[COMMITTEE PRINT]

83D CONGRESS
1st Session

SENATE Committee print

PUBLIC POLICY AND COMMUNIST DOMINATION OF CERTAIN UNIONS

REPORT

OF THE

SUBCOMMITTEE ON LABOR AND LABOR-MANAGEMENT RELATIONS

TO THE

COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE

EIGHTY-SECOND CONGRESS
SECOND SESSION

ON

PUBLIC POLICY AND COMMUNIST DOMINATION OF CERTAIN UNIONS, WITH THE INDIVIDUAL VIEWS OF MR. MORSE

Printed for the use of the Committee on Labor and Public Welfare

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1953

26989

COMMITTEE ON LABOR AND PUBLIC WELFARE

JAMES E. MURRAY, Montana, *Chairman*

LISTER HILL, Alabama	ROBERT A. TAFT, Ohio
MATTHEW M. NEELY, West Virginia	GEORGE D. AIKEN, Vermont
PAUL H. DOUGLAS, Illinois	H. ALEXANDER SMITH, New Jersey
HUBERT H. HUMPHREY, Minnesota	WAYNE MORSE, Oregon
HERBERT H. LEHMAN, New York	IRVING M. IVES, New York
JOHN O. PASTORE, Rhode Island	RICHARD M. NIXON, California

WILLIAM H. COBURN, *Chief Clerk*

SUBCOMMITTEE ON LABOR AND LABOR-MANAGEMENT RELATIONS

HUBERT H. HUMPHREY, Minnesota, *Chairman*

MATTHEW M. NEELY, West Virginia	ROBERT A. TAFT, Ohio
PAUL H. DOUGLAS, Illinois	WAYNE MORSE, Oregon
JOHN O. PASTORE, Rhode Island	IRVING M. IVES, New York

JACK BABBASH, *Staff Director*
MARJORIE WHITTAKER, *Clerk*

PUBLIC POLICY AND COMMUNIST DOMINATION OF CERTAIN UNIONS

NATURE OF THE INVESTIGATION AND RECORD

This is the report of an investigation of the public policy implications of Communist domination of certain labor unions. It was undertaken by the Subcommittee on Labor and Labor-Management Relations of the United States Senate Committee on Labor and Public Welfare.

A first step was to publish as a Senate document the reports of the trial committees of the CIO expelling certain unions on grounds of Communist control and domination.[1] The objective in publishing these documents, which were otherwise not generally available, was to provide concrete case material on the strategy and tactics of Communist-controlled unionism and how a major labor organization went about coping with this problem.

The second step in the investigation was the circulation of a questionnaire to a group of representative spokesmen from the ranks of labor, management, government, and the general public, who have had some specific experience in dealing with the problem at first hand.

The subcommittee asked the following questions:

1. Is there an effective legislative approach to the problem of Communist-dominated unions?
2. Can you suggest the principles or statutory language which ought to be embodied in such legislation?
3. Can you suggest avenues of inquiry which the subcommittee ought to pursue, particularly those avenues which have not already been studied by other committees?

The answers were reprinted in several Senate documents.[2]

In the third step the subcommittee held hearings and probed further into the issues raised by the replies to the questionnaire. In addition the hearings provided an opportunity to get into at least one case situation involving the issue of Communist union domination in the electrical production industry.

In a fourth aspect of the investigation, the subcommittee with the cooperation of the General Counsel of the National Labor Relations Board initiated an investigation of the operation of a Communist-dominated union in action.[3]

This then is the basic record upon which this report relies in analyzing the problem and in making its recommendations. The hearings and investigations of the House Un-American Activities Committee

[1] Communist Domination of Certain Unions: Part I. Reports of the CIO executive board trial committees appointed to hold hearings on charges of Communist domination of several CIO unions (S. Doc. 89), 82d Cong., 1st sess. (hereafter referred to as pt. I).

[2] Communist Domination of Certain Unions: Part II. Atomic Energy Commission reply to subcommittee questionnaire, 82d Cong., 2d sess. (hereafter referred to as pt. II). Part III. Replies to questionnaire from attorneys in labor practice, labor leaders, labor press, university professors, employer associations, and Government officials, 82d Cong., 2d sess. (hereafter referred to as pt. III). Part IV. Additional replies to the questionnaire, 82d Cong., 2d sess. (hereafter referred to as pt. IV).

[3] Hearings, 82d Cong., 2d sess. (hereafter referred to as hearings).

1953

and the Senate Internal Security subcommittee have been followed carefully and that record too will be utilized in this report.

The focal point of the subcommittee's interest in the problem has been the public policy implications of Communist-dominated unions. No need was felt to retread the path of exposure and identification being carried on by other legislative committees and by the labor organizations themselves.

IDENTIFYING COMMUNIST-DOMINATED UNIONS

Now to the facts as revealed by our record. Are there Communist-dominated unions and how can they be identified as such? There are three ways of identifying Communist-dominated unions: (1) By the adherence of the union's leadership to the shifting pattern of the Communist Party line; (2) by direct acts such as strikes which are designed to implement the interests of Soviet foreign policy; (3) By systematic participation of Communist party functionaries in the determination of union policy.

There is no great difficulty in identifying Communist-dominated unions on the first count, that is, the unerring conformity of the union's policies to the Communist Party line in vogue, and as it shifts as directed by the Kremlin. The reports of the CIO trial committees constitute an elaborate spelling out of the rigid parallelism between the political lines of the expelled unions and the line of the Soviet Union.

The International Longshoremen and Warehousemen's Union led by Harry Bridges is an outstanding case in point (pt. III, p. 79). The "popular front" was the keynote of Soviet foreign policy in the period 1935 to 1939. The responsive chord which this line struck in the ILWU took the form of vigorous support of the Roosevelt program to "quarantine aggressors." In 1938, the union, for example, supported bills to change the Neutrality Act to permit active trade assistance to the victims of aggression; it also supported a bill to ban the shipment of helium to Germany.

In June 1939 Soviet Russia reversed its field and negotiated a nonaggression pact with Nazi Germany. The ILWU too shifted in reverse. This was the cue for a reversion to isolationism with the theme "The Yanks are not coming." ILWU resolutions opposed any aid to the countries fighting Germany.

The Soviet line shifted again with the German attack on its erstwhile ally. Again the ILWU responded in kind, advocating no-strike pledges, national service legislation for civilians and the "second front."

And yet another shift in Soviet foreign policy in the postwar period. According to certified ILWU doctrine the Truman doctrine in Greece and Turkey became "international gangsterism" and the Marshall plan a "monstrous plot against freedom and living standards." This is, of course, the current phase of Soviet foreign policy and therefore the official line of the ILWU.

The CIO trial committees found that in addition to the ILWU, there were other unions which adhered to this pattern of inexorable conformity to the Communist line; specifically, United Office and Professional Workers of America; Food, Tobacco, Agricultural, and Allied Workers of America; National Union of Marine Cooks and

Stewards; American Communications Association; International Fur and Leather Workers Union; International Union of Mine, Mill, and Smelter Workers; and United Public Workers of America. And by convention action the CIO expelled the United Electrical Workers on the same grounds (pt. II, p. 48).

The United Electrical Workers asked for an opportunity to be heard by the subcommittee. In the process of examination, Mr. James J. Matles, UE director of organization, could not recall a single instance in which an organ of the UE had criticized the Soviet Union or the Communist Party. Mr. Matles denied that this was evidence of Communist domination. "Every single action is taken by the membership, and every action is taken on the basis of the merits of the case, and every action that we take we believe is for the best interests of our members and the people of the United States" (hearings, p. 500).

For the purposes of this report we shall reserve judgment at this point just how much the policies of the UE reflect democratic sentiment. But the law of coincidence must be strained beyond reasonable bounds to believe that a tenacious conformity to the Communist Party line through at least six major reversals has nothing to do with Communist domination.

In their defense against the CIO expulsion action, the Communist-controlled unions sought to show that at some points their policy was in conformity with CIO policy on these matters. Such a defense, however, merely serves to illuminate the real essence of the party line; the distinguishing mark of Communist Party line adherence is not what it stands for at any particular phase. Indeed at any particular phase the party line may happen to agree with the position taken by reputable, patriotic organizations and individuals. During the period of World War II, for example, the party line dictated a policy of all-out prosecution of the war.

The real essence of the party line is its *shifting* character, a shift directly associated in time and in content with a corresponding change in the foreign policy of Soviet Russia. It is then this highly sympathetic responsiveness to the shifting requirements of Soviet Russia that marks the party-liner, not what he happens to advocate at any special time.

Another distinction needs to be made and the failure to make that distinction has resulted in considerable confusion in the fight against the real enemy—the Communists. This distinction is made very perceptively by Prof. Joel Seidman in his testimony before the committee:

> * * * there are important differences between Communist unionism and other liberal or radical groups also active in the American labor movement. From the point of view of the other liberal or radical groups, a union is a primary institution that the group seeks to build and to make strong, with the objective of winning benefits for the members and for workers in general.
>
> The policy of such unions is determined by an analysis of the needs of the workers who are employed in the industries in which those unions operate. Such other liberal or radical groups may be critical of employers, of the existing economic system, of Government policy; they may in a particular case be opposed to a war in which this Government is engaged, or even opposed to all wars; and yet I would sharply distinguish between such groups and the Communist Party on the ground that the Communist Party seeks control of unions not primarily to benefit the workers involved but primarily because the unions then can be manipulated to further a party line which is in turn determined with reference to the interests of the U. S. S. R. (hearings, p. 149).

The record with respect to direct action by Communist-dominated unions to support the party line is not as decisive as is the record on policy. In a way this is understandable. No union-management relationship is free of grievances of one sort or another. It is difficult to detect the precise motivation which edges a grievance into a strike or slow-down. The Communist union leaders do not usually proclaim in advance that the motivating factor in a strike or slow-down is political. It is even not unlikely that most of Communist-led strikes are legitimate strikes arising out of genuine trade-union grievances. There may be just a hair-line of judgment separating the attitude of the patriotic, militant, trade-union leader and the Communist Party line follower. One feels that the grievance is not weighty enough to justify a strike; the other concerned with implementing the foreign policy of a foreign country does move for strike action.

There is another important reason why the political strike is not easily discernible. Communists are able to control an organization with a few strategically placed followers. The vast majority of members in Communist-dominated unions are not Communist Party followers or even remotely sympathetic to the aims of the Communists. It would be virtually impossible to enlist the support of the rank-and-file membership in an openly announced political strike or slow-down.

Nevertheless there is credible evidence of a specific kind which points to the Communist origin of certain strikes. For example the 1941 strike at the Milwaukee plant of the Allis-Chalmers Manufacturing Co., then producing vital defense materials has been characterized by a congressional committee as a party-line strike designed to weaken the defense program (hearings, p. 60).

Benoit Frachon, French executive committee member of the Communist-controlled World Federation of Trade Unions was reported by the New York Times as having urged the use of labor movements to cripple the rearmament of the western world (hearings, p. 2).

Admitting the inconclusive evidence available on the use of direct action by Communist-led unions, one would have to be dangerously blind to ignore the signals provided by the Communist political strikes abroad and the nature of the Bolshevik conspiracy in the world.

The Bolshevik theory on the role of the Communists in the unions is clear. Thus according to the Theses and Statutes of the Third [Communist] International—

> * * * The Communists must practically subordinate the factory committees and the unions to the Communist Party, and thus create a proletarian mass organ, a basis for a powerful centralized party of the proletariat (hearings, p. 170).

There is ample affirmative evidence that the Communists in the unions heeded this directive. An American Communist, William Z. Foster, sometime later in 1929 adapted the theory as follows:

> Among the membership of every local union the Communists must organize themselves into a group which acts as a body upon all problems coming before the organization. If there are Communists on the executive committee of a given local union, they must act together as a faction though in close connection with the general party faction of the union. The same principle applies all along the way. The Communist delegates from the various local unions in a given trade or industry to a corresponding district council or joint board likewise must form themselves into a faction, and also those on the executive boards of such councils or joint boards. The Communist delegates to all central labor councils must take the same course (hearings, p. 172).

There is ample affirmative evidence of a credible character that the policies of Communist-dominated unions were in fact controlled by secret Communist Party caucuses. In the same UE, in which James

Matles had testified "that the UE is not directed or controlled by any political party including the Communist Party" (hearings, p. 501), Lee Lundgren, an admitted former member of the Communist Party and an ex official of local 1150 of the UE, testified under oath as follows:

> We have often had some of the top leaders of the Communist Party attend our meetings. Even when they did not attend the meetings, why, whoever had the job as educational director for that particular club would have a mimeographed copy of an order or plan or whatever it might be, whatever the thing might be at the time, and they would bring this to the club and then report from that directive they received from the Communist Party headquarters.
>
> * * * * * * *
>
> We had a meeting of our branch of the Communist Party, and we discussed who would sign the non-Communist affidavit, what officers would actually sign and which officers would not.
>
> * * * * * * *
>
> In all cases where matters of importance were going to come up before the local membership meeting, those matters were discussed at the Communist Party meeting prior to the union-membership meeting, and that also included the selection of delegates to conventions, and any official business like that, always the names of these people were selected at the Communist Party meeting first. Then it was brought to the attention of the people at the regular union-membership meeting.
>
> * * * * * * *
>
> The local was under complete Communist control, and we really never had any major opposition, so that the people were not aware of the fact that actually a Communist Party meeting had been held to work out the details before the membership meeting, and therefore the people just went along with the policies without knowing too much about actually what was happening. Actually, the people thought they were making the decisions, and little did they know that they were only carrying out the mandate of the Communist Party.

The CIO reports furnish additional direct evidence of collaboration between party functionaries and union leaders in the determination of union policy. Harry Bridges met with party functionaries to discuss the initiation of a longshore organizing campaign on the east coast. Bridges hegemony is limited to the west coast.

The steering committee of the Mine, Mill and Smelter Union met with Communist Party leaders William Z. Foster, Eugene Dennis, John Williamson, and Gil Green (pt. I, p. 103 ff., pt. I, p. 92 ff.).

LEGAL RESOURCES FOR DEALING WITH THE COMMUNIST-DOMINATED UNIONS

NLRB resources

The major available resource in the law for dealing with the problem of Communist-dominated unions resides in section 9 (h) of the Labor-Management Relations Act, 1947. Section 9 (h) states:

> No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding 12-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35–A of the Criminal Code shall be applicable in respect to such affidavits.

As of July 1, 1951, there were 232,000 individual affidavits on file in NLRB offices from 26,000 local and international labor organizations (hearings, p. 91).

The Board has encountered many problems in administering this section of the law. One of the most important has been the problem of "fronting," that is where a noncomplying union has sought to use an individual or group of individuals as "fronts" in a Board proceeding from which the noncomplying organization itself was disqualified from participation. Or a noncomplying local union sought to use an international union, which had complied, as a "front." The Board has said:

> By adopting a firm policy as regards "fronting," the Board made it clear that compliance with section 9h would have to be achieved in substance as well as in form, if the Board's services were to be made available (pt. II, p. 6).

The Board has however permitted a noncomplying union to be on the ballot where it was the bargaining representative, in a decertification proceeding "lest the labor organization's own dereliction in failing to comply immunize the decertification" (pt. III, p. 4).

The Board has had to concern itself with whether the parent federations, that is the officers of the AFL and CIO, were required to sign the non-Communist affidavit. The Board held the AFL and CIO were not required to sign but the United States Supreme Court in the Highland Park case held to the contrary. The position of the NLRB with respect to its responsibility for determining the truth or falsity of the non-Communist affidavit has been put to the subcommittee by Chairman Herzog, as follows:

> It was apparent from the outset that the NLRB's sole function was to make certain that the necessary persons filed these affidavits, and that, once, they had done so, pursuant to the rules we adopted, we were to process their cases without inquiring into the truth or falsity of the affidavits themselves. Where such an issue arose, the Board's statutory duty was only to refer the affidavit to the Department of Justice for investigation and possible prosecution for perjury under the Criminal Code. We have made 55 such referrals since 1947 (bearings, p. 91).

This view is confirmed by the 1948 report of the Congressional Joint Committee on Labor-Management Relations when it said with respect to 9 (h):

> * * * great care must be given to prevent litigation of the question in Board hearings. If the parties to Board hearings are permitted to question the veracity of the affidavit or the facts as to its having been filed, records will be hopelessly burdened with such proof. Board hearings must be confined to evidence going into the merits of the case at hand if the Board is to carry out its real function of deciding unfair labor practice cases and determining bargaining representatives * * * (pt. 3, p. 10).

This problem became particularly vexing as well known Communist Party followers signed the affidavits when they realized that it would be impossible for their unions to function without access to Board proceedings.

In connection with the Perlow affidavit the then General Counsel, Mr. Denham, said:

> The act does not direct or authorize either the General Counsel or the Board to police these affidavits or to pass judgment upon their truth or falsity. While Mr. Perlow's published statement, if they accurately quoted him, would tend to throw considerable doubt on the good faith of his affidavit, nevertheless we are required by the law to take the affidavits as they are submitted.[4]

Many of the union officers in this category made such statements in connection with their alleged resignation from the Communist Party

[4] Pt. III, p. 7.

as to put in serious question their good faith in taking the oath without reservation.

For example: Ben Gold of the Furriers Union announced his resignation from the Communist Party and said, "I resigned from the Communist Party but I do not give up my belief in true democracy."

Max Perlow an officer of the United Furniture Workers resigned from the Communist Party and signed the affidavit but in resigning from the Communist Party said he was not renouncing Communist doctrines or his right to advocate them.

Maurice Travis, secretary treasurer of the Mine, Mill and Smelter Workers resigned from the Communist Party and signed the affidavit but he said he would still "continue to fight for Communist goals" (pt. III, pp. 6, 7; also hearings, p. 511 ff.).

The extent of the Board's responsibility for ascertaining the truth or falsity of the 9 (h) affidavit is now additionally complicated by the refusal of witnesses before Senate and House committees to testify whether they had signed the non-Communist affidavit, even though Board records indicate that such affidavits were on file. The witnesses who refuse to identify their affidavits plead their constitutional right against self-incrimination.

For example, the following union officers who signed the non-Communist oath refused to testify in 1952 before congressional committees as to whether they had signed the affidavit:

Name	Union	Source
Henley, Paul A	Steward for local 3, UA-WCIO	House Committee on Un-American Activities: Communism in the Detroit Area, pt. 1, hearings, 82d Cong., 2d sess., February 25–29, 1952, p. 2861.
Hood, William R	Recording secretary, UAW-CIO, Ford Local 600.	Ibid., p. 2897.
Boatin, Paul	Chairman of political-action committee, local 600, UAW-CIO.	House Committee on Un-American Activities: Communism in the Detroit Area, pt. 2, hearings, 82d Cong., 2d sess., March–April 1952, p. 3113.
Franklin, Harold	Recording secretary of the Dearborn Iron Foundry local.	Ibid., p. 3217.
DeMaio, Ernest	General vice president of UERMWA.	House Committee on Un-American Activities: Communist activities in the Chicago Area, pt. 1, hearings, 82d Cong., 2d sess., Sept. 2 and 3, 1952, p. 3672.
Henderson, Donald	National secretary-treasurer, Distributive, Processing and Office Workers Union of America.	Senate Committee on the Judiciary, Subcommittee To Investigate the Administration of the Internal Security Act: Subversive control of Distributive, Processing, and Office Workers of America, hearings, 82d Cong., 2d sess., Feb. 12–15, 19–21, Mar. 7, 1952, p. 172.
Durkin, James H	Former organizer, United Office and Professional Workers of America, and national secretary-treasurer, DPOWA.	Ibid., p. 196.
Livingston, Mortimer	President of district 65, DPOWA.	Ibid., p. 257.
Hang, Mrs. Marie	Local representative, local 735, United Electrical, Radio, and Machine Workers of America.	Senate Committee on the Judiciary, Subcommittee To Investigate the Administration of the Internal Security Act: Subversive influence in the United Electrical, Radio, and Machine Workers of America, hearings, 82d Cong., 2d sess., Apr. 17, 18, May 29, and June 26, 1952, pp. 88, 97.
Epstein, Jacob Samuel	President, local 721, CIO, International Union of Electrical, Radio, and Machine Workers.	Ibid., pp. 121, 123.
Shepard, Paul J	Organizer for local 735, United Electrical, Radio, and Machine Workers.	Ibid., p. 135.

As this report is being written the Board has ruled on the significance of a perjury conviction against an affiant of a 9 (h) affidavit. Anthony Valentino, an officer of local 80A of the United Packinghouse Workers (CIO) was convicted in a Federal district court of having filed a false non-Communist affidavit. The NLRB, after notice of intent proceeded to direct that "no further force and effect" be given to the collective bargaining certifications of the local union in question and found that the local was out of compliance with 9 (h). The Board said that its action in this proceeding was designed to protect "its own processes from further abuse" (NLRB release 413).

In a sense the Board has in one other way gone beyond the concept of being simply a filing cabinet for the 9 (h) affidavit. It has taken steps to prevent evasion of the law by union officers who resign from constitutionally designated posts and take so-called administrative positions in the union. This issue was first posed when Donald Henderson, president of the Food, Tobacco, Agricultural, and Allied Workers resigned from the presidency of that union and became "national administrative director" and under the FTA constitution presumably not an "officer." FTA did not provide satisfactory proof to the NLRB that Henderson was not in fact an officer, and the Board refused to permit FTA to be placed on a representation ballot. With the Henderson case as background the Board amended its rules and regulations in 1950 to provide that—

* * * where the Board has reasonable cause to believe that a labor organization has omitted from its constitution the designation of any position as an office for the purpose of evading or circumventing the filling requirements of section 9 (h) of the act, the Board may upon appropriate notice, conduct an investigation to determine the facts in that regard, and where the facts appear to warrant such action the Board may require affidavits from persons other than the incumbents of positions identified by the constitution as officers * * * (pt. III, p. 7).

Not directly related to compliance with the non-Communist affidavit but relevant for the purposes of the general problem which the subcommittee is exploring, is the Board's policy on what an employer may lawfully do about Communist employees.

The General Counsel has refused to issue a complaint in a case where the employer in good faith had suspended employees for being Communists (27 LRRM 1443). A trial examiner found that an employer had not been guility of failure to bargain in good faith because he had insisted that the officers and representatives of the local and national organizations of the UE execute a non-Communist affidavit for the company as a condition of agreement. The trial examiner held that the company had sufficient reasons for believing that the union's officers and representatives were dominated by and in association with Communists (NLRB. In the matter of Square D Co. and United Electrical, Radio, and Machine Workers of America Local 1421, independent, intermediate report March 28, 1952). The Board itself found in another case involving the UE that the discharge of a steward for being a Communist was, for cause (94 NLRB No. 85 (1951)).

In the Sunbeam case the Board revoked a previous direction to the employer to bargain in good faith when it found that the charging union had not complied with section 9 (h), inasmuch as officers of the union who should have signed the affidavit, had not, at the time the union was put on the ballot or at the time of certification.

The Board held that—

It would be inconsistent both with the basic considerations which impelled the establishment of that principle, and with the spirit of section 9 (h) itself, as indicated in the legislative history of the 1947 amendments to the act, to hold that a certification inherently defective at the outset could confer on the union the right of later recourse to the Board, or conversely, expose the employer to an unfair-labor-practice finding for refusing to honor that certification (98 NLRB No. 98).

The Board's holdings on the non-Communist affidavit seem to add up to these tendencies:

(1) The prevention of "fronting" by individuals for unions not in compliance.

(2) The prevention of evasion by officers, in fact, assuming so-called administrative posts.

(3) The revocation of compliance status and certifications on conviction of an affiant for false swearing.

Still, in doubt, at this writing, is what the Board will do when it is confronted by a refusal of an affiant to testify whether he is a member of the Communist Party in a congressional or judicial proceeding.

There seems to be no doubt if the Board maintains its present position it will not under present law undertake to find through its own proceedings whether in fact an affiant is actually a Communist or not.

AEC resources

Another repository of authority to deal with the problem of Communist-dominated unionism is the Atomic Energy Commission. Since AEC authority in this context was used only with respect to two unions, it will be useful to describe specifically what happened in the one case where the application of sanctions ran its full course.

1. The General Electric Corp. pursuant to a Wagner Act certification had recognized the United Electrical Workers as the representative of its organized employees. When GE undertook to operate a Government-owned atomic installation at the Peck Street (Schenectady) plant it proceeded to recognize UE for that operation as well.

2. In any case all employees engaged on classified atomic energy work were subject to security clearance. But recognition of UE as the bargaining representative raised for AEC security questions over and above those of individual security clearances. On the basis of an examination of all available data, including congressional investigations and UE's constitution, the AEC concluded:

(1) that there might exist circumstances at Schenectady conducive to Communist-inspired action adverse to the atomic-energy program and the Nation's security; (2) that such action might take the form of a political strike or other organized sabotage; and (3) that an effective safeguard against such action would be the removal from lines of influence over employees on atomic-energy work of representatives of undependable loyalty (pt. II, p. 3).

3. On September 27, 1948, AEC directed the General Electric Corp. not to recognize UE at the new atomic-energy installation. GE said it would comply fully with the AEC directive.

4. Albert Fitzgerald, UE president, protested the AEC order and in response AEC "proffered to the officers of the UE the opportunity to participate in a fuller exploration of the issue, with the understanding that the UE officials would be expected to give full and candid statements concerning present or past affiliations of any kind

with the Communist Party or Communist-dominated organizations." There was no reply. AEC renewed its offer. This time Fitzgerald explicitly rejected the opportunity for further discussion. On November 1, AEC formally directed GE to withdraw recognition from UE on work at AEC owned or installed operations.

5. On October 26, 1948, UE petitioned for injunctive relief in the District of Columbia Federal District Court to restrain AEC and GE from putting the ban into effect. AEC and GE both filed motions for dismissal. Judge Letts sustained the AEC and GE dismissal motions because of lack of jurisdiction.

6. In May of 1950 UE and IUE were both put on the ballot in the representation elections directed by the NLRB. In its order directing the election the NLRB conditioned any certifications that might issue at the Atomic energy installation thus:

> The record shows that the Atomic Energy Commission has established certain security requirements applicable to labor organizations, and to their officers, as a condition of their being recognized as the representative of employees at the employer's atomic energy operations at the Schenectady works. We have been advised generally by that Commission of the scope and purpose of these security requirements. Accordingly, any certification resulting from elections herein directed on behalf of employees of the atomic energy operations will be conditioned upon compliance, by the certified unions, with the security requirements of the Atomic Energy Commission, a matter exclusively within the jurisdiction of the Commission (pt. II, p. 7).

UE lost all of the three elections.

Similar action ordering withdrawal of recognition from the United Public Workers was taken but UPW immediately stopped organizing.

AEC pointed up the significance of its action against UE as follows:

> (1) The action represented a particularized approach to a particular problem and was fitted to the specific facts of the situation.
>
> (2) There was a decision by the responsible Government agency that the risk in the particular situation was inconsistent with national security and that positive steps were required to eliminate this risk.
>
> (3) An essential step was to provide to employees and the public authoritative information regarding the question of loyalty which existed in the specific situation and authoritative advice regarding the significance of this in terms of—
>
> (*a*) Known Communist aims and purposes in the infiltration of trade-unions.
>
> (*b*) The importance to the national security of the work carried on in the specific bargaining unit.
>
> (4) Specific assurance was given to employees as to the welcome to be accorded any bargaining representative that they might select which was free from Communist affiliations.
>
> (5) The union officials involved were given every opportunity to be heard in their own defense (pt. II, p. 7).

Defense Department Resources

There is legal authority for the Department of Defense to protect classified information including classified contracts. Specifically they are (1) title 5, section 22 of the United States Code which authorizes the heads of government departments to issue regulations for the protection and preservation of pertinent records; (2) the Armed Services Procurement Act of 1947 makes it possible for the secretaries of the military departments to establish reasonable conditions in contracts with the departments; (3) under the Espionage Acts there is authority to protect government records and information (hearings, p. 20).

The Industrial Employment Review Board directed by the Munitions Board has established criteria for determining who is a security risk.

NOVEMBER 7, 1949.

CRITERIA GOVERNING ACTIONS BY THE INDUSTRIAL EMPLOYMENT REVIEW BOARD, AS AMENDED

REVISED NOVEMBER 10, 1950

All actions by the Industrial Employment Review Board, pursuant to its charter dated November 7, 1949, shall be governed by the following criteria hereby established by the Secretaries of the Army, Navy, and Air Force.

A. *Individuals.*—Access to classified military information shall (except as provided in paragraph 6 below) be refused to an individual if, on all the evidence and information available to the Board, reasonable grounds exist for belief that the individual:

1. Has committed acts of treason or sedition, or has engaged in acts of espionage or sabotage; has actively advocated or aided the commission of such acts by others; or has knowingly associated with persons committing such acts.

2. Is employed by, or subject to the influence of, a foreign government under circumstances which may jeopardize the security interests of the United States.

3. Has actively advocated or supported the overthrow of the government of the United States by the use of force or violence.

4. Has intentionally disclosed military information classified confidential or higher without authority and with reasonable knowledge or belief that it may be transmitted to a foreign government, or has intentionally disclosed such information to persons not authorized to receive it.

5. Is mentally or emotionally unstable, is an habitual offender of the law, or does not possess the integrity, discretion, and responsibility essential to the security of classified military information.

6. Is or recently has been a member of, or affiliated or sympathetically associated with, any foreign or domestic organization, association, movement, group, or combination of persons (a) which is, or which has been designated by the Attorney General as being, totalitarian, fascist, Communist, or subversive, (b) which has adopted, or which has been designated by the Attorney General as having adopted, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or (c) which seeks, or which has been designated by the Attorney General as seeking, to alter the form of the government of the United States by unconstitutional means; provided, that access may be granted, notwithstanding such membership, affiliation, or association, if it is demonstrated, by more than a mere denial, that the security interests of the United States will not thereby be jeopardized.

B. *Aliens.*—Access to information or material subject to Section 10 (j) of the Act of July 2, 1926 (10 U. S. C. 310 (j)) whether or not classified, shall be refused to an alien if, on all the evidence and information available to the Board, reasonable grounds exist for belief that the alien is ineligible for access under the criteria specified in A above.

C. *Contractors.*—Access to military information necessary for the negotiation, award, or performance of a contract shall be refused to a contractor or prospective contractor if, on all the evidence available to the Board, reasonable grounds exist for belief that:

1. Any of the personnel of the contractor or prospective contractor who will have access to such information or material is ineligible under the criteria specified in A or B above.

2. The contractor or prospective contractor is owned by or is under the control or influence of foreign interests under circumstances which may jeopardize the security interests of the United States.

This is essentially a denial of access program and involves the screening of individuals found to be security risks. But as the Munitions Board points out—

the denial of access program, efficacious as it may be from the point of view of protecting classified information, does not in itself substantially reduce the threat of possible sabotage which might be carried out at the instigation of Communist

dominated unions. * * * We do not believe that we have the legal authority to go in and remove or summarily exclude potential saboteurs from national-defense facilities (hearings, p. 20).

Under Executive Order 9835 the Attorney General has the authority to promulgate a list of subversive organizations. Other resources which should be considered are the Subversive Activities Control Board established under the Internal Security Act of 1950 and the merchant marine personnel clearance program.

EVALUATING THE LEGAL RESOURCES FOR DEALING WITH COMMUNIST-DOMINATED UNIONS AND ADDITIONAL PROPOSALS

This section is devoted to a critical analysis of the existing resources for the problem at hand as well as an analysis of proposed solutions. All of these analyses are based on the record before the subcommittee.

Perspectives

The perspectives through which proposed solutions to the problem of Communist unionism need to be examined have been perceptively stated by witnesses before the subcommittee. Prof. Joel Seidman points to—

the conflict between goals equally vital if we are to preserve a free society. On the one hand, we wish to preserve essential democratic rights within the trade-union movement, as elsewhere in our society, and on the other hand, we wish to safeguard the country at a time of dangerous tension with the U. S. S. R., by not permitting potential fifth columnists to obtain strategic positions for spying or sabotage. The problem, as I see it, is how best to reconcile these goals so as to preserve simultaneously a maximum of democratic rights within unions and a maximum of security of the Nation.

And once we have tried to resolve the conflicts between the goals of democratic rights and protection from subversion, we face other alternatives. As Mr. Paul Herzog, chairman of the National Labor Relations Board, states these alternatives, they are—

Is it to legislate to eliminate Communist influence from all labor organizations in all industries in the United States, no matter what the cost in administrative burden or in restriction of employees' present right to make an uninhibited choice of their bargaining representatives? Or is it directed at the narrower, and plainly imperative need of making certain that Communist-dominated unions play no role in those sensitive areas of industry essential to the defense effort?

It may be well for the Congress to keep these questions constantly in the forefront as it appraises the various proposals for dealing with the problem of Communist-dominated unions.

Explicit or implicit in the proposals made to the subcommittee which we are about to examine are the assumptions that (1) the existing resources are not adequate to deal with the hazard of Communist-dominated unionism; (2) that the labor movement itself cannot be relied upon to rid itself of Communist penetration to the point where it no longer poses a serious threat; and finally (3) the risk of Communist subversion is so great as to override the possible benefits accruing from permitting the unions to clean their own houses.

Those who argue the position in (1) immediately above, say that the threat of Communist subversion exists over and above the threat posed by individual Communists who are screened out through security measures of one sort or another. Officers of a Communist-dominated union can dictate policies, which are, and are meant to be harmful to the security of the Nation.

With respect to (2) above, it is contended that although the CIO has expelled Communist-controlled unions from its organization, these unions continue to operate in critical defense work such as electrical and electronic manufacturing, nonferrous metals, telegraphic communications, and west coast maritime. There is still, in spite of union anti-Communist activities a hard core of Communist controlled labor organizations standing as a serious threat to our national security.

Finally, to be sure there are great benefits to be derived in permitting the unions to do the job in preference to some form of government intervention. But these benefits have to be measured against the risk involved that the unions will not be able to do the job and the resulting hazard to the national security. The public interest in ridding the unions of Communist domination is overriding and therefore the Government must act (hearings, p. 305).

The non-Communist affidavit

There are varying opinions as to the efficacy of the Taft-Hartley 9 (h) affidavit. Mr. Gerard Reilly, influential in drafting the provisions of the law thinks that—

> while the Communist disclaimer in the Taft-Hartley Act accomplished a great deal of good in focusing the limelight upon some of the Communist officials and their dupes in the various CIO unions, its effectiveness was subsequently impaired when apparently as a result of a general policy adopted by the Communist Party, union officials widely known as Communists executed the affidavits (pt. IV, p. 20).

Mr. Theodore Iserman, an attorney specializing in labor matters for management interests and a participant in the drafting of the Taft-Hartley law, expresses a similar viewpoint:

> * * * section 9 (h) of the National Labor Relations Act, as amended, has gone far in stimulating labor organizations to clean their own houses of leaders who are Communists and fellow travelers. The Taft-Hartley approach, giving unions an incentive to rid themselves of disloyal people, rather than creating an outside agency to do it for them, is, on the whole, a good one.
>
> The amended act has not been as effective as it could be. This, I think, results from two things: First, the seeming reluctance of the National Labor Relations Board and the Department of Justice to give the law full effect, and second, certain shortcomings in the act itself.

The National Labor Relations Board expresses this view:

> It seems highly probable that the 9 (h) proviso was a contributing factor to the postwar forces which led to the revolt against Communist domination of a few labor unions, especially in the first years after its enactment. Foreclosing the services of the National Labor Relations Board to noncomplying unions was a catalyst which compelled compliance by practically all major labor organizations. The affidavit was most effective in cases where the membership became aware that their officers were or might be Communists, thus encouraging removal or resignation of such officers. Later the Congress of Industrial Organizations moved vigorously against leftist domination by expelling some of its major affiliates. Not to be underestimated are other and more general factors, such as disputes over the Marshall plan, the Progressive Party, Soviet foreign policy, the World Federation of Trade Unions, and the Korean war, all of which undoubtedly hastened the process. There is no telling with certainty today whether the presence or absence of section 9 (h) would still constitute, for the long-run future, a determining factor in contributing to the healthy result which we all desire.

Mr. Sal B. Hoffman, president of the Upholsterers' International Union (AFL), criticizes the affidavit provision for its one-sidedness, its possibilities for harassment of non-Communist unions, its unenforceability and the disrespect for law which the blatant violation of the provision has bred (pt. III, p. 53).

Mr. Allan Haywood, executive vice president of the CIO, rejects the affidavit approach on three counts.

In the first place, we do not believe that such a provision has any proper place in a labor-relations law. The purpose of such a law is to promote harmonious industrial relations. The injection into it of security measures merely creates confusion and gratuitously insults unions.

In the second place, we believe that the mechanism of an affidavit requirement, harking back as it does to the test oaths of the seventeenth and eighteenth century, or to those in use after the Civil War, is itself objectionable.

Thirdly, the sanction, urged, of barring resort to the National Labor Relations Board, places in the hands of the employer, rather than of the Government, the decision of whether a particular union is to be penalized for Communist leadership. Section 9 (h) does not prohibit an employer from dealing with a Communist-led union; it simply gives him the option of whether to do so or not. Unscrupulous employers will, in exercising that option, be guided not by considerations of national security but by the strength or weakness of the Communist-led union. If the union is strong, the employer may be afraid to challenge it. If it is weak, the employer may nevertheless be eager to deal with it and to take advantage of its weakness to maintain substandard wages and working conditions. This ties in with the point which I made earlier, that a security provision, or an alleged security provision, of this sort should not be a part of a labor-relations law (hearings, pp. 273–274).

A similar view is expressed by Mr. A. J. Hayes, president of the International Association of Machinists:

The enactment of this law (i. e. the Taft-Hartley law) seriously curtailed the union's efforts to rid itself of the few Communist sympathizers found in their organizational structure, and as an example we can specifically turn to section 8 (a), under which language it is unlawful for a union to force the discharge of an employee even though he is a known advocate of un-American principles or an agent of a foreign government (pt. III, p. 47).

In general, as can be seen from this sampling of opinion, there is some difference as to the early effectiveness of 9 (h) in ridding unions of Communist control. There seems to be a fair measure of agreement that this provision is not now effective.

From the viewpoint of the Department of Justice there are legal infirmities in section 9 (h) which interfere with effective enforcement of its provisions. The Department reported that 68 cases involving false affidavits had been referred to it; 14 were presented to the grand jury, and in 13 of these the affiant himself was brought before the grand jury. There has been one conviction (already referred to) in the case of Anthony Valentino (hearings, p. 53).

The principal criminal sanction for violation of 9 (h) is section 1001 of title 18 of the Criminal Code. This section states:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, ficititious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

The Department's judgment based upon its experience is that under 9 (h) "it is virtually impossible to develop cases for successful prosecution as now drawn" (hearings, p. 54). First of all the affidavit is couched in the present tense and it requires proof that the affiant was a member of or affiliated with the Communist Party on the very day he signed the affidavit.

In addition it has been suggested that enforcement of the "belief" section of the affidavit would encounter serious constitutional obstacles (hearings, p. 109).

The leading Supreme Court case, it is held, makes it extremely doubtful that "belief" in Communist principles alone as a basis for denying access to the facilities of the NLRB could stand up in a test of constitutionality (hearings, p. 58 ff).

To meet the problem posed by pro forma resignations from the Communist Party in order to qualify under 9 (h), Attorney General McGrath proposed that the affiant be required to swear in addition "that for the preceding 12-month period he has not been a member of the Communist Party and has not believed in or been a member of or supported any organization that believes in or teaches the overthrow" and so forth.

The criticism lodged against the 1 year retroactivity proposal is (1) they (the Communists) will wait a year and then will infiltrate the organization (hearings, p. 117); (2) it will reduce the incentive for union officers to break with the Communists if the law imposes a kind of retroactive guilt (bearings, p. 57); (3) this amendment will not catch the "quickie" resignations which started as early as 3 years ago (hearings, p. 273).

The Board itself has in the past recommended a more precise definition of the term "officer" so that it would not be possible for Communist union officers to evade the law by resigning their constitutional office and assuming an allegedly administrative post within the union. Amendments were proposed to define officer as including members of all "policy-forming and governing bodies of labor organizations" (pt. III, p. 10). This concept has been incorporated in the Board's rules and regulations (pt. III, p. 7).

Just how far the Board will go with respect to safeguarding the affidavit from falsification may be more fully tested in its response to the presentment of the New York Grand Jury. The grand jury summoned 13 union officials from the following unions, United Electrical Workers, American Communication Association, Fur and Leather Workers, and the Distributive, Processing and Office Workers, all unions who in one form or another were expelled from the CIO on grounds of Communist domination.

The presentment charges that these 13 officials "were initially confronted with the non-Communist affidavits they had filed, on the basis of which their unions had been certified by the NLRB. They were then asked whether the sworn statements they had made in these affidavits were true. To a man these 13 union officials refused to answer this and similar questions, claiming that the answer might incriminate them, and invoking the fifth amendment to the Federal Constitution."

> In following this course [the presentment continues], these persons refuse to stand by the truthfulness of the non-Communist affidavits they have submitted, on the basis of which the NLRB has recognized their unions. The only possible conclusion is that the filing of these affidavits was a subterfuge.

The presentment concludes that the affidavits are therefore worthless and that the certifications of the unions in question should be revoked. The grand jury further recommends that "consideration be given to the inclusion in each affidavit of a waiver by the affiant of his fifth amendment privilege with reference to any question pertaining to the truth of his statements in the affidavit."

The grand jury recommendation is in substance the same one proposed to the subcommittee by Mr. Nelson Frank, a labor reporter for the New York World Telegram and Sun (hearings, p. 186 ff.).

In response to the grand jury presentment the NLRB on December 19, 1952, issued a notice and order reciting the facts set forth in the presentment. "In order to protect its own processes from abuse," the Board has addressed a questionnaire to the officers who had refused to testify before the grand jury on the question of the truth of the affidavits asking these officers to affirm under oath the truth of the statements contained in the 9 (h) affidavits filed between 1949 and 1951. Failure to file a timely answer to the questionnaire "will result in a finding by the Board that there is reasonable doubt as to the truth and validity" of the affidavits and a declaration that the unions are not in compliance with section 9 (h). [Quotes from NLRB, Notice and Order. In the Matter of Compliance of United Electrical Radio and Machine Workers of America with sec. 9 (h) of the National Labor Relations Act as Amended.]

Disestablishing Communist-Dominated Unions via the NLRB

There are a whole series of proposals having as their common core an amendment to the Taft-Hartley law authorizing the National Labor Relations Board to outlaw Communist-dominated unions as labor organizations within the meaning of the law. One of the first proponents of this approach was David J. Saposs, former chief economist of the National Labor Relations Board, who, in 1941, put it in these terms:

> When company-dominated unions tried to disguise themselves by allegedly going independent it was possible through painstaking research and investigation to gather data exposing the masquerade. Notwithstanding that the courts were skeptical and not too sympathetic to union organization the evidence was so conclusive that they sustained the outlawing of company unions.
>
> A similar historic and economic approach should make it possible to outlaw Communist or other totalitarian-dominated unions. It should be possible to show that Communists are no more interested in effective collective bargaining than antiunion employers; that they aim to circumvent the will of the rank and file for genuine union objectives through subterfuges and the raising of extraneous issues; that they are primarily interested in disturbed and unstable labor relations; that they are ordered and directed by an outside force, in this case a foreign country; that their revolutionary objective runs counter to the legitimate objectives of unions interested in the immediate improvement of the conditions of their members.
>
> However, I want to reaffirm my position that public exposé and union housecleaning are the preferable methods (p. 124, hearings).

A similar approach was taken by the Canadian Labor Board on December 7, 1950. This Board decertified the Canadian Seaman's Union on the ground that it was not a trade union within the meaning of the Industrial Relations and Disputes Act. The Board said that the

> close association of the respondent with foreign elements of the international Communist front in the promotion of international Communist policies and activities * * * was entirely foreign to the purpose of a trade union under the act.

This action was affirmed by the Canadian courts as being a permissible exercise of authority under the Canadian legislation (part III, p. 9).

As Secretary of Labor Tobin sees this type of proposal it "might require that upon the filing of charges, appropriate investigation, public hearings, and so on, the NLRB could find that a union is Com-

munist-dominated and therefore not eligible to represent employees in collective bargaining" (hearings, p. 124).

In the words of Mr. Merlyn Pitzele, labor editor of Business Week, the disestablishment approach would utilize the following procedures:

(1) The charge is made that a given union is Communist dominated.
(2) The NLRB investigates the charge and finds that the organization is indeed dominated by Communists.
(3) The NLRB orders (*a*) the union to disestablish itself; and (*b*) the employer to withdraw recognition from it and cease to deal with it (hearings, p. 61).

The same type of proposal was advanced by Mr. Sal B. Hoffman, president of the Upholsterers International Union, AFL (pt. III, 52 ff.), and by Mr. Roy Brewer, international representative of the International Association of Theatrical and Stage Employees (AFL) (pt. III, 14 ff.).

A variant on the idea of Communist domination as an unfair labor practice is advanced by Mr. Albert Epstein, economist for the International Association of Machinists, speaking in a personal capacity. In order to minimize the hazard that a bar against Communist unions might be used unfairly against non-Communist unions, Mr. Epstein suggests "the legislation should be designed to deal only with unions that are not affiliated with the AFL, CIO, UMW, and unaffiliated railroad brotherhoods. The unions just mentioned are known to be anti-Communist and can be depended upon to handle situations in their own midst" (pt. III, p. 37).

The criticisms of these categories of proposals to deal with the problem of Communist-dominated unions, i. e., by empowering the NLRB to make findings of Communist domination and, in effect, to outlaw these unions as lawful bargaining representatives, fall under two headings. First is the criticism that goes to the use of the NLRB as the machinery through which this policy is effectuated. Second is the criticism aimed at the use of any Government agency to make such findings. Since the latter criticism applies to all proposals, we shall treat these later in the report.

Mr. Herzog, Chairman of the NLRB, thinks that the allocation of such authority to the NLRB would be unwise on two counts:

First, if this Board is expert in anything, it is in the area of collective bargaining. The field of subversive activities, where proof is notoriously difficult to obtain, calls for a different sort of expertise and for special investigative techniques, not only unfamiliar to our staff but inconsistent with the open-court procedures of a quasi-judicial agency.

Second, the speedy conduct of elections and remedying of unfair labor practices, which continue to be our goal, would be completely frustrated if any employer or competing labor organization were free to delay Board proceedings indefinitely, by demanding a long collateral investigation of the issue of whether a particular union was or was not Communist-dominated. The administration of a statute whose stated objective is to foster collective bargaining should not be weighted down by investigations of a wholly different sort. Essentially, communism's role in labor organizations is much more a part of the problem of communism's place on the entire American scene than it is part of the problem of labor-management relations. It should be dealt with accordingly (hearings, p. 94).

Disestablishing Communist-dominated unions through independent agencies

There is a category of proposals which would place the authority for making findings with respect to Communist domination on agencies other than the National Labor Relations Board, apparently in recognition of the difficulties which Mr. Herzog has pointed out above. One of the most systematic proposals of this kind has been made by

Mr. Benjamin Sigal, counsel to the International Union of Electrical Workers CIO.

Mr. Sigal contemplates that his proposal can be made enforcible by administrative action rather than by new legislation.

> In order to be sufficiently inclusive legislation is likely to be too broad in scope. Also once legislation is placed on the statute books, it is likely to linger long after the need for it has passed, and to be applied to situations not contemplated by the Congress (pt. III, p. 71).

Mr. Sigal sees his proposal as aimed only at Communist-dominated unions in defense work.

The outline of the method and procedures to be used, as Mr. Sigal describes it, is as follows:

> The Munitions Board is the agency within the Department of Defense through which defense contracts are handled. It is the agency responsible for making and policing security regulations in connection with defense work. It is the agency ultimately responsible for preventing subversive individuals from working directly on classified work. Logically it is the agency which should exercise the responsibility of dealing with Communist leadership which controls the unions working on defense contracts.
>
> A tripartite committee should be set up within the Munitions Board, consisting of representatives of the procurement agencies, employers, and labor If a union representing the employees of a present or prospective contractor is suspected, after investigation by represenatives of the Munitions Board, of being Communist-dominated, the matter should be submitted to the tripartite committee. The committee could act, also on its own motion. If a majority of the committee, after a hearing, finds that the allegations are substantiated, the Munitions Board will take one of two courses, based on provisios which it will place in its security regulations and in all procurement contracts executed by contractors with the military departments: (1) In the case of a prospective contractor, refuse to give him a contract so long as he maintains contractual relations with the union involved; and (2) in the case of a present contractor, direct him to cancel his contractual relations with the union on penalty of losing his contract with the Government if he does not comply (pt. III, p. 72).

The author of the proposal sees the action of the Atomic Energy Commission described above, as a "persuasive precedent" for his approach to the problem (hearings, p. 285). The Munitions Board has the authority to do what the AEC did in that situation.

Critical appraisal of the specifics of the Sigal proposal have come from three sources. From the NLRB's viewpoint, there is a serious question whether it can commit itself in advance to recognize a directive from a Government agency ordering an employer not to recognize a certified union, as a valid defense against a charge of refusal to bargain. It is also pointed out that AEC took its action at a time when the UE was not in compliance with section 9 (h) and that there was no certification in effect for the specific AEC installation (hearings, p. 25, p. 96 ff).

Second, the Department of Defense, speaking through Mr. Small, has serious doubts that the authority of the Department of Defense is sufficiently analagous to the statutory authority of the Atomic Energy Commission so that the Department can exercise without additional legislation the degree of authority which Mr. Sigal's proposal requires. Mr. Small put it this way.

> In the first place, the action undertaken by AEC, in directing General Electric to cease bargaining relations with the UE was taken at a time when the UE officers had not filed non-Communist affidavits and consequently the provisions of the National Labor Relations Act were not available to them when they unsuccessfully challenged the AEC's action in the case of *UEW (CIO)* v. *Lilienthal* (84 F. Supp. 640 (1949)). Secondly, the expulsion of UE in that case was from a

Government-owned facility and not from the facility of a private contractor, who constitute the great majority of the contractors with whom the Department of Defense deals. Thirdly, a reading of the Atomic Energy Act reveals quickly the broad and express authority which that act bestowed on the AEC, to deal with potential subversives. Contrast this with the more general authority which the Department of Defense has and which has to be extracted from a reading of three statutes together, all of which I mentioned previously in my statement. Fourthly, and I think perhaps more convincing than the other since it is less legalistic, the Atomic Energy Commission agreed with the Department of Defense that what we were asked to do with respect to private contractors went beyond what they did with respect to their own Government-owned facility in the Lilienthal case In fact, AEC joined with NLRB and ourselves in attempting to work out a mutual procedure by which private contractors who were directed by the AEC or the Department of Defense, to cease collective-bargaining relations with UE or any other Communist-dominated unions, were protected from the threat of being adjudged guilty of an unfair labor practice (hearings, p. 23, 24).

As a matter of practical administration, Mr. Small said that—

If we were to pursue such a course, we would have deprived the Government and the people of the United States of important weapons of defense in the fields of electronics, jet propulsion, and so on (hearings, p. 23).

Mr. Sigal testified after Mr. Small and undertook to answer the latter's objections. In paraphrase, the fact that UE has since signed the 9 (h) affidavit has not changed the AEC position on that union's qualifications to represent employees in an AEC installation. Equally irrelevant is the observation that AEC owns the facility. The important consideration is, Who is the employer and the nature of the production? Whether owned by AEC or not, the plants are privately operated and, therefore, are like the contractors with whom the Munitions Board deals. As for express authority, AEC counsel conceded that there was no express authority, either, for action AEC took with respect to the UE. Finally, the proposal, except in rare instances, does not "require the Board to direct the contractor to discontinue" bargaining relations with a duly certified bargaining representative because, as Mr. Sigal explains, the (Munitions) Board—

would simply decline to place a contract in plants in which it found a security problem exists.

Only in the special situation, Mr. Sigal continued—

where the Department of Defense could not place the contract in another plant would the necessity arise for taking more stringent measures. In such case we propose that the Munitions Board go to court and obtain an injunction restraining the contractor from continuing to deal with the bargaining agent. The basis of the injunction would be the regulation providing that such action would be taken if the tripartite committee found that the union was Communist-dominated (hearings, p. 287).

In the course of advancing its own proposal which is treated later in this report, the General Electric Corp., through Mr. Lemuel Boulware, criticizes the tripartite feature of the IUE proposal. The function of deciding the important question "of whether an individual or organization is serving the interests of a Communist foreign government" is not properly a matter for tripartite determination but one that should be determined by a Government agency. The special interests of unions or employers should not be permitted to affect national policy on an issue of such great moment (pt. III, p. 9).

Mr. Boulware's positive proposal is in line with the category of remedies which would lodge the responsibility for making determinations of Communist-dominated unionism in an all-public Government agency. He supports legislation to achieve this purpose on the ground

that the unions have not really demonstrated their capacity to rid their organizations of Communist leadership. The expulsion of the Communist unions by the CIO, Mr. Boulware attributes to the refusal of the Communist unions to follow the "political" line of the CIO and not "because they were found to constitute a danger or threat to the country" (pt. IV, p. 4).

Mr. Boulware makes three specific recommendations as to the principles which should be followed in such legislation.

1. Official Government investigation and identification of Communist-dominated unions and Communist union leaders.
2. Establishment of criteria, pursuant to which the independent agency would make its determination.
3. Disabilities and penalties resulting from determination by the Commission that an organization is Communist-dominated (pt. IV, pp. 8–10).

The penalties and disabilities applied to a Communist-dominated union as contemplated by Mr. Boulware in (3) above come to, in the last analysis, a form of disestablishment, and loss of the rights and privileges which accrue to it as a labor organization, comparable to the sanction invoked against a company-dominated union under both the Wagner and Taft-Hartley Acts.

Mr. Gwilym Price, president of the Westinghouse Corp., makes a proposal comparable to that of Mr. Boulware, involving official determination of Communist domination and the application of drastic sanctions resulting ultimately in the disestablishment of the labor organization for all practical trade-union purposes (pt. IV, p. 15 ff.).

Criticisms of disestablishment approach

We treat now the criticisms made against proposals of all types which have as their fundamental purpose procedures designed (1) to make findings of Communist domination and, (2) to prescribe penalties and remedies arising out of such findings. The criticisms apply to the proposals whether the National Labor Relations Board or an independent agency are utilized, and whether the proposals rely on legislation or administrative action.

Mr. Philip Murray, the late president of the CIO, stated the criticism in principle.

* * * If the Government undertakes to determine what unions can represent workers in this country, it will have embarked upon the long trail toward Government control of unions. In the dictatorships of the world, unions exist at the sufferance of the state. We in America do not want to take a single step in that direction. (Hearings, p. 279.)

This criticism was more specifically amplified by Mr. Allan Haywood, executive vice president of the CIO, in his testimony before the subcommittee. Mr. Haywood equated these proposals with Government licensing of unions.

The only remedy which has been suggested which, in my opinion, would be effective to displace Communist-led unions is a Government directive to employers not to recognize certain unions. This amounts, whether or not it is so labeled, to to Government licensing of trade-unions. It means that the Government determines which unions are legitimate and may continue to function, and which shall be proscribed.

Government licensing of unions would, in our opinion, be justified, if ever, only in a desperate situation and as a last resort. It is emphatically not something that should be lightly undertaken to meet a hypothetical danger.

Government licensing of unions would inevitably involve thought control, since it would turn not on acts but on beliefs and loyalties. The determination

of whether a union should be proscribed would necessarily "reflect the individual political and economic views and attitudes of the Government officials making the determination. Once the gate is opened to Government proscribing of unions, the temptation will be present to use the device to destroy any union with whose objectives the administration in power may not happen to agree." (Hearings, p. 279.)

There is objection to the sweeping legislative approach to Communist-dominated unionism by Mr. Sigal of IUE. Referring perhaps to the Boulware proposal for legislation, Mr. Sigal asserts:

It is typical perhaps of those who have been for so long apparently oblivious to the threat of Communist infiltration of unions that they seek to compensate by going to the other extreme to propose Draconian remedies that bear little relation to the specific problems that must be solved. (Hearings, p. 297.)

An all inclusive approach is rejected by Mr. Sigal on the ground that infringement of the right of workers to chose their own representatives should only be permissible in the face of an overriding emergency. This means limiting the scope of any order to immediate defense requirements. There should be therefore no attempt to deal with this problem indiscriminately through permanent legislation. (Hearings, p. 297.)

There have been other proposals which do not fall within the categories already discussed. Prof. Joel Seidman of the University of Chicago, would suit the steps to be taken to the "danger to the Nation that exists in any particular period." Mr. Seidman distinguishes three possible periods.

(1) The present period of "cold" war with the USSR, combined with a limited shooting war with some of its allies; (2) a shooting war with the USSR; and (3) a genuine period of peace with the USSR" (pt. III, p. 69).

In period 1, steps would be limited to barring Communists and fellow travelers from sensitive employment. In period 2, i. e., a shooting war with Russia, the "national security would require that every Communist Party member and confirmed fellow traveler be treated as a member of a potential fifth column." The arrest of every Communist or confirmed fellow traveler in a position of leadership in a union would clearly be in order "as persons whose primary allegiance is to the U. S. S. R." In period three, Mr. Seidman would "end all restrictions against Communists proposed for the other two periods" (pt. III, pp. 69–70).

Guaranty of democratic processes in unions

Mr. H. W. Story, vice president and general attorney for the Allis-Chalmers Manufacturing Co., introduces a concept of the guaranty of democratic processes in unions, as the key to combatting Communist-dominated unionism. Mr. Story rejects generally the attempt to deal with Communists via the route of the criminal law or through the National Labor Relations Act, as being of dubious efficacy, administrability, and constitutionality. He favors, instead, what he calls the "guaranty of democratic processes."

Experience has shown—

Mr. Story says—

that Communist leaderships hold their power through stifling of democratic processes in the election of officers and in other administrative union activities (pt. IV, p. 19).

Mr. Story therefore recommends the incorporation in the National Labor Relations Act of specific standards for the democratic conduct of union government. He lists them as follows:

> The standards for assuring democratic processes should include:
> (1) Adequate notice of nominations and elections;
> (2) Adequate opportunity to nominate candidates;
> (3) Reasonable eligibility requirements for nominees;
> (4) Protection against fraud and error in the determination of the results;
> (5) Opportunity for recounts;
> (6) Reasonable hours for the polls to be open;
> (7) Location of the polling places so as to assure maximum participation in the election; and
> (8) No disqualification of voters or nominees for an act or failure to act consistent with a legal or civil right (pt. IV, p. 20).

Mr. J. B. S. Hardman, a labor editor of long experience, also focuses attention on union civil rights as, at least, a partial answer to the problem of Communist penetration. In Mr. Hardman's judgment, legislation does not provide a useful answer to the problem of Communist-dominated unionism. "The Taft Hartley Act failed to lick the Communist union issue" because the unions would rather deal with this problem on their own power. The labor movement has reason to believe, Mr. Hardman thinks, that anticommunism has frequently been a cover for antiunionism.

The form which the protection of civil rights within the union would take is the establishment of a court of intraunion relations within the structure and administration of public law. Mr. Hardman's rationale for the establishment of such a court is:

> (1) The preservation of effective and responsible democracy is essential to the purposive and successful operation of unionism as a vital and constructive force in the social order of our democratic Nation.
> (2) The union organization, comprising as it does, all in one, the essential features of a diplomatic corps, a business enterprise, a combative organization, an evangelical fellowship, and a training group in industrial constitutionalism, lacks the basic provision under which the civil and democratic rights and duties of union members can be duly protected.
> (3) Consequently, an agency outside the structure of the union body needs to be devised to take care of and administer the development and preservation of member-officer democratic interrelations (pt. III, p. 45).

Mr. Leon Despres, a Chicago labor attorney, thinks there is no effective legislative approach to Communist-dominated unions "beyond the general existing statutory provisions against sabotage, treason, and similar acts." He suggests that another avenue of inquiry be pursued:

> Why is it that, although Communists are generally pretty well exposed and their domination of certain unions is clearly proved, workers still feel loyalty to those unions? What is it about Communist tactics of control, propaganda, performance, or employer relations that permits them to continue to command the support and loyalty of workers? This is the secret weapon which they have, and which permits them to retain a place, minor though it may be, in the labor movement. Is employer favoritism ever to blame? Is their program superior? Is their efficiency in grievance representation greater? Do they make promises which they cannot fulfill? Or do they have a deliberate policy of making promises and never fulfilling them? (pt. III, p. 34).

Unions can do their own house cleaning

There is a whole body of opinion, mostly from union sources, that we have ample protection against specific acts of subversion and that therefore there is no need for additional action of any sort to deal specifically with the problems of Communist-dominated unionism.

The labor movement has done a successful job of internal house cleaning and, freed from the harassment of Government legislation, which will hurt more than help, the labor movement itself can be depended upon to cleanse itself of the last remnants of Communist infiltration.

Mr. William Green, the recently deceased president of the American Federation of Labor, saw the problem as one of compulsion versus voluntarism.

> Workers are moved by the spirit of voluntarism. Through the exercise of voluntarism and freedom, they have prevented Communists from, in any way, dominating the affairs of any union. Legislation would serve to substitute compulsion for voluntarism. Workers resent compulsion; consequently the enactment of legislation designed to prevent Communist domination of unions would have a bad psychological effect (pt. III, p. 38).

The Congress of Industrial Organizations, speaking through Mr. Allen Haywood, executive vice president, presented an analysis and justification in support of its position that no additional legislation was necessary. In summary, the CIO position sets up as follows:

1. American workers have a fundamental right to choose their own collective-bargaining representative, which is as basic to our American way of life as the freedom to worship, to speak, and to assemble.
2. Encroachments on this fundamental right should not be made except in the face of great danger to our national safety.
3. No showing has been made that such a great danger exists.
4. Existing laws against espionage, sabotage, and access to classified materials "are presumably adequate not only to punish individual acts of espionage or sabotage but to provide reasonable assurance against their commission."
5. The overwhelming majority of American workers are patriotic citizens who are sufficiently aroused against communism and Communists that they would not follow those who would "take them down the road to political work stoppages."
6. In specific, the CIO has demonstrated its capacity to deal with the Communists without Government intervention and by due process, when it expelled the nine Communist-dominated organizations from its ranks.

Mr. George Nelson, speaking for the International Association of Machinists, offers additional evidence of the capacity of the labor movement to deal with the Communists in union, on its own, and cites action taken by the IAM as far back as 1925 to keep Communists out of office, and out of membership in the IAM (hearings, p. 323). Known Communists have been expelled, and the IAM, Mr. Nelson says, has spent considerable sums of money defending its action in the courts.

> Our organization—

Mr. Nelson says—

> along with other bona fide labor unions of this country, has realized the danger of Communists within our ranks before our Government or other institutions in our society realized the necessity of curbing and restricting their influence. I do not think it is fair that labor unions should constantly be singled out as the prime segment of our society harboring Communists (hearings, pp. 324–325).

Mr. Henry Kaiser and Mr. Gerhard Van Arkel, labor lawyers, with a predominately AFL practice, argue that those who advocate "legis-

lative interference" in this matter operate on "certain, usually undisclosed premises."

First, the proponents of such legislation necessarily believe that American workers are either so indoctrinated by communism or so politically apathetic that they can be easily led by the nose on these matters. All our experience has shown this to be untrue; it is a gross distortion of history and an egregious slander on American workers as a group. Workers are citizens and fully responsive to their obligations as such. They do not require—and properly resent—paternalism. They have more than proved their competence to handle these problems.

The second assumption is that American workers, though anti-Communist, are too weak and powerless to take effective action. Again, experience demonstrates the falsehood of the premise. American workers can—and do—change their union leadership, or organize other unions if that method fails. There are invaluable benefits in leaving action to them, in strengthening their self-reliance, in the achievement of a greater solidarity, and in a real awareness of what Communist intentions and practice are (pt. III, pp. 79–80).

President Eisenhower has commented on the 9 (h) affidavit as follows:

I also think that since patriotic American union leaders must swear that they are not Communists, then the employers with whom they deal should be subject to the same requirement.

Ladies and gentlemen, let me explain my view in personal terms. I would not mind every morning swearing an oath of loyalty to the United States of America. I would be proud every night to give my sworn oath that I am not a Communist. But I would resent doing this, and I would resent it bitterly, if I were singled out to do it because I happened to be a veteran, or someone who had lived in Kansas —or if I were a labor union official (New York Times, September 18, 1952).

SUMMARY OF THE FACTS

The significant facts with respect to the problem of Communist-dominated unions, as revealed by the record, can be summarized as follows:

(1) The record before the subcommittee contains an authoritative and comprehensive survey of the relevant facts and opinions from every responsible viewpoint: Government, labor, management, and informed observers.

(2) Communist-dominated unions are clearly identifiable as such because of the positive correlation of their policies with the shifting phases of the foreign policy of the Soviet Union.

(3) The affirmative evidence of direct action by Communist-dominated unions in support of Soviet Russian foreign policy is less conclusive but the potentialities of such direct action are visible.

(4) There is credible evidence that the correlation noted above is not coincidence but the direct outcome of direction by Communist Party functionaries.

(5) The non-Communist affidavit in the Taft-Hartley law in its initial period probably contributed toward directing public and trade-union attention on the focal points of Communist penetration in the unions but the decision of the Communist leadership to sign the affidavits has seemed to nullify the practical intent of the law in eliminating Communist domination of certain labor organizations.

(6) Communist-dominated unions are still operating in defense production, although in diminished strength. The existence of a few Communist-dominated unions in key industries may in times of war

or threatened war constitute a real danger to the safety of the country. Espionage might be practiced through communications and sabotage be committed in the electrical, mining and smelting, and longshore industries. We should not blink our eyes to these dangers.

(7) Recent developments arising out of a conviction of a 9 (h) affiant for false swearing and a grand-jury presentment have set in motion policies by the National Labor Relations Board which look toward a more aggressive protection of the affidavit requirement from gross abuse by Communist union leaders.

(8) The Atomic Energy Commission has been successful in preventing recognition of a Communist-dominated union as the bargaining representative in an important atomic-energy installation.

(9) In the judgment of the Defense Department, its security functions extend only to denying access to facilities and documents on the part of persons of questionable loyalty or reliability. But its authority does not extend to directing contractors to cease recognition of Communist-dominated unions who may be the bargaining representatives of the employees of such contractors.

(10) The proposals which have been made to this subcommittee for dealing affirmatively with the threat of Communist-dominated unionism fall under four main categories. All of these proposals start (explicitly or implicitly) with the assumption that our existing resources are not adequate for the job at hand, that neither existing law nor the voluntary action of unions and employers provide the lawful tools to destroy the threat of Communist-dominated unions.

(*a*) The utilization of the National Labor Relations Board to find, subject to the requirement of constitutional due process, that certain unions are Communist-dominated, and, upon such finding, to deprive these unions of their privilege to act as exclusive bargaining representatives of employees.

(*b*) The utilization of an agency other than the NLRB, subject to the requirements of constitutional due process, to make findings of Communist domination and the subsequent loss of bargaining rights by unions found to be Communist-dominated. There are variations on this proposal (1) whether it should be restricted to defense work or not, and (2) whether new legislation is required or whether the findings and the penalties can be established under existing law.

(*c*) The guaranty of democratic processes approach which has as its basic assumption that Communist-dominated unions flourish only through the denial of democratic process to the members. If such democratic process is guaranteed by law, it is argued, Communist control of certain unions will disintegrate.

(*d*) The strengthening of the affidavit requirement to provide (*a*) that every affiant of a 9 (h) affidavit automatically waives his immunity on the questions in the affidavit in proceedings before a legislative committee, or a court of appropriate jurisdiction, (*b*) the terms of the affidavit be subject to 1-year retroactivity.

11. Those who are critical of any governmental finding of Communist domination of a union urge as their major reasons: (*a*) the availability of adequate clearance and intelligence facilities makes such procedures unnecessary; (*b*) the free, democratic unions and their members can deal with the threat of political strikes; (*c*) this kind of

ideological licensing of unions is incompatible with the maintenance of a free society.

12. Those who are critical of utilizing the National Labor Relations Board as the investigative agency argue that the NLRB is not equipped to administer such investigations and that in any case incorportation of this responsibility in the NLRB would open up opportunities for delay which would indiscriminately penalize non-Communist unions as well.

FINDINGS AND RECOMMENDATIONS

Under this heading we want to set down some judgments about this problem which we believe are reasonably warranted by the facts.

1. Nobody has suggested to our subcommittee that our security machinery is not equipped to deal effectively with the protection of facilities and information in sensitive industries, from acts of sabotage or espionage; or at least as effective as it is humanly possible to be. The subcommittee did not have the resources to conduct an independent investigation of whether in fact the security agencies were taking all the precautions they could against Communist subversion. This matter should be fully studied and the facts made available to the Congress. Special attention should be paid by the Government in supervising its contractors and subcontractors engaged in defense work to see that all appropriate safeguards against Communist infiltration are utilized.

2. One of the great assets, if not the greatest, which a democracy has in combating the threat of Communist penetration is an intelligent awareness of the threat and a desire to do something about it. No law, however intelligently framed, is a substitute for this asset.

We must in all candor recognize that an employer who sees rivalry between a Communist union and a non- or indeed anti-Communist union as simply ordinary trade-union competitiveness is lacking in the insight and perspective which we need to rely on so heavily.

We do not suggest, it should be made clear, that the employer favor one union as against another, or do anything else which would be contrary to law, when he is confronted with a rival union situation involving a Communist-controlled union and a non-Communist union. We do suggest, however, that an employer who takes advantage of such a situation to engage in divisive strategy is making no contribution to the common welfare.

The International Union of Electrical Workers (CIO) has charged that the General Electric Corp. has favored the United Electrical Workers (ind) since expelled from the CIO on grounds of Communist domination. The General Electric Corp., speaking through Mr. Boulware, has vigorously denied this charge. We do not feel that we would be justified in making a definite finding on this issue in controversy, one way or the other.

We feel justified, however, in commenting on an attitude reflected in certain statements issued by the General Electric Corp. on the theme of a "Plague on both your houses" (hearings, p. 450 ff.). The essence of the theme is that there is little to choose from between "left wingers" and "right wingers." The reference is to the UE and the IUE respectively.

We believe—the General Electric Corp. has said—they have in the end the same objectives. We believe that what each side advocates would result, in

the long run, in substantially the same thing for our employees, our company, and our country (hearings, p. 451).

This is an amazing statement and shows little comprehension of the forces at work in this world, in the year 1952. It is this attitude on the part of some employers which has made the opposition to the real Communists in the unions very difficult and explains in large part why the Communists have been able to retain as much as they have. If an employer says, in effect, there is no difference between a Communist union and an anti-Communist union, it is understandable why many workers may not pay too much attention to a valid charge that a union is Communist-controlled.

We need to recall Professor Seidman's critical differentiation between Communist unionism and other liberal or radical groups in the American labor movement.

> From the point of view of the other liberal or radical groups, a union is a primary institution that the group seeks to build and make strong, with the objective of winning benefits for the members and for workers in general.
>
> The policy of such unions is determined by an analysis of the needs of the workers who are employed in the industries in which those unions operate. Such other liberal or radical groups may be critical of employers, of the existing economic system, of Government policy; they may in a particular case be opposed to a war in which this Government is engaged, or even opposed to all wars; and yet I would sharply distinguish between such groups and the Communist Party on the ground that the Communist Party seeks control of unions not primarily to benefit the workers involved, but primarily because the unions then can be manipulated to further a party line which is in turn determined with reference to the interests of the U. S. S. R. (hearings, p. 148).

Not to make this distinction, as apparently General Electric and other employers have not, is to play the Communist theme song, that an attack on Communists is an attack on all liberal ideas. We deny that it is impossible to distinguish between Communists and genuine supporters of liberal or unorthodox ideas. The Communists are spokesmen for a conspiratorial system of power deriving its prime motivation from the needs of the U. S. S. R. We do not have to agree, necessarily, as many of us do not, with the program of free reform groups, to insist that the American tradition and constitutional system gives these groups every right to exist and to pursue every lawful means to propagate their ideas.

3. The issue which needs to be resolved is whether Communist-dominated unions pose a sufficiently serious threat to our security to warrant Government action. We believe that Communist-dominated unions do pose such a threat, and the Government has taken effective steps to protect the national security against these threats. In this report we recommend additional steps that can be taken.

We do not accept the proposition urged upon us that a private group has an inherent immunity from public regulation on this point. This goes for both employers and unions. It happens that this committee has reported out legislation designed to end discrimination in employment based on race, color, creed, or national ancestry. If this legislation were passed no private group, employers, employment agencies, or unions would be permitted to carry on its activities in a way to run counter to the requirements of this policy.

The same principle applies to the question of Communist-dominated unions. The unions have no inherent immunity from regulation on this point. The decisive question is: Will this be a wise and democratic exercise of public authority?

4. The free labor movement must accept the responsibilities which go with its contention that it can handle the Communist problem in the unions on its own. Racketeering, discriminatory practices, exist in a few union situations. Where these unsavory practices exist they are breeding grounds for Communist penetration. They provide a cover for the real purposes of the Communists in the unions. The labor movement must decontaminate itself of these unhealthy influences.

The free unions have done more to isolate and destroy the staging points of Communist unionism than any other single force in American life. It is one thing to require a non-Communist oath as a condition of using the NLRB's facilities. But the critical anti-Communist pressure is exerted when the free unions expel Communist-dominated unions from their midst and then proceed to take their members away. This is anticommunism where it hurts the Communists the most. But, as we have seen, there are still pockets of Communist domination and the free unions must expend added power and resourcefulness in eliminating these Communist pockets.

We commend, too, the action which the American labor movement has taken to combat international communism. The fact that free labor movements all over the world are effectively fighting Communist aggression is in small part due to the economic and moral aid rendered by the American labor movement.

5. The National Labor Relations Board has authority under existing law (in its own words) "to protect its own processes from abuse." If it should develop that the Board does not have this authority, we urge that legislation be enacted to carry out the intent of this recommendation. We recommend that the NLRB in the exercise of such authority under existing law take judicial notice of three kinds of circumstances, as reflecting adversely on the good faith of an affiant of a non-Communist affidavit.

(1) The refusal to testify under oath before a judicial body, grand jury or legislative committee whether the non-Communist affidavit was signed by the affiant.

(2) The refusal to testify under oath before a judicial body, grand jury, or legislative committee whether the affiant is a member of the Communist Party.

(3) A conviction for false swearing in a non-Communist affidavit.

If the Board finds that there is a reasonable doubt as to the truth and validity of the affidavits, as a result of the failure to testify, or as a result of the conviction for false swearing as outlined above, it shall give the union in question 30 days within which to purge itself of the officers whose affidavits have been found lacking in good faith. If the union submits proof that it has complied with the order of the Board it shall be considered as having remained in compliance with section 9 (h). If in the judgment of the Board the union has not purged itself of the officers whose affidavits have been found to be lacking in good faith, then the Board shall declare that the union is not in compliance with section 9 (h).

Our reasons for this recommendation are as follows:

(*a*) Whatever reservations we may have about the efficacy of section 9 (h), we ought not to embark on additional or more dubious legislation until we have exhausted the lawful remedies under existing legislation. With all of its one-sidedness, section 9 (h) of the Labor-

Management Relations Act of 1947 has served to point up the issue and may, with appropriate implementation, yet help to identify the Communist-dominated unions. In our judgment, it should not be taken from the law until all Communist domination has disappeared from unions, at least in vital industries, or until, as implemented, it is proven ineffective and other preferable provisions are adopted.

(*b*) We believe that the NLRB can lawfully apply these recommendations without additional legislation. To be sure, as has been pointed out, Congress did not intend for the Board to conduct an independent investigation on the merits as to whether a particular 9 (h) affiant is or is not a Communist. What we are recommending here, and which in large part the Board has already done, is to protect its processes from obvious abuse. It is our judgment that the three types of circumstances cited above constitute obvious abuse and ought not to be tolerated without question.

(*c*) We are not insensitive to the implications which our recommendations have for the constitutional protection against self-incrimination. But, it seems to us that the constitutional protection ought not to become an immunity for Communist union officers from the consequences of bad faith in filing non-Communist affidavits. And in any case the loss suffered by such officers is a disqualification from serving as officers of a union which wishes to utilize the procedures of the law. That the unavailability of the Board's processes is something less than catastrophic is attested to by the fact that two large and powerful unions (and anti-Communist unions, by the way) have been able to exist for 5 years without access to NLRB procedures.

(*d*) The recommendation for a 30-day period of grace within which a union may remove the cloud of doubt prevailing with respect to 9 (h) compliance is motivated by a consideration that innocent victims of bad-faith filing ought not to be penalized for the acts of particular officers. All the members and non-Communist officers of the union could know, for sure, was that an affidavit was on file. They could not be expected to know beyond a reasonable doubt that the affidavit was executed in bad faith, in the absence of an authoritative declaration to that effect.

Therefore, to revoke compliance status retroactively would penalize union members and employers as well for acts over which they had no control. Legal logic may be on the side of retroactivity in this sort of situation but the facts of industrial relations are not.

A refusal of the union members to remove officers after their affidavits have been found defective in an authoritative determination by the NLRB puts the problem in a different posture. They can remove the officers or accept the consequences of noncompliance. But under our recommendation the alternatives are identifiable.

6. The Department of Justice should establish a special unit to deal with cases arising out of alleged violations of section 9 (h) with effective liaison relationships to the NLRB and the legislative committees engaged in Communist investigations.

7. To the extent necessary, the Munitions Board, the Atomic Energy Commission, the Federal Bureau of Investigation, and other agencies concerned with security problems should develop specialized competence in dealing with security implications of Communist-dominated unions. The Bureau of the Budget should undertake to study how the various Federal responsibilities in this field can be

sensibly coordinated. The President, through the Bureau of the Budget, should also consider the development of in-service training programs for these various agencies on the goals and purposes of Communists in unions and how to distinguish the bona fide militant unionist from the Communist agent. It is a distinction which is not infrequently blurred, but as we have said, a very crucial distinction.

8. We do not believe that the National Labor Relations Board has the statutory authority or that Congress intended it to conduct an independent, de novo investigation of whether, in fact, an affiant is a Communist. Moreover, Mr. Herzog's analysis of this proposal we find very persuasive. Identifying Communists is a special form of expertise which the Board does not now have. Moreover, it would have the effect of delaying the processing of the cases of non-Communist unions.

9. We reserve judgment at this time on proposals that new agencies other than the NLRB be given authority to find Communist domination. The reasons for our reservations may be summarized as follows:

(*a*) The resources of Government agencies charged with security functions, strengthened as necessary, appear to be adequate at this time to deal with hazard of sabotage and espionage.

(*b*) The practical advantages of these proposals in removing the security hazard of Communist control are questionable if the time consumed by the Subversive Activities Control Board in its proceedings against the Communist Party, is any guide. The advantage of operating efficiency is on the side of the agencies like the FBI.

(*c*) The resultant penalties such as disestablishment of Communist unions would in part fall on the Communists but in greater part on the innocent victims, the union members, in the Communist unions who, it is clearly established, are overwhelmingly unsympathetic to the political aims of their leaders.

(*d*) This ideological testing of a union's right to survive is foreign to our tradition of a free labor movement.

If, however, our relationships with Soviet Russia deteriorate even further, these proposals should be reconsidered in the light of the new circumstances.

10. It is recommended that encouragement be given to unions to clean their own ranks of Communist influence by amending the law to permit a waiving of the affidavit requirement for those unions which incorporate a ban on the holding of office by Communists and enforce the ban in good faith. Such a provision would have the additional effect of cutting down the sizable clerical task of keeping track of thousands of affidavits.

11. The proposal that employers and their representatives be required to take non-Communist oaths as a condition for utilizing the facilities of the National Labor Relations Board has equity on its side to recommend it. The argument runs that union people will not resent the application of the affidavit requirement if they feel that they are not being singled out for special treatment as potential subversives. Measured against the standards of speed in processing cases, however, the advantage of this proposal seem to be dubious.

INDIVIDUAL VIEWS OF SENATOR MORSE

I have not concurred in the foregoing report because I think it is inadequate in several respects, although I think that in many respects it is a very good report. At least it shows a lot of hard work and careful and thorough study of the problems which were taken under consideration by the committee. Nevertheless, I hold several reservations as to the soundness of the conclusions of the report in respect to the jurisdiction, which the National Labor Relations Board should take, over Communist-dominated unions.

The subcommittee has never sat down in a formal committee meeting for a discussion of the recommendations contained in the report. At least, I have never had any knowledge of any such meeting being held. If I had attended a committee meeting for a discussion of this report, I would have found it necessary to raise a series of questions for discussion by the committee about the recommendations in the hope that they would be modified. It is quite possible that other members of the committee as the result of such a discussion might have come to share some of my doubts as to the wisdom of some of the recommendations set forth in the report at least as far as their present form is concerned. I know that each member of the committee agrees with me that the existence of any Communist-dominated union in America is a threat to the labor unions as well as to the security of the country. However, I do not think that the recommendations of the report propose very effective means for checking and eliminating Communist-dominated unions.

The American people have the right to look to some agency of government to take direct jurisdiction over the question of Communist-dominated unions. Although I have reached no final judgment on the matter, I see great merit in the point of view that the National Labor Relations Board is the agency which should be given jurisdiction over the issue on the administrative level. It is to be understood, of course, that I would favor having the law so worded that all of the procedures of the Administrative Procedure Act would apply in the granting of such a jurisdiction to the National Labor Relations Board. It would seem to be somewhat absurd as a matter of principle to have the National Labor Relations Board grant the privileges and prerogatives of the National Labor Relations Act to a union and at the same time not have the legal right and duty to exercise jurisdiction by way of denying those benefits and prerogatives to a Communist-dominated union involved in a case before it.

Also, I think it is only fair to the employers of America that they should have the right before the National Labor Relations Board to prove if they can that the union involved in the case is a Communist-dominated union. If the Board finds that the evidence supports that contention, then I think it is bad public policy for the Board to grant any benefits to that union until it has eliminated its Communist domination.

I fully appreciate the fact that so enlarging the jurisdiction of the National Labor Relations Board will probably require some amendments to the National Labor Relations Act. However, that fact in no way detracts from the merits of the proposal that such jurisdiction should be given to the Board. It only means that the Congress should get busy and amend the National Labor Relations Act in such particulars as are necessary to grant to the Board the jurisdiction it needs to accomplish the end recommended. It is also true that enlarging the jurisdiction of the National Labor Relations Board so that it can pass judgment on the issue of whether or not a union is Communist-dominated may slow up the work of the Board unless some procedural reforms are concurrently adopted with the expansion of the Board's jurisdiction. It is quite possible that such procedural reforms in the interest of speeding up the work of the Board would be desirable in any event. It should not be very difficult for the Board by procedural rules and regulations to work out a type of pretrial hearing on the Communist-dominated union issue and if the Board should find in a specific case that a prima facie case does not exist in support of that charge then the Board could proceed without further delay to pass upon the merits of the other issues involved in the case.

It should be understood that the references which I make to changes of Board procedure in this separate report are not in any sense recommendations on my part because I should like to hear all sides of the discussion on these points before reaching any final position. It is just such questions that I would have liked to have discussed within the committee before reaching any conclusion to be set forth in the report as to how the problem of Communist-dominated unions should be handled within our governmental system. Therefore, because I do not feel that I can underwrite or affirm the report of the majority of the committee in its entirety, I respectfully submit this separate and independent report.

○