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MARCH 1964

UNION POWERS and UNION FUNCTIONS:

Toward a Better Balance

A STATEMENT ON NATIONAL POLICY
BY THE RESEARCH AND POLICY COMMITTEE
OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT

Single Copy $1.00

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Library of Congress Catalog Card No. 64-18678

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Foreword

We publish this statement in the hope that it will contribute to the improvement of collective bargaining for all those affected by it — workers, both union and nonunion, management, and the general public. Perhaps most of all, we hope to help assure and strengthen the freedom of collective bargaining. On this, as on many other points, labor and management have a common interest, for the freedom of collective bargaining is the freedom of both.

On behalf of the Research and Policy Committee I wish to thank Mr. William Stolk, Chairman of our Labor Subcommittee, and the other members of the Subcommittee whose names are listed on Page 3. Out of two years of work on this difficult and delicate subject they produced the draft which became the basis of the present statement. As is usual in our statement, dissents by members of the Research and Policy Committee are indicated in footnotes published herewith. The relatively small number of dissents recorded on this controversial subject is evidence of the quality of the work done by the Subcommittee.

Theodore O. Yntema,

Chairman of Research and Policy Committee

Committee for Economic Development

Introduction and Summary

Unionism in America is very old — older than the Republic. Unions, when desired by the workers, have useful functions in our society, and to perform these functions unions need certain kinds and degrees of power. Workers should be able to form unions of sufficient power to represent them effectively in negotiations with employers that affect terms and conditions of their employment. At the same time unions should not have so much power that they can injure or dominate consumers or workers, of whom the vast majority are not union members, or interfere with the growth and prosperity of the economy as a whole.*

*The problem is how to permit unions the powers they need to carry out their valuable, socially-beneficial, functions without allowing them power to injure others.***

This statement presents an appraisal of the powers and performance of unions in America as they affect the national interest and offers recommendations for making the powers and conduct of unions more consistent with and conducive to the national interest.

This statement is written by a group of businessmen who employ labor and sell its product. Our experience as employers of labor undoubtedly influences our appraisal of the facts and our conception of the national interest. As we have worked on this statement we have been aware that this may be a source of bias. We have sought to guard against this danger by consulting with others of different backgrounds and by examining our own ideas with great care.

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*See Memorandum by Mr. ALLAN SPROUL, page 37.
**See Memorandum by Mr. ALLAN SPROUL, page 38.

We offer this statement as a contribution to a national discussion in which many voices will be heard and should be heard. As an earlier contribution to this national discussion we arranged for the publication of a study "The Public Interest in National Labor Policy," by a group of outstanding experts.[1] Our own conclusions agree in some respects with those of that study but differ on other important points.

It should be clear that we deal in this statement only with the conditions that exist where workers are organized in unions. The problems that exist in the more common, non-union, situations are not treated here.

The Search for Balance

The problem of balancing powers and functions is not confined to unions; it exists for most institutions of our society, including business and government. A variety of means have been used to maintain balance — competition in the private economy, a mutually limiting relationship between government and the private economy, constitutional limitations on government, the balance of powers among branches of government and between the federal government and the states, the force of public opinion, and the voluntary exercise of power in a socially responsible way by those who have it. No once-for-all, permanent solution of the problem of power with respect to any major institution has been found. Instead we are continuously adapting the solutions to changing circumstances and objectives. Examples are changes in the relation between Congress and the Executive, or in the relations between the federal government and the states, or in the anti-trust laws.* This process has achieved a reasonable working balance between the powers and functions of the various power centers of the American society much of the time, although from time to time serious imbalances have emerged or at least been claimed.

The search for a suitable policy towards the powers of labor unions has a long history in the United States. We shall recall the highlights of that history only for the last thirty years. The passage of the Norris-LaGuardia Act in 1932, the National Industrial Recovery Act

[1] *The Public Interest in National Labor Policy*. By an Independent Study Group, Clark Kerr, Chairman. New York, Committee for Economic Development, 1961.

*See Memorandum by Mr. ALLAN SPROUL, page 38.

in 1933, and the National Labor Relations Act in 1935 marked a fundamental development in national policy. This legislation removed certain obstacles to the effective organization and operation of unions and established the right of workers to organize and bargain collectively, free of interference from their employer. It is significant that these laws came at the depth of the Great Depression of the 1930's, when mass unemployment and great economic distress were widely interpreted as evidence that the workings of the market place could not adequately protect the interest of workers.

Union organization proceeded rapidly during the recovery of the late 1930's and during World War II. In 1930 less than 7 per cent of the labor force was organized in unions; by 1947 the proportion had risen to 25 per cent. With general acceptance of labor's right to organize, the violence that had once accompanied organizing efforts became much less frequent. In thousands of firms, unions and management came to mutually satisfactory arrangements for reaching and carrying out agreements governing terms and conditions of employment.*

Despite these accomplishments, there was much concern, at the end of the War, with some aspects of unionism as it then existed. Some unions had attained power to close down a whole industry, or any part of it, by a strike, and by threatening to do so could gain wage increases without significant restraint by competition from other workers not represented by the union. In many firms and industries unions had obtained contracts which required union membership as a condition of employment, depriving some workers of freedom to choose whether or not to belong to a union and restricting employment opportunities by limiting union membership. A union representing employees in one firm could use its power there, through a secondary boycott,[1] to force organization of other firms. In some cases union policies were dominated by entrenched leadership that neither represented nor solicited the wishes of the union membership.

Realization of the extent of the powers that unions had acquired, highlighted by a number of nation-wide strikes and by local violence in the immediate postwar years, led to a search for ways to create a better balanced situation. The chief steps were taken in the Taft-Hartley Act of 1947 and the Landrum-Griffin Act of 1959. Among other things, this legislation:

[1] Secondary boycotts and pressures attempt to induce workers or employers not directly involved in a labor dispute to cease doing business with the employer who has a dispute with the union.

*See Memorandum by Mr. ALLAN SPROUL, page 38.

a) Established a procedure by which a strike that threatened to create a national emergency could be postponed, by government action, for an 80-day "cooling-off" period.

b) Prohibited the "closed shop" (in which prior union membership is a condition for obtaining employment), established certain safeguards of workers' rights in a union shop (in which joining a union is a condition for retaining employment), and authorized the states to prohibit the union shop.

c) Limited the use of unfair labor practices, including secondary boycotts.

d) Required procedures favorable to more democracy within unions.

We believe that the national labor legislation adopted in the past generation, taken as a whole, has been constructive. To return to the situation which existed before 1932, or before 1947, or before 1959, would be highly undesirable. However, there is no reason to think that in the field of labor policy we have reached the best of possible worlds. Indeed, there is much evidence of concern in this country with excessive powers of labor unions.

Labor Organization and the National Interest

Unionism affects the national interest in many ways. It affects the economic performance of the nation – the rate of economic growth, the level of employment and unemployment, the stability of prices, and the distribution of income. It also has a fundamental influence upon the character of our society – on the freedom that individuals enjoy, on the equity of the relations among individuals and among groups, and on the role of government in relation to private institutions and individuals. There are wide differences among unions in their powers, structures, and policies; to generalize about American unions, therefore, is dangerous. Nevertheless, consideration of public policy toward organizations of labor must rest upon a judgment of the influences that unionism now exerts.

1. A basic characteristic of the American society is that we do not like to see people pushed around. As one aspect of this, we do

not want workers to be subjected to arbitrary and indifferent treatment by employers with no defense except the threat to quit, a threat too costly to carry out in most cases. *Unions have played a large part directly and indirectly in making and applying equitable rules governing on-the-job relationships.*

To perform this function unions required a certain degree of power. Workers needed enough power relative to their employer to induce him, if necessary, to change his personnel practices. The value to the employees of many of the changes made was often overlooked by the employer. To bring about these changes, however, did not require unions to have the power that many of them now have. It did not require a union to have sufficient power in relation to the whole industry to impose large cost increases on the industry and its customers.

2. *That groups of people should organize to present their desires to the government and to work for adoption of government policies they favor is both legitimate and necessary in a democracy. For many interests of many workers this function is performed by labor unions.*

It is not necessary that the political interests of workers should be represented by organizations — i.e. labor unions — that also represent workers in collective bargaining. The other sectors of the economy, such as business and agriculture, are represented in the political process by associations that do not exercise collective bargaining power. In many other countries labor is politically represented by organizations which, while closely allied to unions, do not perform the economic functions of unions. The political representation of American labor by unions rather than by purely political organizations has disadvantages, including its tendency to give excessive weight to the interests of organized labor as compared with the interests of the large majority of American workers who are not union members. However, the system also has some advantages. It probably tends to focus attention of American labor on collective bargaining rather than on the effort to invoke the power of government to change conditions best left to private decision-making.

3. *The freedom of individuals to associate with each other, for almost any purpose, is one of the basic American freedoms. We value this freedom for its own sake and as a bulwark of other freedoms. The freedom of workers to associate in labor unions is, in general, guaranteed by present law and the union movement is an effective vehicle for*

the exercise of this freedom. Nevertheless there are troublesome exceptions to this general principle. For the individual worker the significant freedom may not be the right to join or form "a" union but to join the particular union that is legally designated to represent him or that controls access to the employment which he seeks. Many unions are able to deny this right to workers seeking membership or employment, and some have done so, in order to limit the supply of their particular variety of labor skill, in order to discriminate against certain groups, or for other reasons.

Private association is a freedom, and private associations are legally protected because they are an expression of the voluntary choice of individuals. The freedom not to join a private association is equally precious and deserving of protection. This principle has substantial recognition in labor law. Nevertheless, in the 30 states where this is legal, unions have been able to use their power to obtain contracts requiring that all employees covered by the contract become union members. Employment may thus be denied to an individual if he does not join the union.

4. *A major accomplishment of American labor policy is the degree to which it has kept government out of the determination of specific employment conditions.* Government has undertaken to assure the ability of the private parties, singly or collectively, to deal with each other freely and without interference. The underlying philosophy has been that the government should not otherwise influence the decisions that are reached, and that the public interest in these decisions will be best served if they are made by the private parties directly involved. This philosophy in turn rests upon the belief that the power of both parties to collective bargaining will be limited by competitive forces which prevent their using their powers to the detriment of the wider public.

Nevertheless this principle has not been followed with complete consistency. *There seems to be danger of increasing government intervention to affect the consequences of collective bargaining.* This results in part from failure to draw a sharp line between government's proper role in assuring that collective bargaining can go on and government's interference with the substance of bargaining. But the danger results more seriously from the hard choice that arises if either or both of the private parties has excessive power, so that their freely-reached agreements cannot be assumed to serve the public interest.

5. *Probably the most visible consequence of unionism to many Americans is the occasional dramatic nationwide or city-wide strike of a critical industry.* Strikes have been a source of inconvenience to almost everyone at some time and of hardship to many, and some firms have been forced out of business by them. But in relation to the size of the American economy, losses from strikes have been comparatively small.

6. *The stronger unions have been able to raise the incomes of their employed members, absolutely and relative to the incomes of other workers. In doing so they have been able to increase the percentage share of the nation's output received by their employed members and thus to reduce the percentage share received by the rest of the population. We do not believe that it is in the general interest for any group to have as much power as some unions do to force a redistribution of income in their favor by collectively withholding their productive services or threatening to do so.*

To raise the incomes of their members is, of course, one of the main objectives of unions. There is no reason to doubt that where unions are very strong, covering a whole industry or craft and substantially free of competition, they have succeeded in this objective.

The conclusion that strong unions have been able to gain for their employed members a larger share of the nation's output and thereby reduce the share received by other workers is not always obvious. For example, it might seem that all workers gain when strong unions gain because the winning of a wage increase by one of the stronger unions usually causes an increase in wages paid to other workers in the same company or in the same area. However, this is only one of the forces set in motion when one of the stronger unions wins a big wage increase. The big rise in wages or other labor costs won by a strong union for its members tends to limit employment in the industry covered by the union by raising its costs and forcing it to raise its prices if it can. The rise in prices restricts sales and the rise in labor costs intensifies the effort by that industry to save labor. Workers who might have been employed in the industry will have to seek work elsewhere and this will both retard wage increases elsewhere and probably leave some workers unemployed.

At the same time, the spreading effect of the big wage increase won by the stronger union will force up prices not only in the industry which it covers but also in other industries which are more or less forced

to follow with wage increases. These higher prices will be paid by all workers, as consumers, and this will offset a large part of the gain in money income received by other workers and especially those whose wage increases were smallest.

This whole process is superimposed on the rise of real wage rates as real output per worker rises, which has been going on for a long time in the American economy — long before labor unions were important. As a result the wages of all workers rise, despite the increase in the share taken by employed members of the strong unions. The effect of the activity of strong unions has been to get their members a larger share, and to leave other people a smaller share, of the income gains resulting from the general increase in output per worker.

7. The preceding discussion has related to the effects of union activity on the distribution of the *real* national income. That discussion did not deal with the effects of union activity on the average level of prices.

It seems probable that union power contributes to a tendency for money wage rates and fringe benefit costs in general to rise more rapidly than productivity with the result that production costs on the average rise. In this situation the country would have a difficult choice between inflation and excessive unemployment, the most probable outcome being some of each. Fear of this possibility has led to increased government concern with the results of the collective bargaining process and increased government intervention in that process.*

> We can summarize our observations on the relation between labor organization and the national interest in the following way: Under present law unions are permitted and have attained sufficient power to act for workers in on-the-job relationships, to represent the interests of organized workers in the political process and, in general, to effectuate workers' freedom of association. These are valuable functions, in the national interest, and should be protected. On the other hand, the freedom of some workers to join or not to join a union and to seek employment has been restricted; some unions have been able to raise incomes of their employed members at the expense of other parts of the population, especially other workers; and there has been some contribution to the danger of inflation and unemployment.

*See Memorandum by Mr. ALLAN SPROUL, page 38.

We seek measures that will assure the continued performance of unions' useful functions while reducing the magnitude and danger of their adverse consequences and while limiting the extent of government intervention in labor relations. Concerned as we are about excessive union power, we are equally concerned about government power. One of the dangers we see in the growth of union power is the temptation it provides for assumption of more power by government.

Summary of Recommendations

For the purposes of this statement we divide the sources of union power into two parts. The first part is pure market power — the power of a group of workers to withhold their labor to win gains for themselves. The second part consists of a number of conditions, mainly defined by law, that affect the environment in which market power is used and the uses to which it can be put. Given the degree of market power a union has, the scale and character of its effects will be influenced by the countervailing measures employers may legally take, by the rigor and impartiality with which laws against violence are enforced, by the circumstances and purposes of government intervention in disputes, by the ability of unions to enforce or prevent membership of workers, and so on.

In the section of this statement which follows this summary we offer the following recommendations:

1. Every worker should have the right to decide freely to belong or not to belong to a union.*

2. Racial or other discriminatory barriers to union membership, apprenticeship or employment should be eliminated. The equal right of all qualified workers to join the union in their trade or industry should be recognized by law. The right of any worker to belong to the union that represents him should not be denied except for nonpayment of dues or similar good cause.

3. United States courts should be authorized to issue a restraining order or injunction against unions in cases involving strikes in

*See Memorandum (for page 22) by Mr. JOHN A. BARR on page 41.

violation of a labor agreement, as they are now authorized to compel an employer to accept arbitration of disputes arising under agreements.

4. The right of employers, singly or collectively, to use the lockout in the bargaining process should not be diluted by the National Labor Relations Board (NLRB) or the courts. This right should be clarified in the law if necessary to avoid dilution. The employer's right to use the lockout is the counterpart of the union's right to strike.

5. There is need for legislation in most states aimed at limiting the use of union resources for political purposes.

6. The intent of Congress to outlaw pressure by a union against a party with whom it has no dispute (secondary boycott) should be carried out, and the law should be clarified if reasonable interpretation of the present language proves incapable of preventing evasions.

7. Laws against violence and the threat of violence, which tend to coerce through fear, should be respected and enforced in labor disputes by federal, state, and local authorities.

8. The present provisions in the Taft-Hartley Act for government action in national emergency disputes should be retained. The recent tendency toward increasing government intervention in the settlement of labor disputes, through "fact-finding" or the participation of high public officials or otherwise, except through mediation, should be halted.

9. Determination of the form and content of collective bargaining should be left to the parties. The present legal requirement to bargain "in good faith" should not be left as a vague demand for good conduct that will lead and has in fact led to uncertainty, confusion, excessive government intervention, and a morass of bureaucratic legislation — all detrimental to free collective bargaining.

The effect of this provision of law has been not to assure bargaining in good faith but to involve the NLRB in determining both how bargaining should be conducted and the substance of the bargain. In lieu of this provision, if there are any actions by either party that should be required or prohibited they should be specified in law. Deletion of the present legal requirement would not allow either party to escape bargaining, because bargaining results from the economic necessity of the parties to reach an agreement in order to continue production and employment.*

*See Memorandum by Mr. JOHN A. BARR, page 39.

10. Unfair labor practice cases should be handled in a more judicial way. The NLRB, which now handles them, should be given more of the attributes of a court, or jurisdiction over such cases should be transferred to a court especially designated for them.

These measures would, we believe, help to protect the rights of workers, defend the freedom of the collective bargaining process, and reduce certain legal inequalities between unions and employers without impairing the ability of unions to perform their proper functions. It is also necessary to consider possible steps going beyond these. The foregoing measures would leave essentially untouched the basic market power of unions, the power to withhold collectively the labor of all or most of the workers in a particular industry or craft, and the use of that power to determine compensation and conditions of employment.

Among the suggestions that have been advanced for dealing with excessive market power of unions are: limiting the size of a union to the employees of a single employer, prohibiting a union from bargaining with two or more competing employers and prohibiting collusion among unions dealing with competing employers, prohibiting industry-wide bargaining, prohibiting combinations among unions where the effect is substantially to lessen competition, and directing the appropriate government agency to take the effect on competition into account when certifying a particular union to represent a particular group of workers.* All of these suggestions attempt to introduce a larger degree of competition into labor markets. An alternative approach is to prohibit the use of union power for certain specified purposes, including direct limitation of production, control of prices, and interference with the adoption of new production methods.

We are not prepared to make recommendations with respect to any of these suggestions.** Some may be unnecessarily drastic, others may be ineffective. Some may put too much discretionary power in the hands of government, others may be impossible to administer. Better alternatives than any of these may be devised. Nevertheless, some of these suggestions, perhaps with modification, may on balance be desirable. More study will be required before responsible recommendations can be made.

The problem with which these suggestions attempt to deal is a real one. It is basically that in important parts of the economy the com-

*See Memorandum by Mr. H. C. TURNER, JR., page 39.

**See Memorandum by Mr. JOHN A. BARR, page 40.

pensation and use of a basic productive resource — labor — is, with legal sanction, unduly insulated from the control and guidance of competition. To the extent that labor unions use their power to control the use of other resources, such as management ingenuity and new production methods, these too become unduly insulated from competition. This is a fact of profound significance in a society like ours, where private economic freedom is partly, though not solely, justified by competition, which limits power and directs private activity to the effective and economical provision of the goods and services demanded by the community.

The Legal Environment of Union Activity

Worker Rights

The Union Shop and the Right To Work

The Taft-Hartley Act outlawed the closed shop — an arrangement under which only union members could be employed and the union was free to accept or reject any applicant for membership. It did not outlaw the union shop but it authorized the states to do so if they wished. Under the union shop an employee is required to join the union, but the union may not prevent his employment by refusing him membership, unless he has refused to pay membership dues to the union. Twenty states have enacted legislation barring all union shop agreements. In other states, union shop agreements are permitted if they contain safeguards specified by the Taft-Hartley Act. The union shop has continued to be an object of controversy.

The issue in the union shop controversy is not basically the strength of unions or the relation between unions and employers. Contrary to many expectations, the course of union membership in relation to the labor force has not been visibly different in states that have prohibited the union shop than in other states. There have been many instances of large union power without a union shop contract. There are many cases of satisfactory labor relations, from the employers' standpoint, where the union shop is in force.

The main issues involved in the union shop controversy are equitable relations among workers and the rights of individual workers. Congress has already restricted the rights of individual workers by giving a union exclusive bargaining rights in negotiating employment terms for a bargaining unit. This principle allows for "majority rule" and eliminates the need for dealing with splinter groups within the unit. The workers in the unit who are not union members must accept the terms decided by union and employer, and the union must represent the non-members as well as its own members.

Those who have advocated the union shop advance the argument that non-members are "free-riders" benefiting from the efforts of the union, to which they do not contribute, but which other employees support financially. However, the non-members are "forced followers" of the union. Unions have actively sought exclusive bargaining rights, including the responsibility for representing non-members. The rights of some workers to effective representation by a union are not abridged by the failure of other workers to join. The rights of the employee who does not want to belong to a union have already been substantially abridged in the interests of labor relations stability; to go farther and compel him to belong to the labor organization is an unwarranted denial of his freedom.*

*Therefore, we believe that the controlling principle should be the right of an individual to decide freely to belong or not to belong to a union.***

Discrimination in Union Membership and Employment

There is no legal bar against union practices which deny union membership to qualified workers on grounds of their race, color, or creed. In recent years many union leaders have tried to end discrimination in admission to membership, but the practice nevertheless continues. Denial of union membership to a worker is often a barrier to his employment. In many trades hiring is done through the union, so that membership is a condition for employment, even though the law prohibits the closed shop. Even where this is not the case, and a nonunion worker can obtain employment, he is denied the opportunity to share in determining the policies of the union that represents him.

Racial or other discriminatory barriers to union membership, to apprenticeship, or to employment should be eliminated. The equal right

*See Memorandum by Mr. PHILIP SPORN, page 40.

**See Memorandum by Mr. JOHN A. BARR, page 41.

of all qualified workers to join the union in their trade or industry should be recognized under law. The right of any worker to belong to the union that represents him should not be denied except for nonpayment of dues or similar good cause.*

Equality Under the Law

Strikes in Violation of Agreements

Ninety per cent of all labor agreements bar strikes in disputes over the administration of the agreement. Most agreements now contain arbitration machinery to settle such disputes.

A union can go to the courts to compel an employer to arbitrate a grievance where there is an agreement to do so. Within the past decade, a series of Supreme Court decisions have compelled employers to accept, under such clauses, arbitration of disputes on subjects not directly mentioned in the agreement, unless there is an explicit provision to the contrary. On the other hand, the court has denied an employer's right to obtain an injunction against a strike in violation of an agreement to arbitrate disputes. This position has been based on the Norris-LaGuardia Act, which prevents federal courts from issuing injunctions in labor disputes.

Legislation is needed to correct this inequality of treatment. If employers are compelled to rely upon arbitration to settle disputes arising out of the interpretation of labor agreements, unions should also be required to utilize the same machinery. The right to obtain an injunction is necessary to prevent serious injury to business arising out of wildcat strikes. The law makes it difficult to recover damages from a union when such breach of contract takes place, and damages are often not a constructive remedy anyway, either in terms of injury to a business or in terms of public inconvenience or harm.

Legislative proposals now under consideration would amend the present Norris-LaGuardia Act to permit the issuance of a restraining order, or a temporary or permanent injunction, by a United States court in any action brought under Section 301 of the Taft-Hartley Act involving strikes in violation of a labor agreement. *We favor elimination of the present inequitable gap in the law concerning enforcement of collectively bargained contracts.*

*See Memorandum by Mr. PHILIP SPORN, page 41.

24.

Lockouts

A "lockout" is an action by an employer withholding employment from workers with whom he has a dispute. A lockout is the employers' counterpart of a strike. A lockout may be illegal, just as a strike may be illegal, if it is used for certain proscribed purposes. Thus, a lockout may not be used to discourage union membership or to destroy a union.

The National Labor Relations Board has tended to recognize the legality of lockouts only in a narrow category of defensive actions by employers against the attempt of a union to break up a previously established and accepted multi-employer bargaining unit by the device of striking only some of the employers in the unit. Even in such cases, if employers attempt to replace some of the locked out employees in order to continue operating, the NLRB has ruled the lockout illegal on the ground that it is "retaliatory" and is directed at destroying the union. Where only a single employer is involved, the NLRB has not accepted the right of an employer to use the lockout as a counterweapon in bargaining in order to influence the union to accept the employer's offer. Some courts have upheld NLRB decisions on lockouts and some have reversed them. The result is substantial uncertainty about the employers' right to use the lockout.

The right of employers to use the lockout in normal collective bargaining processes should be recognized by the NLRB and the courts. This right should be clarified by legislation if necessary, as a step towards more even treatment of employers and unions.

Political Activities of Unions

That labor unions should try to influence the political process, as other sectors of the community do, is natural and proper. In general, we think that efforts to limit political activity hold dangers to democracy that far exceed their potential benefits. However, the federal law, which bars political expenditures by both unions and corporations in federal elections, seems to us a useful, limited measure to avoid undue influence by large economic power. Some states have similar laws with respect to state elections. But there are 25 states in which unions are permitted to make political contributions while corporations are not

allowed to do so.[1] In three other states certain classes of corporations are prohibited from making contributions but all unions are free to do so.[2] There are five states in which neither unions nor corporations can make contributions and 17 states in which neither is limited.

We believe that unions and corporations should be treated equally in state laws and that both should be prohibited from making political contributions.

Coercion in Labor Disputes

Secondary Boycotts

The secondary boycott, utilized by unions, puts pressure on innocent third parties to compel them to assist the union by discontinuing business with an individual or firm in order to gain some advantage for the union. Boycotts are, on occasion, used by competing unions in a jurisdictional dispute in which the employer is powerless to resolve the issues. Such activities often result in unjustified injury to neutral third persons.

Both the Taft-Hartley and Landrum-Griffin Acts contain provisions designed to limit the scope of the strike to those directly involved in industrial disputes and to protect innocent third parties. Congress adopted language clearly intended to outlaw secondary boycotts with only minor exceptions restricted to a few industries which are unique. These laws have, in fact, substantially curtailed the use of this tactic. Proposals have been made to permit the greater use of secondary boycotts in certain segments of our economy, including the construction industry. This is not in the interest of sound labor relations.

The determination of what is secondary pressure is often difficult, especially where the connection between a primary party and a third party is close, geographically or economically. *However, we think it was the clear and correct intent of Congress to define secondary pressure comprehensively. Decisions of the NLRB and the courts may*

[1] Alabama, Arizona, Connecticut, Florida, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, Wisconsin, Wyoming.

[2] Illinois, New Jersey, Oregon.

well call for re-emphasis of the intent of Congress to prohibit all types and methods of secondary boycotts.

Violence

The increasing maturity of labor relations, and the legal guarantee of the right to organize, have greatly reduced the amount of violence in labor disputes. Yet violence and the threat of violence in support of coercive tactics still play too large a part. Many acts of sabotage and terrorism, including homicide, that have occurred in labor relations are a matter of recent public record. The threat of violence by one side or the other is still a factor in labor relations, and is too frequently used to prevent employers from exercising their right to bring in replacements for strikers.

Violence in American life is not confined to labor relations. However, violence in labor disputes is special in at least one respect. In some instances such violence is condoned by large sectors of public opinion and even by law enforcement authorities. This attitude may result from the sympathetic involvement of the public with one or another party and from the political influence of the parties.

*The basic fact is that violence is always against the law and violence in labor disputes is no exception. Vigorous and impartial enforcement of the law by federal, state, and local authorities is essential not only for good labor relations but even more for the protection of citizens and of the social fabric.**

Government Intervention in Collective Bargaining

Government has an essential and well-recognized role in collective bargaining. It is to assure the legal conditions in which the parties are able to bargain with each other freely. As a general principle the government should not go beyond this, to determine the form, content, or results of collective bargaining. Adherence to this principle requires tolerance of the results of free, private behavior, even when the results in particular cases are inconvenient or harmful in an economic sense. *If the government intervenes in every situation where it considers the public interest to be involved, the freedom of collective bargaining will*

*See Memorandum by Mr. PHILIP SPORN, page 41.

be seriously impaired. It may even impair the settlement of disputes by holding out the hope to one of the parties that government intervention would result in gains that could not be achieved in the private collective bargaining process.

National Emergency Disputes

Hard choices about government intervention arise in long strikes closing down production in important industries. We think it essential to emphasize that the possibility of strikes, including long strikes, is a normal incident of free collective bargaining. The possibility of a long strike — and if the possibility exists the fact may sometimes also exist — imposes discipline upon the parties and puts a premium on reasonableness. Each party is aware that if it insists upon conditions that are too costly for the other party it will expose itself to the costs of a long strike. It is likely to do this only if major interests are at stake.

At the same time, there may be circumstances in which even this consideration has to be subordinated. Government at all levels must reserve to itself ultimate authority to protect the nation or the community against a crippling strike. The problem is to retain this authority, and use it when its use is indispensable, but not to use it so much as to subvert the normal private processes.

The Taft-Hartley Act contains a procedure for national emergency strikes. In such cases, the President can obtain an injunction prohibiting the strike or lockout for a period of 80 days. During this period, if renewed efforts to bring about a settlement fails, the employer's last offer is submitted to a vote of the union membership. The law instructs the President to recommend to Congress any further action he feels is needed in the event that a dispute remains unresolved after this procedure has been exhausted.

This procedure has been used 23 times since 1947. Under it the nation has compiled a creditable record of averting crippling strikes. Although there are a few cases of repeated use in a single industry, the law has not seriously hampered collective bargaining. Nevertheless, the procedure has been subject to criticism in recent years by those who believe that it does not give the government enough power to deal with emergency strikes.

The basis of the criticism is that if the parties to a dispute know that the government has only one option — the injunction — one or both

parties may calculate that its interests would be served by forcing the government to exercise that option. One or both parties may consider that they can afford to be intractable in bargaining because the injunction will protect them against having to endure a long strike. There has also been concern that there is no defense against renewal of the stoppage after the 80-day injunction period is over.

The one common proposal for change would provide the President with a variety of instruments that he might use in an emergency — such as partial operation of closed facilities, fact-finding with public recommendations, compulsory arbitration, or seizure. The rationale of this approach is that it would leave the parties to a dispute uncertain about whether government would intervene or in what form, reduce the willingness of either party to gamble that it would gain from intervention, and increase the readiness of the parties to reach a settlement.

We believe this approach is both unnecessary and unsound. To the extent that uncertainty is useful, the right of the President to ask Congress for specific legislation to deal with an unresolved emergency dispute already provides a sufficient degree of uncertainty. To provide the Administration with more, and more readily available, alternatives would, we believe, only tend to increase the number of circumstances in which the government would intervene.

What the parties to collective bargaining need is not more uncertainty but more certainty — specifically more certainty that the government will not intervene except in rare emergencies.

The other chief criticism of the present procedure is that it makes no provision for the government to enter into the substantive issues in dispute and, beyond normal mediation and conciliation services, to assist in resolving them.

Steps beyond Taft-Hartley would almost certainly involve the government not only in trying to end critical work stoppages but also in determining the terms of settlements. Indeed, this has already occurred. The consequences of such action could not be confined to the cases in which a threatened national emergency invited the initial government intervention. Settlements imposed with government sanction in emergency cases would have a profound influence on settlements in all other cases.

Even without specific legislation there has, in recent years, been a marked and, in our opinion, excessive tendency by the government to intervene in the collective bargaining process.* The theory behind in-

*See Memorandum by Mr. FRANK L. MAGEE, page 42.

creased government intervention is that the public is the "third interested party" at the bargaining table and that work stoppages in essential or very important industries cannot be tolerated.*

Some of the principal interventionist procedures have involved: (1) special Presidential fact-finding panels and commissions with powers to recommend terms of settlement; (2) increased personal participation in bargaining by the Secretary of Labor; (3) public pronouncements by the President; and (4) referral of disputes to special boards with powers to "clarify" facts.

Other techniques suggested have been compulsory arbitration of matters in dispute by federally appointed boards, and government seizure of struck facilities, and "partial strikes" to keep the minimum safe level of operation.

There is little evidence that industrial peace is achieved through increased government intervention. While government intervention may end particular strikes, the prospect of intervention may increase the number of disputes carried to the point where intervention becomes necessary. The number of strikes increased during World War II (1942-45) despite the quasi-compulsory arbitration provided by the War Labor Board. Experience with the emergency boards under the Railway Labor Act provisions also suggests that fact-finding boards with power to recommend settlements do not lead to voluntary agreements. The government has seized the railroads and enforced acceptance of emergency boards' recommended terms of settlement when the railway brotherhoods have refused to accept the terms of the recommended settlement. In their effect on employers, recommendations were tantamount to compulsory arbitration. Free collective bargaining disintegrated in both cases to the point where Congress has now legislated overt compulsory arbitration in the railroad "work rules" case.

The reason for the failure of government intervention to produce industrial peace is fairly clear. Compulsory settlement is destructive of collective bargaining because it removes the responsibility from the parties. Compulsory procedures establish an "adversary" attitude that minimizes the desire of either party to compromise. Efforts normally spent to achieve a voluntary agreement may be supplanted by carefully planned tactical maneuvers designed to strengthen the presentation before the final board of arbitration. Disputes which might be settled quickly may drag on, or turn into strikes, because it is known that the government will determine the settlement anyway. Free collective bar-

*See Memorandum by Mr. PHILIP SPORN, page 42.

gaining falls into disuse under such a system.

A further result is that government-influenced or government-dictated agreements may affect the entire economy, placing federal authorities in the role of controlling wages, prices, and working conditions.

The proper role of government in labor-management relations and collective bargaining is to establish the rules of the game and see that they are observed — not to decide what the final score should be.

We emphasize that the possibility and fact of strikes must exist if there is to be free collective bargaining, and we urge that government intervention in strikes should be strictly limited. However, strikes are not to be welcomed, and efforts *by the parties* to resolve their differences without work stoppages are important.*

In our opinion, a particularly unjustified kind of strike is that resulting from a fight between unions. This fact is recognized in the federal law, which provides orderly machinery for deciding which union shall represent any particular group of workers and, in case of dispute, which union shall do any particular kind of work. Nevertheless, strikes over such issues continue, especially in disputes over work assignments. Often strikes tying up large volumes of production or construction result from interunion disputes involving very small numbers of workers. The best solution for this problem would be greater recognition by local unions of their obligation to accept the decisions of private interunion arbitration or, as a last resort, of the NLRB.

The Duty To Bargain "In Good Faith"

A most important problem in the labor law arises from the provisions which establish a legal duty to bargain on "wages, hours and conditions of employment" and to do so "in good faith." The classic statement of the intent of this provision was made, before it was enacted in 1935, by the late Senator David I. Walsh, then Chairman of the Senate Committee on Education and Labor:

> When the employees have chosen their organization, when they have selected their representatives, all the bill proposes to do is to escort them to the door of the employer and say, "Here they are, the legal representatives of your employees." What happens behind those doors is not inquired into, and the bill does not seek to inquire into it.

*See Memorandum by Mr. H. C. TURNER, JR., page 43.

The interpretation of the duty to bargain in good faith has gone far beyond this concept, and involves the government increasingly in determining the form and content of collective bargaining. An ever-widening area of "mandatory" bargaining demands has developed. The definition of wages, hours, and conditions of employment, as currently interpreted by NLRB, has become broad enough to require prior notice and bargaining on such matters as plant relocation, the termination of obsolete facilities and jobs, and subcontracting for reasons of economic survival.

Not only has the law threatened to enlarge the subject matter of compulsory bargaining but it has also restricted the manner in which bargaining is done. The charge of failure to bargain "in good faith" has been used as a tactic by some unions to embarrass employers during negotiations. Such attempts to enlist the government in support of one party or another, or even the constant threat of such charges, are destructive of the development of maturity and mutual acceptance in free collective bargaining.

Furthermore, the uncertainty over this subject, coupled with the NLRB's doctrine that a strike in protest of an unfair labor practice is legitimate even though in violation of a contractual no-strike clause, works against the public interest in stable labor relations. It should be noted that the NLRB can and frequently does find breaches of the duty to bargain in good faith even in situations where in over-all intent and purpose the employer is acting in the best of faith in attempting to reach an over-all accommodation with the union and has no thought of undermining it or evading the general bargaining relationship.

The entire complex of court and NLRB decisions is now too confusing and is a source of "entrapment" from which employers, the NLRB, and the courts cannot disentangle themselves. Congress, in the Taft-Hartley Act, made an effort to improve the situation, but this has proved inadequate.

In place of the mandatory requirement to bargain in good faith, if there are any actions by employers or employees that should be required or prohibited, these should be specified in law. This change in the bargaining requirement will not enable either employers or unions to refuse to negotiate with the other. The employer cannot avoid bargaining with the union which represents his employees because, in order to continue operation, he must come to an agreement with the union —

the legally named exclusive bargaining agent – on employment terms. The legal protection of the right to organize and engage in concerted activities would remain. But revision of the "good faith" bargaining requirement will lead to more complete adaptation of the form and content of collective bargaining to the particular economic circumstances without the threat of government intervention.*

The National Labor Relations Board

The National Labor Relations Board was created "to equalize the legal responsibilities of labor organizations and employers." (Preamble of Act.) For more than 25 years the NLRB has been criticized by unions and employers, at the same time or alternately, as being biased. The National Labor Relations Act has been twice amended to help assure objectivity in the work of the NLRB. However, these amendments have not reduced the complaints. Moreover, sharp changes in the interpretation of the Act when the composition of the NLRB is changed are unsettling to labor relations.

Some such criticism of the NLRB is probably inevitable. The board is required to make decisions in controversial cases, in which not only the interests but also the rights of the parties are involved. In many cases the board must find that what one or another party had heretofore considered its right is, under the law, no longer a right. Application of the law in specific situations oftentimes turns on fine distinctions which different people, with all good will, would draw differently.

With respect to certain parts of the federal labor law, notably the provisions dealing with unfair labor practices, the NLRB is required to perform a judicial function. *We believe it important that the body performing this function should have more of the attributes of a judicial body than the NLRB now has. This would help to make applications of the law more stable, predictable, and generally acceptable.* One approach to this objective would be to lengthen the tenure of members of the board, raise their salaries, partly to symbolize the nonpolitical status assigned them, and to select members with more emphasis on the judicial qualifications required. An alternative solution would be to transfer jurisdiction over unfair labor practice cases from the NLRB to a specially constituted labor court, leaving other, more administrative, matters in the hands of the board.

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*See Memorandum (for page 18) by Mr. JOHN A. BARR, page 39.

The Market Power of Unions

The measures recommended in the preceding section would help to prevent some abuses of union power, particularly in relation to non-members, to equalize legal treatment of unions and employers, and to restrain government interference with free collective bargaining. They would not, however, substantially affect a major, and probably *the* major, source of excessive union power. This is the combination of workers — all employees or any group essential to continuing operations — of many competing employers.

Typically, the American union is not an independent organization of the employees of one employer dealing with that employer only. Typically, the employees of several, or most, or sometimes all employers in a particular industry or labor market, or all the workers in a particular craft, are joined together in one union. It has been a major objective of American unions to achieve a position in which they represent the employees of all competing employers. This is known as "taking labor out of competition." This goes beyond providing workers with a defense against "unilateral" or arbitrary action of their employers. It means preventing employers from competing with each other in the sale of products on the basis of the terms on which they employ labor. Most of the economic consequences of unionism mentioned in the introduction, such as the income gains made at the expense of the rest of the population, depend upon the achievement of disposition by unions. A union does not need hundreds of thousands of members to have this position. A small number of workers controlling the supply of a kind of labor essential to the production of something for which there is no

close substitute can be extremely powerful. Their union can close down vast operations, throw large numbers of other workers out of employment, or exact large rewards by threatening to do so.

Clearly the power of a single union representing all the workers in an industry is greater than the combined power of many unions each representing workers of one or a few employers in that industry. The power that workers get from unified organization of an entire industry is the power to pass on increases of labor costs to the consumers of the product. A single employer may not be able to grant a wage increase unless all his competitors do, because he would be unable to pass the higher costs on in higher prices. But if all the competing employers raise wages they may be able to pass the cost on in higher prices with less loss of sales for any employer.

Even where a union has organized a whole industry its power is not, of course, absolute. Every industry faces some competition from other industries, and many industries face foreign competition. Increases in labor costs, even though spread throughout an industry, can rarely be passed on without some loss of sales and employment, which may be substantial. Employers will resist large increases in labor costs, and the outcome will then depend upon various elements of strength in addition to the proportion of the industry that is organized. It may depend upon the willingness and ability of each side to endure a long strike. The financial position of the companies, and of the workers and the unions, the feasibility of operating with replacements for strikers, the storability of the products, the state of employment among the workers, the political situation within the union, the attitudes of the public and the government — all these will be factors in the strength of the union.

The power of an industry-wide union may also be limited by another kind of competition, the substitution of different production methods using more capital and possibly more unorganized labor, such as white collar workers, instead of organized labor. As labor costs of organized workers are pushed up, the incentives to make such substitutions increase and thus limit the extent to which unions can safely demand higher compensation.

The existence of these possible limits upon union market power — competition between industries, foreign competition, and the competition of changed production methods — naturally generates an effort by unions to use their power to extend these limits. Thus we find, in

some cases the organization of competing industries – such as steel and aluminum – by a single union and, in other cases, unions in competing industries collaborating on policy. Unions try to prevent employers from subcontracting work beyond the reach of their power or from moving plants into areas they have not yet organized. Some unions have been active in seeking protection from foreign competition, through tariffs, for the industries in which they operate. Other unions have attempted to help organize the workers in competing industries abroad. And in many cases union power is being used to slow down the introduction of labor saving techniques, the motivation for which is often the high labor costs resulting from the union's efforts. The attempt by unions that have achieved industry-wide organization to free themselves from the limits of interindustry competition, international competition, and the competition of new techniques is a most significant aspect of the present stage of unionism.

Many unions have a great deal of market power. It would be surprising if this were not so, given the union objective of "taking labor out of competition," the potential gains from acquiring such power, and the permissiveness of the law. We should expect unions to try to increase this power by closing tighter the escape valves of competition and we see no reason why some should not succeed, if present policies are continued.

A number of measures have been suggested for limiting union market power.* We list some of them here, not as recommendations but as illustrations of the kind of policy that deserves serious consideration:**

1. A union could be prohibited from organizing and representing the employees of more than one employer, and combination or collusion among separate unions could also be prohibited.

2. A union could be prohibited from carrying on collective bargaining for the employees of competing employers, and combinations of unions for this purpose could also be prohibited, but associations of unions for other purposes could be permitted, on the analogy of industry trade associations.

3. Industry-wide collective bargaining – simultaneous bargaining with all or most of an industry, nationally or in a significant area or region, resulting in a standard contract – could be prohibited.

4. Organization of the employees of more than one employer in a single union, and combination or collusion among unions, could

*See Memoranda (for page 19) by Mr. H. C. TURNER, JR., page 39 and Mr. JOHN A. BARR, page 40.

**See Memorandum by H. C. TURNER, JR., page 39.

be prohibited where the effect is substantially to lessen competition. Determination of whether the effect is substantially to lessen competition in particular cases would be left to the courts.

5. In proceedings for certification of a union as exclusive representative in a particular bargaining unit, an appropriate government agency could be directed to consider the effect on competition, in the light of the other bargaining units for which that union is the representative.

6. Unions could be prohibited from limitation of production (except by strike), direct control of prices, and featherbedding practices.*

While some members of the Research and Policy Committee would recommend one or another of these steps the Committee is not, as a group, prepared to do so. Much more study of the possible consequences is needed before any of them or any variant can be recommended. Particularly, study is needed of the consistency of these measures with the continued performance of unions' useful functions.

In the end, it is not only the power of unions that concerns us but also and even more the powers of government. We do not believe that great aggregations of undisciplined private power will long survive in a democratic society. Experience at home and abroad indicates that the power either will be dissipated or will gravitate into the hands of government. The public will not tolerate large power without democratic control and public responsibility. We already see the result with respect to the power of labor unions in foreign democracies. Either the top organizations of labor have become charged with public responsibility, or the government has taken substantial control directly over matters formerly and properly the subject of collective bargaining.

Many union leaders have recently expressed alarm over increased government intervention in collective bargaining, and with good reason. But this trend is unlikely to be reversed unless the power of unions is moderated or more responsibly exercised. *The great enemy of free collective bargaining may turn out to be the excessive power of unions.* We hope that others who believe as we do in free collective bargaining will join in the search for ways to bring the powers of unions into better balance with their valuable functions.

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*See Memorandum by Mr. WILLIAM BENTON, page 43.

Memoranda of Comment, Reservation or Dissent

Page 9— *By ALLAN SPROUL, in which WILLIAM BENTON has asked to be associated:

"I recognize that this Policy Statement represents a sincere effort to suggest means of relating union powers to union functions, so that what has proved to be beneficial in this relationship will be preserved and what has proved to be detrimental may be altered. The possibility of bias in approach has been recognized and an attempt has been made to temper its effect. Nevertheless, the Statement has the aspect of a presentation of grievances by the business community which it represents, which may well harden rather than soften the 'adversary position' in labor-management relations which the Statement itself deplores. This danger is increased, in my opinion, by the inclusion of sections in the Statement which give expression to individual views which were not able to achieve group consensus, but which will almost inevitably be interpreted as reflecting a climate of discussion.

"On broader grounds, the narrowness of the frame in which the Statement has been cast has deprived it of a measure of constructive quality, in that it does not attempt to focus attention upon changes in laws and practices, involving both business and labor, which might improve the competitive workings of our economic system. And it dismisses too cavalierly the interest and role of government in labor-management relations, quite apart from specific labor disputes, leaving a void with respect to the coordination of wage-price policies with fiscal and monetary policies designed to promote sustainable economic growth, which is one of the critical issues of our time."

Memoranda of Comment, Reservation or Dissent (contd.)

Page 9— **By ALLAN SPROUL, in which WILLIAM BENTON has asked to be associated:

"Powers granted by government to institutional groupings in the community, such as corporations and unions, may always be viewed by other groups, or by individuals, as injurious to their interests. The goal must be to avoid granting powers which are so absolute as to permit persistent abuse without redress."

Page 10—*By ALLAN SPROUL

"The concept of competition underlying the present anti-trust laws, and their application, is still better adapted to a 'forge in the forest' economy than to our present system of mass production and national distribution. It has failed to adapt to changing circumstances and it is helping to confuse our economic objectives."

Page 11—*By ALLAN SPROUL, in which WILLIAM BENTON has asked to be associated:

"But there remained a residue of serious concern as to whether some of these arrangements, which may have been mutually satisfactory to the companies and the unions, were not achieved without adequate regard for their effect on costs and prices. It is here that the highest public interest in labor-management arrangements arises, because they may compromise the economic health of the community."

Page 16—*By ALLAN SPROUL, in which WILLIAM BENTON has asked to be associated:

"This selection of choices leaves out of consideration the argument that increased wages and fringe benefits may be squeezed out of existing profits (without jeopardizing investment in the continuous improvement in plant and equipment), so as to avoid or minimize the price effects which might create inflationary pressures or excessive unemployment. The argument has been abused, but it should not be ignored."

Memoranda of Comment, Reservation or Dissent (contd.)

Page 18—*By JOHN A. BARR

"Fulfillment of the right of employees to bargain collectively with their employer should not be dependent on the uncertain 'economic necessity' of the employer, but should be affirmatively protected by law. Consequently, I do not agree to 'deletion of the present legal requirement.' Instead, I would clarify the requirement by deleting only the ambiguous phrase 'in good faith,' and by defining the obligation to bargain collectively as requiring only that the parties meet at reasonable times to confer with respect to wages, hours, and other conditions of employment, or to negotiate an agreement, and that the parties execute a written contract incorporating any agreement reached if requested by either party. I would further specify that the obligation to bargain does not compel either party to agree to a proposal or to make a counterproposal or to make a concession. Such provisions would minimize government regulation and control of both the conduct of bargaining and the substance of the bargain, while preserving the legal right of employees to bargain collectively with their employer in the manner succinctly stated by the late Senator Walsh as being the intent of Congress when the bargaining requirement was originally enacted. See Walsh quotation at page 30 of this Policy Statement."

Page 19 and *Page 35*** *By H. C. TURNER, JR., in which THOMAS B. MCCABE has asked to be associated:

"Some of these suggestions, such as 'prohibiting a union from bargaining with two or more competing employers' and 'prohibiting industry-wide bargaining,' are quite unrealistic and impractical for certain industries, particularly the building construction industry. It is essential for individual employers, most of whom are small, to bargain collectively through their local associations in order to have some measure of strength to deal with the various craft unions."

Memoranda of Comment, Reservation or Dissent (contd.)

Page 19—**By JOHN A. BARR

"I would recommend that a union be limited to the employees of a single employer.

"A reasonable balance of power between the bargaining parties is necessary to collective bargaining in the public interest and to labor peace. Just as a balance of power between nations encourages fair dealing and discourages war, so a balance of power between an employer and the union of his employees encourages fair wages and working conditions and discourages strikes.

"As an employer of many workers has more bargaining power than any one of his employees, so a union which represents the employees of many employers, including competitors, customers and suppliers, has more bargaining power than any one of the employers.

"If we accept 'balance of power' as a desirable objective in the bargaining process, pitting the bargaining power of an employer against the collective strength of his own employees would seem to be the approach most likely to achieve it in the myriad of bargaining situations which exist in our economy."

Page 22—*By PHILIP SPORN

"While each worker should have a clear right to decide freely whether or not to belong to a union, there should be no legal prohibition of collective bargaining agreements requiring financial payments in lieu of normal union dues by workers who choose not to be members of the union. Although the right of the majority of the workers to effective representation by a union is not abridged by the failure of one or more of the minority of the workers to join the union, a legally imposed absence of financial responsibility toward the union by the nonmembers in the face of the ineluctable performance of valuable services on their behalf by the union, apart from the inequi-

Memoranda of Comment, Reservation or Dissent (contd.)

ties involved, tends to undermine the financial foundation of union survival."

Page 22—**By JOHN A. BARR

"Not only should this be the 'controlling principle' but the right of a worker to join a union, or not to join a union; to maintain membership in a union, or not to maintain membership; to financially support a union, or not to financially support it, should be declared by federal law to be a basic freedom of the individual worker. As a basic freedom of the individual, it could not be bargained away by an employer or by a union.

"Our policy should be to protect a worker's right not to join a union with the same vigor we protect his right to join. The law now outlaws 'yellow-dog' contracts, contracts in which an employee agrees not to join a union. 'Union shop' contracts are yellow-dog contracts in reverse. One is just as abhorrent as the other, and both should be outlawed."

Page 23—*By PHILIP SPORN

"The abolition of discriminatory union practices requires strong positive efforts. The right of all qualified workers under fairly formulated standards of qualification, fairly administered, to admission into the union of their trade and industry and the equal right of all qualified workers to such membership should be guaranteed by vigorously enforced law."

Page 26—*By PHILIP SPORN

"The attempt to settle labor disputes by force or violence cannot be tolerated in our society. Since the basic framework within which labor relations are carried out is, for the most part, established by federal law, a careful study needs to be undertaken at an early date with a view of establishing criteria to determine the conditions under which breakdowns in the

ability of either local or state law enforcement agencies to cope with the violence would call forth intervention by federal law enforcement authorities to put an end to violence."

Page 28—*By FRANK L. MAGEE

"A recent and typical example of excessive government intervention in the collective bargaining process is the administration's legislative proposal to dictate an increase in overtime costs under the guise of meeting unemployment problems."

Page 29—*By PHILIP SPORN

" 'National emergency' and 'essential industry' have been defined much too loosely with the result that the federal government has tended to intervene in labor disputes too frequently and too soon. The result has been to discourage genuine collective bargaining efforts. The prospect of government intervention has increased the willingness of the parties to a dispute to assume the burdens of a strike based on their confidence that the government will curtail its length and cost. Prolonged strikes that would create a national emergency or severe public hardship cannot be tolerated in many areas of economic activity, but such strikes are less frequent than the record of intervention would indicate. In most cases strikes can be permitted to continue for extended periods with relatively minor inconvenience to the public; in many cases alternatives can be found to relieve the public of serious impairment of health or safety. In such cases the strike should be permitted to run its course. If free collective bargaining is to be meaningful, both parties must be subject, without interference, to the economic pressures that can compel final agreement. But if the prospect of a 'national emergency' appears as a likely development, a careful and recorded evaluation of the probability of such an emergency becoming a fact shall be made by the gov-

Memoranda of Comment, Reservation or Dissent (contd.)

ernment, and a positive determination of the possibility becoming a reality shall be made before any action is taken by it under the 'national emergency' powers granted by law."

Page 30—*By H. C. TURNER, JR.

"One area of dispute for which a solution has not been found is the case of the close-knit, strategically placed union which can, through a strike, effectively interfere with if not completely tie up an entire industry in a particular location, an entire city or region. This can be made effective because other union workers will not cross the picket lines. I believe that a special committee representing employers at the executive level and the heads of national unions should be convened to study this matter."

Page 36—*By WILLIAM BENTON

"The six measures listed on pages 35-36 as deserving serious consideration can justly be given such consideration only in the context of a wide study of competition in the economy as a whole."

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THE COMMITTEE FOR ECONOMIC DEVELOPMENT

The Committee for Economic Development is composed of 200 leading businessmen and educators.

CED is devoted to these basic objectives:

1) *To develop, through objective research and discussion, findings and recommendations for business and public policy which will contribute to the preservation and strengthening of our free society, and to the maintenance of high employment, increasing productivity and living standards, greater economic stability and greater opportunity for all our people.*

2) *To bring about increasing public understanding of the importance of these objectives and the ways in which they can be achieved.*

CED's work is supported by voluntary contributions from business and industry. It is nonprofit, nonpartisan and nonpolitical.

The Trustees, who generally are Presidents or Board Chairmen of corporations and Presidents of universities, are chosen for their individual capacities rather than as representatives of any particular interests. They unite scholarship with business judgment and experience in analyzing the issues and developing recommendations to resolve the economic problems that constantly arise in a dynamic and democratic society.

Through this business-academic partnership, CED endeavors to develop policy statements and other research products that commend themselves as guides to public and business policy; for use as texts in college economic and political science courses and in management training courses; for consideration and discussion by newspaper and magazine editors, columnists and commentators, and for distribution abroad to promote better understanding of the American economic system.

CED believes that by enabling businessmen to demonstrate constructively their concern for the general welfare, it is helping business to earn and maintain the national and community respect essential to the successful functioning of the free enterprise capitalist system.