactical approach the organizer may choose.

As an example of the extent of protection afforded salting by the Act, organizers sometimes utilize cover letters written on union letterhead in submitting union member employment applications to nonunion employers. These letters

outline the applicants' training and experience as well as their union membership. Some even go so far as to announce the applicants' intent to organize once they are hired. In cases such as Yeargin, Inc. and IBEW Local 934, NLRB Case No. 10-CA-23188, where hiring was done without the proffered union salts being considered, the NLRB has issued appropriate complaints against the employer and moved to secure mandatory employment remedies. (See the booklet titled *Salting As Protected Activity Under The National Labor Relations Act.*)

Salted members know or are told that nonsignatory contractors do not make contributions to union fringe benefit plans. It is not unusual, however, for a union to make contributions to fringe benefit funds on behalf of a **salted member**(s) provided the member(s) agrees to remain with the nonsignatory employer until the campaign is completed. This may also include a wage subsidy equal to the difference between actual wages and union scale. This encourages and allows these members to remain on these jobs for the duration of the organizing effort, even after employment by signatory employers becomes available.

If nonsignatory employers in the union's jurisdiction have regularly assumed that union members who apply for employment are doing so without the knowledge or consent of the union, have employed ticket-in-their-shoe-artists in the past, or have come to rely on their skill and ability at least on sizeable jobs, a **salting program** can be particularly effective. Once the organizing effects become obvious and the word circulates as to what is happening, these nonsignatory employers will not know which union members to hire and which ones not to hire.

UTILIZING THE MEMBERSHIP APPLICANT

Many unions have developed methods to utilize membership applicants in their salting programs. These methods are designed to allow applicants to earn membership in the union. (See later section titled PLACEMENT EXAMINATION SYSTEM.)

Membership applicants with the required number of years of experience (use any time period agreed upon in advance) in the industry or who are journeyman members of other locals are automatically referred to the organizer or other

responsible union official for investigation and interview. If an applicant's experience and qualifications check out and he also appears to have the attributes necessary to win friends and influence tradesmen, the organizer reviews with him the normal procedure used to process and act upon membership applications including the fact that the applicant may not be accepted. Then the organizer diplomatically informs the applicant that there is, however, one sure method of gaining membership. The organizer tells the applicant of several employers, shops, or jobs in the jurisdiction that the union is interested in organizing. If the applicant can secure employment in one of these locations, when that job or shop is organized, the applicant will be initiated along with the other employees. The applicant is instructed to contact the organizer immediately for further instructions upon securing employment.

APPLYING ECONOMIC PRESSURE
(Time, Quality, Price)

Contractors obtain and retain customers by delivery of quality work, on time, and at reasonably competitive costs.

Once a construction organizing target is identified, the organizer's full attention should be focused on identifying and evaluating the target employer's customers and qualified manpower. This is most efficiently accomplished through the placement of salts or, failing that, through recruiting supporters among the employer's own craftsmen. A great deal of care and patience should be devoted to this activity. The information gathered will shape the strategy the organizer will use later in the campaign to threaten or actually apply the economic pressure necessary to cause the employer to sign an agreement, raise his prices to recoup additional costs, scale back his business activities, leave the union's jurisdiction, go out of business, and so on.

The construction organizer should structure each campaign in capsules, or activities, that are useful to the union in and of themselves. For example, a campaign to organize XYZ Contractors might be structured as follows:

Action Capsule 1

Identify and rank XYZ's craftsmen by skill, ability, experience, work habits, reliability, and key positions.

Determine what tactics may be effectively used to recruit the support of XYZ's most qualified and reliable key craftsmen.

- Salt the job if possible;

- Concentrate on those craftsmen who estimate jobs, run work, hold master or journeyman licenses, or are otherwise particularly valuable to XYZ. Check their backgrounds, social ties, former employment histories, and any other leads that might enable the organizer to be introduced or otherwise approach them in a trustful atmosphere;

- Be prepared to guarantee (1) membership in the union and (2) a job classification employable under the collective bargaining agreement in return for their cooperation and support. If a particular key craftsman is not an obvious journeyman, be prepared to explain and sell the no-fail test concept;

- Use salts (both overt and covert) to help make converts, but don't rely on them exclusively. Salts may or may not be recognized as union members but, in any event, they are working craftsmen. The organizer is a full-time, professional union representative and official spokesman who can make commitments. **The organizer should eventually talk to each valued craftsman, one on one.**

Action Capsule 2

Identify and rank the value of XYZ's customers by estimated dollar volume, regular or repeat business, cost to service, profit margin, etc.

Determine what tactics may be effectively used to switch these customers to signatory employers or, at least, cause them to stop using XYZ.

- Salt the job if possible;
- Apply the U.S. Supreme Court decision in DeBartolo in using handbills, radio, newspaper, television, bullhorns, and billboards to truthfully reveal the existence of a labor dispute with XYZ and urge the public to boycott XYZ's neutral customers until these neutrals promise to use signatory contractors only;
- Develop a roving picket system to follow XYZ's employees to all or selected jobs for the purpose of conducting primary picketing (to get the customers' attention) while XYZ's craftsmen are on the premises;
- Work to insure that XYZ's customers receive sales visits and other special attention emphasizing that signatory employers have no labor or consumer boycott problems;
- At the appropriate time, encourage a representative of the contractors association to make a series of sales calls on XYZ to explain how the association works and its advantages.

Action Capsule 3

Identify potential work being bid or negotiated.

Determine what tactics may be effectively applied to discourage future customers.

- If the union targets jobs (funded or unfunded), plan to target the type work performed by XYZ. If the

opportunity presents itself, buy away long-time or particularly reliable customers;

- Prepare to advise potential customers that use of XYZ will guarantee labor problems on their projects (don't make statements you can't deliver on);

- Insure that potential XYZ customers receive sales calls to emphasize the organized industry's ability to deliver quality, speed, and competitive price with no labor or consumer boycott problems.

Action Capsule 4

Start moving salts and/or supporters into a Section 7, concerted protected activity, mode.

Determine what actions may be taken most effectively to move XYZ's employees into bottom-up organizing activity and demonstrate the power of the union.

- Inform XYZ of the identity of those salts and/or supporters who are willing to participate in this capsule by certified letter to XYZ, with a copy to the NLRB, or by having them wear union insignia on the job such as caps, shirts, buttons, etc.;

- Identify violations of OSHA, building codes, licensing requirements, prevailing wage determinations, NLRA, wage and hour laws, etc., which may provide a basis for concerted activity;

- Steadily increase the level of concerted activity;

- Prepare to demonstrate the power of the union by calling a short, minority ULP strike;

- Continue increasing the level of concerted activity, protesting any additional ULPs with strikes.

Action Capsule 5

File ULP charges with the NLRB at every viable opportunity.

- Carefully and completely document all XYZ reactions to protected activity, especially those which violate Section 8(a) of the Act;

- Begin filing ULP charges when you are reasonably sure you have the evidence/witnesses necessary to cause the NLRB to issue a Complaint and Notice of Hearing.

Every organizing plan should be subject to circumstantial amendment when necessary. The preceding plan to apply economic pressure to XYZ Contractors is divided into five action capsules. **The sixth and final action capsule — where a Section 8(f) prehire agreement may be signed; the NLRB may issue a bargaining order; XYZ may scale back its operations, leave the local's jurisdiction, or go out of business; etc. — cannot be anticipated in advance. The organizer must simply prosecute the campaign through each of its planned action capsules to its logical conclusion.**

Let's look at the XYZ organizing plan in more depth to determine if (1) the organizer has applied his knowledge of the primary construction industry and (2) if each action caption is a self-contained unit that will be useful, once accomplished, on a stand-alone basis.

Action Capsule 1 Revisited

In action capsule one, the organizer seeks to identify and rank the craftsmen by their value to XYZ and to recruit their support. Union organization is a function of education; it is always preceded by proselytization. But, aside from any attempt or desire to organize them or their employers, educating unorganized tradesmen about the benefits of union representation can have splendid effects. It gives them clear benchmarks as to their potential worth and puts them in better

positions to request or bargain for improvements with their nonunion employers. It sows the seeds of dissatisfaction and aspiration. It makes the union a focal point when they wish to complain of injustices. It pointedly and repeatedly reminds their employers that the union is there and might get them if they don't watch out. **All of this benefits union tradesmen, as well, by improving their competitive positions.** Therefore, even if successive action capsules are never reached, the activity pursued in action capsule one will have been worthwhile.

Action Capsule 2 Revisited

In action capsule two, the organizer demonstrates applied knowledge of the construction industry by beginning to concentrate on XYZ's customers — who are they and which are most valuable to XYZ; how can they be effectively pressured as neutrals; and how can they be persuaded to embrace the union's signatory employers as desirable alternatives. The organizer plans to use primary picketing and secondary publicity, in combination where customer operations make it possible and separately as other opportunities present. When XYZ learns that its customer pool is under siege, the economic pressure, not to mention the diversion from handling the everyday workings of the business, has the potential to become tremendous. As a secondary organizing benefit, **each and every customer or job switched to a signatory employer enhances the work opportunities and job security of union craftsmen.** Even if the other action capsules never become operational or effective, the activity pursued here will have been worthwhile.

Action Capsule 3 Revisited

The organizer has directed action capsule three toward cutting off XYZ's future work or potential customers. Applying pressure to existing neutrals, in order to switch them to union contractors, makes little sense if XYZ can simply replace them with others. The organizer plans to use a number of tools utilized in action capsule two as well as target programs if available. **The same stand-alone benefit applies here as in action capsule two.**

Action Capsule 4 Revisited

The organizer has designed action capsule four to utilize the rights guaranteed employees in Section 7 of the Act to engage in "concerted activity for the purpose of ... mutual aid or protection". Unlike the first three action capsules,

the activation of capsule four depends upon the successful execution of capsule one.

First, the organizer plans to inform the employer of the identity of the union's supporters or, at least, those supporters who will be overtly participating in action capsule four. He knows that, once ULP charges are filed with the NLRB, he must be able to prove employer knowledge of union activity, sympathy, and support of activity in concert with other craftsmen for the purpose of their mutual aid or protection. After all, an employer that is truly unaware of these factors cannot discriminate in retaliation. The organizer should be careful to inform the employer in a manner which meets the standards of evidence set by the NLRB.

As an evidence gathering and/or organizing tactic, the organizer may choose not to reveal all of his salts or supporters immediately. Covert salts who appear to be nonsympathizers, especially if they become trusted by the opposition, can be invaluable aids in gathering evidence and testifying to the commission of ULPs.

Next, the organizer plans to begin the systematic identification of issues upon which concerted activity will be based. As examples, a craftsman, or group of craftsmen, identify or perceive a situation to be a safety violation. One (or more) of the group, acting on behalf of the others for the purpose of mutual aid or protection, goes to the contractor's trailer and asks the supervisor for permission to use the telephone to call OSHA and report the violation. This activity — because it is concerted and for the purpose of mutual aid or protection — is protected by the Act. If the employer responds in an intimidative, coercive, or threatening manner (which is a most common reaction), a ULP has been committed which can form the basis of an NLRB charge and/or a ULP strike.

A tradesman (or group of tradesmen, as the case may be) may next decide that he should ask for wage increases for his fellow employees. After informing at least some of them of his intentions to speak on behalf of all, he approaches management, in conformity with the employer's policy (if there is one), and presents his case. Again, this activity — because the craftsman acted on behalf of other employees as well as himself for the purpose of mutual aid — is protected by the Act. If the employer responds in an intimidative, coercive, or threatening manner (I don't need your agitation; You better start worrying about your own job if you want to stay here; If you don't like it here, don't let the door hit you in the

back; I know who you've been talking to; Get back to your job and don't come up here ever again; etc.), a ULP has been committed which can form the basis of an NLRB charge and/or a ULP strike.

The possibilities for increasing the level of concerted activity for the purpose of collective bargaining or other mutual aid or protection are endless. The craftsmen may decide to picket the job before and after work and during lunch (on their own time) advertising that XYZ Contractors isn't furnishing hospitalization insurance or paying fair wages; to talk about the substandard conditions in loud voices in the presence of management; to openly ask people to sign union authorization cards; etc. If the agents of the employer do not commit ULPs immediately, they will eventually as the concerted activity level rises.

In action capsule four the organizer plans "to demonstrate the power of the union by calling a short minority strike." He wants to demonstrate that just a few employees can walk off the job in a ULP strike, without fear of being fired, and return to work upon unconditional offer. He hopes, of course, to take a number of craftsmen out at once and during a critical time in the work schedule so as to maximize the effect. But the organizer plans to conduct a ULP strike in any event.

We know, of course, that ULP strikers have a right to reinstatement to their jobs upon unconditional offer to return and, if the employer refuses, liability for backpay and benefits begins. Once the ULP strike begins, XYZ Contractors will try to discourage its nonstriking employees from honoring the picket or joining the strikers. Like most construction employers, XYZ will probably announce that the strikers have lost their jobs and will never return, which is another ULP. When the strikers do eventually return in a jovial, undefeated mode and continue to engage in protected concerted activities, the power of the union will have been demonstrated.

The organizer, in action capsule four, is prepared to engage in a series of ULP strikes, each one based on ULPs committed after the previous strike ended. A premeditated series of short strikes is not protected by law. A series of short ULP strikes, however, cannot be premeditated because, by definition, they are based on the independent and arbitrary illegal actions of a party the union cannot control. If XYZ Contractors does not commit ULPs, the craftsmen cannot

engage in self-help in response. In this sense, the employer — not the craftsmen or the union — controls whether a ULP strike or strikes can occur.

Assume that XYZ works fifteen tradesmen. How much profit is there in a fifteen-man operation? How many ULP strikers can XYZ afford to refuse to reinstate at journeyman backpay and benefits? How many ULP strikes can XYZ afford before being union is cheaper than resisting? How long will XYZ's customers be willing to suffer the disruption?

Action Capsule 5 Revisited

Action capsule five is simply a confirmation of the organizer's intent to use the National Labor Relations Act and the NLRB against the employer at every viable opportunity. Once a charge has been filed and investigated by NLRB agents with the cooperation and assistance of the organizer, the employer must provide its own defense at its own expense. Generally speaking, contractors are entrepreneurial craftsmen. They are not qualified by training or experience to handle legal filings or defenses. Legal fees can become substantial financial drains within short periods of time.

The utilization of action capsule five may begin during any of the other capsules of the campaign as need or opportunity dictates.

This Is Construction

The construction organizer should not be confused or limited by industrial organizing scenarios. He is not dealing with regular employers with stable groups of identifiable employees. He is policing an industry where the job site changes every day, as the job moves toward completion, until it disappears completely and with craftsmen who face a continuous expectation of layoff. He is organizing contractors who compete, one with the other, for customers that demand the lowest price that time and quality necessities will allow.

Forcing a nonunion employer to scale back his business may not be a desirable outcome in industrial organizing, but it may be very desirable in construction. It may open more work opportunities to other employers, hopefully union. A like, but more pronounced, result may accrue when the nonsignatory

employer leaves the local's jurisdiction or the industry completely. Increasing a nonsignatory employer's costs may drive up bid or negotiated job prices and likewise improve union contractors' competitive positions.

Historically, formal apprentice training programs have been available only through the sponsorship of unions and the employers that are bound to participate and contribute on a regular and continuing basis by the terms of collective bargaining agreements. Journeyman skill improvement training has traditionally been available on the same basis. Nonunion craftsmen rely on other institutions, such as vocational schools, military services, etc., coupled with actual work experience, or on work experience only, for their training. **As a group, union craftsmen are better trained.**

The average age of union craftsmen is greater than nonunion. This may be because union craftsmen earn more money and enjoy better working conditions and fringe benefits and are thus encouraged to remain in the industry rather than leaving to seek economic security as many nonunion craftsmen are pressured to do. Regardless of why they stay, age and experience march hand in hand. **Union craftsmen, as a group, are more experienced.**

Training and experience are key ingredients to productivity. The maturity of age is another. Immature craftsmen bicker, horseplay, goof off, and miss work. Open-shop supervisors spend a lot of time acting as arbiters of disputes. Mature craftsmen come to work regularly, start on time, and work steadily in a safe manner. **Union craftsmen, as a group, are more productive.**

In an industry where delays, shoddy work, and cost overruns are sure killers, training, experience, and productivity are powerful competitive tools. But unions cannot count on these advantages alone to retain the work. They must insure that the differential between union and open-shop training, experience, and productivity is wide while keeping the price differential as narrow as possible.

There are not enough trained, experienced union organizers in construction and probably never will be. Therefore, it is important that our limited organizing assets be utilized to the fullest with little wasted effort. Every campaign should be given careful thought and structured so that each action capsule is a self-contained unit which, once accomplished, will be useful to the union even if none of the other action capsules are attempted or completed.

As pointed out in a previous section, deny the contractor his customers and/or his qualified manpower and he immediately ceases to be a factor in the industry.

THE RIGHT TO STRIKE AND/OR PICKET

NLRB v. Insurance Agents' Union, 361 US 477, 495, 45 LRRM 2704 (1980) held that a strike "is not a grudging exception to some policy of completely academic discussion enjoined by the Act; it is part and parcel of the process of collective bargaining".

The National Labor Relations Act provides significant protection of the right to strike. Section 7 guarantees to employees the right to engage in concerted activities; Section 8 protects that right from infringement by employers and unions; and Section 13 provides that the Act shall not be construed "so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right" except as expressly stated in the Act. Section 2(3) provides that, "The term employee . . . shall include any individual whose work has ceased . . . in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment."

The right to strike and/or the right to picket is not completely unqualified, however, and Section 8(b) prohibits or limits strikes and/or picketing for certain proscribed objectives. Therefore, we will devote some effort to the task of defining and clarifying a union's right to strike and/or picket in certain circumstances, particularly as these circumstances apply to or affect organizing.

STRIKING FOR RECOGNITION

In the building and construction industry, if the organizer can effectively close down the job and keep it down, striking is usually the fastest and most effective way to gain union recognition. But don't make the mistake of thinking

the union must be able to place all, or even a majority, of the strikers on other jobs before a strike is possible.

Recognitional strikes should be called and prosecuted on the premise that the striking tradesmen will remain on strike and picket duty, without other employment, until the strike is settled, at which time they will return to work for the same employer. This is not an unreasonable premise. In fact, the majority of all strikes are called and prosecuted on this basis. Can you imagine 100,000 automobile workers or 325,000 steelworkers waiting to strike until their union has secured other employment for them or striking with the intent of not returning to work for the same employer? Workers must realize that they are striking to improve and secure their own terms and conditions of employment. They are not striking for the union or to gain union membership or to help the boys down at the hall. They are acting in concert for their own mutual aid and protection.

Under the Board's decision in Deklewa, 282 NLRB 184, construction unions may sometimes be in the position of demanding recognition from employers who are parties to prehire agreements permitted by Section 8(f) of the Act. If such an agreement contains a no strike clause, striking for recognition during its term is not a viable alternative. In this situation, provided the employer refuses to voluntarily recognize, filing an NLRB election petition may be the only immediate choice.

ECONOMIC AND UNFAIR LABOR PRACTICE STRIKES

There are two kinds of strikes: (1) economic strikes and (2) unfair labor practice strikes. Both are essentially the same except that greater protection is offered to unfair labor practice strikers in the event that the employer is able to hire scabs to replace the strikers or the strikers have to offer to return to work with no conditions attached.

Basically, if an economic strike ends without agreement that the employees will be returned to their jobs, those strikers who have been permanently replaced have no right to reinstatement or rehire until a job opening becomes available. They are entitled to reinstatement but not immediately.

When an unfair labor practice strike ends, the employer must immediately reinstate the strikers to their existing jobs, even if replacements have been hired and must be fired to create job openings.

The construction organizer should avoid economic strikes and rely instead on unfair labor practice strikes and the additional protection they afford.

While strikers cannot be legally fired or disciplined for engaging in a strike, strikers remain employees and may be fired or disciplined for engaging in violence, serious threats of violence, destruction of property, etc. In addition, these actions may also involve civil or criminal penalties.

NEVER DRAG UP — ALWAYS STRIKE

Union and nonunion, all construction jobs and employers experience a turnover in employment. Craftsmen drag-up for varied reasons that often have little or nothing to do with the organizational status of the employer. The point the organizer should remember is that, during an organizing effort, supporters should never drag-up; they should strike instead.

One-person strikers are not protected by law. However, under certain limited circumstances, one craftsman may strike an employer as long as he is acting in concert with other employees; i.e., striking on behalf of two or more. Of course, when two or more employees strike together, they are obviously acting in concert and are protected. Although strikes are often accompanied by picketing, it is not necessary to picket in order to strike or to strike in order to picket.

Craftsmen who voluntarily drag-up have no guaranteed reemployment rights. An economic striker has the legal right to be placed on a preferential hiring list upon making an unconditional offer to return to work. A ULP striker has the legal right to immediate reinstatement upon making an unconditional offer to return. Therefore, the experienced construction organizer encourages his salts or other supporters, who are leaving the job or employer anyway, to never drag up — always strike (see Blount Construction and IBEW LU 477, Case No. 31-CA-17440, 1989).

CREATING THE ULP STRIKE

As previously stated, there are two kinds of strikes. Unfair Labor Practice (ULP) strikes offer the greatest protection to strikers. When a ULP strike ends, with or without agreement, upon unconditional application, the employer is legally required to reinstate the strikers to their existing jobs even if replacements have been hired and must be fired to make room for them or even if the work has been subcontracted during the strike. If the employer fails or refuses to offer reinstatement, liability for back pay plus interest for unreinstated strikers begins immediately and could bankrupt some contractors if allowed to build. Therefore, it is to the organizer's advantage if he can rely upon ULP strikes or convert economic strikes to ULP strikes.

A ULP strike is a strike that is caused, contributed to, or prolonged by a ULP committed by the employer. If the employer has committed a ULP and employees then strike because of it, in whole or in part, their right to reinstatement to their existing jobs is guaranteed.

Employer ULPs do not have to be particularly serious in nature to qualify a work stoppage as a ULP strike. A minor 8(a)(1) violation will suffice as long as the organizer can show that it caused, contributed to, or prolonged the strike. If and when the ULP is remedied, however, the work stoppage ceases to be a ULP strike and the strikers must either return to work or continue as economic strikers without the additional ULP protection. The organizer should realize that less serious ULPs are more likely to be remedied quickly by the employer than major or numerous ULPs, thus removing the additional strike protection that ULPs afford.

If ULPs are committed prior to the strike, the organizer should include these as an issue in any strike vote and in any speeches, leaflets, or other explanations as to why the strike is being called. Picket signs should also bear the legend **Unfair Labor Practice Strike or ULP Strike**. This will help the organizer show, if necessary, that the ULPs were a strike issue.

If ULP charges are filed and found to be without merit, ULP strike protection does not apply. Unless the organizer is positive that the ULP charges

are meritorious, he should rely instead upon the economic effectiveness of any strike while working for ULP protection.

ULP STRIKES AS A TACTIC

Strikes and lockouts are punitive and coercive. Strikes are a legally sanctioned method of directly harassing employers (see earlier section titled, STRIKING FOR RECOGNITION) and indirectly harassing others. The ULP strike is especially effective because of its direct relation to a violation of the law.

Imagine the following scenario: (1) the employer commits a ULP; (2) the organizer files a charge and strikes the job; (3) the employer subcontracts the work; (4) as soon as the subcontractor gets the job manned and operating, the organizer makes an unconditional offer on behalf of all striking employees to return to work; (5) the employer spends a couple of weeks talking to his attorneys before reinstatement is offered; (6) the subcontractor is removed from the job to make room for the strikers; (7) the organizer files a charge demanding back pay plus interest for the period of time between the unconditional offer to return to work and the employer's offer of reinstatement; (8) the subcontractor sues the contractor for cost recovery, damages, and breach of contract; (9) the employer commits another ULP and the organizer strikes the job again; (10) this time the employer can't find a subcontractor, so he hires replacements; (11) as soon as the job is operational, the organizer makes another unconditional offer to return to work; (12) this time the employer fires the replacements and offers immediate reinstatement to the strikers; (13) as soon as the replacements are gone and most have other jobs, the organizer calls an economic strike; (14) this time the employer can't get a subcontractor or sufficient replacements for the strikers, so he offers to sign the union's standard agreement; (15) the union advises the employer that the standard agreement is not available and proposes scale plus $2.00 per hour; (16) the owner removes the employer from the job and hires a union contractor; (17) the union initiates the men; (18) the employer declares bankruptcy; (19) etc.

It may never happen just this way, but the organizer would not have been able to remove the subcontractor from the job absent ULP protection for the strikers. The same thing applies to removing the replacements hired during the second strike.

ULP strike protection may be the key to winning. If an economic strike is lost, the organizing effort is usually dead. If a ULP strike is lost, the organizer can put the strikers back on the job where they continue to engage in protected concerted activity and/or prepare for a second strike. Employees are also more willing to strike if they know they can have their jobs back virtually on demand. In the scenario above, strikes were lost twice but the campaign was won.

WHEN TO STRIKE

Assuming that the organizer has filed unfair labor practice charges if appropriate, has discussed the strike issue with the employees affected and secured their assurances of participation, and has completed all other necessary preparations, when should the strike actually start?

The answer is simply — when the organizer determines that a strike will be the most effective. The organizer should be convinced that the strike will hurt the employer, or demonstrate the effectiveness of concerted activity, or both and, unless ULP strike protection is assured, that the job will remain closed down.

SECTION 8(b)(7)

Subsection 7 was added to Section 8(b) of the Act in 1959 in an effort to prohibit "extortion" or "blackmail" picketing in organizing or recognitional contexts. This subsection proscribes picketing where:

- Another union has already been lawfully recognized by the employer in accordance with Section 9 of the Act;

- A valid NLRB election has been held within the last 12 months; or

- A petition for an NLRB election is not filed "within a reasonable period of time not to exceed thirty days from the commencement of such picketing".

NLRB REPRESENTATION ELECTIONS IN CONSTRUCTION

There are a number of reasons why NLRB elections are often not necessary or appropriate in construction.

The Act permits Section 8(f) prehire agreements to be consummated and enforced during their terms in the primary construction industry. Therefore, proof of majority status through **an NLRB representation election** or other means is not **legally necessary** prior to the execution of a collective bargaining agreement as it is in the industrial sector.

The typical construction local union is confined by its constitution and bylaws to operating in a well-defined geographical jurisdiction. The local union cannot organize or represent craftsmen working outside its assigned areas without infringing on the territorial rights of its sister local unions. In those situations where a representation election petition is filed simply to convert an existing Section 8(f) prehire agreement to Section 9(a) majority status, the NLRB will accept the geographical jurisdiction recognized by that agreement.[1] **Otherwise, the confines of the bargaining unit will usually be found to be the geographical area in which the employer actually performs work.**

As an example, a local union whose geographical jurisdiction covers seven counties may file a representation petition seeking NLRB certification in the seven counties in which the Local Union operates for an employer that performs work in eight counties, only four of which are in the petitioning local's geographical jurisdiction. The remaining four counties lie in the territory of a sister local. The NLRB will normally find the employees performing work in all eight counties to constitute a single appropriate bargaining unit, irrespective of the limits of the local's geographical jurisdiction.

In the preceding example, a temporary solution may be for the local unions to become joint petitioners for the eight counties so that, once certified, each may bargain conditions for the work in its respective geographical jurisdiction. But this

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[1]See IBEW publication titled The Deklewa Decision, Appropriate Bargaining Units Under Deklewa.

does not solve the problem of neither local having bargaining rights for its entire geographical jurisdiction. What happens if the locals are able to negotiate an agreement for the certified counties, the employer later begins open-shop operations in the noncertified counties, and the locals are not able to organize or obtain agreements for those additional parts of their jurisdictions? What might be the end result if other signatory employers attempt to cease using the hiring halls, making fringe benefit contributions, and otherwise honoring their agreements in the noncertified counties of the locals' geographical jurisdictions citing, as justification, favored-nation clauses, **i.e, contractual provisos stating that if more favorable terms are granted to other employers, similar terms must be granted to all employers**? Would the locals allow part of their geographical jurisdictions to go completely open-shop, or would they disclaim bargaining rights in the eight-county unit (in which event, the original organizing effort would have proven to be useless)?

The Act excludes supervisors (foremen and general foremen) from the bargaining unit even though the majority of construction agreements include them. Once the NLRB certifies the union to represent a particular bargaining unit, it is an unfair labor practice for the union to insist, to the point of impasse, on inclusion of excluded jobs (supervisors). Thus, all the newly certified construction employer need do to keep its supervisory employees out of an NLRB determined bargaining unit is just say "no".

If the union should proceed to negotiate and execute an agreement covering a unit certified by the NLRB, **sans supervisors**, the newly organized employer could continue to hire supervisors off the street, unilaterally determine their pay and fringe benefits, and ignore the hiring hall for those classifications. If the union is party to a basic construction agreement containing a favored-nation clause, it might be required to remove the supervisory classifications and pay rates from that agreement as well.

The Act imposes rights and duties on certified bargaining agents that may not be desirable or workable in construction. One is the duty to bargain in good faith. **The usual situation in construction is that the union cannot or does not wish to bargain.** The union usually wants the target employer to sign its basic construction agreement; one that has already been bargained, ordinarily with an association of employers, and which often contains a favored-nation clause.

Absent some sophistication, the construction organizer in this situation may find his union facing Section 8(a)(5) refusal-to-bargain charges instead of the employer.

Rightly or wrongly, craftsmen who participate in any NLRB representation election which results in a majority of votes being cast for the union often feel that they have "won". In fact, they are usually no closer to a labor agreement than they were before the election victory and, for all of the previously enumerated reasons, may even be in worse shape organizationally. Unfortunately, it is common for them to turn to the organizer, at that point, and say, "We won; make the employer sign the agreement."

What is the organizer's usual reaction? He demands bargaining, which he will usually get once all the election objections and appeals are eventually exhausted; makes many futile trips to the bargaining table; and spends time uselessly reporting little or no progress to the expectant craftsmen. Eventually, the craftsmen lose faith and hope. They witness the employer acting with impunity and the union demonstrating that it is powerless to effect meaningful change.

Anyone who questions the legitimacy of this scenario need only check the NLRB election statistics for construction, eliminate those expedited elections held simply to convert existing Section 8(f) prehire agreements to Section 9(a) majority status agreements, and then calculate how many of the remaining certifications are successfully converted to collective bargaining agreements. Successful conversions are nearly nonexistent.

If the union does win an NLRB election in construction and if a prebargained area agreement is to be applied, it usually must be done quickly or not at all. This precludes a long or drawn-out bargaining process. Therefore, the union will most likely have to apply the same economic pressures to obtain a contract after an NLRB election is won as would have been needed to obtain voluntary recognition without an election.

If the union petitions for and loses an NLRB election, even a Section 8(f) prehire agreement is prohibited for a year.

NLRB election, certification, and good-faith-bargaining requirements can take months and even years to complete. Under the provisions of the National Labor Relations Act, it is possible for determined employers to delay or stall the

certification process by insisting on unit determination hearings with attendant legal briefs; by committing and/or filing unfair labor practice charges with attendant hearings, appeals, and legal briefs; by filing objections to the conduct of representation elections with attendant hearings, appeals, and legal briefs, etc. By the time final decisions are made and enforced by the NLRB, the construction project may have been long completed and the employer may have even left the jurisdiction of the union. Therefore, if the NLRB election process is to be used in building and construction organizing, it should be applied with discretion to projects of long duration, to stable employers which employ tradesmen on a long-term or permanent basis, or to conversion of Section 8(f) contracts to Section 9(a) status.

Before filing an NLRB representation petition seeking certification of a bargaining unit the union will not sign an agreement for, the construction organizer should ask himself, "What good is it?" Winning an NLRB election prior to obtaining a Section 8(f) agreement may simply guarantee that an agreement will never be consummated.

In summary, NLRB elections are often inappropriate to construction organizing for the following reasons:

- NLRB certification or other proof of majority status is not a legally necessary priority to negotiating and executing a construction agreement.

- The NLRB will define the appropriate bargaining unit to encompass the territory in which the employer performs work rather than the local union's geographical jurisdiction (except where a Section 8(f) agreement is already in effect).

- The NLRB will exclude supervisors from the bargaining unit.

- NLRB certification confers a duty to bargain even though an area construction agreement, often containing a favored-nation clause, is already bargained and in place.

- Winning an NLRB election often conveys a false and dangerous sense of victory

- Losing an election bars all Section 8(f) collective bargaining agreements and recognitional picketing for one year.

- NLRB election certifications and good-faith-bargaining requirements can take months and even years to complete.

- **The union often must apply the same economic pressure to obtain a contract after an election is won as needed to obtain an agreement without an election.**

Other than conversion elections mandated by the Deklewa decision, why do construction organizers continue to seek and participate in NLRB representation elections in construction? The answer usually is simple ignorance of the proper methods and reliance on (improper) training by labor study centers, universities, and others who try to apply the industrial organizing tactics they understand to construction which they don't understand.

An example of what can and does happen when NLRB election procedures are applied to construction organizing is demonstrated by the following excerpt from the testimony of Mr. J. C. Turner, General President, International Union of Operating Engineers, AFL-CIO, before the Subcommittee on Labor-Management Relations of the Committee on Education and Labor, U.S. House of Representatives on March 8, 1983;

> "On other occasions, particularly during the hearings on labor law reform, the labor movement has presented evidence concerning the inordinate delays in the processing of representation cases under current NLRB procedures, and the damage such delays inflict upon the organizational rights of workers. More recently, in your hearings on union busting labor consultants, you reviewed the evidence of how labor consultants manipulate delays in the processing of representation cases to defeat organizing efforts.
>
> "While the evidence in those hearings established the scope of the delays and manipulation and their impact on the rights of workers in all industries, it is beyond peradventure that **in the construction industry the delays alone, without manipulation, effectively**

preclude the possibility of securing collective bargaining representation. The NLRB itself recognized this fact early on.

"After the passage of the Wagner Act, and until passage of the Taft-Hartley Act, **the Board didn't even try to conduct elections in the industry.** The most commonly cited reason for the Board's abdication of jurisdiction over the construction industry was that stated in its 1943 Brown and Root decision, i.e., application of the Act to the construction industry 'would not effectuate the policies of the Act.' 51 NLRB 820. Indeed, even after Taft-Hartley, which contained amendments specifically directed to the construction industry, the Board's General Counsel advised the Board to ignore the statute in the construction industry for election purposes. (25 Lab. Rel. Rep. 107, 1949).

"At the time everyone, including industry representatives, acknowledged that employment in the industry was too sporadic and transitory for representation proceedings conducted on an employer-by-employer, job-site-by-job-site basis to effectively provide collective bargaining representation.

"A current case involving the International Union of Operating Engineers provides an excellent example of the frustration encountered by workers who attempt to secure union representation through the NLRB's election procedures. In 1981, the S. J. Groves Company of Minneapolis, Minnesota commenced work on two very large Interstate highway projects in downtown Atlanta, Georgia. The International Union of Operating Engineers is familiar with the Groves Company because it has been a major national heavy and highway construction firm for many years. In my experience, until these Atlanta projects, Groves had worked throughout the country as a union contractor, and prospered as such. At the present time, the Company enjoys mutually beneficial collective bargaining relationships with a number of IUOE local unions around the country. In spite of these long-standing relationships, when approached by construction unions in Atlanta concerning the two Interstate projects, Groves advised that they intended to perform the work on a nonunion basis and refused to negotiate a collective bargaining agreement.

Because of the unusual magnitude and duration of these projects, the unions determined to attempt to secure an NLRB election for the workers involved. It is estimated that the two projects will cost one hundred and twenty-five million dollars and take approximately three and a half years to complete. Such a time frame makes an election petition at least worth a try, even though it is recognized that a contested NLRB case with appellate review can take much longer than a mere three and a half years.

"Soon after the Atlanta jobs began, IUOE Local 926, as well as four other building trades and Teamster local unions, began organizing. The Company responded with what has become an increasingly normal employer reaction to employee attempts to organize: Unfair labor practice activity aimed at intimidating and coercing the workers into rejecting the union. From the outset of the organizing drive, the Company engaged in acts of surveillance, interrogation, threat and reprisal which the General Accounting Office's report to this Subcommittee of last year showed to be cost effective law breaking from the employer's standpoint. Suffice it to say that the unions filed a series of unfair labor practice charges on behalf of the workers which resulted in a formal settlement by Groves in which it agreed to cease and desist all such unfair labor practices and make whole the affected employees in the amount of $22,000.

"Almost one year ago today, on March 10, 1982, the five local unions filed a joint election petition with the NLRB. In response to this petition, the Company filed with the Board a list of its employees, which allegedly demonstrated that the unions' petition was not supported by a sufficient showing of interest, i.e., 30% of the employees in the bargaining unit.

"The unions had requested an election in a unit consisting of all operating engineers, carpenters, cement masons, laborers, and teamsters on the two Interstate projects, and the central garage facility which serviced the jobs. While the unions estimated that approximately 120 employees were encompassed in the unit, the employer's list included well over 200 names. Accordingly, on

March 26 the Board's Regional Director dismissed the petition for lack of a 30% showing of interest.

"Four days later, the unions filed another petition, excluding the teamsters and the central garage from the requested unit. This time, the Regional Director found that there was a sufficient showing of interest and directed that a hearing be conducted on the petition. That hearing was held on April 20, 1982 and the employer raised all of the issues that are common to construction industry cases. For instance, the employer argued that the unions' petition should be dismissed because the two project unit was too narrow, and should have included thirteen other small, short-duration jobs being performed by the Company in the area. This argument is made, of course, to dilute the unions' established support and force them to secure authorization cards from workers on widely scattered job sites. Of the thirteen additional projects all had anticipated completion dates in 1982, which of course meant that by the time an election might be expected some, if not all, of the work would have been completed, and the workers widely scattered. And let me assure you that if the unions' original petition had included all of those small projects, the employer would have gone to the hearing and argued that since the small jobs were of limited duration and presented no prospects for continuing employment, their inclusion by the union required dismissal of the petition.

"The Company also asserted a number of other arguments. They contended that the work performed by the construction employees was not sufficiently segregated by function to identify the workers along craft lines. The usual arguments concerning the inclusion or exclusion of supervisory personnel were also made. Where the union argued for exclusion the Company argued for inclusion and vice versa.

"It's a game; we recognize that. It's a game played under NLRB rules stacked against workers in all industries, but in our industry we don't have time to play because, by the time the game is over, the work is also over and our people are unemployed.

"On June 21, 1982, two months after the close of the hearing, the Regional Director issued a decision holding that the unit in this case must include the thirteen small projects, in addition to the two Interstate projects. The unions accepted this setback and immediately gathered enough additional authorization cards to proceed with an election in this expanded unit. The election was set for July 16, 1982.

"The Company, however, was far from through. Although it had prevailed in its argument that all fifteen jobs should be included in the unit, the Regional Director had rejected the Company's argument that all employees, not just the specified craftsmen, should be included in the unit. Since the Regional Director had accepted some, but not all, of the Groves' position, the door was left open for the Company to file a Request for Review with the Board in Washington, asking that the Regional Director's decision be set aside. This the Company did. While that Request for Review was pending, election preparations progressed. But, on July 15, the eve of election day, the parties received a telegram from Washington advising that the Board had granted the employer's Request for Review and directing that the election be postponed until further notice.

"As I sit before you today, the unions and workers sit in Atlanta awaiting that further notice from the NLRB. Next week, they will have waited for eight months. **In the meantime, the completion dates for all of the thirteen small projects have passed.** Two days from now, one year will have elapsed since the first petition in this case was filed. One year, and we know that the game is far from over. Should the unions ultimately prevail before the Board it is fully anticipated that the Company will seize upon a basis to refuse to bargain and appeal the Board's decision to the Circuit Court of Appeals. The Board's handling of such refusal to bargain cases typically consumes some (sic) months and I am advised that thereafter it can reasonably be anticipated that the court proceedings in the Eleventh Circuit would take at least a year."

[Emphasis added.]

Under the interpretation and application of the Act presently embraced by the NLRB, **there is only one situation where representation elections are nearly always appropriate, desirable, and necessary in construction**; i.e., where the employer has already been organized and is party to a Section 8(f) prehire agreement which the employer will not agree to convert to Section 9(a) majority status through a card check and execution of a voluntary recognition agreement. Here, the only possible conversion tool is an election. But this situation is entirely different from that in a bottom-up campaign; i.e., the employer is already organized, a contract is in effect, the voters should already be union members, the NLRB will accept the unit description (job classifications and geography) contained in the agreement, and thus the election will be expedited.

NATIONAL LABOR RELATIONS ACT - SECTION 8(f)

As defined by the NLRB (National Labor Relations Board), an appropriate unit of employees for the purpose of collective bargaining ordinarily requires a regular employer and a stable group of identifiable employees. In the construction industry, however, if appropriate collective bargaining units were determined to be each construction project separately, many or even most of those projects might be completed before NLRB representation elections could be held and certainly before final certification of the union could be issued and a first labor agreement negotiated. Likewise, if appropriate collective bargaining units were determined to be the employees of each contractor separately, the entire work force or a substantial portion thereof might change once or even several times before an NLRB election could be held and the lengthy processes necessary to certification and negotiation of a first agreement completed. For these and other reasons, **NLRB representation election processes are not always appropriate to construction organizing.** (See later section titled NLRB REPRESENTATION ELECTIONS IN CONSTRUCTION).

The National Labor Relations Act (NLRA) was not designed for application to the construction industry and, therefore, has never fit its realities well. During the Wagner Act period, the NLRB acknowledged this fact by refusing to apply the Act to construction, and following passage of the Taft-Hartley Amendments, its attempts to apply the Act to construction were not very successful. The 1959 Landrum-Griffin Amendments attempted to address these problems but failed to

cope with the serious flaws inherent in applying the NLRB's industrial procedures to construction job sites. Regardless, in recognition of the unique nature of the industry, the NLRA does make some special exceptions for construction.

In recognition of the inability of construction craftsmen to achieve a truly effective voice in their wages, hours, and conditions of work except through the organization and control of a loose monopoly of the construction labor pool, Section 8(f) of the National Labor Relations Act encourages the formation of such monopolies by making legal their operation by construction unions. The rights granted construction unions by Section 8(f) are generally denied to unions in other industries. For construction unions, Section 8(f) is the single most important section of the Act because:

> It permits building and construction trades employers to sign union agreements without requiring the union to first establish that it represents a majority of the employees. Absent this proviso, prehire agreements would be unlawful, as they are in other industries. Agreements signed after a job is manned would also be unlawful unless the union first established that it represented a majority of the employees. Needless to say, this proviso is a powerful weapon which building and construction trades unions can utilize to its fullest extent only by organizing and controlling a loose monopoly of the construction labor pool;
>
> It permits building and construction trades collective bargaining agreements to require union membership after seven (7) days of employment or after seven (7) days following the signing of the agreement;
>
> It permits building and construction trades unions to require employers to notify the union of employment opportunities and allows the union to refer qualified applicants for employment;
>
> It permits building and construction trades unions to contractually establish standards of training or experience as qualifications for employment and to grant priorities in employment based upon length of service (a) with the employer, (b) in a geographical jurisdiction, or (c) in the industry.

The special privileges granted by Section 8(f) provide the tools needed to operate monopolies of qualified tradesmen formed by organizing and taking into membership a majority of all who are employed or available for employment in the industry. Once a monopoly has been built, the union automatically controls its work since employers cannot readily employ qualified tradesmen except through the union. In order to employ union tradesmen, an employer must first sign a "prehire agreement" made lawful by Section 8(f). These agreements will contain provisions establishing training or experience qualifications and employment priorities as also permitted by Section 8(f).

It is easy to see why Section 8(f) is so important. A monopoly of available manpower is possible under Section 8(f); without Section 8(f), it is impossible.

THE LAW OF SUPPLY AND DEMAND

The same principles apply to the skilled trades today as when the pioneers formed our labor organizations; to survive and prosper, the service offered must be matched with the demand. The law of supply and demand applies to the labor movement just as stringently as it applies to commercial endeavors.

Labor organizations must not be deluded into thinking they can survive or prosper by controlling or regulating the level of demand for skilled labor. The labor movement has attained only limited, short-term success in mediating demand, most often through political action designed to stimulate the level of construction activity; eliminate the least qualified and/or restrict entry to the trades through licensing requirements, training minimums, and ratios; or legislate union-only jobs.

Unions have sought to stimulate demand for their members' services by insuring that their levels of skill and ability are high and remain so; by investing their trust fund assets on favorable terms in projects that employ members only; and, in some cases, by directly subsidizing employers through stratagems such as funded target programs, i.e., the Kansas City Plan, Elgin I, and Elgin II. The effect of these efforts have been limited to localized or short-term successes and primarily have rewarded one group of tradesmen (union) to the detriment of the other group (nonunion). But in truth, these stratagems have had little long term

effect; while they have directed additional work to members, they have not substantially increased the continuing overall demand for skilled tradesmen nor have they allowed unions to regain control of the manpower supply.

The true long-term accomplishments of skilled trades unions have come from organizing and maintaining control of the supply of skilled tradesmen and then using that control through strikes, boycotts, limiting referral to those employers who agree to minimum terms and conditions of labor, and so on, to keep prices fair and working conditions good. Unions' declared intent, since their inception, has been to control the supply; to organize all building tradesmen into local unions for the purpose of eliminating that competition which is based on substandard terms and conditions of employment. It is the only strategy that has worked; continually organizing and controlling a working monopoly of the supply of skilled labor — the labor pool — and, through that working monopoly, enforcing minimum standards.

Like many social organizations which evolve over a long period of time, skilled trades unions have adopted some policies or programs which continue to work to their advantage but, in bureaucratic maturity, have taken on some disadvantageous characteristics as well. Thus, at the same time unions are trying to organize and control the existing supply, they may also support activities that add to the glut.

Think of the jurisdiction of a hypothetical skilled trades local union as a "labor market" controlled, as it is, by the basic law of supply and demand. There is a finite amount of skilled trades work to be performed in such a "labor market" and to the extent that the union controls the supply of skilled tradesmen, it can also control labor prices; that is, wages, fringe benefits, and other terms and conditions of employment. Assume, for purposes of illustration, that this "labor market" supports a demand for 600 tradesmen. Present building trades union control of 20-30% of the manpower in the U.S. construction industry will support an assumption that 180, or 30%, of these tradesmen are members of a local union and that the remaining 420 are self-employed or work for various nonsignatory employers.

FIGURE 1.

Union	plus	Others	equals	Supply	less	Demand	equals	Excess
180	+	420	=	600	-	600	=	0

Assume that the 180 building tradesmen who are members of the local union are wisely investing in their futures by employing organizers whose task it is to bring the 420 unrepresented tradesmen into membership so that, through control of the supply, they will be able to increase their standard of living and enhance their job security.

If this supply of 600 building tradesmen is stable or shrinks, thus fueling demand, the organizers' task will be easier and progress can be more readily attained. If, on the other hand, this supply of 600 tradesmen grows, the organizers' task will be more difficult and wages, fringe benefits, and other terms and conditions of employment will experience downward pressure as the result of more than 600 tradesmen competing for the 600 available jobs.

Now introduce into this "labor market" a program created by the union which continues to offer advantages but which has developed some disadvantageous characteristics; a joint apprenticeship and training committee. For the purpose of this example, assume that the basic local union agreement provides for a ratio of one apprentice to every three journeymen. Based on 180 journeymen members of this hypothetical local union, the joint committee's assessment of the ideal situation in a five-year apprenticeship program is to annually start classes of twelve each. They realize that, due to attrition, they will not be able to maintain a full 3-to-1 journeyman-apprentice ratio using these numbers, but it is a figure that has been arrived at through a consensus of the parties.

FIGURE 2.

Union	plus	Others	equals	Supply	less	Demand	equals	Excess
180								
+60	Apprentices							
240	+	420	=	660	-	600	=	60

In this example, to the extent that increases in supply are not offset by decreases due to retirement, injury, death, and other reasons, there will soon be more tradesmen than there are jobs. The union will then encounter problems in accomplishing its basic objective of maintaining high wages and full employment and, thus, will become less attractive to nonmembers. Current members will resist taking in additional journeymen members through organizing because they fear their competition for available union jobs. The union's stated goal of an ever increasing standard of living for its members will become less attainable as market

conditions become depressed due to oversupply and a working monopoly of the manpower supply becomes more difficult to maintain.

Those who originally organized the building trades unions knew that their first priority had to be control of the existing supply of skilled tradesmen, and that is why the goal of organizing all workers in the entire industry became boilerplate in all building trades union constitutions. In response to this same hypothetical example, they would have acted, first, to bring the 420 nonmember tradesmen into the union before increasing the supply by training additional ones.

FIGURE 3.

Union	plus	Others	equals	Supply	less	Demand	equals	Excess
180		420						
+60 Apprentices & Trainees		-60 Recruited by Union						
240	+	360	=	600	-	600	=	0

The problem is simply that union apprenticeship and training efforts have largely become apprenticeship efforts only; as bottom-up organizing in the building trades slowly ceased, the training function took a distant second place as well. As skilled trades organizations, unions have always conducted skill improvement and training activities. On the other hand, apprenticeship programs, as they operate today, are fairly recent innovations. Certainly, the challenge of training those who may not be high school graduates, who may not have the best study habits or well developed learning skills, and who may have pressing family and community obligations as well is greater than training carefully selected registered apprentices. But it represents change from our present method of operation — a change from present paradigms and a renewed obedience to the basic law of supply and demand.

The law of supply and demand dictates that union tradesmen do not command superior wages and conditions by virtue of their demonstrated superior skill and ability. If they did, wage cuts, funded target programs, and other concessions would never be necessary. Tradesmen command superior wages and conditions when they are organized well enough to affect the supply of labor, by withholding it in meaningful amounts or releasing it only under stated minimum conditions. To the extent that joint apprenticeship and training efforts have tended to instill a belief that union wages and conditions are based solely upon a skill and

ability platform, our labor organizations are endangered. Why would a tradesman need a union if wages were actually based upon skill and ability alone; that is a personal asset which does not require a union to promote. Those who are forced to market themselves in competition with the nonunion manpower supply soon realize that it is union organization, not skill and ability, that provides true marketing support. That is why strong organizations of relatively unskilled workers, such as in automobile plants, usually command higher wages and better conditions than most unorganized tradesmen whose skills are high.

CLASSIFYING AND INITIATING NEWLY ORGANIZED CONSTRUCTION WORKERS

Open-shop contractors are free to arrange their work so as to use individual employees on a wide variety of tasks and, therefore, they employ journeymen, subjourneymen, helpers, laborers, etc. These are the workers whose support must be secured if organization of the work force is to succeed. Union contractors, on the other hand, are constrained by collective bargaining agreements which specify the use of journeymen for certain work and which limit the number or ratio of apprentices who may be employed. Because of this, the organizer must recognize and understand that, to some extent, union contractors and open-shop contractors are looking at different sources for their manpower.

In order to organize most jobs, shops, or contractors it is necessary for the union to offer, or convincingly promise, two basic conditions to the workers in the unrepresented bargaining unit:

- job classifications employable under the collective bargaining agreement;
- an opportunity for union membership.

In top-down situations, the contractor may be willing to sign a union agreement and employ all needed additional craftsmen in conformance with the referral procedure while at the same time insisting that all, or a selected group, of his current employees be employed under the labor agreement and offered union membership.

In bottom-up situations, the union cannot realistically expect to secure the necessary support of a meaningful majority of the bargaining unit unless **union membership and placement in jobs covered by the labor agreement are the projected end results.** If the above stated conditions cannot be met, bottom-up organizing of entire bargaining units cannot usually be accomplished. Unfortunately, unorganized workers do not fall into the neat categories of journeymen and apprentices as recognized by most construction collective bargaining agreements and whom most unions are equipped to process as new members under their normal systems.

In the past, some local unions have attempted to deal with this problem by taking into membership only those craftsmen who passed required journeyman examinations and proved minimum experience levels while expecting or requiring contractors to get rid of and replace all others by using the referral procedure. Whether or not a contractor would cooperate usually depended on the strength of his desire or need to become party to the local union's labor agreement. Faced with losing his work, not being able to bid desirable work, being thrown off key jobs, etc., a contractor might be willing to discharge all of his employees, qualified as well as unqualified. On the other hand, faced with unemployment, losing a particularly desirable job, etc., the local union might be willing to accept into membership all of a contractor's employees.

Between these two extremes lie infinite variations ranging from refusing to allow a contractor to sign a local union agreement, thus forcing him and all of his employees off the job to be replaced by a contractor employing local union members, to such shoddy operations as promising to test and accept into membership all employees who achieve acceptable scores and then, after the contractor has already signed the agreement, designing the test so that none pass. Needless to say, these and like schemes have not solved the long-term problem and, in fact, actually work to erode the union's strength and eventually destroy it.

All union representatives responsible for organizing should understand that it is an unfair labor practice, in violation of Sections 8(a)(1) and (3) of the National Labor Relations Act, for a contractor to discharge or otherwise discriminate "against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members or (B) if he has reasonable grounds for believing that

membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership". Those contractors who have violated this part of the Act with impunity usually have been able to do so only because the discriminatees were ignorant of their rights and protections under the law. Otherwise, in most cases, those contractors would have eventually faced a reinstatement-to-employment order with appropriate back pay and interest.

All union representatives responsible for organizing should also understand that it is an unfair labor practice, in violation of Sections 8(b)(1) and (2) of the National Labor Relations Act, for a labor organization or its agents "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection 8(a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership". Those unions who may have violated this part of the Act with impunity usually have been able to do so because the contractor either did not know the law or chose not to use it or, again, because the discriminatees were ignorant of their rights and protections under the law. Otherwise, in most cases, those unions would have eventually faced orders for back pay plus interest also.

Removing an open-shop contractor from a job temporarily gains some work for union craftsmen but it also leaves this open-shop contractor intact and free to continue to bid against, or otherwise compete with, union contractors and union craftsmen. At the same time, it creates or aggravates bitter feelings against the union by the open-shop contractor and his unorganized workers thus making eventual organization even more difficult. Left free to operate nonunion, this contractor will eventually cost the union more work than the union gained by having him thrown off a job and will erode the union's wages, benefits, and working conditions while doing it. Whenever the union has or gains the advantage, it should cause the contractor to become party to a collective bargaining agreement, multiemployer if possible, and should improve its control of the construction labor pool by initiating the workers. This destroys the ability of the contractor to continue to compete based on substandard wages, benefits, and working conditions which, after all, is an important purpose of unions.

Prior to passage of the Davis-Bacon Act in 1931, placing newly organized construction workers in job classifications covered by the labor agreement did not pose as large a problem since the use of helpers, preapprentices, learners, trainees, subjourneymen, etc., was common practice in most construction unions. However, because of the tremendous impact of Davis-Bacon which excluded all classifications except journeymen and those apprentices registered in BAT (Bureau of Apprenticeship and Training, U.S. Department of Labor) programs from the wage categories set in its regulations, use of other classifications in the unionized sector had virtually disappeared by the early 1950s and classification of newly organized workers had become more difficult as well.

Many open-shop contractors are able to underbid or otherwise compete effectively against union contractors because they are free to organize their work so as to use individual workers who lack journeyman skills (subjourneymen) on a wide variety of tasks and assignments ordinarily performed by union journeymen. Although the employment of subjourneymen together with the absence of BAT-approved apprentice training programs has helped to limit the Davis-Bacon work performed by these open-shop contractors, it is the major source of their ability to compete effectively for work not involving use of public funds.

Recently, because of the economic climate, the tremendous growth in numbers of double-breasted, merit-shop, and open-shop contractors, and changes in the regulations of the Davis-Bacon Act to allow use of subjourneymen and use of the average wage rather than the union wage as prevailing on projects involving use of public funds, some unions have added various subjourneyman categories to their labor agreements in order to improve the ability of union contractors to compete against the subjourneyman categories. It has been anticipated that, where used, subjourneymen categories will eliminate the white ticket or permit system used by some unions to refer unqualified nonmembers at full journeyman rates to jobs where manpower is needed but journeymen are not available.

Although classification of newly organized workers is easier under agreements containing subjourneyman categories, this trend is not widespread enough to have a meaningful impact on this problem and some unions will not approve any agreement providing for use of subjourneyman categories in their craft jurisdiction.

How, then, does the union approach the organization of bargaining units which include subjourneyman categories such as helpers, laborers, preapprentices, learners, and others who do not fit the predetermined qualifications and classifications enumerated in the labor agreement? Must the union fail in recruiting majority support because the organizer cannot guarantee classification in jobs covered by the labor agreement or because certain workers must be told that they cannot be accepted into membership? This problem is one of the toughest to solve and is the single most damaging obstacle to both top-down and bottom-up construction union organizing. It usually breaks down into two parts: (1) how can unorganized workers be guaranteed that the local union body will eventually accept them into membership; and (2) how can newly organized workers be meshed into the job classifications specified by the union's collective bargaining agreements.

PREPARATIONS TO DEAL WITH THIS PROBLEM MUST BE MADE IN ADVANCE IF ANY CONSTRUCTION ORGANIZING PROGRAM IS TO BE SUCCESSFUL OR SUSTAINED.

Placement Examination System

One of the best ways to accomplish both the proper classification under the current labor agreement and initiation into membership of newly organized workers is through use of a **placement** or **no-fail** examination system. In order to successfully operate such a system, in addition to its normal apprentice training arrangements and facilities, the local union may want to offer separately the instruction and training necessary to upgrade the skills of newly organized workers who cannot immediately qualify for the journeyman classification. Many local unions already have this capability. Those which do not may want to develop it before implementing the placement examination system.

Under the placement or **no-fail examination system**, all newly organized workers are given tests for the purpose of ascertaining their knowledge of and familiarity with their craft. These tests may be written, oral, or practical and should include experience ratings. Although acceptable minimum scores may be predetermined for the purpose of attaining immediate journeyman classification, the primary purpose of the testing is placement.

Although newly organized tradesmen may be meshed into existing apprentice classes, this is not always practical. Placing subjourneymen with long years of experience in classes with inexperienced recent high school graduates, for example, may not provide the most desirable educational environment. More importantly, these subjourneymen may have different educational or instructional needs which can be more adequately and timely addressed in separate skill improvement and training classes. These separate classes may be set up with journeyman certification or automatic journeyman classification, based on experience ratings, as the end result.

Those tradesmen who cannot achieve immediate journeyman classification and who are not placed in separate skill improvement and training classes should be placed in the apprentice training program at the level indicated by their test results (1 month, 6 months, 12 months --- 42 months, etc.). The normal qualifications required of apprenticeship applicants such as age, education, residency, etc., may usually be waived to accept newly organized tradesmen into BAT-registered apprenticeship and training programs provided evidence that they came as the result of an organizing effort (a majority of tradesmen in the bargaining unit sign union authorization cards, an agreement is signed, or an NLRB election is won) can be furnished to BAT or provided their employer becomes party to the local union's labor agreement and pays into the program and, in either case, further provided that some credit for previous experience (as little as one month) is given to each so that none start at the beginning.

The BAT will occasionally object to the waiving of some requirements but will often back away if pressed. Any real roadblocks to placement of newly organized workers in the apprentice training program usually arise on the joint committee. For this reason, **particular care should be taken to win the joint committee's support for the organizing program in advance.** This should not be difficult once the employers understand that organizing makes them more competitive.

An efficient way to insure that newly organized tradesmen qualify for inclusion in the union's apprentice training program is to amend the standards. This approach has been utilized by the National Joint Apprenticeship and Training Committee for the Electrical Industry (NJATC). The Qualifications for Apprenticeship section of the NJATC's National Standards, which are registered

with the U.S. Department of Labor, Bureau of Apprenticeship and Training, contains the following exceptions or additions to the traditional qualifications:

> "(1) ...To qualify for oral interview an applicant must meet the .... basic requirements unless he or she has a minimum of six thousand hours of substantiated electrical construction work experience.
>
> "(2) An employee, of a nonsignatory employer, not qualifying as a journeyman when the employer becomes signatory shall be evaluated by the JATC and indentured at the appropriate period of apprenticeship based on previous work experience and related training.
>
> "(3) An individual who signs an authorization card during an organizing effort wherein over fifty percent of the employees have signed: Whether or not the employer becomes signatory, an individual not qualifying as journeyman shall be evaluated by the JATC and indentured at the appropriate period of apprenticeship based on previous work experience and related training."

For those subjourneymen who actively assist in organizing efforts but are not able to substantiate 6,000 hours of electrical work experience and whose employers do not become signatories or where NLRB elections are not won or a majority of authorization cards are not obtained, an alternative is to simply place these workers in training without registering them with BAT. These nonregistered trainees cannot be used, as such, on prevailing rate work and, upon completion of the program, will not receive a state or federal certification. They will receive the ultimate recognition, however, which is journeyman classification for purposes of referral and employment under the collective bargaining agreement.

Most collective bargaining agreements provide that the joint committee (JATC) shall be responsible for all training and not just the apprenticeship program and not just "registered" apprentices. Many newly organized workers can be processed through special skill upgrading and training classes designed especially for that purpose.

Regardless of age and/or excellent qualifications, an applicant may prefer placement in the apprentice training program to an immediate journeyman

classification. Applying the sample referral language which appears in the following pages, consider an employment situation where the Group I applicant pool is turning over on a regular and frequent basis but where Group II is seldom, if ever, utilized. Simultaneously, the union is engaged in an organizing drive which hinges upon the recruitment and subsequent employment of key qualified nonunion tradesmen. Since none of these key tradesmen have been employed for a period of "at least one year in the last four years" under the union's collective bargaining agreement, none can qualify for registration in Group I. They face the Hobson's choice of remaining nonunion and employed or becoming members only to face an indefinite period of unemployment as Group II registrants. In this situation, an apprentice classification may be preferable because apprentices are not subject to the referral procedure but, instead, are placed on jobs by the joint committee. Inclusion of key tradesmen in the final year of the apprentice training program can provide employment under the collective bargaining agreement at a relatively high rate of pay. Additionally, the minimum employment period under the collective bargaining agreement of "at least one year in the last four years" may be satisfied while completing the final apprenticeship year so that Group I registration eligibility and the journeyman classification are achieved simultaneously.

Following the placement examination, but prior to acceptance, as an additional precaution, newly organized tradesmen who do not qualify for immediate journeyman classification may be given individual letters clearly stating the placement level achieved or other conditions (see Exhibit B).

First preference for employment and the highest wage rates are the right of those who have earned or acquired the journeyman classification. This is usually evidenced by a membership book, ticket, dues receipt, etc., issued by the local union and requires certification as a journeyman by a joint apprenticeship committee or a passing score on a journeyman examination given by a construction local union. The following referral language excerpt from a construction labor agreement is typical:

Sample Contractual Referral Language

> Section_____. The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or nonmembership in the Union and such selection and

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referral shall not be affected in any way by rules, regulation, bylaws, constitutional provisions or any other aspect or obligation of Union membership policies or requirements. All such selection and referral shall be in accord with the following procedure.

Section_____. The Union shall maintain a register of applicants for employment established on the basis of the Groups listed below. Each applicant for employment shall be registered in the highest priority Group for which he qualifies.

GROUP I. All applicants for employment who have four or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a Journeyman examination given by a duly constituted Construction Local Union or have been certified as a Journeyman by any Joint Apprenticeship and Training Committee, and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this Agreement.

GROUP II. All applicants for employment who have four or more years' experience in the trade and who have passed a Journeyman examination given by a duly constituted Construction Local Union or have been certified as Journeyman by any Joint Apprenticeship and Training Committee.

GROUP III. All applicants for employment who have two or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market, and who have been employed for at least six months in the last three years in the trade under a collective bargaining agreement between the parties to this Agreement.

GROUP IV. All applicants for employment who have worked at the trade for more than one year.

Section_____. If the registration list is exhausted and the Local Union is unable to refer applicants for employment to the Employer within 48 hours from the time of receiving the Employer's request; Saturdays, Sundays, and holidays excepted; the Employer shall be free to secure applicants without using the Referral Procedure but such applicants, if hired, shall have the status of "temporary employees".

In the four referral groups appearing in the above sample, you will note that the only registration requirement the union has direct control over is the journeyman examination or certification. Even though the referral procedure is not subject to or dependent upon union membership or other union requirements, it is the reason underlying most membership application rejections. Too often the local union membership wrongly reasons that it is to their advantage to limit the number of craftsmen who are entitled to employment preference under the labor agreement by withholding the journeyman classification and/or a union card, ticket, book, etc., as evidence of the journeyman classification. By doing so, they are often guaranteeing that these craftsmen will be permanently available to their nonunion competitors, usually at substandard rates and conditions.

It is easy to limit the number of craftsmen certified as journeymen by a joint apprenticeship committee. First, all applicants must meet certain standards which may be based on age, education, physical fitness, aptitude tests, residency, etc., and survive a committee interview based on judgment factors such as interests, moral character, cooperativeness, judgment, financial condition, etc. Second, and most important, the number of new apprentices to be accepted is arbitrarily determined in advance.

It is more difficult, but not impossible, to limit the number of craftsmen who pass a journeyman examination given by a duly constituted construction local union. Sometimes these examinations are offered in writing only or, if offered orally, may not be administered by interview designed to determine actual knowledge and familiarity with the craft. Experience ratings may be ignored or not given proper weight. Under the guise of maintaining high industry standards, examinations may be deliberately designed to be difficult, or even impossible, to pass. Applications to take examinations may be discouraged through various forms of intimidation, coercion, or discrimination. Those who apply, if already

employed under the labor agreement, may suddenly be laid-off or referral under the **permit system** may suddenly become difficult or impossible to achieve.

Our sample referral language, in accord with the law, makes it plain that preference for employment referral shall not be based on union classification or membership. In theory, therefore, a journeyman classification issued by a union is meaningless for referral purposes unless it is earned by examination or certification. However, in some situations where local unions have classified craftsmen as journeymen even though they have not taken or passed a journeyman examination or been certified by an apprenticeship and training committee, the NLRB has ruled that such classification, absent conclusive proof to the contrary, is based on experience ratings and indicates qualification for employment referral as journeymen.

It goes without saying that newly organized workers who pass a journeyman examination should be classified and referred for employment as journeymen just as those who are placed in apprentice training programs should be classified and employed as apprentices. Those who are not placed in either category but are enrolled in skill improvement and training classes may be classified in a variety of ways. If the labor agreement makes provisions for use of subjourneymen, they may be classified and referred for employment in that manner pending full journeyman status. They may be classified as **steamfitter** rather than **journeyman steamfitter**, as **wireman** or **residential wireman**, etc., and be referred out of the proper group (GROUPS III or IV in the sample), be used in place of **white tickets** or the **permit system**, be used as supplements to maintain the proper apprentice/journeyman ratio if permitted, etc. If necessary to organizing purposes and permitted by agreement with signatory employers, they may even be classified as **provisional journeyman** pending full journeyman status.

What recourse, if any, does the union have following classification and initiation into membership if a newly organized worker fails to complete the terms of the placement letter by attending skill improvement and training classes or completing the required apprenticeship and training program? As long as the journeyman classification has not been granted, such classification may be withheld and registration for employment referral as a journeyman (in GROUPS I or II in our sample) would not be permitted. Whenever possible, the full journeyman classification should not be granted until the necessary skill improvement and training is completed. If there are any who cannot be classified as journeymen or

apprentices, hopefully they will remain with their newly organized employers until the terms of their placement letters put them in classifications recognized by the labor agreement so that the referral procedure will not come into use prematurely.

The possibility should be acknowledged that referral out of GROUPS I or II of our sample referral procedure may imply journeyman status just as granting a journeyman classification without requiring a journeyman examination may imply it as earlier noted. In addition, the knowing referral out of any group of a person or persons not so entitled may subject the local union to charges by those rightfully entitled and thus disadvantaged.

So far we have discussed how the **placement** or **no-fail examination system** can make a sustained organizing program possible and successful by providing a workable mechanism to guarantee workers that, once organized, they will be placed in employable job classifications. This is only half of the problem, however. To be successful, we must also offer union membership.

Initiating The Newly Organized

With rare exception, apprentices are automatically offered union membership. By using the **placement** or **no-fail examination** system to move as many newly organized workers as possible into the apprentice training program, we are also guaranteeing that union membership will be open to them. In any event, once apprentices are certified as journeymen, they are entitled to preference for employment referral (through GROUPS I and II in the sample) so there is no longer a reason to oppose their membership in the union. Problem solved for this group.

If strong membership opposition is expected, an effort may be made to see that these journeymen applicants qualify for preference in referral before any membership vote. Under our sample referral language, this would require a year's employment under the labor agreement. Assuming that these journeymen applicants are currently employed under the labor agreement by a recently organized contractor, this should not be impossible. Once an applicant qualifies for referral preference (registration in GROUP I in our sample), opposing his membership in the union no longer makes sense.

In situations where the examining board may be hostile to organizing, those who are qualified for journeyman classification may be placed in the final stage of the apprentice training program and, upon completion, certified as journeymen by the joint committee.

Permanent Solution

There are, of course, better and more permanent ways to solve the two major internal problems prohibiting or limiting union organization of the construction manpower pool. The best way is through an educational program, such as IBEW's COMET, designed to improve the rank-and-file member's understanding of the necessity of taking in new members. However, this cannot be accomplished over night nor can the organizer always afford to wait.

REGARDLESS OF THE METHOD USED, BEFORE ANY ORGANIZING PROGRAM CAN BE SUSTAINED, THE UNION MUST BE ABLE TO GUARANTEE THAT NEWLY ORGANIZED WORKERS WILL BE (1) PLACED IN JOB CLASSIFICATIONS EMPLOYABLE UNDER THE LABOR AGREEMENT AND (2) OFFERED MEMBERSHIP IN THE UNION.

THE JATC - A CRITICAL ORGANIZING ROLE

In order to mount a successful bottom-up organizing effort, it is absolutely essential to be able to extend two basic guarantees to nonunion employees. These guarantees are:

1. JOB CLASSIFICATIONS EMPLOYABLE UNDER THE COLLECTIVE BARGAINING AGREEMENT; and

2. THE OPPORTUNITY FOR UNION MEMBERSHIP.

The above stated guarantees are not all that may be needed in order to successfully organize bottom-up. They are minimums.

Being skilled in all facets of the trade is no longer necessary for lifetime employment in the nonunion branch of the construction industry even though the union definition of "qualified" includes it. the journeyman classification requires

it, most standard collective bargaining agreements recognize no employable job classifications except foreman, journeyman and apprentice, and most standard referral-for-employment procedures recognize but one referable job classification; journeyman.

When organizing, how can unions appeal to the vast majority of the nonunion craftsmen who are performing skilled work under substandard terms and conditions of employment? If they are completely honest, most local unions must simply say:

> "If you will support our union in its effort to organize your nonunion employer and the effort is successful, you will be given an examination to determine if you are knowledgeable in all facets of the trade -- both in theory and in code. Provided you achieve an acceptable score on this examination, you will be classified as a journeyman. You will thereafter be allowed to remain with your present employer without penalty as long as that employer remains signatory to our union's collective bargaining agreement and wishes to keep you.
>
> "If your employer lets you go for any reason, and provided that you have at least four years experience in the industry, you will be eligible to sign our union's out-of-work-list in one of the top two groups.
>
> "If you are a resident in the jurisdiction and further provided that you have worked at least one year out of the last four under our union's collective bargaining agreement, you will be eligible to register in Group I. Otherwise, you will be placed in Group II where the prospects for your employment are not good since our union does not anticipate being able to refer from that group for several months or even years.
>
> "You may travel away from home and family to work out of Group II in the jurisdiction of other local unions provided they need the help. In the meantime, even if your present employer, who has employed you for many years and who has recalled you from layoff repeatedly, should experience an increase in work and wish to call you back as

has been his custom, you will not be allowed to return and your former job will be given to a Group I registrant.

"If you should perform any nonunion electrical work while you are unemployed, you will be subject to discipline including fines and the loss of your newly acquired union membership.

"Since most of the craftsmen working for your nonunion employer are subjourneymen when measured against our union's journeyman standard of knowledge of all facets of the trade, you probably will not be able to pass a journeyman examination. In this event, you may apply for inclusion in our union's pool of eligible apprenticeship applicants. To be included in this pool you must be a high school graduate or have a GED, have completed one full year of algebra, achieve qualifying scores on aptitude tests, and be physically able to perform the work or you must have at least 6,000 hours of experience in the industry. In the event you meet these standards and are included in the pool, you still may not be selected for training and placement in a job covered by our union's collective bargaining agreement.

"In the event you cannot qualify as a journeyman and are not accepted as an apprentice, you cannot be placed or referred for employment under the standard collective bargaining agreement and, in all honesty, there is no employable place for you in our union.

"Regardless, we are asking for your support in our organizing effort and we hope that you will authorize our union to represent you, strike if necessary, and do all other things necessary to bring your employer under our union's collective bargaining agreement even if you cannot be employed as a union craftsman yourself."

Unorganized tradesmen cannot be expected to engage in organizing activity such as recognitional or unfair labor practice strikes if success will result in their unemployment or will not bring union membership.

The Placement Examination

Unfortunately, unorganized workers do not fall into the neat categories of journeyman or apprentice recognized by, and employable under, most construction agreements and whom most local unions are equipped to process as new members under their present systems. Therefore, in order to conduct a successful organizing program, modifications must be made to alleviate this problem. The method that has worked best for many years is use of a placement examination (no-fail test) system.

In recognition of its changing major responsibility and its critical organizing role, in August 1987, the NJATC for the Electrical Industry helped prepare a comprehensive placement examination and on August 1, 1988, issued Bulletin 88-34 titled *Organizing — JATC's Role and Responsibility*, (see Exhibit C-1), which stated, in part, that:

> "As you are aware, the IBEW and NECA are dedicated to an organizing effort. With such efforts individuals not qualifying as journeyman will be referred to the JATC for evaluation and placement in apprenticeship.
>
> "The JATC should develop or adopt a standard test to help evaluate the individual's past education, training and experience. In addition to evaluating tests results, the committee (JATC) or representative should interview the individual to determine previous OJT experience and related training. The sole purpose of testing and interviewing the individuals is to place them in the program at a realistic level. A level at which they can succeed.
>
> "It is the opinion and belief of the NJATC that local JATCs should cooperate fully in the organizing effort, and it is also our view that this can be done and must be done in such a manner as to insure, protect and promote the quality and integrity of the training program."

The message delivered by Bulletin 88-34 is clear. The elimination of fair employers' nonunion competition cannot be accomplished unless two basic conditions are met as minimums. The first of these is the guarantee of a job classification employable, through placement or referral, under the union's

collective bargaining agreement. The JATC has a vital role in this part of the organizing process. If newly organized employees cannot qualify as journeymen, the JATC has a training responsibility which begins with proper placement. Every JATC should be cognizant of the fact that they are responsible for all training and not just apprenticeship.

The National Electrical Contractors Association (NECA) has determined that its proper function is as a union contractors association. As such, NECA's future growth also depends upon the success of the union's organizing effort. The proper function of electrical industry JATC's is to discharge the duties which IBEW/NECA assigns to them. Presently this includes an organizing responsibility.

Broadening The Applicant Pool

On September 14, 1988, the NJATC for the Electrical Industry once again assumed the lead position in the building and construction industry by issuing Bulletin 88-43 titled *Section V of Apprentice Wireman Standards - Revised*, (see Exhibit C-2), which announced revisions in the standards for inclusion of newly organized craftsmen in the apprentice applicant pool. These changes, which are registered with the U. S. Department of Labor, BAT, waived all educational, aptitude, physical, and age requirements for newly organized tradesmen under certain circumstances.

JATCs do not have a responsibility to process all newly organized craftsmen through apprenticeship training. Many will be processed through local union examining or executive boards. Others will be placed in special JATC skill upgrading classes or be processed in other ways. JATCs should act only upon those newly organized craftsmen brought before them.

As a stop-gap measure, some local unions have initiated all newly organized craftsmen and if, after being admitted to membership, it was found upon investigation that they were not sufficiently acquainted with the branch or type of work on which they were engaged to earn or command the established wages, then the local union, through its executive or examining board or an especially appointed committee, required them to revert to the proper apprentice grade and pay rate, to attend study classes, or devote time toward becoming competent, properly informed mechanics.

On September 21, 1989, the NJATC for the Electrical Industry issued Bulletin 89-63 titled *Emphasizing JATCs' Responsibilities in Organizing as seen by the NJATC*, (see **Exhibit C-3**), which stated in part as follows:

"The rapid and sometimes drastic decline in the number of apprentice applicants increases the demand for JATCs to recruit applicants employed elsewhere in the electrical construction industry. Many individuals working **nonunion** already meet your basic requirements for interview. Others may qualify by having the six-thousand hours work experience that qualifies an individual for interview by the committee.

"We believe JATCs should seek out the best qualified candidates from this untapped [nonunion] supply.

"The national standards also clearly provide provisions for indenturing through organizing.

"The written examination (placement examination) is not a test to determine if one coming through organizing will be indentured. . . The individual should be caused to understand it is not a qualifying test but necessary to help determine what training they need to succeed. Don't anticipate or look for high scores on the placement examination.

"Not all of those coming through organizing will perform all the job skills as well as many of your more carefully selected applicants, but most of them can be trained to be a productive part of our industry. Remember; somehow, someway, they have been doing your work in the past years and **if they don't produce for you they will compete against you**.

"No decline in quality training, selection or apprenticeship standards is suggested, nor is it threatened, if we approach this organizing effort in a positive productive manner. Knowing the growth in the number of nonunion workers and employers over the past should be motivation enough to cause us to act expediently to redirect the course of the electrical construction industry."

On October 17, 1992, the NJATC for the Electrical Industry issued Bulletin 92-122 titled *Organizing - Recruiting Apprentices From the Nonunion Work Force*, (see **Exhibit C-4**), which provides in part as follows:

> ". . . we want to encourage JATCs to start doing some very special recruiting.
>
> "The registered standards allow [nonunion] individuals with six-thousand hours to qualify for an interview.
>
> "You will also find individuals working for the nonunion with less than six-thousand hours who will qualify for interview . . . You should do everything possible to have these people apply so as to have an opportunity to interview them as potential candidates for your program.
>
> "We further believe that we should **make a concerted effort to recruit the best workers the nonunion has to offer**. Recruiting the best performers from the competition is a means of organizing that will prove extremely successful.
>
> "The IBEW-NECA apprenticeship standards permit providing selected applicants with credit for previous EXPERIENCE and TRAINING where warranted."

It is clear that the NJATC for the Electrical Industry is a training organization that is not oblivious to the creeping destruction of union standards in the construction industry. It has responded well by shedding outmoded and unworkable paradigms while urging all affiliated JATCs to follow its effective example. Unfortunately, as in all advocated change, the JATC response has not been uniform or complete. A few continue to slop at the same trough by failing to comprehend or assume their necessary roles. Some who owe their livelihoods to joint apprenticeship programs even deny that JATCs have a critical organizing role. They view their primary occupation as training traditional apprentices and anything that threatens this activity is also viewed as threatening their livelihood. Surely we can understand and sympathize with this position especially since, as labor unions, our purpose is job security. But it should not be so. At best, it would take a number of years to organize and upgrade the skills of the 420

nonunion tradesmen working in the hypothetical "labor market" of our example. Surely, this would pose a much greater challenge to the joint committee and offer more job security than simply selecting and training the brightest and most easily taught from among the pool of eligible applicants for apprenticeship.

COLLECTION OF UNION FINES IN CIVIL COURT

Nearly all members of building and construction trades unions are familiar with various kinds of union imposed discipline including fines, expulsion from membership, or both. But many construction union officials have come to erroneously believe that union fines cannot be enforced in court once a member resigns or otherwise allows his membership to lapse.

While there may have been strong arguments against bringing suit to collect union fines in the past when loss of union membership was the more threatening prospect, the situation today is entirely different. Unions no longer represent a majority of the building tradesmen in this country. In a situation where thousands of building tradesmen of all crafts have resigned their union membership to work open-shop while thousands more have allowed their membership to terminate through nonpayment of dues, the collected fine is often more effective than loss of membership. Uncollected, however, the fine becomes less than meaningless.

Since some union officials mistakenly assume that union imposed fines are not collectible in civil court, a discussion of the legal basis may be helpful. The courts have traditionally held that there is a contractual relationship between a union and its members. By joining a union, a member becomes contractually bound by its constitution and bylaws except to the extent that this common-law principle is modified by the National Labor Relations Act and the Labor Management Reporting and Disclosure Act. While these Acts do proscribe union discipline in certain situations, unions are left with great discretion in enforcing their constitutions and bylaws. Since we are primarily concerned with the collection of legal fines in civil court, we will not discuss these proscriptions here.

Construction unions commonly fine members who are discovered working for nonsignatory employers. Provided that working nonunion is properly proscribed by the union's constitution or bylaws and the member is not employed

as a supervisor, these fines are perfectly legal. In Scofield v. NLRB, 394 US 423, 70 LRRM 3105 (1969), the U.S. Supreme Court noted that unions are "free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave and escape the rule". Also see Orange County Carpenters, 242 NLRB No. 75, 101 LRRM 1173 (1979).

How much can a union legally fine a member? In NLRB v. Boeing Co., 412 US 67, 83 LRRM 2183 (1973), an employee was fined and the union then sued in state court to collect. The employee filed an NLRB charge alleging that the amount of the fine was unreasonable. Following dismissal by the NLRB, the employee appealed and the U.S. Supreme Court stated: "While 'unreasonable' fines must be more coercive than 'reasonable' fines, all fines are coercive to a greater or lesser degree. The underlying basis [is] not that reasonable fines were noncoercive under the language of Section 8(b)(1)(A) of the Act, but was instead that those provisions were not intended by Congress to apply to the imposition by the union of fines not affecting the employer-employee relationship and not otherwise prohibited by the Act."[2]

The Court, in effect, held that while causing an employee to be discharged from employment for failure to pay a fine is unlawful, court action to collect a fine does not violate the Act. The Court went on to tell us that: "Issues as to the reasonableness of such fines must be decided upon the basis of the law of contracts, voluntary associations, or such other principles of law as may be applied in a forum competent to adjudicate the issue. Under our holding, state courts will be wholly free to apply state law to such issues at the suit of either the union or the member fined".

Since members may contest the reasonableness of fines in courts, what size fines are reasonable? As one example, courts have held that a reasonable fine for working behind a legal picket line is an amount equal to the money earned while so engaged. Since this question may be determined by state courts, there is a potential for fifty different sets of criteria. You may wish to consult legal counsel in the state where you are located on this question.

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[2]A more recent case, Woodell, holds that fines may also be collected in federal court.

The U.S. Supreme Court has ruled that a union trial board has the right to determine whether its constitution and bylaws have been violated and that a court is not supposed to substitute its judgement for the union's. The Court has said that if a disciplined member appeals to court, the union's decision must be upheld as long as it is supported by some credible evidence. Therefore, if a union fines a member for working for a nonsignatory employer and then sues in court to collect the fine, the court should uphold the union's decision as long as there is credible evidence that the member actually committed the offense. See Boilermakers v. Hardeman, 401 US 233, 76 LRRM 2542 (1971).

Generally speaking, a tradesman must be a union member when an offense is committed but membership is not a requirement at the time of trial or at the time suit for collection is brought in court.

Since union fines may be collected under state contract law, unless there is a specific statute providing that the winner is entitled to legal fees or unless the member is contractually bound to pay the legal fees by the union's constitution or bylaws, each side must pay its own legal fees.

IBEW Special Projects Department
1125 15th Street, NW
Washington, DC 20005

May 1994

EXHIBIT A

SALTING RESOLUTION

WHEREAS: (Name of local union here) is committed to organizing all unorganized craftsmen working in our jurisdiction, and

WHEREAS: A continual organizing program is the lifeblood of all building and construction trades unions because it is the only proven method of maintaining control of the construction labor pool, and

WHEREAS: The first obligation of the members of this local union is to organize the unorganized in order to maintain and secure our wages, benefits, and other conditions of employment, and

WHEREAS: The success of any organizing drive depends upon the support of each and every union craftsman, both on and off the job; therefore be it

RESOLVED: That the (title of responsible local union official or committee here) be empowered to authorize members to seek employment by nonsignatory contractors for the purpose of organizing the unorganized, and be it further

RESOLVED: That unemployed members shall report to the (title of responsible local union official or committee here) for the purpose of assisting as needed in the organizing program, and be it further

RESOLVED: That the (title of responsible local union official or committee here) shall maintain records of all members authorized to seek employment by nonsignatory employers including date(s) of authorization, date(s) of employment, and all other pertinent information, and be it further

RESOLVED: That such members, when employed by nonsignatory employers, shall promptly and diligently carry out their organizing assignments, and leave the employer or job immediately upon notification, and be it further

RESOLVED: That any member accepting employment by a nonsignatory employer, except as authorized by this RESOLUTION, shall be subject to charges and discipline as provided by our Constitution and Bylaws.

Adopted by the Local Union and entered into the minutes of the membership meeting this ______ day of ________________, 19__.

____
President

L.U.
SEAL

____
Recording Secretary

EXHIBIT B

1st Sample Letter

Dear (Newly Organized Worker):

The placement examination administered on (insert date here) has been evaluated and indicates that you do not presently qualify for a journeyman classification. These tests and other required criteria do indicate, however, that you are eligible for inclusion in our joint apprenticeship training program at the (insert period, hour, level, etc., here). You will be required to complete this program in order to achieve a journeyman certification.

If the above conditions meet with your approval, please indicate your acceptance by signing and dating the original copy of this letter in the space provided below and returning it to this office.

__________________________ Sincerely yours,
(Acceptance signature,
Newly Organized Worker)

DATE: ________________

____
Business Manager

2nd Sample Letter

Dear (Newly Organized Worker):

The placement examination administered on (insert date here) has been evaluated and indicates that you do not presently qualify for a journeyman classification. These tests and other criteria do indicate, however, that you are eligible for voluntary participation in our skill improvement and training program which is designed to assist you in acquiring the skills and knowledge necessary to achieve a journeyman classification. If you accept, you will be allowed to attend study classes and devote time as necessary to becoming a competent, properly informed mechanic.

If the above conditions meet with your approval, please indicate your acceptance by signing and dating the original copy of this letter in the space provided below and returning it to this office.

__________________________ Sincerely yours,
(Acceptance signature,
Newly Organized Worker)

DATE: ________________

____
Business Manager

3rd Sample Letter

Dear (Newly Organized Worker):

Experience ratings included as part of the placement examination administered on (insert date here) indicate that you may be issued an immediate provisional journeyman classification pending completion of voluntary skill improvement and training classes designed to enhance your competence as a properly informed mechanic. If, for some reason, you do not complete these classes, your provisional classification will be changed to the proper grade (apprentice, subjourneyman, no classification, etc.) and pay rate.

If the above conditions meet with your approval, please indicate your acceptance by signing and dating the original copy of this letter in the space provided below and returning it to this office.

Sincerely yours,

____
(Acceptance signature,
Newly Organized Worker)

DATE: ______________

____
Business Manager

EXHIBIT C-1

National Joint Apprenticeship and Training Committee for the Electrical Industry

August 1, 1988 BULLETIN 88-34

TO: Secretaries, Chairmen, Training Directors, IBEW Business Managers, NECA Chapter Managers, IBEW Vice Presidents, NECA Regional Directors, NJATC Members

SUBJECT: Organizing - JATC's Role and Responsibility

As you are aware, the IBEW and NECA are dedicated to an organizing effort. With such efforts individuals not qualifying as journeyman will be referred to the JATC for evaluation and placement in apprenticeship. Remember, apprentices enter the program only through the JATC.

At what level OJT and in which year related training such individuals are to be indentured is the responsibility of the JATC.

The JATC should develop or adopt a standard test to help evaluate the individual's past education, training and experience. In addition to evaluating tests results, the committee (JATC) or representative should interview the individual to determine previous OJT experience and related training. The sole purpose of testing and interviewing the individuals is to place them in the program at a realistic level. A level at which they can succeed.

It serves no purpose to place individuals at a level where they cannot perform in related class or on the job. The sole objective is to help them be successful in becoming accomplished journeymen. It does not serve this industry well if they are indentured and provided a year or so of training then fail, only to return to work for the competitors, better equipted than before.

PLACE THEM WHERE THEY CAN SUCCEED.

Remember, a uniform (non-discriminatory) method of testing must be used.

A. J Peerson, Director • 16201 Trade Zone Ave., Suite 105 • Upper Marlboro, MD 20772 • Phone 301 249-2042

Also, a uniform method of awarding OJT credits should be adopted by the JATC. The individual's work experience should be evaluated to determine the amount of hours to credit toward the mandatory work practices listed and registered in your standards.

UNIFORM, REALISTIC AND FAIR TESTING FOLLOWED BY EVALUATION AND AWARD OF CREDIT IS A MUST.

It is the opinion and belief of the NJATC that local JATCs should cooperate fully in the organizing effort, and it is also our view that this can be done and must be done in such a manner as to insure, protect and promote the quality and integrity of the training program.

EXHIBIT C-2

National Joint Apprenticeship and Training Committee for the Electrical Industry

September 14, 1988 BULLETIN 88-43

TO: Secretaries, Chairmen, Training Directors, IBEW Business Managers, NECA Chapter Managers, IBEW Vice Presidents, NECA Regional Directors, NJATC Members.

SUBJECT: Section V of Apprentice Wireman Standards-Revised.

Section V - Qualifications for Apprenticeship of the National Standards has been revised and registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training.

The new language is shown on the page following this bulletin. The new language serves to specify what is already a practice in many areas.

Part one simply says an applicant has to meet all qualifications (A through F) unless he/she has 6000 hours of electrical construction work experience.

Part two deals with individuals being placed (indentured) into apprenticeship when their employer becomes a signatory contractor.

Part three allows individuals to be indentured provided over fifty percent of a nonsignatory employer's employees sign authorization cards.

To revise local standards the JATC would need to do the following:

(1) Make seven (7) copies of the sheet following this bulletin. Copy front and back.

(2) JATC chairman and secretary must sign and date all seven (7) copies.

(3) Forward all seven (7) copies to NJATC. Please use cover letter. The NJATC will approve (sign) and return six (6) copies.

(4) Submit six (6) copies to the registration agency.

(5) When received, mail one copy with registration agency approval to the NJATC.

A. J. Pearson, Director • 16201 Trade Zone Ave., Suite 105 • Upper Marlboro, MD 20772 • Phone 301 [illegible]

SECTION V - Qualifications for Apprenticeship

An individual may become an apprentice by any of the following means:

(1) A pool of eligible applicants shall be established consisting of individuals who qualify for oral interview.

To qualify for oral interview an applicant must meet the following basic requirements unless he or she has a minimum of six thousand hours of substantiated electrical construction work experience.

A. Must be at least 18 years of age.

B. Must be a high school graduate or have a GED.

C. Minimum math - must have completed one full year of high school algebra with a passing grade or one post high school algebra course with a passing grade.

D. Must have a qualifying score on the S-72R77 aptitude test or a qualifying percentile on the GATB (family group IV - Validity Generalization Testing) as prescribed by the Committee.

E. Must present or sign a statement that he or she is physically able to perform electrical construction work. Applicants selected from the pool may be required to provide results of physical examination if the committee elects.

F. Must provide official transcript or transcripts for high school or post high school showing courses and grades.

(2) An employee, of a nonsignatory employer, not qualifying as a journeyman when the employer becomes signatory shall be evaluated by the JATC and indentured at the appropriate period of apprenticeship based on previous work experience and related training.

(3) An individual who signs an authorization card during an organizing effort wherein over fifty percent of the employees have signed: Whether or not the employer becomes signatory, an individual not qualifying as journeyman shall be evaluated by the JATC and indentured at the appropriate period of apprenticeship based on previous work experience and related training.

EXHIBIT C-3

National Joint Apprenticeship and Training Committee for the Electrical Industry

A. J. Pearson, Director • 16201 Trade Zone Ave., Suite 105 • Upper Marlboro, MD 20772

Phone 301 249-2042 FAX 301 249-4961

September 21, 1989 BULLETIN 89-63

TO: Secretaries, Chairmen, Training Directors, IBEW Business Managers, NECA Chapter Managers, IBEW Vice Presidents, NECA Regional Directors, NJATC Members

SUBJECT: **EMPHASIZING JATCS RESPONSIBILITIES IN ORGANIZING AS SEEN BY THE NJATC.**

The rapid and sometimes drastic decline in the number of apprentice applicants increases the demand for JATCs to recruit applicants employed elsewhere in the electrical construction industry. Many individuals working non-union already meet your basic requirements for interview. Others may qualify by having the six thousand hours work experience that qualifies an individual for interview by the committee.

We believe JATCs should seek out the best qualified candidates from this untapped supply. Some of these individuals would appreciate the opportunity to work and study in a system where they can grow and develop with pride and provide a better way of life.

The national standards also clearly provide provisions for indenturing through organizing.

Individuals are being referred to the JATCs for evaluation and placement as a result of organizing efforts. It is the responsibility of the JATC to EVALUATE, not simply test, these individuals to determine where they should be placed in the program. They must be awarded some credit for previous job experience.

The written examination (placement examination) is not a test to determine if one coming through organizing will be indentured. It is but one of the tools needed to determine where you should place the individual in related training. The individual should be caused to understand it is not a qualifying test but necessary to help determine what training they need to succeed. Don't anticipate or look for high scores on the placement examination.

Just as important as the written placement examination is a thorough oral interview. From the interview you can determine the individual's actual job experiences. During the oral interview you should have the individual look through the apprentice training materials. They can, and often will, help show you what they need.

Your major objective is to place the individuals where they can succeed. Some may require additional tutoring or special classes. If this extra training is required, the JATC should provide it. Special courses are also highly recommended for those being organized as journeyman wireman. Sell them on the fact that we are providing this training so they can be proud of who they are and what they can do. They are no longer employed where people don't care for them as individuals.

Don't segregate them to become second class members of our industry. Provide all the necessary training and personal attention to help them be proud of their decision to join our ranks. Not all of those coming through organizing will perform all the job skills as well as many of your more carefully selected applicants, but most of them can be trained to be a productive part of our industry. Remember; somehow, someway, they have been doing your work in the past years and if they don't produce for you they will compete against you.

Individuals brought in through the organizing effort should not be left unattended for weeks on end without evaluation and placement. The local union should call on the JATC to evaluate and place the individuals as soon as possible. You will have the probationary period to take any corrective action for those placed in apprenticeship. These individuals should be indentured and registered before attending class or participating in OJT. Newly organized apprentices coming in during the mid-school year should not be neglected. If it is too late to place them in the current year's class, you could provide self-study classes until new classes begin. The new math review course is one example of a self-study course. You may issue the apprentice material and texts to allow them to begin study on their own. After all, getting ahead is perfectly okay.

No decline in quality training, selection or apprenticeship standards is suggested, nor is it threatened, if we approach this organizing effort in a positive productive manner. Knowing the growth in the number of non-union workers and employers over the past should be motivation enough to cause us to act expediently to redirect the course of the electrical construction industry.

For your thinking, consideration and action.

a:bulS963

EXHIBIT C-4

BULLETIN 92-122: ORGANIZING - RECRUITING APPRENTICES FROM THE NON-UNION WORKFORCE

Many JATCs will begin recruiting applicants for apprenticeship in the near future for the 1993 class. Regardless of when you begin the recruitment, we want to encourage JATCs to start doing some very special recruiting.

The registered standards allow individuals with six-thousand hours to qualify for interview. The NJATC believes every JATC should take advantage of this extraordinary opportunity which allows you to interview these individuals in an effort to select those you would find to be good candidates for this industry's apprenticeship.

You will also find individuals working for the non-union with less than six-thousand hours who will qualify for interview by meeting the basic qualifications required of applicants for your local program. You should do everything possible to have these people apply so as to have an opportunity to interview them as potential candidates for your program.

The NJATC is encouraging local JATCs to do everything possible to recruit the best candidates for apprenticeship. We further believe that we should make a concerted effort to recruit the best workers the non-union has to offer. Recruiting the best performers from the competition is a means of organizing that will prove extremely successful. In contrast, taking the very worst performers from the competition most likely does the non-union employer a big favor.

We believe some personal contacts in recruiting these individuals would be advisable. Show them what your program has to offer. Educate them to our high quality training program, the health and welfare program that you have, note the local pension plans, the NEBF pension, the journeyman training that will be available to them after apprenticeship, and their ability to travel as a true journeyman once they have completed a National training program such as ours. Tell them about all the other benefits this industry offers the well-trained craftsman.

In recruiting those with work experience who presently are working for others you should look especially for qualified minorities and females.

In all your recruiting efforts, make sure that your affirmative action efforts do not regress in any manner. Continue to use the minorities and females you have to establish support groups to help recruit other minorities and females. JATCs should also utilize these support groups and take the necessary steps to implement programs that will increase the retention rate of minorities and females at both the apprentice and journeyman level.

The IBEW-NECA apprenticeship standards permit providing selected applicants with credit for previous EXPERIENCE and TRAINING where warranted. A VERY IMPORTANT NOTE: The apprenticeship regulation (29 CFR PART 29) states that the maximum amount of credit one can be provided for previous experience and training is sixty percent of the usual full term of apprenticeship. The regulation further states that in order to be eligible to receive a certificate of completion of apprenticeship an apprentice shall have served at least the last one-fourth or more of his/her term of apprenticeship in a registered program. In some states where there are approved State Apprenticeship Councils (SAC) this requirement may differ. Be aware of the requirements for your area.

STATEMENT OF JIM BENSON, BUSINESS MANAGER RESILIENT FLOOR and DECORATIVE COVERING WORKERS LOCAL #1179

affiliated with the International Brotherhood of Painters and Allied Trades

Before the House Small Business Committee and the
Committee on Economic and Educational Opportunities

Johnson County Central Resource Library
9875 West 87th Street
Overland Park, Kansas 66212
April 12, 1996
10:00 am

My name is Jim Benson, I am Business Manager for the Resilient Floor and Decorative Covering Workers Local Union #1179, affiliated with the International Brotherhood of Painters and Allied Trades (IBPAT). I would like to thank the Committee and all concerned for giving me the opportunity to express the views of Local 1179 members, and the views of working men and women throughout the area. This document should serve as a supplement to the statements given by my fellow trade unionists.

Along with my other duties as Business Manager, I am a COMET instructor. As you know, COMET is an acronym for Construction Organizing Membership Education Training. I have taught this program for nearly four years, to nearly 1,000 construction workers. I have yet to hear of a case where those successfully completing the course, have miss-applied the principles and techniques in the COMET curriculum and broken the law! Furthermore, if we (organized labor) have caused some discomfort for unorganized employers I make no apologies; it is our sworn mission as members of the union to organize the unorganized. Like our founding fathers, union brothers and sisters are committed to lawfully accomplishing this task! We truly believe, as our great leaders of the past have stated, that our success is destiny as sure as the setting of the sun. We will use all lawful means to accomplish this goal. Moreover, to directly answer some allegations and charges - we are never frivolous, whether in action or motive.

The United States is a nation of laws. What the Building Construction Trades Labor movement is doing with COMET, is applying the law as it has been written for over 60 years. We are not taking advantage of any loopholes in the law, **we are merely acting in accordance with the law** and its intent. This is what good citizens do. The fact that laws (serious laws) are broken and reported to the proper authorities is what ALL good citizens are supposed to be doing. This is ethically and morally correct behavior in our society. When unorganized employers blatantly break the law, we are not talking about the moral equivalent of slowly rolling through a stop sign once in a great while. This is an affront to what we are about! We are not second class citizens, and we demand the rights that all Americans enjoy, and we demand that our current laws be enforced.

We in the labor movement also subscribe to the right of businesses (union and non-union) to conduct their business free of unlawful harassment and conduct. This includes our not filing frivolous charges with the National Labor Relations Board (NLRB). However, our position is such that the rights of the people shall reign supreme, and the exercise of those rights shall not be considered petty or superficial. We hold to the truth that an employee has property rights concerning their job, just as the employer has property rights concerning their business.

What this committee should be looking for is how to further secure the union model in construction, not hearing testimony from those wishing to further weaken it! Union workers are not low wage, low skilled, marginal workers - these kinds of jobs are leaving our country in a stampede. The union model promotes high skill, high wage, high performance employees and employers. Throughout the metropolitan area we train thousands of apprentices for America's future, with little or no public assistance using the worlds most successful training system - Apprenticeship. We assure the use of private dollars to finance pensions and family health care. We promote family values by assuring our members the opportunity, time, and affluence to be involved in church and civic affairs. We promote the idea of a social contract between workers and society. Union contracts are America's first, foremost, and most successful attempts at Labor-Management Cooperation; this type of cooperation is propelling our high performance companies and industries into the next millennium with confidence. They are successfully competing in a global market place not in spite of labor management cooperation, but because of it!

Local Union 1179 has many signatory employers composed of the most respected, responsible, high performance floor covering employers in the industry. Our Joint Apprenticeship and Training Committee (like similar committees across the country) is but another example of Labor and Management cooperating to provide long term training of apprentices and journeymen. The union offers unparalleled scope and structure, to a management desirous of continuing journeyman education. Organized Labor has all the necessary attributes for future work; a large labor pool of highly skilled workers adjusted to working on a "temporary" basis; multi-employer reciprocity of benefits for pension, and health insurance; and multi-employer pooled funds for shared employee training costs. The bottom line is, this model works! Our government should be moving towards organized labor, not away from it.

In closing, it is always agonizing to learn of legislation that will "restore the delicate balance" to labor law. Organized labor has fought for and been told for years, that (anti) Striker Replacement Legislation would upset that balance, but now we are told that all these new laws are needed to restore balance. **Working people see this as another blatant effort to further erode and destroy the American Dream - their American Dream. This legislation should be exposed for what it is - another attempt to abridge the rights of workers to organize.** Accordingly, I urge the Committee to **NOT RECOMMEND THE PASSAGE OF HR 32-11.** Thank you.

Sincerely,

Jim Benson

Statement of

Independent Electrical Contractors, Inc.

Before the

Economic and Educational Opportunities Committee

of the

United States House of Representatives

April 12, 1996

IEC

The Independent Electrical Contractors, Inc. is a national trade association, representing over 2,000 electrical contracting firms, organized in 55 local chapters. IEC members are mostly small businesses with an average of twenty-one employees, although over 50% of the membership have fewer than ten employees. The vast majority of these small businesses and their employees have chosen to remain free from the constraints of a union contract. Even so, the electrical workers' union has campaigned to organized all electrical workers. In their frustration, they have chosen a campaign of using paid union organizers, "salts", to disrupt the business operations of all independent electrical contractors.

Position

It is the position of the Independent Electrical Contractors, Inc. (IEC) that the International Brotherhood of Electrical Workers (IBEW) are unfairly utilizing an agency of the United States Government, including the National Labor Relations Board (NLRB), to do economic harm to IEC members and to prevent increased employment in the electrical construction industry. It is incumbent upon the Congress of the United States to stop this abuse by passing enabling legislation to protect the majority of American workers, their employers and the American taxpayers. We feel that H.R. 3211, sponsored by Representative Harris Fawell (R-IL), would go a long way toward solving a large percentage of these problems. The NLRB is forced to treat all employees as defined in the National Labor Relations Act. If HR 3211 becomes law, the Board will have a more restricted definition of the law as was intended when the act was passed.

Facts

IBEW correspondence and publications prove that they intend to use the NLRB as a tool of their Construction Organizing Membership Education Training or COMET organizing campaign. Consider these quotes:

> "After obtaining an interview with the person who does the hiring and he does not mention union you should ask him if your union membership has anything to do with making the application. If the target has never been approached by a salt application [a salt is a union member working in a nonunion shop to disrupt or organize workers] he will probably make a blundering remark against the union, which again is documentation for an unfair labor practice. . . A lot of our members have already been getting a paycheck from these targets without being on the job working."
>
> -publication of Alaska IBEW

> "In addition to being an old and well established organizing tactic, salting is protected activity under the National Labor Relations Act. . .The organizer may be able to sting a law violating employer by placing a nucleus of members on the job utilizing falsified applications. This will facilitate evidence gathering since these members will then be able to ascertain and testify to the identities, dates of hire and qualifications of newly hired nonunion employees. . . If the employer should openly question a job applicant about his union activities, employment or membership, the organizer should immediately prepare an affidavit setting forth these facts for later use in an NLRB charge.

If an applicant [for membership in the IBEW] . . .appears to have the attributes necessary to win friends and influence tradesmen, the organizer. . .diplomatically informs the applicant that there is, however, one sure method of gaining membership. The organizer tells the applicant of several employers, shops, or jobs in the jurisdiction that the union is interested in organizing. If the applicant can secure employment in one of these locations and when that job or shop is organized, the applicant will be initiated along with other employees."

-publication of IBEW Special Projects Department

"The NLRB is a tool we will use . . ."

-IBEW Organizer in Ohio

The NLRB

Most small electrical contractors cannot afford to fight for their rights before the NLRB and are forced to settle cases they would normally win. COMET teaches union members ways to entrap unsuspecting electrical contractors in unfair labor practices. In most cases these tactics fail but the cost in time and money can be devastating to a small electrical contractor. IEC has a sampling of these cases which are available to interested parties.

Salting Tactics

The tactics used by the IBEW are unfair and detrimental to the continued growth of employment in the U. S. economy. Unemployed workers are not being hired because the open shop employer is afraid to hire for fear of having to hire salts. If they solicit employment applications, open shop employers are opening the door to union organizers whose only reason for seeking employment is to disrupt company operations. In the end, American Industry will suffer in the global economy as construction costs rise to meet the dwindling supply of construction services. Additionally, taxpayers must finance NLRB hearings on cases that have little or no merit.

The Solution

Passing HR 3211, is an important step in protecting the rights of open shop electrical contractors and their employees. Union members have a right to work and all Americans have the right to organize. However, the NLRB is forced to use a broad definition of the term "employee" in dealing with salting cases.

The Independent Electrical Contractors, Inc is a 2,000 member association of predominately open shop or nonunion electrical contracting companies IEC members take pride in their quality, trained workforce and their attention to customer needs through a total quality process For more information concerning IEC contact. Ike Casey, Executive Vice President, 507 Wythe St , Alexandria, VA 22314, or call (703) 549-7351

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