"EMERGING TRENDS IN EMPLOYMENT AND LABOR LAW: LABOR-MANAGEMENT RELATIONS IN A GLOBAL ECONOMY"

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, OCTOBER 8, 2002

Serial No. 107-84

Printed for the use of the Committee on Education and the Workforce

82-896 pdf

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: (866) 512-1800; DC area (202) 512-1800
FAX: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON EDUCATION AND THE WORKFORCE

JOHN A. BOEHNER, Ohio, *Chairman*

THOMAS E. PETRI, Wisconsin
MARGE ROUKEMA, New Jersey
CASS BALLENGER, North Carolina
PETER HOEKSTRA, Michigan
HOWARD P. "BUCK" McKEON, California
MICHAEL N. CASTLE, Delaware
SAM JOHNSON, Texas
JAMES C. GREENWOOD, Pennsylvania
LINDSEY O. GRAHAM, South Carolina
MARK E. SOUDER, Indiana
CHARLIE W. NORWOOD, JR., Georgia
BOB SCHAFFER, Colorado
FRED UPTON, Michigan
VAN HILLEARY, Tennessee
VERNON J. EHLERS, Michigan
THOMAS G. TANCREDO, Colorado
JIM DeMINT, South Carolina
JOHNNY ISAKSON, Georgia
BOB GOODLATTE, Virginia
JUDY BIGGERT, Illinois
TODD RUSSELL PLATTS, Pennsylvania
PATRICK J. TIBERI, Ohio
RIC KELLER, Florida
TOM OSBORNE, Nebraska
JOHN ABNEY CULBERSON, Texas
JOE WILSON, South Carolina

GEORGE MILLER, California
DALE E. KILDEE, Michigan
MAJOR R. OWENS, New York
DONALD M. PAYNE, New Jersey
ROBERT E. ANDREWS, New Jersey
TIM ROEMER, Indiana
ROBERT C. "BOBBY" SCOTT, Virginia
LYNN C. WOOLSEY, California
LYNN N. RIVERS, Michigan
RUBEN HINOJOSA, Texas
CAROLYN McCARTHY, New York
JOHN F. TIERNEY, Massachusetts
RON KIND, Wisconsin
LORETTA SANCHEZ, California
HAROLD E. FORD, JR., Tennessee
DENNIS KUCINICH, Ohio
DAVID WU, Oregon
RUSH D. HOLT, New Jersey
HILDA L. SOLIS, California
SUSAN DAVIS, California
BETTY McCOLLUM, Minnesota
VACANCY

Paula Nowakowski, Chief of Staff
John Lawrence, Minority Staff Director

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

SAM JOHNSON, Texas, *Chairman*

JIM DeMINT, South Carolina
JOHN BOEHNER, Ohio
MARGE ROUKEMA, New Jersey
CASS BALLENGER, North Carolina
PETER HOEKSTRA, Michigan
HOWARD P. "BUCK" McKEON, California
THOMAS G. TANCREDO, Colorado
PATRICK J. TIBERI, Ohio
JOE WILSON, South Carolina

ROBERT E. ANDREWS, New Jersey
DONALD M. PAYNE, New Jersey
DALE E. KILDEE, Michigan
LYNN N. RIVERS, Michigan
CAROLYN McCARTHY, New York
JOHN F. TIERNEY, Massachusetts
HAROLD E. FORD, Jr., Tennessee

Table of Contents

HEARING ON "EMERGING TRENDS IN EMPLOYMENT AND LABOR LAW: LABOR-MANAGEMENT RELATIONS IN A GLOBAL ECONOMY"

Tuesday, October 8, 2002

Subcommittee on Employer-Employee Relations

Committee on Education and the Workforce

U. S. House of Representatives

Washington, D.C.

The Subcommittee met, pursuant to call, at 1:36 p.m., in Room 2175, Rayburn House Office Building, Hon. Sam Johnson, Chairman of the Subcommittee, presiding.

Present: Representatives Johnson, DeMint, Boehner, Ballenger, McKeon, Tancredo, Tiberi, Wilson, Andrews, Kildee, Rivers, and Tierney.

Staff Present: Stephen Settle, Professional Staff Member; Loren Sweatt, Professional Staff Member; Dave Thomas, Senior Legislative Assistant; Ed Gilroy, Director of Workforce Policy; Jo-Marie St. Martin, General Counsel; Kevin Smith, Senior Communications Counselor; Patrick Lyden, Professional Staff Member; and, Deborah L. Samantar, Committee Clerk/Intern Coordinator.

Peter Rutledge, Minority Senior Legislative Associate/Labor; Camille Donald, Minority Counsel, Employer-Employee Relations; Michele Varnhagen, Minority Labor Counsel/Coordinator; and, Dan Rawlins, Minority Staff Assistant/Labor.

Chairman Johnson. A quorum being present, the Subcommittee on Employer-Employee Relations will come to order.

OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Good afternoon and welcome. We appreciate you all being here. As all of us know, 29 West Coast marine terminals have not been operating over the past week. They closed because of a labor dispute between the Pacific Maritime Association and the International Longshore and Warehouse Union. This maritime association represents steamship lines and runs the terminals currently out of operation. The union exclusively represents all the labor used to load, unload and otherwise move cargo from the ships that dock at these terminals.

What does this mean, and why should we care?

Each shipping container at these ports holds a part of the national economy, from produce to computers, spare auto parts to lumber, consumer electronics and retail items to grain and wheat. Any household good imported for an American store shelf can be found stuck in these containers.

It is estimated that many, if not most, Members of Congress represent businesses, retailers and industries that either have been or soon will be affected by the closure of these terminals. The dispute is estimated by some to cost America's economy as much as $1 to $2 billion per day. With so many workers laid off in the last year, why should it be up to one union and association to determine additional layoffs and unemployment?

This is about free enterprise. This dispute is a blatant attack against the freedom of all American workers and the benefits of the American economy. Constituents asking what, if anything, can Congress do to see that commerce returns to normal have personally contacted me. My guess is that most of you have been contacted, too.

Companies, small, medium and large, eagerly await their fall, winter and holiday merchandise, while agricultural goods spoil on the ships and docks. Businesses can't stock their shelves if they don't have the product. Unfortunately, some of these items have already been advertised, and now retailers have to explain to customers why they don't have the product. So is there anything we can do to ensure that Americans return to work and that our industries and economy no longer suffer?

It goes without saying that Congress can pass legislation tailored to end this labor dispute. But as you know, the United States Congress has a long-standing precedent to remain neutral in disputes between employers and employees. That is why I am pleased that President Bush has used a provision under the National Labor Relations Act to set up a board of inquiry to look into the dispute. The board of inquiry, hand-picked, told the White House that the labor standoff between the West Coast longshoremen and shippers has no chance of ending soon, handing Mr. Bush the ammunition to seek a court injunction to end the shutdown.

If it is determined that the labor strike will “imperil national safety and health”, the President is authorized to direct the Attorney General to seek an injunction that would provide an

80-day cooling off period, commonly referred to as the Taft-Hartley injunction. Members of Congress continue to struggle to get more facts about the impact that this labor dispute is having on our national economy and the safety and health of all our citizens.

Having said that let me share with you what we hope to learn today.

Now that the President has used his authority, many of us want to know whether this type of action is enough, or whether Congress needs to contemplate additional action to ensure a free flow of commerce. The benefits of this economy must not be broken because of the interests of a few, whether it is labor or management. Understandably, it is prudent that responsible legislators recognize before we act whether Congressional action will be effective or needed.

We will begin the process of getting those answers with the information provided by our first panel. Our second panel today has the opposite concern with labors' failed attempt to unionize; they have redirected their efforts overseas. Today's hearing originally stemmed from questions regarding domestic labor disputes and how international pressure points are increasingly used to force employers to agree to labor demands, even if it means putting our laws on trial in foreign countries.

It is no secret that corporate campaigns have recently become the key weapon in the AFL-CIO's recommended arsenal of tactics. Unlike more traditional elements of the bargaining process, corporate campaigns center on image management; that is, the objective of these companies is to make the employer look bad in the public eye. Their goal is to move the targeted employer toward an unfavorable image with very high visibility. We will learn more about these general smear tactics, but our true interest is how these negative campaigns have spread into the global marketplace.

In the 1930s, 40s and 50s, when most of our labor laws were written, the use of international boycotts or international public relations campaigns as a tool to influence bargaining and organizing were unheard of. Now, thanks to the Information Age, they are common. I believe this is something Congress needs to learn more about and perhaps find out if it is an issue that demands legislative action or not.

WRITTEN OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX A

Chairman Johnson. I thank both panels of our fine witnesses who have come today.

I would now yield to Mr. Kildee for any comments he might like to make.

OPENING STATEMENT OF CONGRESSMAN DALE KILDEE, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman, for yielding to me. I want to welcome today's witnesses on behalf of the Ranking Member, Mr. Andrews, whom we expect shortly, and myself. I especially want to thank Max Vekich on the first panel and Kathy Krieger, who will be on the next panel, for being here this afternoon on rather short notice.

We will hear from two panels today on two different subjects. The first panel will discuss the West Coast dock lockout, a labor dispute in which a conglomeration of international employers has locked out American dock workers on the West Coast in order to obtain a contract that will give the union no voice at all as to how much work will be available to its members.

The second panel will discuss concerns by American employers that efforts by international unions in support of American unions, even in instances where the American workers in question have been denied any meaningful ability to organize, are somehow unfair or dangerous.

Mr. Chairman, I cannot help but be struck by the obvious contradiction that the two panels present. International employers are to be defended in their efforts to undermine the wages and living standards of American workers, and American workers are to be criticized for seeking international support to raise their wages and living standards. The only consistency about this hearing would seem to be our desire to undermine the wages and living standards of American workers.

I look forward to today's testimony. Both issues under discussion today raise serious questions that will have significant ramifications for what kind of future American workers will face. While it is very probable that my own position on these issues is quite different from those of Chairman Johnson, nevertheless I think we are performing an important service by publicizing these alternative visions of our future.

Mr. Chairman, I yield back the balance of my time.

Chairman Johnson. Where else but in America can we agree to disagree?

Mr. Kildee. That is right. It is a great country.

Chairman Johnson. Yes, it is.

I am going to limit the opening statements to the Ranking Minority Member, and myself and if other Members have statements, they can be included in the record. With that, I ask unanimous consent for the hearing record to remain open 14 days to allow Members' statements and other extraneous material referenced during the hearing to be submitted.

Hearing no objection, so ordered.

In addition, I have a letter here from Congressman Boozman of Arkansas that I would like to enter into the record. Without objection, so ordered.

We have two panels, and I will begin by introducing the first panel. Our first witness today is Ms. Katherine Lavriha. She is Senior Vice President of Government Affairs for the International Mass Retail Association. Our second witness will be Mr. Max Vekich. Mr. Vekich is a member of the International Longshore and Warehouse Union.

I will now yield to the gentleman from North Carolina for the purpose of introducing our last witness on the first panel. Mr. Ballenger, you are recognized.

Mr. Ballenger. Thank you, Mr. Chairman.

I am pleased to introduce today Mr. John Jokinen, Chief Executive Officer of E.J. Victor Furniture Company, a furniture manufacturer from my “neck of the woods”, Morganton, North Carolina. Privately owned, E.J. Victor employs about 300 talented artisans and associates. E.J. Victor readily adapts to market changes while manufacturing the highest quality furniture, hand-crafted to perfection. Mr. Jokinen is well qualified to enlighten the Subcommittee about the economic impact of the West Coast port shutdown, and we are delighted to have him with us today.

Thank you.

Chairman Johnson. Thank you, Mr. Ballenger. I appreciate the introduction.

Before the witnesses begin their testimony, I would like to remind the Members they will be asking questions of the witnesses after the complete panel has testified. In addition, Committee Rule (2) imposes a 5-minute limit on all questions and a 5-minute limit on your testimony. You will see a green light, and with one more minute left a yellow light. Having said all that, Ms. Lavriha, you may begin your testimony.

STATEMENT OF KATHRYN LAVRIHA, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, INTERNATIONAL MASS RETAIL ASSOCIATION, ARLINGTON, VA

Good afternoon. My name is Katherine Lavriha, and I am the Senior Vice President of Government Affairs for the International Mass Retail Association. Thank you for the opportunity to come before you today and discuss the impact that the closing of the West Coast ports has had on the mass retail industry.

IMRA is the leading alliance of retailers and their product and service suppliers. IMRA members represent over $1 trillion in sales annually and operate over 100,000 stores, manufacturing facilities and distribution centers nationwide.

Virtually all of IMRA's members depend on global commerce and the maritime transportation system. Trans-Pacific trade is essential to the consumer goods industry. Retailers and their suppliers import finished products and food; suppliers and consumer product manufacturers import parts for production. In addition, many IMRA members, both retailers and suppliers, export consumer products and food to markets abroad and to Alaska and Hawaii.

Over the last 20 years, the consumer goods industry has made a significant investment in just-in-time delivery of parts, finished products and food products. In fact, driving time out of the supply chain has been a major focus of cost-cutting efforts of U.S. industry. Today manufacturers regularly keep no more than 2 weeks of critical parts on hand. Retailers, especially those in the fashion business, can no longer afford to carry large inventories. Their suppliers face strict delivery deadlines and can face lost orders if delivery dates are not met.

For this reason, the current situation on the West Coast stocks has become a problem in more ways than one. U.S. West Coast ports are significantly less efficient than their counterparts overseas. The Port of L.A.-Long Beach, for instance, may be the world's third largest port, but it does not even rank in the top 10 in terms of throughput. As trade expands, there are open questions as to whether our ports can adequately manage the growth without serious congestion and pollution side effects. I should also add that our seaports face a major new challenge in the face of the events of September 11th in securing water borne commerce. One essential part in meeting these challenges is the use of information technology. To date, many of the processes at our Nation's ports use paper and pencils instead of hand scanners and computers because of the contract between the PMA and the ILWU.

So it comes as no surprise that terminal operators, as represented by the PMA, have insisted on changes in the current labor contract that would clear the way for the introduction of new information technologies. For the ILWU, of course, new technologies potentially mean fewer jobs and loss of jurisdiction. By now you are well aware of how the negotiations have progressed and the reasons for why the PMA initiated the lockout.

What makes this struggle so problematic for those of us who are port customers is that it is being waged coast wide by two entities that have monopoly control over the supply chain from Asia. I am not an expert in labor relations, so I do not know how we came to this situation where only one labor contract covers commercial terminals in all 29 ports on the West Coast. Thirty years ago, the last time we had a strike on the West Coast, this monopoly posed a significant problem, but it hardly brought the economy to its knees.

Today that is no longer the case. This dispute, now in its second week, not only threatens to take the U.S. economy into a double-dip recession, but also could well touch off a serious recession in Asia. Let me address the impact on the retail sector. My written statement addresses some of the other sectors being harmed as well.

The retail industry is virtually certain now to have a poor holiday season. Even if the ports are reopened today, enormous costs have been incurred and will be incurred in the air shipping of critical holiday merchandise. Other merchandise will miss its in-store delivery dates, meaning that holiday merchandise will arrive late just in time to be marked down.

There are only two ways to reopen the ports: First, the private parties in this dispute could agree to a new contract. Second, that a second method for reopening the ports is the use of the Taft-Hartley Act, which the President is moving forward with.

In closing, this situation raises some serious issues that Congress must address in the future. The maritime transportation system must receive more attention on Capitol Hill. IMRA has no specific legislative recommendations at this time, but it strikes me that a labor contract that covers every port on our West Coast poses significant future risks to our economy. The government regularly disciplines this kind of monopoly power, and we would urge Congress to consider whether there are some actions that are needed in this case.

Labor contracts on the East Coast are not structured in this manner. If we had a labor dispute on the East Coast, it would affect only a single port and provide alternatives that would not shut down commerce entirely.

I thank you for this opportunity to present our views to you today. Thank you.

WRITTEN STATEMENT OF KATHRYN LAVRIHA, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, INTERNATIONAL MASS RETAIL ASSOCIATION, ARLINGTON, VA – SEE APPENDIX B

Chairman Johnson. Thank you. We appreciate your testimony.

Mr. Vekich.

STATEMENT OF MAX VEKICH, PRESIDENT, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 24, COSMOPOLIS, WA

Thank you, Mr. Chairman, and Members of the Subcommittee on Employer-Employee Relations. My name is Max Vekich, and I am here on behalf of my 10,500 locked out brothers and sisters of the International Longshore and Warehouse Union. I am President Of Longshore Local 24 in Washington State.

It has been 11 days since our employers locked the gates to the West Coast ports and refused to allow us to go to work. Our employer, the PMA, is a conglomeration of maritime corporations. Ninety percent of PMA members are foreign companies. We are incensed that the PMA has such low regard for American workers, consumers and businesses, that they would bring shipping to a standstill and threaten the U.S. economy for no good reason.

As you know, the President has begun the process of invoking Taft-Hartley. We are opposed to the implication of Taft-Hartley. We had hoped that the President would have signaled his support for the collective bargaining process. The PMA started negotiations last May by repeatedly threatening to lock out our members if we do not capitulate to their demands. Their whole bargaining strategy centered on presidential intervention. If we allow them to get away with this cynical strategy, then collective bargaining in this country is imperiled.

Last Sunday the PMA reneged on tentative agreements they made the previous day on the issue of technology and the role of workers and the implementation of that technology. The Federal mediator, on behalf of President Bush, tried to broker a deal to get the ports open while the ILWU and the PMA continue to negotiate. The ILWU accepted a 7-day extension of the old contract without preconditions. The PMA rejected the mediator's deal. The members of the ILWU want to get back to work. We do not want to see any more workers, consumers or businesses harmed by the PMA's irresponsible lockout of American workers. The PMA apparently believes it can get this administration to do what it cannot accomplish at the bargaining table. This is the only reason they continue to refuse to deal honestly with the union.

Last week, the union achieved some success in terms of moving cargo. The union successfully pressured the foreign-dominated PMA to move United States military cargo for our troops overseas. The union pressured the PMA to move cargo and essential supplies to Alaska and Hawaii, two States completely dependent on ocean transportation.

And right now the ILWU is asking the PMA for the same for Guam. The ILWU bypassed the Stevedoring Services of America when they refused to dispatch longshore workers to help move baggage from stranded cruise vessel passengers. We helped move the baggage for these stranded passengers anyway. The ILWU is also placing pressure on the PMA to move agricultural products, particularly perishable items and grain. The PMA does not care how much our farmers are suffering due to their irresponsible lockout of American workers. They are only interested in achieving their negotiating goals.

The PMA has demonstrated its complete disrespect for workers and the American people by not taking this process seriously. They went so far as to bring armed thugs to a Federal mediation session. They refused to meet the union halfway on technology and jobs. They attempted to gain leverage in return for moving essential cargo. This is not bargaining in good faith.

For the two years preceding contract negotiations, the PMA repeatedly said that the ILWU would slow down work when the contract expired in order to gain bargaining leverage. My brothers and sisters had other ideas. In a sign of good faith and a great concern for the economy, we did not slow down. ILWU members set records for cargo movements in the West Coast ports in June, July and August.

As a consequence of the increased cargo volume, the number and severity of accidents on the job increased. In response to the high number of accidents, the ILWU instituted a safety program that urged members to adhere to all safety regulations in our safety code that was part of the current contract. The critical safety regulations were agreed to by the PMA and the ILWU.

The CEO of the PMA reportedly threw a temper tantrum and decided to shut down West Coast commerce because of the safety program.

Five of my union brothers, Rudy Acosta, Richie Lopes, Jr., Dick Peters, Mario Gonzales, and John Prohorroff, were killed on the job over the course of the last seven months. They did not go home to their families at the end of the workday. In 2001 there was not one fatality involving longshore workers in West Coast ports. In 2002 there has been five to date. Yet the ILWU is accused of a slowdown, and West Coast commerce is brought to a halt in response to a safety program?

Our job is the second most dangerous in the country, right behind mining. We have a strong union and we have been able to negotiate good contracts for the working men and women of the ILWU. We do not apologize for raising the standard of living for working families, but one needs to be accurate when we talk about the average salary of a longshore worker. The PMA claims to the media that the average longshoreman makes $106,000, but on page 62 of their 2001 report, they listed the average income as $80,088.

On September 20th, 2001, the union's Labor Relations Committee proposed that the union employer work together to beef up security at West Coast ports as a result of the new threats of terrorism to our Nation's ports. The employer group has objected to every program that the union has proposed to truly enhance port security. The union proposed that all marine terminals institute and build on the kind of security for containers that the American President Lines performs. On the other hand, marine terminals managed by the Stevedoring Services of America, including terminals that handle China Ocean Shipping Company vessels, perform no security checks of containers. We think it is vital to the American people to check containers. Our employers are desperately trying to kill any user fee to help pay for the security that they have failed to provide for the American people.

Finally, we ask Members of Congress to recognize who has done their duty here - American workers. The working men and women of the ILWU stayed on the job until they were locked out. The ILWU worked in good faith with the Federal mediator and agreed to his suggestions, like the 7-day extension. All American workers will be hurt if President Bush invokes Taft-Hartley. These injunctions ostensibly promote a cooling-off period between workers and management, but in most cases presidential interference only adds to a heating up of the conflict.

It is the members of the PMA that needed to be shamed into opening the docks to the American workforce. The ILWU has acted responsibly. Thank you.

WRITTEN STATEMENT OF MAX VEKICH, PRESIDENT, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 24, COSMOPOLIS, WA – SEE APPENDIX C

Chairman Johnson. Thank you, sir. We appreciate your testimony as well.

Mr. Jokinen.

STATEMENT OF JOHN VICTOR JOKINEN, PRESIDENT, E.J. VICTOR FURNITURE COMPANY, MORGANTON, NC

Good afternoon Mr. Chairman and Members of the Subcommittee. My name is John Victor Jokinen, and I am President of E.J. Victor Furniture Company, a small manufacturing company located in Morganton, North Carolina. At the outset, I would like to express my appreciation to the Subcommittee and to Representative Cass Ballenger for allowing me this opportunity to share our company's concerns about the current labor dispute affecting ports on the West Coast.

About a dozen years ago, two business partners and I set out to establish a furniture manufacturing company that would provide an alternative to the growing trend in our industry towards high-volume manufacturing that too often minimizes the importance of hand craftsmanship. When we founded E.J. Victor in 1990, we created a company that would be committed to preserving time-honored construction methods used to create exquisite furniture for the home.

We began with 33 employees, and we initially offered 15 pieces of wood and 10 pieces of upholstered furniture in the style of English reproduction. Today we employ more than 250 associates in three plants, covering more than 360,000 square feet of manufacturing space. Our current product selection includes wood furniture commonly known as "casegoods" in our industry that is, dining room and bedroom furniture, upholstery, and smaller items known as occasional furniture, such as coffee tables and end takes.

At E.J. Victor meticulous attention is paid to handpicking premium materials that go into making our casegoods and upholstery items. Only the finest grade of hardwood solids and veneers, finishing materials, fabrics and custom made hardware are used in our manufacturing process. As a result, our products have found their way into homes not only here in the United States but also abroad, particularly in Japan, Taiwan, Turkey, Saudi Arabia, Kuwait, Italy and Russia. We have also been very fortunate to supply an assortment of furnishings to American embassies and ambassadors' residences around the world, thanks to procurement opportunities available through the U.S. State Department.

Despite our export distribution channels, the unrivaled work of our skilled artisans and our strong commitment to manufacturing the highest quality furniture, we are not immune from competition. The global economy that imports from the Pacific Rim and other sources has exerted tremendous pressure on smaller manufacturers like us who are often torn between preserving a dedicated local workforce and bringing in furniture products from offshore sources in order to remain competitive.

As a business decision, we concluded that the best way to remain competitive and retain our employees, particularly as the economy slid towards recession, was to begin importing a small segment of our product line made up of those occasional pieces that I mentioned earlier, as well as a collection of decorative accessories such as lamps, wall art and ceramics. Today imports represent roughly 25 percent of our overall product line, with the remaining 75 percent manufactured in our three North Carolina facilities. It is because our company depends on both imports and exports that I am appearing before you today to discuss current work stoppages affecting ports on the West Coast.

The situation is made all the more critical for the domestic furniture industry, because this dispute comes at a time when thousands of home manufacturers like us are preparing for the fall International Home Furnishings Market, which begins next week in High Point, North Carolina. If you are not familiar with what Market is all about, I can tell you that the twice-annual trade show is the single most important event for the furniture industry. More than 3,000 home furnishings manufacturers gather in High Point each April and October to exhibit their new products to more than 83,000 retail store owners, interior designers, architects and other design professionals from all 50 States and 110 foreign countries. Because almost half of the U.S. furniture sales are derived from products imported from abroad, especially from the Pacific Rim, numerous manufacturers are depending on their market samples to arrive in time for this major trade event. Failure to do so will most assuredly be reflected in a marked decrease in sales orders. As a result, the furniture industry can ill afford a prolonged disruption in the flow of goods both into and out of our Nation's ports.

We at E.J. Victor are especially concerned about the situation, because we roughly do 25 percent of our business at Market. That translates to nearly $3 million in finished furniture products that we will not be able to ship over the course of the next 6 months. If our clients are not able to see these Market samples firsthand, for example, we will not be able to ship our domestically manufactured dining room tables, sideboards and china cabinets without the accompanying chairs, which are brought in from overseas. What's more, we have just completed construction of an additional 8300 square feet of display space at our permanent showroom in High Point at a cost of $1.4 million. Without being able to transport our incoming samples from Long Beach, California to High Point, the new addition will have little practical use when market opens next week.

At the same time, our export operations are at stake in this dispute. At this time, we have shipments of furniture products waiting to be loaded in Long Beach in outbound ships headed for China and Japan. Exports contribute more than $2.5 million in receipts each year and are an integral and growing part of our company's business.

Mr. Chairman, ours is a proud company. Our employees are dedicated professionals who love their work and who put themselves into every piece of furniture we make. We are a small company, among the few that have not closed down in Burke County, a rural area where unemployment and limited economic development are already a challenge, and we feel very strongly about remaining a predominantly domestic manufacturer, but we are not invincible. We do not enjoy profit margins that will allow us to absorb the kind of losses that are certain to result from a prolonged shutdown in West Coast port operations. Furniture manufacturing and retailing is a very competitive business, one that requires us to constantly strive to innovate and modernize and adjust to every change in business consumer preferences. Because we operate in such a highly competitive environment where consumers can choose from so many manufacturers, my greatest concern is that if this work stoppage continues in its current form with no meaningful resolution in sight, we will more likely face the unpleasant task of having to reduce our workforce, a step none of us wants to take in our close-knit community.

It is my sincere hope that the Administration's decision to step in and assess the economic consequences of the work stoppage will convince both parties involved that this dispute needs to be resolved quickly before the cost of the national economy becomes larger and more pertinent. I will admit, Mr. Chairman, that, too, I am not a labor relations expert, and I do not presume to have a long-term solution to the particular dispute. What I am skilled at is running a manufacturing business that employs dedicated, hard-working artisans and crafts people who use time-honored techniques to create truly exceptional residential furniture. It is on their behalf that I ask for your bipartisan support for bringing this dispute to a peaceful, productive and, might I add, quick resolution.

WRITTEN STATEMENT OF JOHN VICTOR JOKINEN, PRESIDENT, E.J. VICTOR FURNITURE COMPANY, MORGANTON, NC – SEE APPENDIX D

Chairman Johnson. Thank you for your testimony.

I wonder if I could ask a question of the unions. You indicated that salaries are much lower than everybody says. Is it true your benefits package doesn't cost your employees anything and that it averages around $42,000 a year?

Mr. Vekich. I think you will find that some of the benefits were counted twice in the calculations and portrayal. We have a good benefits package, and we do not have a co-pay. But if I could explain how we got there.

Forty years ago we made an agreement with our employers to embrace technology, called the M&M agreement, or mechanization and manpower. In return for us adopting technology and labor-saving devices, the employers made a promise to us that they would pay for health care for the life of all the workers and their beneficiaries.

Chairman Johnson. Are they doing that?

Mr. Vekich. Yes, they are.

Chairman Johnson. Okay, but I understand that technology increases are part of the fight that is going on right now. Why are you fighting technology improvements when some of the foreign ports can unload at four, five, six, twelve times the rate you do?

Mr. Vekich. Well, I think it has been overstated how many foreign ports actually can load faster than we can.

Chairman Johnson. Well, let me ask the question differently. Is there technology out there that would allow us to unload faster?

Mr. Vekich. The employer right now in our current contract can implement technological changes. He can do it on his own, unilaterally. What we are asking for is not that we don't want technology, because really technology has been our friend. It has allowed us to make money, allowed our families to have good livings, allowed us to raise our standard of living.

At the same time we went from 100,000 people to 10,000 people in the last 40 years. So we are not afraid of technology. You know, we have a lot of smart people that are very able, and I haven't seen a person on the docks use a pencil and paper for 5 years. So most people I see are busy punching in computers and using scanners. That is what I see as technology on the docks.

Chairman Johnson. What is the difference between our ports and Hong Kong that they say can move four times what we do?

Mr. Vekich. Well, I think I have crane operators that I know in L.A. who can load as fast as anybody in Hong Kong. Part of the problem is the skill levels of people. We haven't trained enough workers, I don't feel, to do the real, highly skilled jobs, and there is a lot of competition for those folks. It takes a while to learn how to move container cranes so you can load 50 loads in an hour. You know, it takes some skill there to do that, and we have not had the training to keep up with the demand.

Things are exploding in L.A. That place is booming. I work there and we are a very mobile workforce. We work up and down the coast, and we go to wherever the work is. I would think if you put a Hong Kong longshore worker group and an L.A. longshore worker group together, I think we could show you we can load just as fast.

Chairman Johnson. Well, but the statistics don't indicate that you are doing that.

Mr. Vekich. Some of that is infrastructure, Mr. Chairman. Some of that is infrastructure and much-needed improvements to the port. As far as the congestion in the port of L.A.-Long Beach goes, a lot of that has to do with the roads and the rail-put getting out. It is hard. We need to invest in our infrastructure. We need to invest a lot, and that is the major problem for more cargo and throughput in the L.A.-Long Beach area.

Chairman Johnson. Do you ever consult with your brother unions like the Teamsters, for example, who drive the trucks? I know they too are suffering from your walkout. Have you talked to them about this?

Mr. Vekich. We have talked to the Teamsters. I am not International President. I couldn't tell you what the conversations were, but we have had a lot of support from them. We would like to see them also organized and unionize and those truck drivers given some benefits and be beneficiaries of the international trade, which isn't happening to date to a far enough extent.

Chairman Johnson. I would like to ask both of the others, when you knew this was coming why didn't you try to arrange for an earlier shipment or a different kind of shipment? Is there some reason?

Ms. Lavriha. Number one, we did inform our retailers of this, and so some of them were able to increase some of their shipments, but as I reference in my testimony, we are trying to cut costs and be more efficient with the just-in-time system so that we can pass on savings to consumers and be more efficient. So we have pared down our inventories. We have pared down our warehouses to save consumers' prices, and so to say that we can stock a lot of stuff, we don't have anywhere to put it. And so it is a very different system than it was.

Chairman Johnson. Yeah. I understand the warehousing problem, but could you see this coming?

Ms. Lavriha. We did see this coming. We did predict it. We alerted many of our members, but many of their ships had already left the ports in Asia, and many of our ships are sitting out there in the harbor with goods on them that are waiting to be unloaded. So the stuff that we had hoped to get in is not available.

Chairman Johnson. Mr. Jokinen?

Mr. Jokinen. We anticipated some of the problems, and we got some of the goods that we had for Market shipped on earlier shipments. But our only other solution would be to pay exorbitant airfreight and these are sometimes fairly bulky items that just would have been too cost prohibitive. So we rolled the dice and hoped that the settlement would be finalized by then.

Chairman Johnson. And there is no alternative transportation mode, I understand?

Ms. Lavriha. Well, we have one apparel retailer that has already spent well over a million dollars to airfreight their goods in, because as you full well know, apparel fashion turns very quickly, and so you have to move it very quickly. So they have already spent beyond what they are waiting on the ports for in merchandise dollars to try and fly some stuff in. And other products are just too heavy and just too expensive to do that.

Chairman Johnson. How about foodstuffs? Is there any way to rectify the problem of it rotting on the dock?

Ms. Lavriha. That is a major challenge as well, and at this point we are trying to improve that, but we have no solution for that at this time.

Chairman Johnson. Do you have any idea what the Congress could do to help? You know, making a law doesn't always helps things. Sometimes it hurts.

Ms. Lavriha. We are not here to ask you to make a law. We are here to urge the two parties, the PMA and the ILWU, to get back to the table, to settle their differences, get a good contract and reopen the ports so we can move our goods and put goods on the shelves for Christmas. That is all we are here to ask you for today.

Chairman Johnson. Well, that is essentially what the board is going to recommend to the President, but an 80-day cooling off period doesn't necessarily make things happen. Will you engage in a slowdown if you have to go back to work?

Mr. Vekich. I think most of our members are happy to get back to work and they are looking forward to the opportunity to get working again.

Chairman Johnson. At full speed?

Mr. Vekich. I am assuming so, Mr. Chairman. I am assuming so.

Chairman Johnson. I figured you would answer that way, and that is the right answer. Thank you. I appreciate your testimony.

I will yield now to Mr. Kildee if he has questions.

Mr. Kildee. Thank you, Mr. Chairman.

Mr. Vekich, who bargains for the PMA, since most of its members are foreign-owned companies? Who determines PMA's bargaining strategy and contract offers?

Mr. Vekich. Well, I am not an expert on the PMA, but to the best of my knowledge it appears that the PMA is a nonprofit employer association, and they handle the bargaining along with an executive committee and a board of directors. Now, foreign shipping companies dominate the board of directors.

Mr. Kildee. Did the PMA improve its contract offers during the failed bargaining or mediation process?

Mr. Vekich. It actually slipped. Their position slipped, and the last one we received was a lesser offer. And so it has been eroding.

Mr. Kildee. What are the key remaining issues of the dispute now in the lockout?

Mr. Vekich. Well, you know, the union has offered basically to move ahead on technology issues. Now, we are probably putting an end to up to 400 of our people's jobs through attrition and retirement, and what we would like to secure is future jobs with technology.

There are basically about 50 to 100 planning jobs that we think should come to us that are in the technological chain right now. We think those should be our jobs, because they are ship-related, and we normally have done all the ship work. And so that is what we are after, but it is important, I think, for us to secure our future, even though it is a much lesser, more diminished future.

But jobs are going to be lost in the long haul. We realize technology is going to change and is going to reduce the need for our marine clerks, and we have accepted that. Our marine clerks have accepted that. In fact, they have engineered the program that was put on the table to discuss the technological changes on the docks.

Mr. Kildee. The General Motors Corporation several years ago in my district completely rebuilt an assembly plant, and it was a very high-tech plant, and they had joint committees with the United Auto Workers and General Motors to work that out. Has PMA worked closely with you involving your members in the technological changes?

Mr. Vekich. First, they relied on us to put the technological changes on the table. We kept asking them what they would like. We would welcome working, Mr. Kildee, with the PMA in the future for our industry. We would like to be at the table and jointly agree and jointly move forward on technology. It is our future. We recognize that.

Mr. Kildee. I think that is true, the ILWU did the same thing, too. I think unions recognize that technology is here, and it is generally good if management sits down and involves the workers. Very often the workers see things on a day-by-day basis and know what technology will help both labor and management, and the UAW and GM have had a good record on that, and I would hope that they could replicate that in your situation there.

Ms. Lavriha, in your testimony you state that the workers should agree to a day-to-day contract extension. I think this weekend the workers agreed to a 7-day extension, but the PMA refused. Do you know why the PMA refused that 7-day extension?

Ms. Lavriha. I do not.

Mr. Kildee. Mr. Vekich, do you have any idea why?

Mr. Vekich. I couldn't speak for the PMA, but I think they felt they had a superior bargaining position. At that point in time, I think they wanted to push it into presidential intervention.

Mr. Kildee. They may from the beginning have hoped that the Taft-Hartley injunction would be imposed and that would be the solution rather than acting in good faith collective bargaining.

Mr. Vekich. That is how it looks on the docks.

Mr. Kildee. Okay.

Ms. Lavriha, the PMA has locked down the workers and shut down the West Coast ports right now, and you suggest that we should consider forbidding the union from having a single contract on the West Coast. Shouldn't we, if we were going to consider that, consider requiring each port to be separately and independently owned? I mean, you have one contract, and it is not just the union. When you have a labor dispute, it is both union and labor-management involved in the dispute. Is it your contention that it is only collective activity by workers that poses a threat and not collective action by employers?

Ms. Lavriha. I don't really feel that I can respond to that, other than that we feel that really both sides should have the opportunity to decide what is best for them, and at this point we are not taking a position on either side. We don't know enough about it, but we think that both sides should be able to work out how they want to operate the ports on the West Coast.

Mr. Kildee. Well, I will conclude, Mr. Chairman. But I really feel that when management recognizes that there are long-term interests, it is better to settle through the collective bargaining process rather than bring the Federal Government, and the Federal courts into it. It is really in the long-term interest of the country too, rather than having an imposed settlement and an injunction. So I would hope PMA would try to use the collective bargaining system in a better way.

Thank you, Mr. Chairman.

Chairman Johnson. Thank you.

Mr. Boehner, you are recognized.

Mr. Boehner. Thank you, Mr. Chairman.

As most of my colleagues on this panel know, I am one who doesn't really believe that government ought to involve itself in a dispute between labor and management, that in the end the two have to work together and come to some resolution. But I have read the report from the President's board of inquiry with regard to this work stoppage, and I quote, “We believe the seeds of distrust have been widely sown, poisoning the atmosphere of mutual trust and respect which could enable a resolution of seemingly intractable issues. For example, the parties have been unable to agree even on such matters as the length of a proposed temporary contract extension, although both know that their standoff costs the Nation billions of dollars. We have no confidence that the parties will resolve the West Coast ports dispute within a reasonable period of time.”

I think that is the point here. It is not about who is right or who is wrong. Our slightly growing economy is being damaged severely, and millions of American workers, union and nonunion, are about to see their own livelihoods come to a halt unless something is done to resolve this issue to reopen the ports. And therefore, I am hopeful that the President will in fact invoke Taft-Hartley to get the ports open again and allow the parties such time as needed to try to come to some resolution of this.

Let me also say thank you to the three witnesses for coming here and sharing experiences in terms of how this is affecting you. Mr. Vekich do we see any resolution here?

Mr. Vekich. Congressman, we have had labor peace on the West Coast docks for 30 years, and we have always managed to reach a contract settlement. We haven't always liked each other, but we have always gotten a contract. So I am optimistic.

Mr. Boehner. With this work slowdown, and now possible lockout that is underway don’t you feel that you are holding the rest of the American economy at hostage?

Mr. Vekich. We didn't start this fight. We were the ones locked out, and I think the media hasn't gotten it quite right. They keep talking about a strike. There are no workers striking here. There are workers who are locked out.

Mr. Boehner. Are you suggesting there wasn't a slowdown before the lockout began?

Mr. Vekich. You know, there are problems that various employers have with various employees, and I really don't know. In my port, there was no slowdown that was going on. We were working as normal.

Mr. Boehner. What do you think the prospects are for coming to an agreement?

Mr. Vekich. I think it is possible. I don't think they were that far apart. It sounds like they were worlds apart, but my feeling was there wasn't that much separating them. I heard one amount of money, $20 million that was separating the two parties.

Mr. Boehner. Over what period of time?

Mr. Vekich. On the technology issue, which seemed to be the major sticking point.

Mr. Boehner. If the President were to impose a Taft-Hartley back to work order, do you think that would improve the prospects for coming to some agreement?

Mr. Vekich. I was a senior in high school when Richard Nixon imposed Taft-Hartley on my family. We had been on strike for 90 days, and then we were out of work after the end of the Taft-Hartley cooling off period for an additional 3 months. It didn't seem to help at that point in time.

I want to say, though, that my side, the union, felt very good about the Federal mediation efforts. You know we really felt the Federal mediator, who was a Republican, had done a heck of a job and had done his best to try to help things along. We had never gone to mediation before. You need to know, this was a big change for us. We have always been a union that felt we could take care of ourselves and we didn't need any of them. But going to mediation was a change. It was a change into the modern era. You know, we are not afraid of technology, and now we are not afraid of mediation.

Mr. Boehner. Well, if the President were to impose a back to work order, how would the union look at this action?

Mr. Vekich. Well, I don't think there are any illusions here. I think we think it is coming.

Mr. Boehner. But how would you feel about it if it happens?

Mr. Vekich. We are hoping that we can still use the Federal mediator, that he can still be informed, because we think that that showed some prospects and some promise.

Mr. Boehner. You suggested earlier in your testimony that you believed that you are locked out and you want to go back to work. If the President were to put you back to work, I have to think that would make you very happy.

Mr. Vekich. If it prolongs this dispute further, and it puts us way past who knows when, and sides tend to get more upset and more entrenched, it seems to me that prolonging the dispute doesn't help. We would have stayed at the table and kept mediating and kept negotiating.

Mr. Boehner. But don't you and the PMA understand that the rest of the Nation's economy is at risk while you are sitting there arguing?

Mr. Vekich. That is why we set records for cargo movement in the period of time I talked about, June, July, August, because we are sensitive to the economy, and we are sensitive to our fellow American workers.

Mr. Boehner. Thank you, Mr. Chairman.

Chairman Johnson. I would like to remind the gentleman that we are at war, and it is not a very good time to be having a strike or a work stoppage. The lockout and a strike are synonymous with Taft-Hartley and can be used in either case. You know that.

Mr. Ballenger, would you care to question?

Mr. Ballenger. Thank you, Mr. Chairman.

Mr. Jokinen, you are a businessman. Basically I am a businessman, and I would like to ask a question about problems like this. I don't know whether it makes sense, but if you had a chair leg that you could produce in your own factory and you had a chair leg that you were having made in China, recognizing that the labor costs are substantially different, why wouldn’t you get that chair leg manufactured in Colombia, which would be an East Coast port? I realize it is hard to back off and change your source of supply in a short period of time, but doesn’t the idea that this settlement 80-days from now may not be any better than it is right now make you think about that?

Mr. Jokinen. Well, Mr. Ballenger, we bring most of our things in ocean freight into East Coast ports, even from China. The only time we utilize the Long Beach port is to utilize tandem trucking opportunities, where it takes an ocean liner to go from Hong Kong to L.A. about 10 days and then about 3 days to be trucked across the country.

When the time element is not such an essential ingredient as it is today because of Market, we generally get goods in about 33 days all the way from China to Charleston and then trucked across the Southeast.

Mr. Ballenger. Is it basically cheaper, then, to go through the Canal? Is that what you do?

Mr. Jokinen. Well, we are not a huge importer. We don't bring in 200 containers a year like some furniture manufacturers do. Our contracts are more lucrative for the shippers, and we just have to rely on the best time frame to get them. I don't know how many of them use the Panama Canal, honestly.

Mr. Ballenger. But you are shipping across the Pacific to East Coast ports?

Mr. Jokinen. We are.

Mr. Ballenger. Ms. Lavriha if your organization would look at it very seriously for some certainty in delivery, it might make some sense on your part to do what Mr. Jokinen is doing and pay a little bit more to use a port on the East Coast that has many union contracts so that you would have a variation in possibilities of delivery. In case you had a strike at New Orleans, you could come into Charleston. With a truck in Charleston, you could come into Baltimore. Does that make sense?

Ms. Lavriha. It certainly makes sense, and as we were preparing for this inevitability, we did move some things to the East Coast ports. Right now, though, with the length and time that the West Coast has slowed down, the East Coast ports have refused any further shipments. So in a sense, we really have no place to go.

Mr. Ballenger. You say they are full?

Ms. Lavriha. They are absolutely full, and they are moving as fast as they can to empty the containers and move them across the country. But you have to understand with L.A. and Long Beach and the West Coast ports, that is a lot of containers that move through there. So it has been very, very challenging to find a place to take the containers that we have.

Mr. Ballenger. Mr. Vekich, you said PMA is foreign owned. Who are they? Are they Chinese? Who are they?

Mr. Vekich. There are 83 or 84 members of the Pacific Maritime Association. I believe 7 to 9 are U.S. companies, and the rest are foreign; Chinese, Japanese, Korean, and European.

Mr. Ballenger. It seems to me it would behoove us somehow when you can see a bottleneck building, that somewhere along the line if I were an investor or a port manager, if I can't get delivery of my product in a pretty solid manner, common sense says the best thing to do is to find service somewhere else. Hutchinson I know is buying ports all over the country, and I don't know whether they are involved in PMA. They may be.

I don't know whether the PMA thinks about that or the longshoremen think about that. I represent a part of the country loading for textiles, and somewhere along the line we found out that if people can buy the product somewhere else, they will do it. I am sure Ms. Lavriha that sadly you buy a great deal of your products in China, that you used to buy it in the United States. If I were a longshoreman, I would start reading the handwriting on the wall. The same thing could happen to you that has happened to our textile industry.

Mr. Vekich. Mr. Ballenger, unfortunately for trade in this country even when this dispute is solved, and I am sure it will be favorably solved for both sides, you are still going to have problems at the West Coast and East Coast ports. And part of the problem is created by this great idea of just-in-time delivery. The warehouse now is the container, and there needs to be more incentive to move those containers along. The retailers like to store the containers on the dock, and there isn't a big hurry to push them off a lot of times. And that has added to the congestion in our West Coast ports.

Mr. Ballenger. Let me say one thing. If Mr. Jokinen thinks very seriously about what is going on, I might even be for your strike. You could generate new business in the furniture industry in North Carolina where you wouldn't have to buy anything overseas, and think of all the textile industries that we could rebuild in North and South Carolina. If you just stay out on strike a little bit longer, you might regenerate the jobs that we have lost.

Thank you, Mr. Chairman.

Chairman Johnson. We are going to strike more and more cotton in Texas, too.

The Chair recognizes Mr. Andrews. Do you care to question?

Mr. Andrews. I do. I want to thank Mr. Kildee for his indulgence in attending the first part of this hearing. I know he has left now. I was involved with the matter that is on the floor with respect to the situation in Iraq. I also thank the Chairman, Mr. Johnson, for his indulgence, and I apologize to the witnesses for not being here to hear their testimony.

Mr. Vekich, are your members on strike?

Mr. Vekich. We are locked out, Mr. Andrews.

Mr. Andrews. And it is my understanding that the amount of cargo that your members handle went up rather significantly in the 3 months prior to September the 1st. Is that right?

Mr. Vekich. That's right. Actually from January on, in each region of the West Coast, there are increasing volumes every month.

Mr. Andrews. And when did negotiations begin on this agreement that is in dispute, or this possible agreement that is in dispute?

Mr. Vekich. May 16th.

Mr. Andrews. So negotiations began on May the 16th. Between May 16 and September the 1st, did your members handle more cargo or less cargo than they had in a similar period of time last year?

Mr. Vekich. My understanding is more cargo.

Mr. Andrews. Now, what happened on the 1st of September?

Mr. Vekich. On the 1st of September, we had continued to negotiate. We raised the issue about safety concerns with the employers. We were on 1-day extensions from July 1st, and on September 1st it wasn't getting anywhere. We thought we would be 1-day extensions into infinity, and it was time to give attention to this issue. Five of our members have been killed on the job. It was time to reinstitute our safety program and stop pressure because of the contract situation, and go back to the normal way of enforcing safety regulations on the docks. That is what happened.

Mr. Andrews. Did your members stop handling cargo on September 1st?

Mr. Vekich. Not at all.

Mr. Andrews. In your opinion, and I realize this would be subject to some dispute, did they violate the terms of the agreement that existed in any way?

Mr. Vekich. Not in my opinion.

Mr. Andrews. Well, tell me the kinds of things that they did. It has been described by one of the witnesses as work to rule. I don't think you used that phrase probably. But tell me some of the things that your members changed or insisted on after September the 1st.

Mr. Vekich. Well, one of the big problems is the speed limit on the docks in the container ports. You know, a lot of times it is 15 miles an hour in many places, and 20 in some. But because of the volume of traffic, we are encouraged and pressured to drive 40 to 45 miles an hour pulling a 40-foot container. And the problem with our industry really is everything is so big now. The cargo containers are big, the vehicles move fast, the pieces of equipment that move the big cargo containers are huge. I mean if there is a mistake, there just isn't a whole lot of room for error. If you are hit by something, you are really messed up.

Mr. Andrews. Now, there is a Federal mediator involved in this dispute; is there not?

Mr. Vekich. That is right.

Mr. Andrews. When did the Federal mediator become involved in the discussions?

Mr. Vekich. My understanding was the Thursday or Friday. He has been monitoring the discussions, and he had been on site, and he has had informal talks with the parties before he actually entered into mediation.

Mr. Andrews. So the Thursday or Friday after September 1st?

Mr. Vekich. I will have to get that information to you. I don't know the exact time line.

Mr. Andrews. Okay. But it has been a few weeks.

Mr. Vekich. Yes.

Mr. Andrews. Now, I assume that both sides have met with the mediator and tried to discuss a solution to the problem; is that right? And I think you told us in your testimony that the mediator proposed a 7-day extension of the existing contract. When did he propose that?

Mr. Vekich. It was last weekend.

Mr. Andrews. And did the union accept that proposal?

Mr. Vekich. Yes. We accepted it without condition.

Mr. Andrews. So the union agreed that it would work under the terms of the existing contract for 7 days, I assume continue to meet with the employer and with the mediator during the 7 days, and try to work something out.

Mr. Vekich. That is correct.

Mr. Andrews. What was the employer's response?

Mr. Vekich. It was, as I understand, a flat refusal.

Mr. Andrews. I don't dispute the testimony on the economic consequences that we have heard from either of the other witnesses. Clearly the amount of cargo and the importance of the cargo that flows through the west coast ports are awfully important to this country's economy. But I would put on the record my own concerns about the indication of this extreme Federal remedy to interfere in the collective bargaining process where it appears that one of the parties, the union, has agreed to keep working during this time, at least for 7 days, and continue the discussion. And I would urge the parties involved in the dispute to take another look at that 7-day period. Thank you.

Chairman Johnson. Thank you. I would hope they could get together as well.

The Chair recognizes Mr. McKeon.

Mr. McKeon. Thank you, Mr. Chairman.

I have been a member of a union, and I have been on the other side negotiating with the unions, but I have never been in this kind of a situation where it impacts the economy of the Nation as a whole. I understand the President's reluctance to invoke Taft-Hartley, but it seems to me the pressure is building with the economy. After reading this report I understand that at 4 o'clock today he is going to have a news conference and take steps to invoke Taft-Hartley, and I would support him in that.

I think, given the nature of the problem, the poisoning of the atmosphere and so forth, it probably is good to have a cooling off period, and I hope that both sides will come together in the spirit of trying to work this out for the good of themselves and the country.

That is an important part of this meeting, but also we want to focus on the economic impact for the retailers and manufacturers that haven't been able to move their products, which we have heard could have a $2-billion-a-day impact on our economy. Ms. Lavriha, how long do you think it will take to catch up in the retail industry if the injunction is issued and work resumes on the docks?

Ms. Lavriha. For every day that the port is closed, it takes 5 to 7 days to clear up the backlog. We are getting precariously close to the holiday season, and we are looking at a number of weeks and possibly months to get this port cleared and reorganized to operate at total efficiency. I think what Mr. Vekich is saying is the fact that with things backed up there now, we are hearing that containers are put in places just to stack them, and that will be a safety issue if things don't reopen.

Mr. McKeon. Were they taking them off the ships and then just putting them wherever they could fit on the dock, or did everything stop? It sounds like you are saying that partly it stopped and partly it didn't.

Ms. Lavriha. There are ships waiting in the harbor to be unloaded.

Mr. McKeon. I understand that. If everybody gets in line, I don't know why there would be an inordinate amount of containers on the docks that are backed up if they stopped everything evenly at the same time.

Ms. Lavriha. They had a slowdown. Nothing was loaded. And so during a slowdown, when you went to a 50 percent productivity rate, a lot of things just backed up.

Mr. McKeon. So if the President orders the Attorney General to go to the court this afternoon, when will we begin working again on the docks?

Mr. Vekich. I am not an attorney. I couldn't tell you how this all plays out. My understanding is that hiring halls are staffed, and we have been ready. We have been ready for 11 days to go back to work. All they had to do was order gangs. And we loaded military cargo. We have been loading Alaska and Hawaii. We have been loading as this has been going on.

Mr. McKeon. So if he does order this, this afternoon, you could go back to work tomorrow?

Mr. Vekich. I would think that is possible.

Mr. McKeon. And if that happened, would you resist that?

Mr. Vekich. We have been trying to be part of the process here, and we want to resolve this problem. We want a contract. This is all about a contract. That is what we want, to protect our members, to ensure our jobs.

Mr. McKeon. And I think that would be our position. I think that would be the President's position. I think that would be to the benefit of all.

So if you went back to work tomorrow, you could still get a lot of these goods in for Christmas. Manufacturing, you are behind on that already. But the retailers, the merchandise that is there, the food stuffs and things like that, the perishables, they are going to be gone, but the hard goods that are there you could get in time for Christmas.

I would think it would be beneficial to all of us if the President would invoke this, if you would get back to work tomorrow and let those who were handling the bargaining get back to what they are doing and move toward improving the outlook for the holiday season.

Before I came to Congress, I was a retailer, and I have been through strikes. We were in the western wear business, and I can remember telling people, sorry, we are out of sizes. We can't get them for you. And that was before we went to this type of retailing where you have it on the spot, you wait and it comes. We had to wait. Our normal delivery was late. This just made it that much worse.

But I hope that you will be able to get this resolved and move quickly back to work. I understand both sides feel that they are under a lot of pressure, and it will play out to one or the other's advantage. I hope that it will play out to both their advantages and get it resolved for the better of the country. Thank you.

Chairman Johnson. Thank you, Mr. McKeon.

Let me insert a question here before we go on. I would like to ask both Ms. Lavriha and Mr. Vekich, why it is going to make a difference if the President puts you back to work and you start negotiating. Is the negotiating problem with the foreign aspect of that board that controls PMA? One. And, two, do you think that we should protect our ports by requiring all American participation in running those things?

Ms. Lavriha. Our bottom line is that we want the ports reopened, and we want both parties to come back to the negotiating table. We felt that Taft-Hartley was the last resort, and we really don't feel that that is where we wanted to be. We just want them both to get back to the table and move forward.

Chairman Johnson. But Taft-Hartley doesn't have any influence on foreign participation. I'd like to hear from you, Mr. Vekich. Do you have trouble negotiating because of the foreign input that is in that organization?

Mr. Vekich. It would appear we have trouble in negotiating with all of them.

Chairman Johnson. Okay. That is the answer I was looking for. You don't think it makes a difference, in other words?

Mr. Vekich. You know, I don't think that “black hats” are one nationality or the other. It seems to me the difficulty is collective.

Chairman Johnson. How many people are on that board?

Mr. Vekich. Ten, twelve. I will tell you, Mr. Chairman, next time I do this I am going to bone up on PMA and know a lot more about it.

Chairman Johnson. We should have had them here. And we may do a follow-up hearing on them.

Mr. Andrews. Mr. Chairman, if the Chairman would just yield, if I could add a follow-up, because the Chairman and I had a discussion about this.

One of the concerns that I have, any of you can react to this, is that the principle behind Taft-Hartley is that everyone at the bargaining table has a stake in the U.S. economy. We all have a stake in the U.S. economy, and some extraordinary things sometimes have to be done in the context of a labor dispute. If a significant majority of the employer board here is not American firms, their stake in the U.S. economy is a little narrower than Taft-Hartley would contemplate.

Now, clearly they have an interest in moving the goods through the port to receive whatever compensation, but the ripple effect that the rest of us are concerned about, that Ms. Lavriha has testified to, is very true. Most domestic employers would have a stake in it because it would be their customers and employees and so forth, and that is not the case here. And I do think it merits some consideration as to whether Taft-Hartley remedies should be different when the employer on the other side of the table is not a domestic employer.

Chairman Johnson. Mr. Tiberi, do you wish to question?

Mr. Tiberi. Yes.

Chairman Johnson. You are recognized for 5 minutes.

Mr. Tiberi. Yes, Mr. Chairman.

Mr. Chairman, I would like to submit an article from the October 6th edition of the New York Times, “The Union Wins the Global Game” for the record.

Chairman Johnson. Without objection. Hearing no objection, so ordered.

Mr. Tiberi. Mr. Vekich, I will read a paragraph from this article, and I would like you to comment on it:

"In the past, management has often surrendered to the demands of dock workers, granting them fat wages and benefits instead of enduring a strike or a slowdown. This time, officials with the PMA, which represents port operators and shipping lines, shut 29 ports last week and locked out the workers after complaining that the workers were engaged in a slowdown. The association wants the right to introduce new technology to speed cargo handling, while the international longshoremen want the remaining jobs to be under its jurisdiction."

Can you comment on that?

Mr. Vekich. Yes. Right now the Pacific Maritime Association has the right to introduce new technology unilaterally. It is in the contract. They have that right under the existing contract. The question about some of the jurisdiction areas is what we are trying to work out. And as far as the shipping companies giving anything that longshore workers wanted, part of the dynamic on the docks is, of all those companies, they compete with each other. So a lot of the benefits that flow to one group of workers or another has to do with those companies competing to get the best crane operators, the best drivers. So they have been more willing, I think, in that regard to pay more for talent, and that has driven some of this dynamic.

Mr. Tiberi. You mentioned, in answering a question from Mr. Andrews, I believe it was, that it is about the contract. Isn't it about jobs outside the longshoremen and many union jobs as well?

As of yesterday my figures show a tally here of 5,400 American workers that have been laid off thus far. In a California newspaper, it says that if the shutdown lasts another week or two, it could take more than a month to unsnarl the backlog of idled or ruined goods, a delay that could torpedo the holiday sale plans of a variety of retailers; within 3 weeks of a shutdown, it could force companies in America to lay off nearly a quarter of a million jobs.

Knowing the current workers that are laid off, and the projected layoffs, isn't Taft-Hartley the only way to go to save employees' jobs?

Mr. Vekich. You know, we were locked out, and we regret that those 5,400 people were laid off, and it wasn't our call, and we didn't do that. And so we absolutely think that is part of the problem, and we think it is a shame that that happened. We think it is a shame that our 10,500 people got locked out also. So it looks to me like the PMA is responsible for 15,900 people unemployed right now. That is my opinion.

Mr. Tiberi. If you were President, though, Mr. Vekich, and you were facing not only an economy but also goods and services that over the next couple of months were going to be impacted, in addition to possibly 250,000 employees around the country many of them your union brothers losing their jobs because of this shutdown, what other options are there?

In front of you today is the board of inquiries report, which Chairman Boehner read. The last line reads, "We have no confidence that the parties will resolve the west coast ports dispute within a reasonable time." What other option is there when this three-member board of inquiry report is pretty direct, and you have on the other side over 5,000 layoffs so far and maybe another

200,000 in the coming weeks. What other option is there?

Mr. Vekich. Well, Mr. Tiberi, as far as me being President, I spent eight years in the Washington State Legislature, and I got my fill of politics there, and I have no illusions about answering difficult problems. And any unemployed worker, any laid-off worker, any worker who is underemployed, I think it is a tragedy, and it is a waste of a valuable asset in this country.

I am not qualified to comment on the rest of your statement. I see the world from my little point of view and from my limited experience. Smarter people than I need to deal with that.

Mr. Tiberi. Mr. Chairman, can I have 30 more seconds for one last question?

Sir, this is something maybe within your purview. If what we have heard today is true, and the President is going to ask that Taft-Hartley be invoked, what can we assume or what assurances can you give as an official with the union that efficiency levels and worker productivity will continue at an adequate level in the next 80 days?

Mr. Vekich. My feeling is a lot of my brothers and sisters want to get back to work. They don't like it. When there have been beefs on the jobs, unofficially I will tell you, it is hard to get our people to slow down, really. It really is. They have a work ethic that is, I think, unsurpassed. And I think that we want a contract, and our workers want to be treated with respect. And that is the bottom line. And I think we would like to see negotiations resume, and hopefully we can get a deal before this 80 days expires. That is my hope.

Mr. Tiberi. Thank you.

Chairman Johnson. Thank you. I think we have discussed this as much as we can at this point, and I have no further requests for questions for this panel.

I just want to thank you all so much for answering, and frankly I hope that we have increased your understanding of what the United States Congress does. We are not here to chastise anybody. We are interested in getting the facts and seeing if there is any reason for us to try to legislate differently than we have. And, you know, the point of turning our ports over to a foreign authority is something we may look into. I appreciate your comments, all three of you. Thank you so much for being with us today.

Will the second panel please take their seats? Thank you for joining us today. I know that you heard me talk about the timer lights, so I presume you are familiar with the green, yellow, and red.

The first witness on the second panel is the Honorable Charles Cohen. He is a Senior Partner at Morgan, Lewis & Bockius. Mr. Cohen is testifying on behalf of the United States Chamber of Commerce. Our next witness is Dr. Herbert Northrup. He is Professor Emeritus of Management at the Wharton School of the University of Pennsylvania. The next witness is Ms. Kathy Krieger. She is the Associate General Counsel for the AFL-CIO. And our final witness today is Mr. Thomas Fairley. He is President and CEO of TRICO Marine Services, Incorporated.

Mr. Cohen, you may begin your testimony now.

STATEMENT OF CHARLES I. COHEN, SENIOR PARTNER, MORGAN, LEWIS & BOCKIUS LLP, WASHINGTON, D.C., TESTIFYING ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Chairman Johnson and Members of the Committee, I am pleased and honored to be here today. Thank you for your kind invitation.

By way of introduction, I was appointed by President Clinton and served as a member of the National Labor Relations Board from March 1994 until my term expired in August 1996. Before becoming a member of the Board, I worked for the NLRB in various capacities from 1971 to 1979, and as a labor lawyer representing management in private practice from 1979 to 1994. Since leaving the Board in 1996, I have returned to private practice and am a Senior Partner in the law firm of Morgan, Lewis & Bockius LLP. I am a member of the Labor Relations Committee of the U.S. Chamber of Commerce and Chair of its NLRB Subcommittee, and am testifying today on behalf of the U.S. Chamber of Commerce.

The National Labor Relations Act was enacted in 1935 and has been substantially amended only twice, once in 1947 and once in 1959. Nonetheless, the Act continues to strike the balance in labor relations that its drafters intended. The Act guarantees important rights to employees, employers, and unions. The fundamental precept in industrial democracy is premised on a majority of employees in a collective bargaining unit freely selecting a union as their bargaining representative. Because all employees in that unit are bound by the decision of the majority, it is especially important that the employees are informed about the possible consequences of their choice, and that their right not to be represented by a union be respected. Once a union is duly designated, the Act provides a framework for both sides to work out, through collective bargaining, the terms and conditions applicable to employees and collective bargaining units.

Recent times, however, have seen a remarkable shift caused in the labor relations landscape, a shift caused in large part by the need for U.S. corporations to remain competitive in a global economy. Although unions remain strong in many traditionally unionized industries, union density has decreased precipitously to the point where only about 9 percent of the American private sector workforce is represented by a union. Union leadership has been unable to combat this trend through traditional methods, namely, union organizing campaigns and NLRB secret ballot elections. Therefore, union leadership has turned to two other approaches.

The first approach unions have taken to combat their decreased density in American industry is the use of corporate campaigns as a way of obtaining and then exerting their influence over employees and over management. The corporate campaign is an alternative approach to the traditional forms of expression by unions representing employees or by unions seeking recognition, namely, collective bargaining, picketing, and strike activity. Corporate campaigns take many forms, but typically involve unions' attempts to enlist the media and public interest groups to influence public opinion and to rally support for union organizing and other union causes. Corporate campaigns often attempt to have the target company and its officials portrayed as villains by investors, customers, vendors, employees, and the public at large.

The second approach used by unions to stem the tide of their declining membership is the use of a so-called bargaining to organize strategy, resulting in neutrality agreements and especially card check recognition agreements. The term “neutrality agreement” is an umbrella term, and like corporate campaigns generally represents the national labor movement's attempt to jumpstart union organizing by having one-sided organizing campaigns and eliminating secret ballot NLRB elections.

Neutrality agreements contain built-in provisions designed to ensure union success in organizing, including automatic recognition of the union based on authorization card designations as well as requirements that the neutrality provisions apply to corporate affiliates of the company that actually enters into the neutrality agreements.

To the extent unions are successful in getting neutrality clauses and card check agreements, the NRLB is almost entirely removed from the process. The consequences to the labor relations process, however, can be startling. Free choice by employees with respect to union representation is a basic tenet of labor laws. Corporate campaigns conducted with the aim of securing neutrality agreements, card check agreements, or other procedural concessions from the employer with the ultimate goal of obtaining representation status without a fully informed electorate and without a secret ballot election, in fact, undermine the right of free choice.

Particularly troublesome is the TRICO Marine situation about which you will hear much. We see there the three legs of the stool of avoiding our established procedures for accepting or ejecting union representation: One, a corporate campaign; two, pressure to accept the neutrality agreement and card check recognition; and, three, international pressure, including a lawsuit in a Norwegian court to permit a crippling of TRICO's international operations. Indeed, I intend to testify next month in a Norwegian court on behalf of TRICO Marine to explain to the Norwegian court our finely balanced labor laws as that court considers whether a boycott of TRICO Marine should be sanctioned in Norway because of TRICO's actions in Louisiana. Thank you.

WRITTEN STATEMENT OF CHARLES I. COHEN, SENIOR PARTNER, MORGAN, LEWIS & BOCKIUS LLP, WASHINGTON, D.C., TESTIFYING ON BEHALF OF THE U.S. CHAMBER OF COMMERCE – SEE APPENDIX E

Chairman Johnson. Thank you, sir.

Dr. Northrup, would you care to testify?

STATEMENT OF DR. HERBERT R. NORTHRUP, PROFESSOR EMERITUS OF MANAGEMENT, WHARTON SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA, HAVERFORD, PA

Let me start off talking about this question of international corporate campaigns. They are not really new. They are much more effective now than they have ever been, but there are organizations that used to be called international trade union secretariats, which are now called global union federations, which affiliate unions in their field around the country. I have provided a list of the important ones to the Committee. They act as coordinators and bring together the various unions from around the world to talk about “common problems” and things like that so that the various unions in the AFL-CIO, for example, know the people in these other unions.

Now, American employers have also been affected by multinational government organizations, including the International Labor Organization and the Organization of Economic and Cooperation Development, OECD, which have passed what amount to be statements claiming how industrial relations should be maintained and so forth. The ILO also issues a number of what they call conventions, which are tripartite majority agreements on things in a particular area or industry. They have to be approved by the Senate before they become effective in the United States, but, as you know, if the Senate approves them, they become law in the United States and substitute for any laws that exist in that area.

The United States has not approved a number of them for a very significant reason, and that is we don't agree with some of these conventions which protect the right of supervisors and management people to unionize, and we don't agree with the requirements that public employees should have the right to strike, and so this has blocked our approval of them. As a result of this, the Norwegians, at the AFof L-CIO instigation, are now saying that our laws are inadequate, and therefore they should substitute their laws and boycott a company like TRICO, which has not violated any law over here, and which the unions have failed to organize and can't even get enough cards to hold an election, 30 percent. I am not an authority on the TRICO situation, I know those few salient facts, that is all, but you will undoubtedly hear more about it.

At the same time this is occurring, the unions are using laws including one passed, I don't know, a couple of hundred years ago, which pertain to slavery elsewhere to sue unions because of the misbehavior in some countries, particularly in Myanmar, which used to be called Burma, and which is misbehaving, there is no question about that. The question is what will it do, for example, if UNACOL is forced to give up its operations there? And the answer, I think, is: Little good.

First of all, it could deprive people over there of much better work and working conditions than they have elsewhere. And, second, knowing Japan and European countries, particularly like Germany or France, they will be delighted to have the work. And all this because we don't agree we should approve a convention that alters our labor law without any vote of the Congress or the people of the United States.

You must understand that these international labor organizations by and large do not have members as such. They have affiliations like American unions that have members. But nobody gave them a blanket instrument to say to the world, like apparently in their great estimation: And this is what we have coming in Norway.

So you have this double whammy going. On the one hand the claim is made that our unions are aiding and abetting, misbehaving, and some seriously misbehaving governments, but maybe some that aren't really misbehaving; and second of all, that our labor laws are inadequate so that we can't be trusted to deal abroad. And, of course, there are a lot of people over there in Europe that would be delighted not to have American competition.

And, finally, the research on these conventions and what good they do and what actions like that do don't find any substantial benefit resulting just from them, and there is a good summary of those in an OECD publication which I will submit later for the record.

In closing, I want to apologize for not having a paper ready, but I couldn't get assurance until last week that you were going to hold the hearing. And, really, I haven't time to put together a paper that isn't going to be used in a hearing that wasn't held, so I sat on it until I finally got word, and here I am.

WRITTEN STATEMENT OF DR. HERBERT R. NORTHRUP, PROFESSOR EMERITUS OF MANAGEMENT, WHARTON SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA, HAVERFORD, PA – SEE APPENDIX F

Chairman Johnson. Thank you for your testimony. We appreciate it, Doctor Northrup.

Ms. Krieger, you may begin your testimony now.

STATEMENT OF KATHY L. KRIEGER, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C.

Good afternoon. And thank you, Mr. Chairman, Members of the Committee and staff. As you know, I am Kathy Krieger, and I am a member of a law firm based here in D.C., a labor and litigation law firm, James & Hoffman, and as part of my work there, I represent the AFL-CIO. And I am one of their associate general counsels, and it is in that capacity that I am appearing this afternoon.

I don't claim to be an expert on international law or the types of conventions that Professor Northrup has raised, but I am going to try to share, I guess, my perspective on why I don't think there is an issue of concern to this Committee and what has been happening either with TRICO or with any of the other international solidarity campaigns that are going on all the time.

My written testimony lays out in detail, I think, the points that I would like to make here, and I would just like to shortcut it for the panel. I want to start with the point that I totally agree with Dr. Northrup. There is absolutely nothing new about international solidarity, global alliances, communications, and solidarity actions among labor and other organizations all around the world. And he is correct that the acceleration of technology, the information age, has perhaps made communication faster.

When you go back and look at the archives of union conventions in the 19th century and the turn of the century, people were coming over on slow boats to meet with each other at union conferences and meetings. They were sending telegrams. Now we have Websites where all the major labor organizations in the world can post on a day-to-day bulletin board news of what is happening in every country, their positions on all the issues. There is a one-stop information clearinghouse, if you will, at your fingertips for anybody who can use the information technology.

And I guess I would respectfully disagree with Dr. Northrup that anybody has to be instigated by anybody else to take solidarity action. All you have to do is look at facts, look at opinions, look at what is circulating as information, and then make up your own mind.

What has been happening with the TRICO situation, I think Mr. Fairley will probably speak on it in detail, and I don't want to get into who did what to whom in details today, but there is litigation going on, and more importantly, I guess there are discussions and disputes in the court of public opinion around the world.

One of the laws that unions certainly do use along with their allies around the world that is a couple of hundred years old is the first amendment, and the first amendment happens to protect, in our country at least, the ability to criticize, to bring truthful information, to express opinions, to communicate with your allies. It also protects the freedom of association; that is, the freedom not just of individual employees to get together, but also of their organizations to talk to other organizations, to work together on common policies and programs. And it also protects the right to petition our government.

Now, there are many ways in which United States standards are the acme, if you will, of responsibility and fairness. And we have always done our best, I think, both politically, economically, and as a labor movement to try to promote best practices around the world.

It is an everyday occurrence that the conduct of actors all around the world, including corporations who do business here and globally, is held up to judgment in our court of public opinion and before our members and is found wanting. And we come to the aid of brothers and sisters around the world in solidarity support, whether it is for human rights purposes, whether it is to promote democratic political change as in South Africa and Poland, or whether it is to work on common interests that affect all of us in a global economy.

What is happening at TRICO is the flip side of that situation. That is, a corporation that does business in the United States and that does business abroad is being held up in the court of public opinion, if you will, in other countries and by the likes of the union members in those countries and the organizations who are used to a type of labor relations that is much different from the United States adversarial model, is found wanting in its behavior. And I will get into detail in just a minute as to how this played out, but what you had was not any kind of high-tech corporate campaign, but a very old-fashioned fact-finding mission whereby the mariners union that is organizing the Gulf of Mexico invited its counterparts from various countries of the world to come to south Louisiana and to witness for themselves the conditions under which the mariners worked and the obstacles that they faced in trying to organize. Then they took what they saw and what they viewed and what they recorded on videotape, back to their own forums to decide in good faith what they wanted to do in the way of protests, aid, and assistance to their U.S. mariner counterparts.

Now, that is nothing new. The only thing different in this situation is perhaps that we are on the other end of the stick. Our laws perhaps and our practices are being held up and found deficient by the standards of union members in other countries.

Is there a reason why that is the case? One of them Professor Northrup mentioned is that, for example, supervisors under the National Labor Relations Act do not enjoy the protection of the labor laws. It is not illegal for them to organize, it is not illegal for them to associate and seek to get collective bargaining representation, but they are not protected from retaliation by employers when they do.

One of the issues that is front and center in this campaign is that boat captains working for many of the companies doing business in the Gulf of Mexico have been the most eager to get together and organize unions, but they are not protected from retaliation, coercion, discriminatory discharge when they do. They are among the 32 million workers that the GAO in a recent September 2002 report estimates do not enjoy the protection of the U.S. labor laws. Approximately 8.6 million, the GAO report estimated, are frontline supervisors, not people with management responsibilities in the company, but people who are the direct frontline working supervisors.

So, here we have a situation where a good number of people would like to organize. They are not protected from retaliation by U.S. law when they try to organize. Their counterparts all around the world enjoy decent collective bargaining representation and cooperative labor relations with the same employers who operate nonunion in the Gulf and who would deny those rights to the workers in the Gulf. And so the foreign unions are saying, what is good enough for us is good enough for our brothers and sisters in the United States, and we have the right to express our opinion and to take action if we feel that justice is not being done to these workers.

Thank you.

WRITTEN STATEMENT OF KATHY L. KRIEGER, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C. – SEE APPENDIX F

Chairman Johnson. Thank you. I appreciate your testimony.

Mr. Fairley, can you elaborate on your situation?

STATEMENT OF THOMAS E. FAIRLEY, PRESIDENT AND CEO, TRICO MARINE SERVICES, INC., HOUMA, LOUISIANA

Thank you, Chairman Johnson and the rest of the distinguished Members of the Subcommittee.

My name is Thomas Fairley. I am the President and Chief Executive Officer and one of the founders of TRICO Marine. TRICO is an offshore service vessel company that services the oil and gas industry on a global basis. Our principal offices are in Houston, Texas, and Houma, Louisiana.

My personal history is that I began work on a vessel of the type that we operate today. I worked my way up through the ranks to the level of captain in the Gulf of Mexico as well as South America and East Africa. Through good fortune and opportunity, I was able to form a boat company with my colleague Ron Palmer in 1980, and we called that company TRICO.

For almost 2-1/2 years, TRICO and its employees have been the subject of a harassing and propaganda-based corporate campaign to organize TRICO's U.S. employees. A federation of U.S. maritime unions called the Offshore Mariners United, or OMU, which is supported by the AFL-CIO Center for Strategic Research, Department of Corporate Affairs, spearheads it. This campaign, which is essentially a membership drive, is directed at the approximately 70 offshore vessel companies operating in the Gulf of Mexico which serve the oil and gas industry. There are different types of boat companies here. That may be important later on.

TRICO Marine has become the target company for this campaign. After 29 months, neither TRICO employees nor the employees of any other vessel company in the Gulf of Mexico has chosen to be represented by the OMU, nor has the National Labor Relations Board petition for a secret ballot election been filed by the OMU, not one, a process that requires only 30 percent of a company's employees.

Throughout this campaign, TRICO has honored our Nation's laws. In the past 29 months, TRICO has received one unfair labor practice charge, which was discharged by the NLRB. I am also proud to say that TRICO has a very good wage and benefit program for its employees. Through 2001, vessel personnel averaged wage increases of 20 percent per year for the last 5 years. What makes this campaign against TRICO unusual is that after the failure to persuade TRICO's U.S. employees to enlist, the OMU has recruited international unions to continue the attack on TRICO's operations and customers throughout the world, including Singapore, Brazil, Trinidad, Nigeria, the U.K., and particularly in Norway.

On October the 18th of 2001, the Norwegian Oil and Petrochemical Workers Union (NOPEF), a union which we are not associated with or have any collective bargaining agreements with whatsoever, filed a lawsuit under a Norwegian boycott statute against TRICO Supply ASA, which is our Norwegian subsidiary. This union represents the dock and platform rig workers in the North Sea. Three maritime unions represent TRICO Supply's employees. Our own employees' unions have protested this boycott, but to no avail. This case is filed in the small town of Volda, Norway, and a 3-week trial is scheduled to begin on November the 4th. NOPEF seeks court pre-approval of an announced boycott against TRICO Supply's vessels that are operating in the North Sea. The only issue at trial will be TRICO's conduct here in the U.S. during this campaign.

The U.S. unions are trying to accomplish in Norway something that they could not legally do in the U.S., a secondary boycott.

Principal to TRICO's defense in Norway is the fact that it has observed and honored U.S. Labor laws. In response, NOPEF has launched an attack in their pleadings against the National Labor Relations Act. NOPEF is asking the court in Volda to rule that TRICO's compliance with U.S. law does not offer a defense to the boycott since the U.S. labor law does not adequately protect U.S. citizens. The AFL-CIO is providing a witness to support this point.

NOPEF is contending that U.S. labor law is defective by the standards of the International Labor Organization Conventions 87 and 98, which are not ratified by the U.S. These deal with the right to organize and the freedom of association. NOPEF also contends that U.S. labor law does not meet European humanistic standards. Of particular interest to this Committee, I would think, is that NOPEF in its pleading has argued that the National Labor Relations Act is less protective of workers' rights than the labor laws of Afghanistan, Burma, and the banana republics which have ratified these two conventions.

An adverse ruling would become precedent in Norway. Any U.S. company operating in Norway but involved in a domestic or international labor dispute or a membership drive could be boycotted even when in compliance with U.S. labor law without a pretrial determination. Since the vast majority of U.S. corporations operating in the offshore oil and gas industry in both the Gulf of Mexico and the North Sea are nonunion in their Gulf operations, a successful boycott against TRICO will likely spawn more boycotts against U.S. companies that operate in both locations.

I have been told that an adverse ruling against TRICO might be used in context beyond the labor field. For example, the European Union might seek to use the case to argue that the United States environmental laws are deficient because the U.S. Government does not ratify the Kyoto Convention; therefore, the EU has the right to impose countervailing duties on U.S. products to level the playing field for EU companies that might pay higher prices for products like oil that contribute to greenhouse gas emissions.

TRICO alone is shouldering the responsibility of defending our Nation's labor laws. We have sought the assistance of the U.S. State Department to defend U.S. Labor law, but have been told that the United States Government is not prepared to intervene in the case at this stage.

Our best hope to end the Norwegian legal proceeding, and the boycott threat lies here in the U.S. before the NLRB. In July and August of 2001, TRICO filed an unfair labor practice charge against the U.S. unions, alleging an illegal secondary boycott under U.S. law for their open and active roles in the U.S. and Norway in organizing and implementing the current boycott created in Norway. I am told there is strong evidence and legal precedence to support action by the general counsel. At this time the charges are still pending before him. We believe that action by the

NLRB and the U.S. would lead to an end to the Norwegian boycott case against TRICO.

Thank you very much. I would be pleased to answer any questions.

WRITTEN STATEMENT OF THOMAS E. FAIRLEY, PRESIDENT AND CEO, TRICO MARINE SERVICES, INC., HOUMA, LA – SEE APPENDIX G

Chairman Johnson. Thank you, sir. We appreciate your testimony.

Mr. Cohen, Ms. Krieger argued there is nothing new about union solidarity, implying TRICO's situation is common. Would you agree or disagree with that?

Mr. Cohen. I would not ultimately agree. There is nothing new about union solidarity. And Ms. Krieger talked about the court of public opinion. That, I submit, is a different court than the Norwegian court where the lawsuit has been instituted to basically put on trial the U.S. labor laws and whether they adequately defend workers' rights. That is something that in my years of practice and experience I have never heard of.

Chairman Johnson. Well, we have a strong States rights viewpoint here in this country, and wouldn't you be abrogating the State authority to some degree if you took a foreign court into view?

Mr. Cohen. I think that is right, both from the States rights perspective as well as the Federal perspective. We, of course, have right-to-work laws in our country which permit individuals to not financially support a labor organization, and there is no way of knowing whether the Norwegian court could attack that States rights issue itself as part of a determination that the U.S. labor laws do not measure up.

Chairman Johnson. Dr. Northrup, do you want to comment?

Dr. Northrup. Yes. I disagree that this is nothing new.

The solidarity business is something that existed, but it was mainly leafleting and issuing statements and claiming big action when action couldn't be found. In fact, I started in the very early 1970s to study the international labor situation because I was working with a chemical company. The head of the international chemical and energy company claimed his work had caused the company to settle a dispute. Well to start with, the company had never heard of him before, which was a problem for many of these multinational companies during this period. And second of all, the dispute wasn't settled according to the union's demands at all. And I figured that something was goofy and yet a lot of writers in this company had just copied the union propaganda without talking to the employer and issued articles and things that sought to support these claims when they were nonsense.

But actions like the Norway union is taking is a new turn in events that is quite different and quite serious, and it determines whether an American company can live up to American laws and be charged with a boycott because “American laws are inadequate”. I mean, who the devil are they to tell us our laws are inadequate? That is a pretty serious thing.

Chairman Johnson. No kidding. I totally agree with you on that.

Can you tell me also why both of you think the TRICO case might signal more international boycotts?

Dr. Northrup. Well, if the Norway unions get away with this, it will encourage others to do the same. And here you have a case in which the unions have failed to unionize the company. Section 7 of the National Labor Relations Act emphasizes that employees have the right to join unions without discrimination of any kind, or to refrain there from, and these employees are exercising that right. And here we have some organization that has no authority and no real claim to speak, and it says, these poor workers aren't unionized, and it is because American laws are inadequate.

Really, that is quite a stretch. And you must realize that the International Labor Organization is European-dominated to start with. We weren't in that for many years.

Chairman Johnson. It used to be synonymous with Communism, too. When I was in Vietnam that is all I heard.

Dr. Northrup. Now, they did admit the Russians, finally, when they were still under the Stalin bloc, and you had a tripartite organization. Where the unions are really part of the State apparatus, you don't have a tripartite organization, period. But if you will study what countries validate and agree to these conventions, you will find that many of them have no desire, wish, or whatnot to live up to them, like Arab countries.

Now, we have a different attitude toward unions. In Europe, in most countries, a union is good per se. Over here, we say unions are fine if employees want them. And we provide election machinery by secret ballot, and the Board has done a good job of making sure the ballots are secret and so forth by and large. The Clinton board had to be reminded a few times by the circuit courts, but by and large you have to say they have done a good job on that, and that is what the law says.

Chairman Johnson. Thank you, sir.

Do you have a quick comment?

Mr. Cohen. Yes, just very quickly. I think Dr. Northrup had it exactly correct; that if this effort is successful, it will encourage more of this kind of situation, and could easily expand to environmental and other aspects of our law which would be under scrutiny there, and indeed under our law. And that is why I spent a little bit of time in my opening statement on this notion that a majority of the workforce wanting the union expressed through a secret ballot election is so important. This is an alternative end run to that procedure.

Chairman Johnson. Thank you.

Mr. Andrews, do you care to comment?

I will give you a chance, Ms. Krieger.

Mr. Andrews. I will.

First of all, I am sure that the labor history that Ms. Krieger has talked about is substantially totally different from that of Stalinist Russia. She was referring to an entirely different historical dynamic. I want the record to reflect that.

I know there are a lot of passions involved in the TRICO case. It is obviously something people feel very, very strongly about. My experience has taught me that to extrapolate from the specific to the general and make new law based upon those specific cases is usually a mistake, and I offer no opinion as to who is right or who is wrong in the TRICO case. That is not my function. I would note for the record that it is the function of the National Labor Relations Board, and I assume it will offer its opinion.

If I understand, Mr. Fairley testified that there are two complaints that are pending before the Board now, and I assume they will be resolved one way or the other. Is that right, Mr. Fairley?

Mr. Fairley. One.

Mr. Andrews. There is one.

Mr. Fairley. I am sorry. One has been resolved. That was an access charge, which the Board gave the OMU the choice of withdrawing, or they were going to rule against them.

Mr. Andrews. Okay. So that was resolved. And then there is a second one that is pending right now.

Mr. Fairley. That is correct.

Mr. Andrews. And who initiated that?

Mr. Fairley. That was initiated by TRICO.

Mr. Andrews. Okay. So that is your complaint that is pending.

The other thing I would note is that to the extent that there is something wrong or unfair about what is going on in Norway, you feel strongly that there is; I am sure others think that there isn't. That is a statute that the Government in Norway has enacted. And if they have enacted a labor law that is unduly broad or unfair, we have some international treaty considerations we ought to make, but I am not sure of the exact connection to our own labor law.

Which leads me to the point I have for Mr. Cohen, because you do talk more generically about corporate campaigns and the problems that they raise. I read your testimony, and with the exception of the bottom of page 2 and top of page 3, I can't find any description that you give us about what happens in corporate campaigns other than this:

"Corporate campaigns take many forms, but typically involve unions' attempts to enlist the media and public interest groups to influence public opinion and rally support for union organizing and other union causes. Corporate campaigns often attempt to have the target company and its officials portrayed as villains by investors, customers, vendors, employees, and the public at large."

I don't read anything in those statements that isn't an exercise of people's first amendment rights, and to the extent that there is something that crosses the line and is false, there is a whole body of tort law and defamation that would seem to me to cover that. I mean, what needs to be changed in the labor law to address that problem?

Mr. Cohen. Thank you, Mr. Andrews.

Much of what goes on in corporate campaigns does indeed rise to the level of protections under the first amendment, but a couple of things are quite important. One, we are here in part, I believe, to acquaint the Congress with what I regard as a sea change in labor relations, and the fact that the use of corporate campaigns has increased so dramatically represents that change.

Second, certain aspects of corporate campaigns can indeed spill over and be unlawful under the secondary boycott laws, under recognition picketing laws, and things of that kind.

Mr. Andrews. But if I may, don't those laws already prohibit that kind of conduct?

Mr. Cohen. They prohibit certain conduct that is right. But as to defamation matters, the Supreme Court has basically said defamation doesn't exist in labor disputes. They have been very, very restrictive in applying the New York Times v. Sullivan standard.

Mr. Andrews. Well, with all due respect, I think that is an overstatement of what the Court has said. I think that what they have said is when there are issues in motivation that take place in the context of a labor dispute, they might be viewed differently than in other commercial contexts.

Let me ask you another question. Can you analytically identify for me conduct that is not protected by the first amendment and not prohibited by existing labor laws that you think has taken place in corporate campaigns that needs to be addressed by a new statute? Give me some examples.

Mr. Cohen. Well, again, I am not here today to say that Congress needs to pass a statute. What I am here to say is that there is a great deal of pressure which is being placed on companies. Rather than organizing the employees the so-called good old-fashioned way, and convincing them that they wish to be represented by a union, and having a secret ballot election to make that determination, instead we have it from the top down. We have it from the pressure tactic down. I think there could be theories that could be espoused, depending on the given circumstances, that would give rise to a violation, even in the TRICO situation, where it is my understanding there are secondary boycott allegations pending before the general counsel.

Mr. Andrews. Okay. I want to be sure that I understand then. When you say on page 2 that the techniques that you describe, which are the corporate campaigns and the neutrality agreement-type dynamics, have serious implications for the future of labor relations, and they warrant the attention of the U.S. Congress, you were not advocating necessarily that we change the law?

Mr. Cohen. That is correct.

Mr. Andrews. Okay. Thanks very much.

Chairman Johnson. Thank you, Mr. Andrews.

The Chair recognizes Mr. DeMint.

Mr. DeMint. Thank you, Mr. Chairman.

I am not an expert at all on labor relations, but I have worked a fair amount on the macro level of the economy and trade. And I guess as we discuss who is right and who is wrong on the labor management issue here, there is a more global issue that concerns me.

Mr. Cohen, I just would like your perspective on this, because I know that our ports have become the gateway to our economy. Many manufacturers in this country depend on raw materials, and component parts to manufacture what they make, as well as depending on open ports to ship their products all around the world. And as we have seen here on the west coast it appears that, despite who is right or who is wrong, we have been able to shut down a large part of the economy at least short term, and a relatively few number of people have been able to do this.

My biggest concern and the alarm I sense in listening to the testimony is that both the port management, as well as the union workers have significant offshore interests, and the international campaigns, no longer domestically based, can attack a company and shut down our ports. I have become seriously concerned, as I have listened to the testimony of a much bigger issue. Are we at risk here in this country because of the way we are managing our ports, and the relatively few number of people who can close our doors?

Mr. Cohen. I will be happy to try to express a view on that. It is somewhat of a daunting question.

There is a certain irony here. Multi-employer bargaining under our labor laws occurs as a result of consent on the part of the employers to get together and have multi-employer bargaining, and consent on the part of the union to have multi-employer bargaining. In my experience, there is only one exception to that principle, and it dates back to an NLRB decision in about 1937 involving the ports on the west coast. In that particular decision, the NLRB in its wisdom said that even though there was not consent, they were forcing all of the employers into the same collective bargaining unit to deal with the union.

And as we look with 65 years of hindsight at that, I see that that is where the consolidation of power has come from in terms of one unit and one collective bargaining relationship coast wide. And I think that is a terribly significant ruling, and I think it may well be the genesis of what could well be a problem.

Mr. DeMint. Thank you.

Thank you, Mr. Chairman.

Chairman Johnson. Mr. Tierney?

Mr. Tierney. Thank you, Mr. Chairman.

In view of the conversation that went back and forth between Dr. Northrup and Mr. Andrews where you conclude that there is no particular law that you are advocating be changed or instituted, whatever, I am at a little bit of a loss as to what we are doing today other than probably covering some ground directly that could have been covered with a written letter or a letter to the editor or something.

But let me just ask this, Ms. Krieger, just to give you a shot at this. In your opinion, tell us whether or not you believe the national labor relations laws are adequately protecting the rights of workers today.

Ms. Krieger. That is a subject for a separate hearing, and counterparts in the Senate began that this summer. Some of our mariners went to that hearing to testify actually on what happened when they tried to organize.

The range of improvements that would be needed, I think, starts with one of the key issues that we are talking about here, which is coverage. It is well and good to talk about the protection of the National Labor Relations Act and filing for union elections, but when the key employees who want to organize don't have the right to file elections and get certified in bargaining, I think it behooves employers to complain that the unions haven't come and asked for an election. So extending the coverage of the act to low-level supervisors, being less draconian in the way people are excluded from statute might well be a major improvement, and it is one of the key issues that I think have been identified for years in ILO reports.

As a matter of fact, in 1999, the United States itself, when reporting on its progress under the ILO conventions and under the more important Declaration of Fundamental Rights, which is binding on everybody regardless of whether you signed the convention, the United States endorsed that fundamental right of effective collective bargaining and said there are many ways in which our laws probably are deficient and could deserve some scrutiny. And I would encourage perhaps this Committee at some point to take up the broader issue of improvement in the laws.

The ability of employers to hold captive-audience meetings, to coerce employees, in effect, by saying basically you have no choice but to listen to antiunion propaganda, these are all issues that have been debated, I think, for years in all kinds of forums, and again would deserve a hearing before one of the committees, certainly one of the subcommittees.

Certainly in our experience down in the Gulf, four out of five workers who talked with union reps before a broad campaign of coercion and suppression started among the employers were eager to join and signed up and said we could really use the benefits of organizing collectively. And then what happened is that the employers, through their own coalition group, the Offshore Mariners Marine Service Association, or OMMSA, brought in a consultant to basically show the employers how to make sure that no union would ever get a foothold in the Gulf. They took it on themselves to make sure that south Louisiana and the Gulf industries remain union-free. And my testimony includes the manifesto, if you will, that: We are taking on the fight to make sure that no employer gets unionized and, if they do get unionized, that no employer caves to a collective bargaining agreement.

All those things are issues, I think, that deserve looking at, because they certainly pose major obstacles to the ability of any employee who is covered by the law to effectively exercise his or her rights of choice.

But again, here at TRICO we are talking particularly about people who don't even have the choice under the law if their employer chooses to fire them for union activities or to otherwise discriminate against them. And what happened here, again, there was a fact-finding mission. The Norwegians, the British mariners, and the Australians came and took their own tour of the south Louisiana industry, and what confronted them, I think, just appalled them, because they had an idea that America was different in their romanticized view of what democracy and free speech meant.

You know, they showed up at the shipyards, and they showed up at the ports to try to just talk to mariners, and armed guards met them. Armed policemen met them. They were tailed in scenes that are reminiscent of the movie Mississippi Burning. They were followed wherever they went by police cars. Nine police cars descended on them and stopped their vans at the side of the road, took their passports, detained them for up to an hour, you know, forced them to, in effect, suffer a reign of terror just because they had the gall to come down to south Louisiana with some union people and try to look around.

One of TRICO's own employees from Norway tried to deliver a letter at TRICO headquarters and again was met by the same armed force, if you will, turning them away. And this was all witnessed. It was filmed. The Norwegian trade unionists found this really something that they were startled by. So when they went back, showed the footage, talked to their counterparts, the only thing that was novel about their act of protest is that they actually went to court first to get a declaratory judgment of permission before they did the boycott. For years, unions who react to perceived abuses have just gone out and done the boycotts or the strikes in their own home countries under their own laws without asking court permission first.

So, I mean, I am not sure what the Committee is asking. Should the Norwegian oil workers simply have gone off and done it, as they lawfully can do, without going to court first? Would that have made my colleagues here on the panel happier? I am not sure. That is the only novel twist. By the way, TRICO itself was the first to bring a legal action in the British courts on this same subject.

Mr. Tierney. Well, as I mentioned, this panel, as far as I know, doesn't have jurisdiction over things in Norway or England or anywhere else, and I was at a bit of a loss as to what we were doing here today, except that you have now shed some light on some things that maybe we should be doing on this Committee. And maybe if the Chairman has listened carefully, he might think of some future hearings about some subjects that may need attention in terms of amendments or changes in the law that we would all benefit from today. So thank you for your testimony.

Chairman Johnson. Thank you, Mr. Tierney.

I wonder if you could follow up, Ms. Krieger, and just tell us, what we can do to fix our own law, if anything? And why weren't these issues brought up in the United States first?

Ms. Krieger. Well, they have been brought up in the United States, and they have been the subjects of a lot of publicity. I believe that people's oxen were gored perhaps, as I said, by the thought that some foreign unions would pass judgment on them as well as being criticized here in the United States by American unions.

I myself am not certain, you know, as I say, what is so novel about the TRICO situation that calls for this investigation, but I do think, again, improving the coverage of the National Labor Relations Act, which is under-inclusive, particularly as to the mariners who are trying to organize, would be a major step in dealing with some of the ability of employers, as I say, to hold employees effectively captive to antiunion propaganda, certainly would be two issues that are front and center on the agenda of the U.S. trade union movement.

Chairman Johnson. Mr. Cohen, would you care to comment?

Mr. Cohen. I would like to very much, Chairman.

In terms of the question about why it wasn't brought up here, it is my experience that while unions have often avoided the representation procedures of the National Labor Relations Act, they have not at all been shy about filing unfair labor practice charges against employers. I think it speaks volumes that a 29-month campaign has given rise to one unfair labor practice charge, which was withdrawn after the charging party was told that it was going to be dismissed. So if there is egregious bad conduct, certainly we already have laws on the books that would have covered the situation, and it hasn't been utilized here.

Next, we have heard a lot about the coverage of supervisors, that somehow supervisors need this right to engage in union activity. Our laws are premised on supervisors being part of management. Under the National Labor Relations Act, the employer is responsible for the conduct of all of its supervisors, first level and above, so that if the individuals engage in unfair labor practice conduct in connection with unionization, which is quite easy to do, the employer is responsible for those actions. So I think our law wisely, as it was amended in 1947, creates a bright line distinction. I think our laws do not need adjusting there.

Lastly, in terms of the so-called captive audience speeches, while I certainly was not there, it is my understanding that no employees of TRICO were required to sit in on any antiunion messages that were given to them by the employer; that they had the option of opting out. But even if captive audience meetings do go forward and employees are required to attend, that is not unlawful under our system, and I don't think it should be unlawful under our system.

What we are trying to have is a system of industrial democracy that respects the right of employees to either engage in union activity or not engage in union activity, and to have neutrality agreements which put a gag order on the part of the employer in terms of having only a one-sided campaign, I don't think that would be healthy or is healthy at all.

Chairman Johnson. Thank you, sir.

Mr. Andrews?

Mr. Andrews. Mr. Chairman, the only request I have is that earlier in the first panel there was some discussion of a board of inquiry report on the west coast dock. We would request a copy of that, if that were available. Some of the Members made reference to it. The Minority has not yet seen that, and we would ask that we be provided with a copy. Otherwise I thank the witnesses for their participation.

Chairman Johnson. Certainly.

Thank you so much for joining us today. We appreciate your testimony and your frankness. Thank you.

If there is no further business, the Subcommittee stands adjourned.

Whereupon, at 3:59 p.m., the Subcommittee was adjourned.

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Opening Statement of Rep. Sam Johnson

Chairman, Employer-Employee Relations Subcommittee

October 8, 2002

AS WE ALL KNOW, 29 WEST COAST MARINE TERMINALS HAVE NOT BEEN OPERATING OVER THE PAST WEEK.

THEY CLOSED BECAUSE OF A LABOR DISPUTE BETWEEN THE PACIFIC MARITIME ASSOCIATION AND THE INTERNATIONAL LONGSHORE AND WAREHOUSE UNION.

THIS MARITIME ASSOCIATION REPRESENTS STEAMSHIP LINES, AND RUNS THE TERMINALS CURRENTLY OUT OF OPERATION.

THE UNION EXCLUSIVELY REPRESENTS ALL THE LABOR USED TO LOAD, UNLOAD, AND, OTHERWISE, MOVE CARGO FROM THE SHIPS THAT DOCK AT THESE TERMINALS.

WHAT DOES THIS MEAN, AND WHY SHOULD WE CARE?

EACH SHIPPING CONTAINER AT THESE PORTS HOLDS A PART OF THE NATIONAL ECONOMY – FROM PRODUCE TO COMPUTERS, SPARE AUTO PARTS TO LUMBER, CONSUMER ELECTRONICS AND RETAILED ITEMS TO GRAIN AND WHEAT. ANY HOUSEHOLD GOOD IMPORTED FOR AN AMERICAN STORE SHELF CAN BE FOUND—STUCK—IN THESE CONTAINERS.

IT IS ESTIMATED THAT MANY, IF NOT MOST, MEMBERS OF CONGRESS REPRESENT BUSINESSES, RETAILERS AND INDUSTRIES THAT EITHER HAVE BEEN OR SOON WILL BE AFFECTED BY THE CLOSURE OF THESE TERMINALS.

THE DISPUTE IS ESTIMATED BY SOME TO COST AMERICA'S ECONOMY AS MUCH AS $1 – $2 BILLION A DAY.

WITH SO MANY WORKERS LAID OFF IN THE LAST YEAR, WHY SHOULD IT BE UP TO ONE UNION AND ASSOCIATION TO DETERMINE ADDITIONAL LAY-OFFS AND UNEMPLOYMENT?

I PERSONALLY HAVE BEEN CONTACTED BY CONSTITUENTS ASKING WHAT, IF ANYTHING, CAN CONGRESS DO TO SEE THAT COMMERCE RETURNS TO NORMAL.

MY GUESS IS THAT MOST OF YOU HAVE BEEN CONTACTED TOO.

COMPANIES, SMALL, MEDIUM AND LARGE, EAGERLY AWAIT THEIR FALL, WINTER AND HOLIDAY MERCHANDISE—WHILE AGRICULTURAL GOODS SPOIL ON THE SHIPS AND DOCKS.

BUSINESSES CAN'T STOCK THEIR SHELVES IF THEY DON'T HAVE THE PRODUCT!

UNFORTUNATELY, SOME OF THESE ITEMS HAVE ALREADY BEEN ADVERTISED—AND NOW RETAILERS ARE HAVING TO EXPLAIN TO CUSTOMERS WHY THEY DON'T HAVE THE PRODUCT.

SO IS THERE ANYTHING WE CAN DO TO ENSURE THAT AMERICANS RETURN TO WORK AND THAT OUR INDUSTRIES AND ECONOMY NO LONGER SUFFER?

IT GOES WITHOUT SAYING THAT CONGRESS CAN PASS LEGISLATION TAILORED TO END THIS LABOR DISPUTE.

BUT, AS YOU KNOW, THE UNITED STATES CONGRESS HAS A LONG-STANDING PRECEDENT TO REMAIN NEUTRAL IN DISPUTES BETWEEN EMPLOYERS AND EMPLOYEES.

THAT IS WHY I AM PLEASED THAT PRESIDENT BUSH USED A PROVISION UNDER THE NATIONAL LABOR RELATIONS ACT TO SET-UP A BOARD OF INQUIRY TO LOOK INTO THE DISPUTE.

IF IT IS DETERMINED THAT THE LABOR STRIKE WILL "IMPERIL NATIONAL SAFETY AND HEALTH," THE PRESIDENT IS AUTHORIZED TO DIRECT THE ATTORNEY GENERAL TO SEEK AN INJUNCTION THAT WOULD PROVIDE AN 80-DAY "COOLING-OFF" PERIOD.

THIS IS COMMONLY REFERRED TO AS A "TAFT-HARTLEY INJUNCTION."

MEMBERS OF CONGRESS CONTINUE TO STRUGGLE TO GET MORE FACTS ABOUT THE IMPACT THAT THIS LABOR DISPUTE IS HAVING ON OUR NATIONAL ECONOMY AND THE SAFETY AND HEALTH OF ALL OUR CITIZENS.

HAVING SAID THAT, LET ME SHARE WITH YOU WHAT WE HOPE TO LEARN TODAY.

NOW THAT THE PRESIDENT HAS USED HIS AUTHORITY, MANY OF US WANT TO KNOW WHETHER THIS TYPE OF ACTION IS ENOUGH, OR WHETHER CONGRESS NEEDS TO CONTEMPLATE ADDITIONAL ACTIONS TO ENSURE A FREE FLOW OF COMMERCE.

THE BENEFITS OF THIS ECONOMY MUST NOT BE BROKEN BECAUSE OF THE INTERESTS OF A FEW, BE THEY LABOR OR MANAGEMENT.

UNDERSTANDABLY, IT IS PRUDENT THAT RESPONSIBLE LEGISLATORS RECOGNIZE—BEFORE WE ACT—WHETHER CONGRESSIONAL ACTION WILL BE EFFECTIVE OR NEEDED.

WE WILL BEGIN THE PROCESS OF GETTING THOSE ANSWERS WITH THE INFORMATION PROVIDED BY OUR FIRST PANEL.

OUR SECOND PANEL TODAY ALMOST HAS THE OPPOSITE CONCERN—WITH LABORS' FAILED ATTEMPT TO UNIONIZE, THEY'VE REDIRECTED THEIR EFFORTS OVERSEAS.

TODAY'S HEARING ORIGINALLY STEMMED FROM QUESTIONS REGARDING DOMESTIC LABOR DISPUTES AND HOW INTERNATIONAL PRESSURE POINTS ARE INCREASINGLY USED TO FORCE EMPLOYERS TO AGREE TO LABOR'S DEMANDS—EVEN IF IT MEANS PUTTING OUR LAWS ON TRIAL IN FOREIGN COUNTRIES.

IT IS NO SECRET THAT CORPORATE CAMPAIGNS HAVE RECENTLY BECOME THE KEY WEAPON IN THE AFL-CIO'S RECOMMENDED ARSENAL OF TACTICS.

UNLIKE MORE TRADITIONAL ELEMENTS OF THE BARGAINING PROCESS, CORPORATE CAMPAIGNS CENTER ON IMAGE MANAGEMENT—THAT IS, THE OBJECTIVE OF THESE CAMPAIGNS IS TO MAKE THE EMPLOYER LOOK BAD IN THE PUBLIC EYE. THEIR GOAL IS TO MOVE THE TARGETED EMPLOYER TOWARD AN UNFAVORABLE IMAGE WITH VERY HIGH VISIBILITY.

WE WILL LEARN MORE ABOUT THESE GENERAL SMEAR TACTICS, BUT OUR TRUE INTEREST IS HOW THESE NEGATIVE CAMPAIGNS HAVE SPREAD INTO THE GLOBAL MARKETPLACE.

IN THE 1930'S, 40'S AND 50'S, WHEN MOST OF OUR LABOR LAWS WERE WRITTEN, THE USE OF INTERNATIONAL BOYCOTTS OR INTERNATIONAL PUBLIC RELATIONS CAMPAIGNS AS A TOOL TO INFLUENCE BARGAINING AND ORGANIZING— WERE UNHEARD OF. NOW, THANKS TO THE INFORMATION AGE, THEY ARE COMMON.

I BELIEVE THIS IS THIS SOMETHING CONGRESS NEEDS TO LEARN MORE ABOUT … AND, PERHAPS, FIND OUT IF IT'S AN ISSUE THAT DEMANDS LEGISLATIVE ACTION.

TO EACH OF OUR FINE WITNESSES, THANK YOU FOR TAKING THE TIME TO JOIN US TODAY.

APPENDIX B - WRITTEN STATEMENT OF KATHRYN LAVRIHA, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, INTERNATIONAL MASS RETAIL ASSOCIATION, ARLINGTON, VA

IMRA
INTERNATIONAL MASS RETAIL ASSOCIATION
1700 North Moore Street
Suite 2250
Arlington, VA 22209

TESTIMONY OF THE INTERNATIONAL MASS RETAIL ASSOCIATION BEFORE THE COMMITTEE ON EDUCATION AND THE WORKFORCE SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS ON EMERGING TRENDS IN EMPLOYMENT AND LABOR LAW: LABOR-MANAGEMENT RELATIONS IN A GLOBAL ECONOMY

OCTOBER 8, 2002

Phone: (703) 841-2300 • Fax: (703) 841-1184

Good afternoon, my name is Kathryn Lavriha and I am Senior Vice President of Government Affairs for the International Mass Retail Association. Thank you for the opportunity to come before you today and discuss the impact that the closing of the West Coast ports has had on the mass retail industry and others.

By way of backgound, IMRA is the leading alliance of retailers and their product and service suppliers and is committed to bringing price-competitive value to the world's consumers. IMRA members represent over $1 trillion in sales annually and operate over 100,000 stores, manufacturing facilities, and distribution centers nationwide. Our member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of Americans. As a full-service trade association, IMRA provides industry research and education, government advocacy, and a unique forum for its members to establish relationships, solve problems, and work together for the benefit of the consumer and the mass retail industry.

Virtually all of IMRA's members, both retailers and suppliers depend on global commerce and the maritime transportation system. The transpacific trade is essential to the consumer goods industry. Retailers and their suppliers import finished products and food, suppliers and consumer product manufacturers import parts to sustain their manufacturing operations. In addition, many IMRA members, both retailers and suppliers, export consumer products and food to markets abroad, and to stores in the states of Alaska and Hawaii.

Over the last twenty years, the consumer goods industry has made a significant investment in just-in-time delivery of parts, finished products and food products. In fact, driving time out of the supply chain has been a major focus of cost-cutting efforts of U.S. industry. Today, manufacturers regularly keep no more than two-weeks of critical parts on hand. Retailers, especially those in the fashion business, stay on top of markets and can no longer afford to carry large inventories. Their suppliers face strict delivery deadlines and can face lost orders if delivery dates are not met.

For this reason, the current situation on the West Coast docks has become a problem, in more ways that one. U.S. west coast ports are significantly less efficient than their counterparts overseas. The port of LA/Long Beach, for instance, may be the world's third largest port, but does not even rank in the top ten in terms of throughput. As trade expands, there are open questions as to whether our ports can adequately manage the growth without serious congestion and pollution side effects. I should also add that our seaports face a major new challenge in the face of the events of September 11 in securing waterborne commerce. One essential part in meeting these challenges is the use of information technologies. To date, many of the processes at our nation's ports use paper and pencils instead of hand scanners and computers; and one reason for this is the existing contract between the Pacific Maritime Association and the International Longshore and Warehouse Union.

So it comes as no surprise that terminal operators, as represented by the Pacific Maritime Association have insisted on changes in the current labor contract that would clear the way for the introduction of new information technologies.

For the ILWU, of course, new technologies mean fewer jobs and also pose the risk that technology jobs might be moved to data processing centers that are not on the waterfront and therefore not under ILWU jurisdiction.

And so the battle between the ILW and the PMA is a classic one, related to who will control technology and whether there will be future jobs for union workers.

The current contract expired on July 1, and the two sides have been in negotiations on-and-off since about mid-may. Until September 1, the two sides agreed to a day-to-day extension of the contract, which assured everyone that there would be no "job actions" at the ports. But on September 1, the union refused to extend the contract, stating that they now had the ability to take whatever job actions they felt necessary. On September 26 the union began a "work to rule" campaign that reduced port productivity by approximately 50 percent. PMA responded by locking out the union until such time as the union once again agrees to a day-to-day extension of the old contract, or agrees to a new contract.

What makes this struggle so problematic for those of us who are port customers is that it is being waged coast wide by two entities that have monopoly control over the supply chain from Asia. I am not an expert in labor relations, and so I do not know how we came to this situation where only one labor contract covers commercial terminals in all 29 ports on the West Coast. Thirty years ago—the last time we had a strike on the West Coast—this monopoly posed a significant problem, but it hardly brought the economy to its knees.

Today that is no longer the case. This dispute, now in its second week, not only threatens to take the U.S. economy into a double-dip recession, but could well touch off a serious recession in Asia. Let me run down quickly just a few of the economic impacts:

- The retail industry is virtually certain now to have a poor holiday season. Even if the ports are reopened today, enormous costs have been incurred and will be incurred in air shipping critical holiday merchandise. Other merchandise will miss its in-store delivery dates, meaning that holiday merchandise may arrive on our shelves on December 26, just in time to be marked down. When the retail sector announces its sales and profits for the fourth quarter there will be more losses and less profit and the stock market will respond accordingly. In addition, several retailers are reducing staffs at their distribution centers as a result of no deliveries.
- The retail story is an important one, but not nearly as critical as what is now happening to manufacturers. As of today many manufacturing plants across this country have gone to reduced shifts or have completely shut down their lines for need of parts. Even if the ports were opened today, plant closings will escalate because it will take more than two months to unsnarl the ship traffic jam that now exists off our shores. This means it could be weeks before parts shipments arrive. Indeed, those shipments may be sitting in port facilities in Panama or Mexico right now

because ships are diverting to these areas and off loading cargo. These stranded shipments won't be moved until the lockout is ended.

- Each employee that is sent home because of a closed assembly line, will lose pay. This in turn, reduces expendable income, which in turn affects consumer spending. Slower retail sales will ensure that there will be no economic recovery.
- I'd like you to think about American farmers who export food to Asia, and to our stores located in Alaska and Hawaii. Because exports to the Orient cannot move by train or truck, grain elevators are now full at harvest time, frozen warehouses are overflowing, fresh chilled merchandise is being diverted to the domestic market, suppressing prices, exporters are losing their contracts, and beef and poultry producers have halted slaughters and sent workers home.
- Finally, it's worth noting that factories are now closing in the Orient because no trade is moving east. The impact on Asia could unleash a recession there, which in turn has an impact on the ability of U.S. exporters to sell into those markets.

Mr, Chairman and members of the Committee, we need immediate action. There are only two ways to reopen the ports:

- First, the private parties in this dispute could agree to a new contract; or alternatively the ILWU could agree to an extension of their existing contract. To date, the ILWU has declined to agree to a day-to-day extension of the existing contract. Obviously a negotiated settlement would be the ideal solution, but the parties in this dispute are backed into corners, and they need some encouragement to reach a settlement. For that reason, we would urge every member of the House to use whatever influence they have over the parties in this dispute to seek an extension of the existing contract. Unfortunately talks broke down once again Sunday night when the ILWU rejected the PMA's latest offer.

- The second method for reopening the ports is the use of the Taft-Hartley Act national emergency provisions, which allow the President to impose an 80 day cooling off period. Yesterday, the Administration announced that they were taking the initial steps to create a Board of Inquiry under Taft-Hartley. We fully recognize that Taft-Hartley injunctions are rarely successful in ending labor disputes and in this case would likely reopen the ports but hardly at full capacity or productivity. Organized labor opposes the use of Taft-Hartley, but quite frankly at this late date, well into the second week of a shut down of all commerce with Asia we see very little choice for the President. There are no other statutory remedies here. Taft-Hartley may not be elegant, but it will surely reopen the ports for a 80 day period during which Congress and the President must ensure that the private parties involved reach a compromise that puts our ports back in business at full capacity

In closing, this situation on the docks raises some serious issues that Congress must address in the future. The marine transportation system, often regarded as the red-headed step child, must receive more attention on Capitol Hill. Trains, planes, and trucks are not the whole story when it comes to commerce. Ocean going vessels calling at our ports link our economy to the rest of the world. The rapidity of the economic damage wrought by this labor dispute should underscore the American interest in keeping markets open and in supporting a transportation system that supports global trade.

I am not an expert in labor law. IMRA has no specific legislative recommendations at this time. But it strikes me that a labor contract that covers every port on our West Coast poses significant future risks to our economy. The government regularly disciplines this kind of monopoly power, and we would urge Congress to consider whether there are some actions that are needed in this case. You should be aware that labor contracts on the East Coast are not structured in this manner. If we had a labor dispute on the East Coast it would affect only a single port and provide alternatives that would not shut down commerce entirely. While this surely reduces the leverage of organized labor, it by no means eliminates labor from having a role at the ports.

Again, I thank you for this opportunity to present our views. I have several documents I would like to provide for the record including:

Attachments: IMRA Letters to President Bush

IMRA Fact Sheet on Negotiations

Fact Sheet on Logistics Problems Once Ports Reopen

IMRA INTERNATIONAL MASS RETAIL ASSOCIATION

June 12, 2002

President George W. Bush
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear President Bush:

On behalf of the International Mass Retail Association (IMRA), I would like to bring to your attention to the contract negotiations between the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA) now underway that could affect every port on the West Coast. These negotiations are important to both national security and the national economy, and we are deeply concerned that the July 1 contract expiration is quickly approaching without any apparent progress being made. Any labor disruption could be devastating to the U.S. economy.

These labor negotiations affect dockworkers and marine terminal operators in all of the major ports on the West Coast of the United States, including Hawaii and Alaska. It is estimated that more than 7 percent of U.S. Gross Domestic Product passes through these ports in the form of U.S. exports to the Far East as well as imports of consumer products and inputs to production. For the mass retail industry, the stakes could not be higher. July marks the beginning of the "peak" import season for Back to School and Christmas merchandise. Worker disruptions could severely impact both selling seasons, which encompass a large percentage of annual retail sales.

Given the slow pace of negotiations, we fear that agreement on a new contract will not be reached by July 1. We sincerely hope that the union will not walk away from labor talks that only began on May 13. Equally concerning would be a potential lockout of workers. Such disruptions would have significant economic impacts on our member companies, the nation as a whole and potentially foreign markets. A recent study by the University of California at Berkeley has estimated that the cost of a strike on the U.S. economy to be as much as $1 billion per day. As retail continues to be the shining light in a weak economy, such disruptions would send the U.S. economy right into a tailspin. There are no real options for companies if the ports shut down.

The issues separating the two sides are not "economic"—they deal with changing work rules and implementing information technology at the dock that will enhance security, reduce truck congestion, and improve productivity and efficiency. While labor is concerned that these changes might lead to job losses, management has repeatedly said that workers will not lose their jobs because of technology improvements. The truth is that trade through West Coast ports continues to grow. Basic technologies are needed to meet growing demand.

I am not asking you to take sides in this negotiation, but I urge you and your Administration to use your influence to ensure that the two sides do not engage in slowdowns, strikes or lockouts that could harm the U.S. economy or put the U.S. in harms way. I urge you to contact the

1700 North Moore Street • Suite 2250 • Arlington, VA 22209
Phone: (703) 841-2300 • Fax: (703) 841-1184

negotiators themselves and urge them to remain at the table and negotiate in good faith without engaging in slowdowns or a lock out.

The International Mass Retail Association—the world's leading alliance of retailers and their product and service suppliers—is committed to bringing price-competitive value to the world's consumers. IMRA members represent over $1 trillion in sales annually and operate over 100,000 stores, manufacturing facilities, and distribution centers nationwide. Our member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of Americans. As a full-service trade association, IMRA provides industry research and education, government advocacy, and a unique forum for its members to establish relationships, solve problems, and work together for the benefit of the consumer and the mass retail industry.

IMRA's members and the American public stand to be significantly harmed if disruptions occur at the West Coast ports. We urge your attention to this issue. If you have any questions, please contact Jonathan Gold, Director of International Trade Policy for IMRA at (703) 841-2300. Thank you for your consideration.

Sincerely,

Robert J. Verdisco

Robert J. Verdisco
President, IMRA

CC: Donald L. Evans, Secretary of Commerce
Elaine L. Chao, Secretary of Labor
Norman Y. Mineta, Secretary of Transportation
Paul H. O'Neill, Secretary of Treasury
Robert B. Zoellick, United States Trade Representative

INTERNATIONAL MASS RETAIL ASSOCIATION

October 1, 2002

President George W. Bush
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear President Bush:

On behalf of the International Mass Retail Association (IMRA), I would like to urge you to take ***whatever steps are necessary*** to get the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA) back to the negotiating table.

The International Mass Retail Association—the world's leading alliance of retailers and their product and service suppliers—is committed to bringing price-competitive value to the world's consumers. IMRA members represent over $1 trillion in sales annually and operate over 100,000 stores, manufacturing facilities, and distribution centers nationwide. Our member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of Americans.

We are extremely disappointed in the breakdown of these talks and the subsequent closing of ports along the West Coast. The effective shutdown of the ports is costing the U.S. economy $1 billion a day. This number will increase exponentially if this shutdown progresses any longer. This shutdown is affecting every aspect of the U.S. economy including agricultural exports sitting on the docks, railroads sitting idle not accepting containers destined for export, the loss of drayage work at the ports, the depletion of just-in-time manufacturing inventories forcing assembly lines to shut down, and a threat to the availability of finished consumer products for the important Christmas holiday sales period. It is estimated that for each day the port is closed, it will take five days to clear the backup. That means that even if the situation were resolved today, it would take more than a month before the global supply chain would be back to normal.

The issues separating the two sides are not "economic"—they deal with changing work rules and implementing information technology at the dock that will enhance security, reduce truck congestion, and improve productivity and efficiency. While labor is concerned that these changes might lead to job losses, management has repeatedly said that workers will not lose their jobs because of technology improvements. The truth is that trade through West Coast ports continues to grow. Basic technologies are needed to meet growing demand.

We continue to believe that negotiations are the best way to resolve the issues that surround the use of technology and the jurisdiction over technology jobs. We continue to hope that the two sides will accept a third-party mediator, or that labor and management could once again agree to a day-to-day contract extension that would reopen the ports. Unfortunately, with each passing day this becomes less likely.

1700 North Moore Street • Suite 2250 • Arlington, VA 22209
Phone: (703) 841-2300 • Fax: (703) 841-1184

We implore you to take whatever steps are necessary to order the reopening of the West Coast ports and to persuade both parties to accept mediation and to return to the negotiating table. We strongly urge you not to delay in your actions, as each day imposes hardships and costs on a wide range of American industry, their customers, their employees and their shareholders.

IMRA's members and the American public stand to be significantly harmed if the shutdown continues. We urge your immediate attention to this issue. If you have any questions, please contact Jonathan Gold, Director of International Trade Policy for IMRA at (703) 841-2300. Thank you for your consideration.

Sincerely,

Robert J. Verdisco

Robert J. Verdisco
President, IMRA

CC: Donald L. Evans, Secretary of Commerce
Elaine L. Chao, Secretary of Labor
Norman Y. Mineta, Secretary of Transportation
Paul H. O'Neill, Secretary of Treasury
Robert B. Zoellick, United States Trade Representative

IMRA INTERNATIONAL MASS RETAIL ASSOCIATION

October 3, 2002

President George W. Bush
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear President Bush:

The International Mass Retail Association (IMRA) respectfully urges you to use your powers under Federal Law to appoint a Board of Inquiry to investigate how the closing of the West Coast ports is harming the nation's economy. The work stoppage due to an impasse between the Pacific Maritime Association and the International Longshore and Warehouse Union is causing serious harm to every segment of the U.S. economy. Each day imposes new hardships and costs on a wide range of American industries, their customers, their employees and their shareholders.

The International Mass Retail Association—the world's leading alliance of retailers and their product and service suppliers—is committed to bringing price-competitive value to the world's consumers. IMRA members represent over $1 trillion in sales annually and operate over 100,000 stores, manufacturing facilities, and distribution centers nationwide. Our member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of Americans.

The ports have now been shut down for six days, costing the U.S. economy over $6 billion dollars thus far. These damages will increase exponentially if the shutdown continues. Even if the ports were to reopen tomorrow, it could still take several months to recover from the backlog the shutdown has caused.

This shutdown has hit every sector of the U.S. economy -- importers, exporters, manufacturers, agriculture and transportation. No U.S. business can afford to take the economic hit that this lockout has caused. It is damaging every company's bottom line, and hit every consumer's wallet.

IMRA has supported mediation to resolve the situation, but it is now clearly evident that the two parties are unable to end this impasse as quickly as both economic and national security require. Prompt action is needed to ensure timely reopening of the nation's West Coast ports.

IMRA stands ready to assist in any way efforts for a speedy resolution of this impact. Please feel free to contact me or Jonathan Gold, IMRA's Director of International Trade Policy, if we can be of any assistance. Thank you for your consideration of this important issue.

Sincerely,

Robert J. Verdisco

Robert J. Verdisco
President, IMRA

CC: Donald L. Evans, Secretary of Commerce
Elaine L. Chao, Secretary of Labor
Norman Y. Mineta, Secretary of Transportation
Paul H. O'Neill, Secretary of Treasury
Robert B. Zoellick, United States Trade Representative

1700 North Moore Street • Suite 2250 • Arlington, VA 22209
Phone: (703) 841-2300 • Fax: (703) 841-1184

International Mass Retail Association

West Coast Labor Negotiations: The Facts

Who Are the Parties Involved?
International Longshore & Warehouse Union (ILWU) – The ILWU, formed in 1937, represents longshoremen, warehousemen, marine clerks, walking bosses and casual workers who load and unload oceangoing cargo at West Coast ports. There are approximately 10,500 longshoremen whose annual salaries average between $80,000 - $120,000 depending on their job.

Pacific Maritime Association (PMA) – The PMA consists of American and foreign flag operators, stevedoring companies and terminal operators who operate along the West Coast. The principal business of the PMA is to negotiate and administer maritime labor agreements with the ILWU covering wages, employee benefits and conditions for employment for longshoremen, marine clerks, walking bosses and foremen.

Where does the contract stand?
For the last few years, the ILWU and the PMA have negotiated three-year contracts. The last contract expired on July 1, 2002. The two parties began negotiations on a new contract this May. When the contract expired on July 1, the two sides agreed to 24-hour extensions on a daily basis until September 3. The two sides again met sporadically throughout July and August and repeatedly each other's offers rejected offers.

The two sides continued talks without the benefit of a contract. The lack of a contract allows the union to engage in "non-strike" job actions, such as slowdowns and work to rule initiatives and in early September they indicated that their decision not to extend the contract was to allow them to take job action against the employers. On September 21st, the PMA accused the ILWU of engaging in work slowdowns, which the ILWU denied. Shortly thereafter the union announced a work-to-rule initiative because of safety concerns which began to slow down operations by September 26. The PMA countered these actions by officially locking out the ILWU for a 36-hour "cooling off period." On September 29, at the end of the PMA "cooling off period" the union once again failed to provide adequate labor to work ships in harbor. At that point, the PMA imposed an indefinite lockout until such time as the ILWU agrees to extend the expired contract on a day-by-day basis; or agrees to a new contract.

What are the main issues in dispute?
The employer group is seeking changes in the existing contract to allow for the use of technology at the ports. The technology in question includes such items as global positioning systems for tracking containers, information systems for improving the speed and security of truck gates and other measures designed to manage growth, improve security and deal with congestion problems. The ILWU fears that the introduction of technology will result in fewer longshore and clerk jobs, and, more important, they are concerned that new technology jobs created will be off-dock and therefore not subject to the union's jurisdiction. The PMA has guaranteed the ILWU that no current longshoreman will lose his or her jobs because of the introduction of technology; but the issue for labor is not existing jobs, but future jobs for their sons and daughters. The two sides appear to be very close on basic economic issues such as wages, healthcare and pensions.

1700 North Moore Street ❖ Suite 2250 ❖ Arlington, VA 22209
phone: (703) 841-2300 ❖ fax: (703) 841-1183.
www.imra.org.

Who is impacted by the closing of the West Coast ports?

Every aspect of the U.S. economy is affected by the closure of the West Coast ports. According to a study conducted by the University of California at Berkeley, the cost to the American economy of a port closure is about $1billion a day, but will escalate if the closure extends for a longer period. The port closure also has much larger impacts on stocks and financial markets in America and abroad.

Even if the ports are reopened quickly, it will take weeks to undo the congestion and the backup. The impacts of week long lockout will be felt for almost two months.

Industry Impacts that are occurring right now:

- Short haul trucking companies at the harbors have effectively been shut down. Their employees and independent owner-operator truckers have no work to perform, are not getting a paycheck and will have trouble covering bills.

- U.S. rail operations supporting Asian trade are shutting down. Not only are no trains being built at the harbor for inbound commerce, but also major railroads have announced that they will no longer accept containers with export cargo headed for West Coast ports.

- Exporters are unable to send products to customers overseas, and are missing delivery dates. Export product is backing up in grain elevators and in warehouses. As the rail companies shut down operations, export companies dependent on overseas customers have to shift to congested East Coast or Gulf Coast ports and may have to scale back operations. Exporters of perishables are the most impacted of all losing sales and losing cargo that is sitting on the ports.

- U.S. manufacturers in global just-in-time supply chains face imminent suspension of manufacturing operations as inventories of parts are exhausted. While many U.S. manufacturers have taken expensive contingencies to build "just in case" inventories or fly parts in on airplanes, for the most part manufacturers probably have only two weeks worth of critical parts. In some cases their stocks may be much less. Plants have already shut down. Most plants will not shut down because it will take more than a week to unsnarl their parts delivery chains.

- Ocean carriers have now suspended their eastbound lines out of Hong Kong and have announced that no ships will depart for at least a week. This means that products destined for the U.S. market are now backing up in Asia. This in turn will have a significant impact on a number of Asian economies. In addition, some carriers are diverting cargo to Panama and Mexico and offloading it in unsecured locations, raising concerns about cargo theft and even potential smuggling or terrorism.

- U.S. retailers are entering the critical fourth quarter, during which they experience nearly 40 percent of all annual sales. The lockout occurs at the height of peak holiday season and the lockout could mean that important seasonal merchandise does not reach stores on time. Consumers are unlikely to see wide scale shortages of merchandise unless the lockout continues for several weeks. Nevertheless specific items may not be available on time with the result that retailers will lose sales. In addition, the contingency plans that retailers have taken, including building inventories and shipping products by air, add costs. These costs will either be passed on to consumers, or more likely, will affect the profitability of the retail sector as a whole.

For more information contact Jonathan Gold (jongold@imra.org) at 703/841-2300.

Key Negotiating Officials

Mr. James Spinosa
President
International Longshore and Warehouse Union
1188 Franklin Street
4th Floor
San Francisco, CA 94109
Phone: (415) 775-0533
Fax: (415) 775-1302

Mr. James Miniace
President
Pacific Maritime Association
550 California Street
PO Box 7861
San Francisco, CA 94120
Phone: (415) 576-3200
Fax: (415) 989-1425

October 7, 2002

Backgrounder - The Logistical Problems Created by the West Coast Port Shutdown

- Experts now estimate that restoring the West Coast ports to normal operations will take four to six days *for each day the ports are closed.*

- Through Monday, October 7, the ports will have been shut for ten days. It will take *six to eight weeks* to return them to normal operations – shortly before Thanksgiving at earliest, and possibly as late as December.

- Once opened, the ports will be confused and highly congested. Factories will continue to close for lack of critical components, farmers will continue to learn that their produce has rotted on the docks, and exporters will continue to reduce shipments while the backlog is worked down.

- *Even if the ports were to reopen immediately, the economic situation will continue to worsen before it improves.* Every single day that the ports remain closed compounds the problem greatly.

- The West Coast port infrastructure simply cannot support the massive movement of containers that will be necessary to clear the congestion more quickly.

- Long Beach / Los Angeles is a prime example. On Monday October 7 there were 46 loaded ships dockside, and another 72 anchored as much as 20 miles down the coast awaiting a berth. 31 more ships were scheduled to arrive on Monday and Tuesday. Most of these are container ships, and each ship carries from 1800 to 6000 containers. Conservatively, there are more than 240,000 containers awaiting offloading in Long Beach / Los Angeles alone.

- Logistics at the port are tight in the best of times: there are only 10,000 trucks registered to serve the port, each of which can carry one container at a time. Normally these trucks wait one or two hours to pick up a container, and wait an equal amount of time to return the empty. Many hub or distribution facilities are 60 to 80 miles away, so many of these trucks will move only one container a day. With the confusion that will accompany the resumption of port operations, these delays could be considerably greater.

    - Some containers ordinarily are loaded directly onto railcars on the docks, but this too is tight even in normal operations: port rail facilities are so limited that a large proportion of containers must be hauled out of the port by truck to rail lines miles away.

- The implications for export cargoes are equally bad. Shipments are piling up at grain elevators, factories and farm loading docks, as railroads are unable

October 7, 2002

to accept cargo for the congested ports. This cargo will not be in the ports for lading onto ships, resulting in ships leaving the docks without full export loads. The stoppage also has serious implications for the return of empty containers and railcars: empty containers and rolling stock will not be in the right locations when port operations resume. The ports will face "outbound" railcar shortages on a daily basis, compounding the congestion.

- Every day the work stoppage continues increases the severity and magnitude of the impact:
  - Steamship lines have begun offloading cargos in foreign ports. Theft and damage almost certainly will be greater in these locations, and the logistics of transport to the intended destination will be greatly complicated
  - Congestion of offloaded containers will make smooth ship-to-rail offloading far more difficult, so that a greater proportion of containers will have to be moved by the over-burdened fleet of trucks.
  - Inability to move enough containers out of the ports means that offloaded containers will be "buried" in stacks. Critical components could languish at the bottom of these stacks for weeks.
  - Lack of availability of empty containers in foreign ports will prevent loading of some merchandise, including critical parts for US factories
  - Carriers have ceased booking departures from Asia to the West Coast ports. When operations resume, vessels will be slowed down to avoid "bunching", adding extra days to the transPacific transit.
  - Asian manufacturers will stop production due to inability to ship or store goods intended for export. The economic implications of the stoppage thus could spread throughout the Pacific Rim.
  - Grounded containers waiting in Asian ports face increased risk of becoming an easy terrorist target.

APPENDIX C - WRITTEN STATEMENT OF MAX VEKICH, PRESIDENT, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 24, COSMOPOLIS, WA

TESTIMONY OF MAX VEKICH, PRESIDENT

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION
LOCAL 24

BEFORE THE
HOUSE EMPLOYER-EMPLOYEE RELATIONS SUBCOMMITTEE
HEARING ON LABOR-MANAGEMENT RELATIONS IN A GLOBAL ECONOMY

October 8, 2002

bdopeiu29

Mr. Chairman and members of the subcommittee on Employer-Employee Relations, my name is Max Vekich, and I am here on behalf of my 10,500 locked out brothers and sisters of the International Longshore and Warehouse Union. I am President of Longshore Local 24 in Washington State and also serve as Washington's representative on the union's Legislative Action Committee.

It has been 11 days since our employer locked the gates to the West Coast ports and refused to allow us to go to work. The PMA is a conglomeration of maritime corporations. Ninety percent of PMA members are foreign companies. We are incensed that the PMA has such low regard for American workers, consumers and businesses that they would bring shipping to a stand still and threaten the U.S. economy for no good reason.

As you know, the President began the process of invoking Taft-Hartley yesterday. We are opposed to the invocation of Taft-Hartley and hoped that the President would have signaled his support for the collective bargaining process. The PMA started negotiations last May by repeatedly threatening to lock out our members if we did not capitulate to their demands. Their whole bargaining strategy centered on Presidential intervention. If we allow them to get away with this cynical strategy, then collective bargaining in this country will be imperiled.

Last Sunday, the PMA reneged on tentative agreements they made the previous day on the issue of technology and the role of workers in the implementation of that technology. The Federal Mediator, on behalf of President Bush, tried to broker a deal to get the ports open while the ILWU and the PMA continued to negotiate. The ILWU accepted a seven day extension of the old contract without preconditions; the Pacific Maritime Association rejected the mediator's deal. The members of the ILWU want to get back to work. We do not want to see any more workers, consumers or businesses harmed by the Pacific Maritime Association's irresponsible lock-out of American workers. The PMA apparently believes it can get the Bush Administration to do what it cannot accomplish at the bargaining table. This is the only reason they continue to refuse to deal honestly with the union.

Last week, the union achieved some success in terms of moving cargo. The union successfully pressured the foreign dominated PMA to move United States military cargo for our troops overseas. The union pressured the PMA to move cargo and essential supplies to Alaska and Hawaii – two states completely dependent on ocean transportation. Right now the ILWU is asking the PMA to allow us to move essential supplies to Guam. The ILWU bypassed the Stevedoring Services of America when they refused to dispatch longshore workers to help move baggage for cruise vessel passengers. We simply reported to the cruise vessels and helped move the baggage for these stranded passengers. The ILWU is also placing pressure on the PMA to move agricultural products, particularly perishable items and grain. The PMA does not care how much our farmers are suffering due to their irresponsible lock out of American workers – they are only interested in achieving their negotiating goals.

The PMA has demonstrated its complete disrespect for workers and the American people by not taking the process seriously. They went so far as to bring armed thugs to a federal mediation session. They refused to meet the union halfway on technology and jobs. They attempted to gain leverage in return for moving essential cargo. This is not bargaining in good faith.

For the two years preceding contract negotiations, the PMA repeatedly said that the ILWU would slow down work when the contract expired in order to gain bargaining leverage. My brothers and sisters had different ideas. In a sign of good faith and a great concern for the economy, we did not slow down. ILWU members set records for cargo movement in West Coast ports in June, July and August.

As consequence of the increased cargo volume, the number and severity of accidents on the job increased. In response to the high number of accidents, the ILWU instituted a safety program that urged members to adhere to all safety regulations in the safety code that was part of the current contract. The critical safety regulations were agreed to by the PMA and the ILWU. The CEO of the PMA reportedly threw a temper tantrum and decided to shut down West Coast commerce because of the safety program.

5 of my union -- Rudy Acosta, Richie Lopes, Jr., Dick Peters, Mario Gonzales, and John Prohorroff, were brothers were killed over the course of the last seven months. They did not go home to their families at the end of the work day. In 2001, there was not one fatality involving longshore workers on West Coast ports, in 2002, there have been five to date. Yet, the ILWU is accused of a "slow down" and West Coast commerce is brought to a halt in response to a safety program?

I would like to set the record straight on the average salary of longshore workers. Our job is the second most dangerous in the country, second only to mining. We have a strong union and we have been able to negotiate good contracts for the working men and women of the ILWU. We do not apologize for raising the standard of living for working families. But one needs to be accurate when we talk about the average salary of a longshore worker. The PMA claims to the media that the average longshoreman makes $106,000; but on page 62 of their 2001 Annual Report, they list the average income as $80,088

On September 20, 2001, the union's Labor Relations Committee proposed that the union and employer work together to beef up security at the west coast ports as a result of the new threats of terrorism to our nation's ports. The union did not receive a favorable response from the PMA. In fact, the employer group has objected to every program that the union has proposed to truly enhance security at our nation's ports. The union proposed that all marine terminals institute and build on the kind of security checks for containers that American President Lines (APL) performs. On the other hand, marine terminals managed by the Stevedoring Services of America (SSA), including the terminal that handles China Ocean Shipping Company vessels, perform no security checks of containers. We think it is important to the American people to at least do quick security checks on containers. PMA's allies like the International Mass Retail Federation are desperately trying to kill a Customs rule that would give Customs officials timely and detailed ocean manifests for the purpose of heading off weapons of mass destruction before they reach the United States. Our employers are desperately trying to kill any user fee to help pay for the security that they have failed to provide for the American people

Finally, we ask that members of Congress recognize who has done their duty – American workers. The working men and women of the ILWU stayed on the job until they were locked out. The ILWU worked in good faith with the Federal Mediator and agreed to his suggestions, like a seven day extension. All American workers will be hurt if President Bush invokes Taft-Hartley. These injunctions ostensibly promote a cooling off period between workers and management; but in many cases Presidential interference in a collective bargaining dispute has only served to heat up the conflict. In 9 cases, mostly involving Taft-Hartley injunctions against longshoremen, a strike occurred after the 80 day cooling off period.

The ILWU has acted responsibly. We abhor the reckless behavior of the PMA which has caused damage to workers and businesses dependent on the waterfront. It is the members of the Pacific Maritime Association that needed to be shamed into opening the docks to the American workforce.

bdopeiu29

APPENDIX D - WRITTEN STATEMENT OF JOHN VICTOR JOKINEN, PRESIDENT, E.J. VICTOR FURNITURE COMPANY, MORGANTON, NC

Prepared Statement of Mr. John Victor Jokinen

President of the E.J. Victor Furniture Company

Morganton, North Carolina

On the Economic Consequences of the West Coast Ports Work Stoppage

Before the Subcommittee on Employer-Employee Relations

House Committee on Education and the Workforce

October 8, 2002

Mr. Chairman and Members of the Subcommittee:

Good afternoon. My name is John Victor Jokinen, and I am the President of E.J. Victor Furniture Company, a small manufacturing company located in Morganton, North Carolina. At the outset, I would like to express my appreciation to the Subcommittee and to Representative Cass Ballenger for allowing me this opportunity to share our company's concerns about the current labor dispute affecting ports on the West Coast.

About a dozen years ago, two business partners and I set out to establish a furniture manufacturing company that would provide an alternative to the growing trend in our industry toward high-volume manufacturing that too often minimizes the importance of hand craftsmanship. When we founded E.J. Victor in 1990, we created a company that would be committed to preserving time-honored construction methods used to create exquisite furniture for the home.

We began with 33 employees, and initially we offered 15 pieces of wood and 10 pieces of upholstered furniture in the style of English reproduction. Today, we employ more than 250 associates in three plants covering more than 360,000 square feet of manufacturing space. Our current product selection includes wood furniture, commonly known as "casegoods" in our industry (that is, dining room and bedroom furniture), upholstery, and smaller items known as "occasional" furniture (such as coffee tables and end tables). At E.J. Victor, meticulous attention is paid to handpicking premium materials that go into making our casegoods and upholstery items. Only the finest grades of hardwood solids and veneers, finishing materials, fabrics, and custom-made hardware are used in our manufacturing process. As a result, our products have found their way into homes not only here in the United States, but also abroad, particularly in Japan, Taiwan, Saudi Arabia, Kuwait, Italy, and Russia. We have also been very fortunate to supply an assortment of furnishings to American embassies and ambassadors' residences around the world, thanks to procurement opportunities available to us through the U.S. Department of State.

Despite our export distribution channels, the unrivaled work of our skilled artisans, and our strong commitment to manufacturing the highest quality furniture, we are not immune from competition. The global economy is such that imports from the Pacific Rim and other sources have exerted tremendous pressure on smaller manufacturers like us who are often torn between preserving a dedicated local workforce and bringing in furniture products from offshore sources in order to remain competitive. As a business decision, we concluded that the best way to remain competitive and retain our employees, particularly as the economy slid toward recession, was to begin importing a small segment of our product line made up of those "occasional" pieces I mentioned earlier, as well as a collection of decorative accessories, such as lamps, wall art, and ceramics. Today, imports represent roughly 25 percent of our overall product line, with the remaining 75 percent manufactured in our three North Carolina facilities.

It is because our company depends on both imports *and* exports that I am appearing before you today to discuss the current work stoppage affecting ports on the West Coast. On a national level, the dispute between labor and management is causing tremendous havoc to global supply chain management and is placing additional pressure on an economy already battered by corporate scandals, unnerving fluctuations in the stock market, and shaky consumer confidence. As you probably know, many analysts have estimated the work stoppage to be costing the American economy between 1 and 2 billion dollars a day – clearly complicating bipartisan efforts to speed-up the economic recovery. The shutdown is affecting nearly every aspect of the economy, from agricultural exports sitting on the docks, railroads sitting idle not accepting containers destined for export overseas, a major disruption in "Just in Time" manufacturing inventories, and a serious threat to the availability of finished consumer products for the upcoming holiday sales period.

The situation is made all the more critical for the domestic furniture industry because the dispute comes at a time when thousands of home furnishings manufacturers like us are preparing for the fall International Home Furnishings Market, which begins next week in High Point, North Carolina, the furniture capital of the world. If you're not familiar with what Market is all about, I can tell you that the twice-annual trade show is the single-most important event for the furniture industry. More than 3,000 home furnishings manufacturers gather in High Point each April and October to exhibit their new products to more than 83,000 retail storeowners, interior designers, architects and other design professionals from all 50 states and 110 foreign countries. Because almost half of all U.S. furniture sales are derived from products imported from abroad, especially from the Pacific Rim, numerous manufacturers are depending on their Market samples to arrive in time for this major trade event. Failure to do so will most assuredly be reflected in a marked decrease in sales orders. As a result, the furniture industry can ill afford a prolonged disruption in the flow of goods both into and out of our nation's ports.

We at E.J. Victor are especially concerned about this situation because we do roughly 25 percent of our business at Market. That translates to nearly $3 million in finished furniture products that we will not be able to ship over the course of the next six months, if our clients are not able to see these Market samples firsthand. For example, we will not be able to ship our domestically manufactured dining room tables, sideboards, or china cabinets without the accompanying chairs, which are brought in from overseas. What's more, we have just completed construction of an additional 8,300 square feet of display space at our permanent showroom in High Point, at a cost of $1.4 million. Without being able to transport our incoming samples from Long Beach, California, to High Point, the new addition will have little practical use when Market opens next week.

At the same time, our export operations are at stake in this dispute. At this time, we have several containers of furniture products waiting to be loaded in Long Beach onto outbound ships, headed for China and Japan. Exports contribute more than $2.5 million in receipts each year, and are an integral and growing part of our company's business strategy and marketing efforts. Moreover, without our Market samples, our international clients will not be able to make their purchasing decisions in a timely manner, which in turn, will affect our future export potential.

Every day that passes without a resolution to this labor-management dispute puts tremendous pressure on our company, and many more like it across the U.S., that depend on the smooth flow of commerce through our nation's ports. While news accounts often describe the economic impact on mass retailers and very large manufacturers, like the nation's automakers, my message to you today is that smaller manufacturers are just as much in the proverbial "cross-hairs."

Mr. Chairman, ours is a proud company. Our employees are dedicated professionals, who love their work and who put themselves into every piece of furniture they make. We are a small company, among the few that have not closed down in Burke County, a rural area where unemployment and limited economic development are already a challenge. And, we feel very strongly about remaining a predominantly domestic manufacturer. But, we are not invincible. We do not enjoy operating margins that would allow us to absorb the kinds of losses that are certain to result from a prolonged shutdown of West Coast port operations. Furniture manufacturing and retailing is a very competitive business, one that requires us to constantly strive to innovate, modernize, and adjust to ever-changing consumer preferences. Because we operate in such a highly competitive environment, where consumers can choose from among so many manufacturers, my greatest concern is that if this work stoppage continues in its current form, with no meaningful resolution in sight, we will more than likely face the unpleasant task of having to reduce our workforce – a step none of us wants to take in our close-knit community.

Over the past several days, many individual companies and trade associations have brought their concerns to the attention of key figures in the Administration, urging the White House to help jump-start negotiations, while work on the docks resumes. The American Furniture Manufacturers Association, our national trade organization, also weighed-in and highlighted our shared concerns about the unique situation facing our industry. As a result, I am certainly encouraged by the President's recent decision to convene a Board of Inquiry, the first in a series of steps aimed at getting workers back on the job and negotiations between the two sides back on track. Looking back at the events leading up to yesterday's decision, I believe it was critical for policymakers to understand just how many parties are feeling the "ripple effects" of the port lockout – small manufacturers like us, farmers and ranchers, the U.S. military, and even auto workers whose jobs are affected by such a major disruption in the supply chain.

It is my sincere hope that the Administration's decision to step in and assess the economic consequences of the work stoppage will convince both parties involved that this dispute needs to be resolved quickly, before the costs to the national economy become larger and more permanent. I will readily admit, Mr. Chairman, that I am not a labor relations expert, and I do not presume to have a long-term solution to this particular dispute. What I *am* an expert at is running a manufacturing business that employs dedicated, hard-working artisans and craftspeople who use time-honored techniques to create truly exceptional residential furniture. It is on their behalf that I ask for your bipartisan support for bringing this dispute to a peaceful and productive resolution.

Thank you, Mr. Chairman. I would be pleased to answer your questions.

APPENDIX E - WRITTEN STATEMENT OF CHARLES I. COHEN, SENIOR PARTNER, MORGAN, LEWIS & BOCKIUS LLP, WASHINGTON, D.C., TESTIFYING ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Statement of the U.S. Chamber of Commerce

ON: CORPORATE CAMPAIGNS IN A GLOBAL ECONOMY

TO: SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS OF THE HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE

BY: CHARLES I. COHEN

DATE: OCTOBER 8, 2002

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross- section of the American business community in terms of the number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 83 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

Statement of

Charles I. Cohen

Senior Partner, Morgan, Lewis & Bockius LLP

before the

Subcommittee on Employer-Employee Relations

House Committee on Education and the Workforce

October 8, 2002

Chairman Boehner, Chairman Johnson, and Members of the Subcommittee, I am pleased and honored to be here today. Thank you for your kind invitation.

By way of introduction, I was appointed by President Clinton and served as a Member of the National Labor Relations Board from March 1994 until my term expired in August 1996. Before becoming a Member of the Board, I worked for the NLRB in various capacities from 1971 to 1979 and as a labor lawyer representing management in private practice from 1979 to 1994. Since leaving the Board in 1996, I have returned to private practice and am a Senior Partner in the law firm of Morgan, Lewis & Bockius LLP. I am a member of the Labor Relations Committee of the U.S. Chamber of Commerce, and Chair of its NLRB subcommittee, and am testifying today on behalf of the U.S. Chamber of Commerce.

The National Labor Relations Act was enacted in 1935 and has been substantially amended only twice – once in 1947 and once in 1959. Nonetheless, the Act continues to strike the balance in labor relations that its drafters intended. The Act guarantees important rights to employees, employers, and unions. The fundamental precept in industrial democracy is premised on a majority of employees in a collective bargaining unit freely selecting a union as their bargaining representative. Because all employees in that unit are bound by the decision of the majority, it is especially important that the employees are informed about the possible consequences of their choice, and that their right not to be represented by a union be respected. Once a union is duly designated, the Act provides a framework for both sides to work out, through collective bargaining, the terms and conditions applicable to employees in collective bargaining units.

Recent times, however, have seen a remarkable shift in the labor relations landscape – a shift caused in large part by the need for U.S. corporations to remain competitive in a global economy. Although unions remain strong in many traditionally unionized industries (steel, coal, airlines – to name a few), union density has decreased precipitously to the point where only about 9 percent of the American private sector workforce is represented by a union.

Union leadership has been unable to combat this trend through traditional methods – namely, through union organizing campaigns and NLRB-conducted secret ballot elections. Therefore, union leadership has turned to two controversial approaches (or techniques) to bolster their position among working Americans, and to firmly entrench unions in the landscape of American industry. It is a tremendous understatement to state that these techniques have serious implications for the future of labor relations, and they warrant the attention of the U.S. Congress, which is why I have accepted your invitation to appear here today.

The first approach unions have taken to combat their decreased density in American industry is the use of "corporate campaigns" as a way of obtaining and then exerting their influence over employees and over management. The corporate campaign is an alternative approach to the traditional forms of expression by unions representing employees or by unions seeking recognition – namely, collective bargaining, picketing, and strike activity. Corporate campaigns take many forms, but typically involve unions' attempts to enlist the media and publi interest groups to influence public opinion and to rally support for union organizing and other union causes. Corporate campaigns often attempt to have the target company and its officials portrayed as villains by investors, customers, vendors, employees, and the public at-large.

It is often observed that although corporate campaigns are by no means new, their use has greatly intensified and has become much more sophisticated over time. Unions have developed innovative strategies to exert pressure on employers. Corporate campaigns have become a weapon of choice in the union movement's arsenal, and it appears they will remain the weapon of choice for the foreseeable future.

The goals and tactics of union corporate campaigns are diametrically opposed to the current regime of federal labor relations laws, which exist to facilitate the equitable balance of the interests of management, employees, and unions. When properly aligned, labor relations can result in win-win situations. Businesses thrive, jobs are created, and employee satisfaction is high. This prosperous situation is less likely to occur under a corporate campaign regime. One of the principal differences between the traditional forms of union expression and the corporate campaign is that while collective bargaining is premised on labor having some or all of its views adopted voluntarily by management after a period of collective bargaining, the corporate campaign often is premised on management either being coerced into accepting a union's demands or potentially being driven out of business. It is no wonder that it has been recognized that corporate campaign strategies are divisive, threaten the viability of companies and jobs, and are at odds with the need for employer-employee cooperation in the workplace to meet the demands of global competition. And, in this shrinking global environment, corporate campaigns can be utilized internationally, with efforts made to unfairly portray law-abiding companies as international outlaws.

The advantages to unions in obtaining neutrality agreements are apparent. They help unions increase membership without the need for the lengthy, expensive, and ultimately unpredictable process of industrial democracy culminating in an NLRB-conducted secret ballot election process. In fact, to the extent unions are successful in getting neutrality clauses and card check agreements, the NLRB is almost entirely removed from the process. The consequences to the labor relations process, however, can be startling. Free choice by employees with respect to union representation is a basic tenet of U.S. labor laws. Corporate campaigns conducted with the aim of securing neutrality agreements, card check agreements, or other procedural concessions from the employer – with the ultimate goal of obtaining representation status without a fully informed electorate and without a secret ballot election – in fact undermine the right of free choice.

Union corporate campaigns and neutrality agreements are thus part of the same disturbing trend in labor relations. Unable to win while playing by the well-established rules of the National Labor Relations Act and the National Labor Relations Board, unions and union organizers and their representatives have turned to corporate campaigns and neutrality agreements to circumvent the federal labor laws. In so doing, unions endeavor to make up for the fact that in today's environment, employees – when given the right to choose of their own accord after being fully informed – choose to reject union representation roughly half the time.

Particularly troublesome is what is occurring in the Trico Marine situation. We see there the three legs of the stool of avoiding our established procedures for accepting or rejecting union representation: a corporate campaign, pressure to accept a neutrality agreement and card check recognition, and international pressure including a lawsuit in a Norwegian court to permit a crippling of Trico's international operations. Indeed, I intend to testify next month in a

Norwegian court on behalf of Trico Marine to explain to the court our finely balanced labor laws as that court considers whether a boycott of Trico Marine should be sanctioned in Norway because of Trico's actions in Louisiana.

This concludes my prepared oral testimony. I look forward to discussing my comments in more detail during the question and answer period, but before that, I would again like to thank the committee for inviting me here today, and for its attention to these very important developments regarding labor relations in the 21st century.

Charles I. Cohen
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202.739.5710
ccohen@morganlewis.com

APPENDIX F - WRITTEN STATEMENT OF DR. HERBERT R. NORTHRUP, PROFESSOR EMERITUS OF MANAGEMENT, WHARTON SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA, HAVERFORD, PA

MULTINATIONAL UNION CORPORATE CAMPAIGNS: A NEW DOUBLE THREAT TO AMERICAN INDUSTRY[1]

Herbert R. Northrup*
Wharton School, University of Pennsylvania, Philadelphia, PA 19104

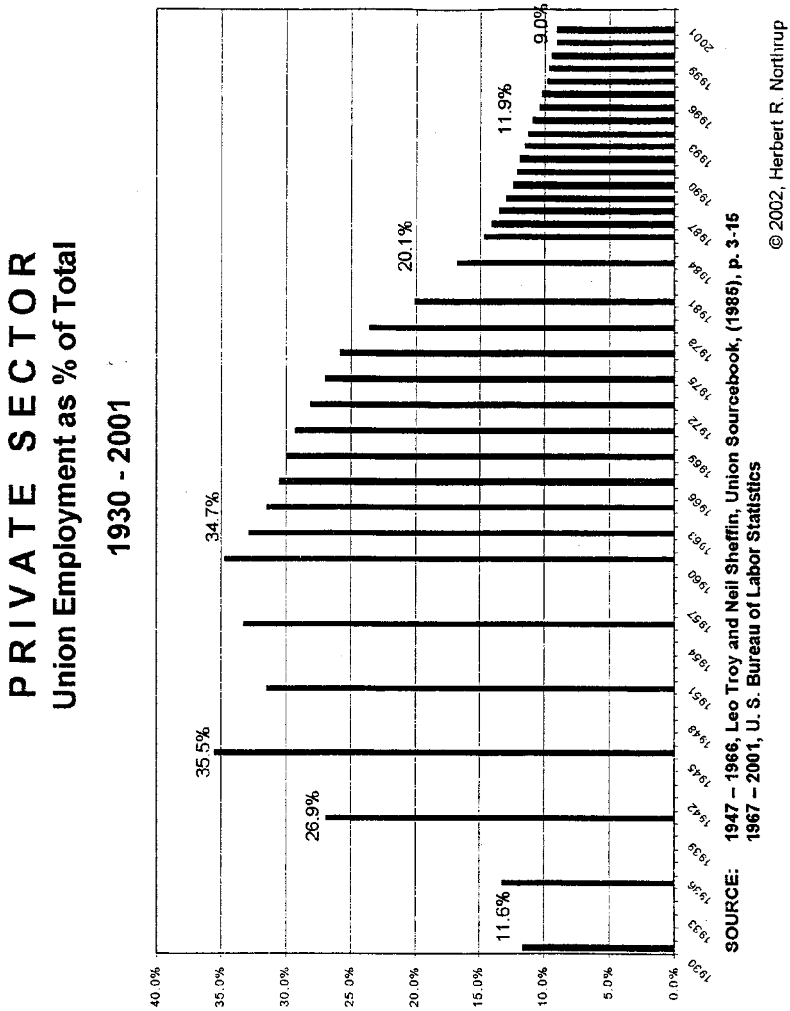
I. Introduction

The weakness of American unions in organizing, a principal cause of the private sector decline in union membership to approximately 9 percent of the labor force (Figure 1), has caused unions to develop substitute pressure methods which attempt to force employers to agree to union representation of its employees without National Labor Relations Board (NLRB) representation elections. One of the most widely used of the new techniques is the "corporate campaign," which can be designed to generate outside pressure on companies to recognize unions, and the "inside game," which concentrates on creating pressures within the target facility, or a combination of the two even where the union may have only a few supporters who are current or former employees.[2] This article examines the purpose and policies involved in corporate campaigns which have adopted new tactics that have major dangers for American multinational companies and their employees here and abroad. First, however, the nature of corporate campaigns and the "players" in this international field are examined.

II. *The Nature of Corporate Campaigns and Global Union Federations*

Corporate Campaigns have been defined in various ways, but the definition of the now defunct AFL-CIO Industrial Union Department (IUD) is succinct and accurate. The IUD defines a corporate

Figure 1


PRIVATE SECTOR
Union Employment as % of Total
1930 - 2001
40.0%
35.0%
30.0%
25.0%
20.0%
15.0%
10.0%
5.0%
0.0%
1930
1933
1936
1939
1942
1945
1948
1951
1954
1957
1960
1963
1966
1969
1972
1975
1978
1981
1984
1987
1990
1993
1996
1999
2001
11.6%
26.9%
35.5%
34.7%
20.1%
11.9%
9.0%
SOURCE: 1947 – 1966, Leo Troy and Neil Sheflin, Union Sourcebook, (1985), p. 3-15
1967 – 2001, U. S. Bureau of Labor Statistics
© 2002, Herbert R. Northrup

campaign as one which:

> applies pressure to many points of [corporate] vulnerability to convince the company to deal fairly and equitably [from the union's point of view] with the union ... It means vulnerabilities in all of the company's political and economic relationships -- with other unions, shareholders, customers, creditors, and government agencies -- to achieve union goals.[3]

In his seminal study of corporate campaigns, Professor Charles Perry quotes another definition which was made by an attorney

for the chemical company, BASF:

> Since ... June 1984 ... OCAW [Oil, Chemical, & Atomic Workers] has engaged in an intensive course of conduct maliciously intended to injure and interfere with BASF in its business, trade, and reputation. This course of action has been described by OCAW as a "coordinated campaign" or "corporate campaign." Its express purpose, as described by [the] OCAW President ... is to make the consequences to BASF for the lockout "as unpleasant, disagreeable, and expensive as possible. *OCAW has stated its intent to precipitate a crisis ... in employee, customer, and public confidence -- and loyalty.*"[4]

Similarly, the IUD defines the "inside game" in the first publication on this approach to corporate pressure and harassment which the IUD declared was designed "as a partner to the earlier [corporate campaign] publication," and that:

> This new booklet ... explores the use of tactics within the workplace.... It is a guide to organizing workers to fight on their own behalf where they work -- whether it's in a plant or a hospital, a retail store or an office, a construction site or an agency of government.[5]

Unions are at a disadvantage in using the inside game if they do not represent the employees involved, but they can overcome this problem if they can find a disgruntled employee or former employee to file a law suit alleging a violation of a regulatory law. Then, union supplied attorneys request discovery in order to obtain lists of employees, purportedly to enlist other employees allegedly so treated, thereby converting the case into a class action. The union attorneys can circulate a letter to employees, not only asking about similar alleged violations, but also about a host of other matters including working off-the-clock, a violation of the Fair Labor Standards Act (FLSA), alleged equal employment violations, and various company alleged malpractices.

From the answers to these questions, the union can reach a relatively few dissatisfied employees and ex-employees who are willing to serve as complainants in cases and can help to provide charges or information that reap wide publicity and damage the company. Additionally, the information collected in this manner can permit the union, its allies, and surrogates to engage in a broad use of regulatory agencies, municipal, state and federal, to further the union's ends. This proves the point of Joe Crump, a local official of the United Food and Commercial Workers (UFCW), who wrote:

> You don't need a majority or even a 30% support among employees. A few people inside and outside are all that's necessary to be successful. (Note: Fired employees are a great source of information. They're not afraid and they're motivated!)[6]

Corporate campaigns and inside games involving companies with multinational operations always contained action on the part of unions abroad, but historically such action was almost exclusively in the form of "solidarity" expressions, leafletting, and public appeals.[7] In gaining this cooperation, American unions usually received assistance from what were formerly known as International

Table 1
Global Union Federations Affiliated with
The International Confederation of Free Trade Unions (ICFTU)

Belgium Education International (EI)

Belgium International Federation of Chemical Energy, Mine & General Workers' Unions (ICEM)

Belgium International Federation of Journalists (IFJ)

Belgium International Textile, Garment & Leather Workers' Federation (ITGLWF)

France Public Service International (PSI)

Great Britain International Transport Workers' Federation (ITF)

Switzerland International Federation of Building and Woodworkers (IFBWW)

Switzerland International Metalworkers' Federation (IMF)

Switzerland International Union of Food Agric, Hotel Rest.Cater.Tobac.& Allied Work. Assoc.(IUF)

Switzerland Union Network International (UNI)

Notes: The ICFTU, headquartered in Brussels, Belgium, is the coordinating body for the formerly called International Trade (Union) Secretariats, now termed Global Union Federations (GUFs). The countries listed above are where the various headquarters of listed GUFs are located.

Union Network International is the new name for the formerly called International Federation of Commercial, Clerical, Technical and Professional Employees. Name was changed after mergers of Actors and Musicians federations.

The long name of the formerly termed International Union of Food and Allied Workers Associations depicts a number of mergers of small ITS groups.

Trade [Union] Secretariats (ITS), but more recently call themselves "Global Union Federations." (GUFs). American, European, and various other country unions have affiliated with GUFs particularly since World War II, and play an important role in their operations. With rare exceptions, GUFs have no employee membership of their own, but often still claim to represent their affiliates' membership. Table 1 provides a list of the Gulfs which are affiliated with the overall coordinating body of the group, the International Confederation of Free Trade Unions (ICFTU).

In addition to the GUFs, there are other multinational groups which today are active. These include European federations which are affiliated with the overall European union coordinating body, the European Trade Union Confederation (ETUC). Some affiliates of the ETUC are affiliated with GUFs, but several key ones are not, including the European Metalworkers Federation (EMF), the most active of these European groups. Even in the case of the EMF, dual membership of key country unions with both the relevant GUF and the ETUC affiliate gives the GUFs strong influence at the European level.

Most important at the European level, however, are the European

Community bureaucrats who see themselves as principals in multinational bargaining. It was more than twenty years ago in interviews with key staff personnel at the EC's Brussels, Belgium, headquarters it was clear that such staff members considered themselves ideally suited to mediate between labor and management in bringing "harmonization" between labor and management in the EC, and to participate as representatives of the public in labor-management relationships. Moreover, the EC subsidizes the union side by supplying translators at union "congresses" (which Americans call "conventions,") and at other gatherings, as well as supplying meeting places. Management groups also had some access to such support, but utilized them much less, and often had the means to do without.[8]

III. Multinational Governmental Organizations Role

Two multinational governmental organizations have become involved in controversies concerning the extent and content of national legislation and collective bargaining as a result of their adoption of "guidelines" for conduct by multinational companies in employment and industrial relations. The first to act was the Organization for Economic Cooperation and Development (OECD) in 1976 through its Committee on International Investment and Multinational Enterprises (CIIME) which receives input from business, via its Business and Industry Advisory Committee (BIAC) and from unions via its Trade Union Advisory Committee (TUAC) on which the GUFs play an important role.

The OECD Guidelines cover a wide range of corporate activity, including disclosure, the environment, science and technology, and employment and industrial relations. Trade unions strongly supported adoption of the guidelines because they viewed them as a means to counteract the spread of multinationals and the alleged problems associated with their economic and political power. Corporations based in member countries of the OECD are expected to follow the recommendations contained in the guidelines, but they are not binding in a legal sense. Instead, their implementation is enforced through the establishment of National Contact Points (NCP) by OECD member governments; NCPs both promote the guidelines and attempt to resolve conflicts that arise over their implementation. A trade union or other interested party can bring a case to the NCP of a supposed violation of the guidelines, and the NCP is required to try to resolve the issue.

For the first decade of their existence the guidelines were viewed by trade unions as a marginal, but at times an effective, tool for combating multinational corporations, and there were numerous cases brought before NCPs claiming corporate wrongdoing in the area of labor relations. Although in some instances these cases were little more than a nuisance to companies, in others, such as that involving the Swedish multinational, Electrolux, they evolved into a significant public relations problem.

Starting in the mid-1980s and extending for more than a decade, the labor movement, for various reasons, largely abandoned the OECD Guidelines as a means to exert pressure on multinationals. During this period a chapter on the environment was added to the guidelines, but little else of note took place. Trade unions had shifted their focus to establishing more extensive interunion cooperation across borders and to fostering and participating in company-based organs dealing with labor relations on an international basis. The latter effort was largely driven by the European Union's mandate that companies of a certain size must establish works councils composed of unions of the countries within which they operate. But by the late 1990s, these international activities of unions -- mainly in the European context -- had begun to run out of steam with the realization that the European works council model was not going to spread to the United States and beyond in the foreseeable future.

The International Labour Organization (ILO) followed with its guidelines in 1977. The ILO's membership is different from other multinational governmental organizations in that country representatives participate on a tripartite basis -- that is workers, companies, and government comprise each country's representatives. The workers group is usually headed by a GUF official, and union representatives fill the other worker spots.

The ILO is now a constituent body of the United Nations, but was established as one of the League of Nations.

Prior to World War II, the United States participation in the ILO was minor. One result is that the ILO has always been dominated in staff, operations, and viewpoint by European country outlook and policies. When, for example, the ILO is invited to assist governments in undeveloped countries to establish labor and employment policies, it means that such policies will be based on a European country model. Such practices as unions chosen after a secret ballot election, majority rule required for representation rights, supervisory and other management employees not considered as employees protected by the NLRA in unionization attempts (although unionized in a few industries like construction, airline and railroads,)[9] are not found in most European country public policies in Europe. European country laws also generally permit strikes by federal and most state government employees, and do not proscribe secondary boycotts as do laws in the United States. Moreover, European laws and practices mostly forbid operating during strikes and outlaw striker replacements in contrast to those in the United States.

These differences in approaches and laws in labor relations matters are a fundamental reason why the United States has not ratified ILO "conventions" which contain action by the ILO establishing policies that become effective when ratified by a specified number of countries. The problem for the United States is that the conventions are considered treaties to be ratified by a two-thirds majority of the Senate as set forth in Article II, Section 2 , of the Constitution. Once ratified, a convention modifies or amends any law which covers the issues involved, thus altering law and policy without any voter participation. Unable to secure enactment of legislation which they regarded as more sympathetic to their wishes, unions have particularly desired such action, but either Presidents have not submitted ILO conventions to the Senate, or a two-thirds Senate majority has not been agreeable to this method of amending labor and employment legislation.

Spearheaded by the TUAC, the OECD Guidelines were much more utilized at first by unions and their allies than were the ILO ones particularly in Belgium and The Netherlands where a strong effort was made by these countries' governments to give them the force of law. Many of the American cases involved pertained to smaller multinationals whose officials were uninformed beforehand of the existence of the guidelines. The most complete account and analysis of these events is found in a book published by the Wharton Industrial Research Unit in 1983.[10]

IV. Changes in the 1980s

As noted above, a review of multinational union-management consultation which unions hoped would lead to multinational collective bargaining occurred during the late 1970s and early 1980s, but this experience was followed by a decline in the 1980s. In its introductory paragraph, an article by Wharton School personnel summarized these developments as follows:

> One of the expectations raised by the launching of the European Community was that economic integration would lead to consultation and eventually to collective bargaining between multinational unions and multinational managements. Several significant consultations did develop, but by the beginning of the 1980s virtually all except those in the entertainment-communications industries had fallen victim to restructuring, unemployment, or disagreement between the parties. Some contacts continued or even expanded ... but as a rule, overt, formal multinational arrangements were conspicuous by their absence. By 1981 the severe recession and political changes in key European countries had led employers and unions to modify their approach to European or worldwide problems, and this of course has been reflected in the political agendas both of individual

> countries and of the European Community, as well as of other intergovernmental agencies.[11]

While these formal relationships were declining in the 1980s, the severe recession of this early decade not only reduced union interest in multinational consulting, but also lessened employer opposition to meeting with international union groups because it gave the employers the opportunity to explain the need for some of their policies. Moreover, after prounion amendments to German co-determination law covering large companies, four officials of GUFs and one European regional official received union appointments to company supervisory boards, thus giving these organizations both greater influence and status. Meanwhile the EC proposed a directive which would have required board-level participation at the European level as well. This was rejected by member states at this time. The EC did also inject itself

> in a host of labour laws pertaining to hours of work, part-timers, temporary workers and women, that also were blocked at this time by member states. These disagreements between member countries and the EC bureaucracy demonstrated the greater relation between the ETUC and the European Social Commission, and of the Commission and the Union of Industries of the European Community (UNICE) whose cooperative actions with the EC on these matters was clearly restrained by the hostility of its constituents towards the social policy intentions and by the vigor with which the Commission's Vredling sided with the ETUC.[12]

The victory of the socialists under Mitterand in French elections was a factor in changing policies of French management toward multinational consultation. A key factor in Mitterand's policies was government takeover of major multinational corporations. Saint-Gobain, one of the world's largest glass and building materials companies, had always rejected any multinational union consultation attempts. After being nationalized with a political appointment as chief executive, it and several other French-headquarted concerns that were nationalized willingly met with multinational union groups. The French Thompson group and various unions established a Liaison Committee and a European Branch Committee with the EMF which appeared to be the first European Works Council. Again, these were consulting, not collective bargaining groups, but seemed for a time to be moving toward bargaining. BSN-Gervais Danone, which was not taken over by the French Government, but which always was open to consultation approaches, went farther with an international union management committee. All these arrangements, however, were weakened by the splits among, and the weakness of, French unions, and when many of these companies were sold back to stockholders, their strength tended to decline and some seem to have disappeared. The review of developments in the 1980s cited above concluded as follows:

> The basic factors that worked against multinational collective bargaining remain as potential barriers to multinational consultation. Multinational employers, even those who have participated in such consultative mechanisms, are likely to resist any pressure, whether from union or governmental sources, that would transform consultation into negotiation. The resistance may be all the greater depending upon the country of origin of the multinational. Attempts to convert consultation arrangements into bargaining ones could easily end the multinational consultation efforts made by employers as it did some arrangements of the 1970s. Finally, political changes both at the national and at the EC levels could upset the tentative process of "social dialogue" initiated either by national policies or by the European Commission. For the present, however [1988], the European Commission is unambiguously furthering the establishment of a true "European industrial relations area" at the EC,

industry and company levels ....[13]

V. Changes in the 1990s and Beyond

Fortunately for domestic unions and the GUFs, there were two issues ripe for their involvement as the decade came to a close; the debate over tying international labor standards to trade agreements, and the effort to blame multinationals for the clearly deplorable working conditions in some developing countries, in particular child and forced labor. This, along with the OECD's own efforts to regain credibility in the aftermath of the failure of its negotiations over the Multilateral Agreement on Investment, led to a renewed focus on the OECD guidelines.

1. Amendments to OECD Guidelines

In 1998 the OECD launched a review of the guidelines, and in June 2000 the thirty member countries, along with Argentina, Brazil, and Chile, approved a new version of the guidelines. These changes were strongly supported by the TUAC, within which the American labor movement is a powerful constituency.

The revision of the OECD guidelines is important in a number of ways with respect to unions and companies. First, the wording of the guidelines has been changed in such a way that they can be construed as applying to a firm's operations regardless of the country. Previously, the guidelines were applicable only to operations in signatory countries; now, it may be possible to apply them to the entire supply chain of companies. This would allow unions and non-governmental organizations (NGOs) to bring cases to the attention of national contact points alleging violations of the guideline's labor relations provisions by multinationals in their operations in developing countries. If in fact this is how the revised guidelines are interpreted, multinationals could face an enormous increase in trade union activity against them in the OECD. The second change involves the employment and industrial relations section of the guidelines. This section used to include only core trade union rights (freedom of association and collective bargaining); now it includes abolition of child and forced labor and affirmation of non-discrimination in employment. The issues of child labor and forced labor are not relevant in the industrialized world, but when combined with the potential extended application of the guidelines to non-member countries, they could be used as a weapon against those multinationals having extensive supply chains.

The final change of note is in the functioning of the NCP and the entire implementation procedure. Governments are now firmly responsible for making sure that the guidelines are adhered to, and they are to strive for the maximum level of transparency appropriate given the sensitive nature of some deliberations. In effect, the only means available to the NCP to alter corporate behavior is negative publicity, so any enhanced ability to open the process up to the public should be viewed with concern by companies. In addition, disputes arising in non-member countries - i.e., developing countries - should be resolved within the NCP of the country in which the company is headquarted; thus, for instance, a union claim that an American apparel firm is employing child labor in India could end up being discussed in front of the U.S. NCP. Finally, the OECD itself has been given a new role in monitoring the guidelines; although the exact nature of this change is not clear, it could lead to increased scrutiny of the operations of firms all over the world.

In summary, the changes to the OECD Guidelines could result in increased pressure on companies operating, not only within the OECD member states, but also any where in the world. The OECD Guidelines and their implementation now more closely resembles those of the ILO's Tripartite Declaration, and this is bad news for corporations.

Another factor in the equation has been the resignation of Margaret Thatcher as British Prime Minister. This ended the strong opposition to the extension of multinational consultation into the United Kingdom, and equally important, an strong critic of the European actions to expand multinational regulation of terms of employment. Pressure, therefore, grew to expand multinational consultation in the 1990s and later. About a dozen companies have since agreed to multinational consultation beyond a single country's borders, some not only in EC member countries, and a few others beyond. The most significant of these is Volkswagen. Since a majority of the supervisory board of this company is composed of union representatives those of the International Metal Workers and of representative of the German State of Lower Saxony, which holds a large shareholder position in the company, and generally votes with its union colleagues on the supervisory board, one can foresee strong union pressure to extend consultation to bargaining and to extend bargaining boundaries worldwide.

2. Alien Tort Claims Act

With little progress having been made in affecting multinationals' policies, whether through multinational collective bargaining, guidelines issued by intergovernmental organizations, or labor standards attached to trade agreements, it is not surprising that organized labor and its supporters have turned to other means. The most prominent today, and potentially most damaging to companies and the economy, is the filing of lawsuits against American multinational corporations under the Alien Tort Claims Act (ACTA). The ACTA is an obscure law that was enacted in 1789 in order to allow foreign victims of pirates and slave traders access to U.S. courts. Use of the ACTA as a weapon against U.S. multinational corporations is controversial, in part because it seeks redress not for violations of domestic law, but rather it creates legal liability for violations of international law. Prior to use of the ACTA, American corporations faced legal liability only at the federal and state level, and with respect to the laws of the countries in which they operate. ACTA cases, however, ask U.S. courts to hold companies responsible for alleged violations of international law, which is far more expansive than domestic law. Most ACTA cases have been filed by the International Labor Rights Fund, an organization that it is believed has significant union financial support, and in two of them it was joined by the United Steelworkers of America (USW). Suits have been filed against Unocal, ExxonMobil, Coca-Cola, Del Monte, Dyn Corp, and Chevron; a few of these cases will be discussed in order to give a flavor of the accusations being made against American multinationals.

The first case filed against a company using the ACTA was Doe vs. Unocal in 1997, and it still remains in the courts. As a result of a decision by the U.S. Court of Appeals, Ninth Circuit, reversing dismissal by a U. S. District Court, and remanding it to the District Court for a hearing on the merits,[14] this case could be perhaps the most critical in terms of how the ACTA will be used against corporations in the future. The plaintiffs – four refugees from Burma, the National Coalition Government of Burma, and the Federation of Trade Unions of Burma – claim that the government of Burma engaged in crimes against humanity, including forced labor/slavery, rape, and torture, in securing the labor for constructing a gas pipeline between Burma and Thailand; and, that Unocal acquiesced in the government's actions and was therefore a conspirator in its violation of international law. The company has argued that, although labor rights abuses may have occurred, it was not directly involved in the practices and no employees of Unocal engaged in any such actions.

In the case of ExxonMobil, the plaintiffs claim that military units hired by the company to protect its gas facilities in Indonesia engaged in widespread violations of human rights. The facts are that Pertamina, the state oil company in Indonesia, owns the gas extraction and liquification facilities at Arun, and an affiliate of ExxonMobil operates it. Most importantly, Pertamina – not ExxonMobil – is solely responsible for coordinating the security needs of the facility, and these are provided by the Indonesian government. ExxonMobil is thus being sued under the ACTA for acts allegedly committed by the security forces of the Indonesian government and contracted for by the state oil company Pertamina.

Another prominent case involves Coca-Cola in Colombia. The company is alleged to have knowingly employed paramilitary troops to protect a bottling plant, and that these troops murdered trade union leaders in the company's effort to thwart union activity. The bottling plant in question is not owned by Coca-Cola, and thus it had no control over the security arrangements made by management; in addition, there are legitimate questions regarding the precise details of what occurred.

What is shown by these and the other cases not discussed in detail, in particular that of Chevron, is that the American legal system is being manipulated by unions and their allies to attack corporations for alleged violations of human rights in foreign countries by entities and individuals over which the companies in question have had no either ownership and/or management control. Although it is not clear how affective the use of the ACTA will ultimately be, it has already caused American firms to expend enormous resources (time and financial) to defend themselves.

3. "Adequacy" of American Labor Policy - Trico Marine Service

Another example of the lengths to which unions will go to attack multinationals via the legal systems of western countries involves the American firm Trico Marine Services (TMS). TMS is a well run and profitable business that manufacturers and operates offshore vessels serving the oil and gas industry in the United States and overseas. By all accounts, TMS has excellent labor relations, pays industry standard or higher wages, and offers a full array of benefits to its employees. In the United States, the company does not have unions, but some of its operations in foreign countries, including Norway, are unionized. It has never in the United States been charged by the NLRB to have committed an unfair labor practice.

In an effort to counteract the sharp decline in maritime union membership in the United States, the Offshore Mariners United (OMU) was founded in 2000 with the active support of the AFL-CIO's corporate affairs (i.e., corporate campaign) department. The OMU launched a membership drive among TMS's workers in the

Gulf of Mexico, but after almost two years of effort it had made little progress; TMS workers showed no inclination toward the union, as the OMU has not even filed an NLRB petition for a secret ballet election, which requires only a 30 percent of workers to approve. In the face of abject failure, the OMU and the AFL-CIO decided to abandon its organizing effort in the United States, and instead to focus on mounting an international corporate campaign in order to force the company to recognize the OMU. To do this it enlisted the help of the International Transport Workers Federation (ITF) in London, and the International Federation of Chemical, Energy, Mine and General Workers Unions (ICEM) in Brussels; and, through them, the Norwegian Petrochemical Workers Union (NOPEF). The choice of NOPEF was not random; Norway has a very permissive boycott law that allows boycotts where the cause is deemed fundamentally fair and the impact is not disproportionate.

In late 2001, the NOPEF announced a boycott against Trico's vessels operating in the North Sea under the premise that the labor laws of the United States are inadequate to protect workers. Specifically, the NOPEF claims that American laws do not measure up to ILO Conventions 87 and 98, which deal with the right to organize and freedom of association, and to European humanistic standards. These conventions would amend American labor legislation by providing government employees the right to strike and providing management and supervisory employees protection to join unions and bargain collectively. Thus, the NOPEF, with the active assistance of the AFL-CIO, is arguing that it has a right to boycott an American company because the failure of the OMU to organize workers in the Gulf maritime industry proves that U.S. labor law does not protect the fundamental rights of all American workers. The right of American employees to make these decisions is ignored.

It is difficult to know where to begin to counter this argument, so broad is its absurdity. Perhaps one need only point to the fact that union membership in Europe has been falling for the past 30 years, to the point where in France the official unionization rate is less than that in America. Will the NOPEF, along with its comrades in arms, the ITF, the ICEM , and the AFL-CIO, also launch a boycott against all French vessels operating in the North Sea? After all, if the French unionization rate is below that of America, the only explanation must be that its laws are inadequate to protect its workers from employer abuse and antiunion activity. The failure of unions to organize workers has been the signature development in labor relations in the industrialized countries since the 1970s; it has occurred in Canada, Australia, New Zealand, Japan, and almost every country in Europe with the rare exception being a number of Scandinavian welfare states.

VI. Concluding Remarks

It is apparent that the AFL-CIO and some American unions have joined in an international corporate campaign to attempt to compel employees to join unions and in opposition to American labor law to do so by conspiring with foreign unions and others who would subvert the legislative process in America. This is being done even though American multinationals have been among those providing the best conditions in their foreign operations. If American multinationals are forced from bidding on jobs abroad by such tactics, foreign firms will rush to take over. The result will be no gain, and possible loses for employees. The American unions will not gain memberships and dues, and our balance of payments will further decline. Such union policies are both unfair and short sighted -- negative in all their respects and completely indifferent both to the public good and to the future of unions themselves.

*Professor Emeritus of Management; formerly; Professor of Industry; Director of Industrial Research Unit; and Chairman, Labor Relations Council.

1. A summary of the information provided herein was presented at a hearing of the House of Representatives, Subcommittee on Employer-Employee Relations, Washington, D.C., October 8, 2002.

2. Corporate campaigns are described below, but for more complete description and analysis, see the following articles by Herbert R. Northrup, "Union Corporate Campaign and Inside Games As a Strike Form," *Employee Relations Law Journal*, 19 (Spring 1994): 507-49; "Corporate Campaigns: The Perversion of the Regulatory Process," *Journal of Labor Research*, 17 (Summer 1996): 346-58; and (with Charles H. Steen), "Union 'Corporate Campaigns' as Blackmail: The Rico Battle at Bayou Steel," *Harvard Journal of Law & Public Policy*, 22 (Summer 1999): 771-848.

3. Industrial Union Department, AFL-CIO, Developing new *Tactics: Winning With Corporate Campaigns* (1985), at 1.

4. Quoted by Charles R. Perry, *Union Corporate Campaigns*. Major Industrial Research Unit Studies No 66. (Philadelphia: Wharton Industrial Research Unit, University of Pennsylvania,1987), p. 131. (Emphasis supplied.)

5. Industrial Union Department, AFL-CIO, *The Inside Game: Winning with Workplace Strategies* (1986), foreword page.

6. Joe Crump, "The Pressure Is On: Organizing Without the NLRB," *Labor Relations Review*, 18 (1991): 43. Parentheses are in original. Crump is secretary-treasurer, UFCW Local 951, Grand Rapids, Michigan.

7. For an analysis of multinational bargaining attempts, see following by Herbert R. Northrup and others: "Why Multinational Bargaining Neither Exists Nor Is Desirable," 29 *Labor Law Journal* (June 1978): 330-42; and (With R.L. Roan), "Multinational Union-

Management Consultation: the European Experience, 116 *International Labour Review*, (September-October 19, 1977): 153-69. For a most complete analysis of the issues, covering ten years of research, see Northrup and Roan, *Multinational Collective Bargaining Attempts*. Multinational Industrial Relations Series,No. 6. (Philadelphia: Wharton Industrial Research Unit, University of Pennsylvania, 1979).

8. Professors Northrup and Roan spent at least three weeks in Europe annually during the 1970s and early 1980s interviewing global and European union officials, managements, and governmental officials, and often attending union congresses. During this period, at least one included the European Community staff among the interviews nearly every year.

9. Minor supervisors are protected in unionizing under the Railway Labor Act, which covers airline and railroad employees.

10. Duncan C. Campbell, *et al.*, *Multinational Enterprises and the OECD Industrial Relations Guidelines*. Multinational Industrial Relations Series. No 11. (Philadelphia: Wharton Industrial Research Unit, University of Pennsylvania, 1983).

11. Herbert R. Northrup, Duncan C. Campbell, and Betty J. Slowinski, 127 *International Labour Review*, (No. 5 1988): 526-43. (Article footnotes omitted.)

12. *Ibid.*

13. *Ibid*, p. 540. (Footnotes omitted.)

14. Doe V. Unocal Corporation, ___ F.3d.___ (9th Cir., Sept. 18, 2002); 2002 U.S. APP. Lexis 19263. See also *Daily Lab Rep.* (BNA) No. 187, (Sept. 26, 2002), pp. E10-32.

APPENDIX G - WRITTEN STATEMENT OF KATHY L. KRIEGER, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C.

TESTIMONY OF KATHY L. KRIEGER
ASSOCIATE GENERAL COUNSEL, AFL-CIO

TESTIMONY BEFORE SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
COMMITTEE ON EDUCATION AND THE WORK FORCE
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON
"EMERGING TRENDS IN EMPLOYMENT AND LABOR LAW:
LABOR-MANAGEMENT RELATIONS IN A GLOBAL ECONOMY"

WASHINGTON, D.C.
OCTOBER 8, 2002

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address this Committee. I am a partner in the Washington, D.C. law firm of James & Hoffman, and I represent the AFL-CIO as an Associate General Counsel. It is in that AFL-CIO counsel capacity that I appear before the Committee as part of the Panel focusing on "International Effects of Corporate Campaigns."

Although the notices of today's hearing do not specify a pending legislative initiative, the overall title suggests the assumption that labor activity transcending national borders is a novel, "emerging trend"– a trend warranting Congressional investigation. As explained below, that suggestion is unfounded.

1. There is nothing new or startling about international association and global solidarity among working people and their organizations. The modern labor movement in North America grew from the strong trade union movements of many other nations, and U.S. labor has never abandoned its international roots. For more than a century, labor unions and labor federations based in the United States and Canada have maintained extensive political, ideological, economic, and cultural relationships with their counterparts around the world, relationships designed to protect and advance the common interests of working people everywhere. Given this deeply rooted tradition and culture of international solidarity, global labor federations and trade unions from many nations have proven to be reliable allies of U.S. unions and workers in our domestic labor disputes. In turn, the AFL-CIO and its affiliated unions have long been a powerful force for workers' rights and economic justice throughout the world. Today, as in the past, the U.S. labor movement actively supports workers' struggles for freedom of expression, freedom of association, fair working conditions and just treatment worldwide, not just at home.

2. Moreover, there is nothing novel or radical about international labor efforts to enforce the highest economic standards and best practices on a global basis. That basic principle underlay the creation of the tripartite International Labour Organization as part of the formal peace process that ended World War I. The representatives of employers, workers and sovereign governments who came together in 1919 to draft the ILO Constitution, under the chairmanship of Samuel Gompers, shared the common understanding that economic markets are global, that a race to the bottom threatens the peace and security of the entire world, and that all nations must therefore hold each other to the highest standards of worker rights and social justice. Thus, the Preamble to the ILO Constitution declares that "universal and lasting peace can be established only if it is based upon social justice;" that "conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled;" that "an improvement of those conditions is urgently required;" and that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries."

3. Since its inception, the ILO has promoted workers' freedom of association and expression, coupled with effective collective bargaining rights, as bedrock principles essential to

global peace and security. In 1944, ILO members strongly reaffirmed and elaborated on their original understanding by adopting an explicit "Declaration Concerning the Aims and Purposes of the International Labour Organization." Recognizing that "freedom of expression and of association are essential to sustained progress," and that "experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organization that lasting peace can be established only if it is based on social justice," the so-called Philadelphia Declaration emphasized that it is "the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve . . . the *effective* recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures . . . ." (emphasis added).

In addition to the 1944 Declaration committing all ILO member nations to foster "freedom of expression and of association" and to pursue programs ensuring "*effective* recognition of the right of collective bargaining," the ILO adopted two important Conventions to enforce those fundamental principles: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (Convention No. 98). Although the United States still has not formally ratified Conventions Nos. 87 and 98, our government has consistently endorsed the principles and standards embodied in those Conventions. Thus, the U.S. government strongly supported adoption of the ILO's landmark 1998 Declaration on Fundamental Principles and Rights at Work, which provides that "all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution [of the ILO], the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the *effective* recognition of the right to collective bargaining . . . ." (emphasis added).

4. Transportation unions, and particularly those representing seafaring labor, have a long tradition of international solidarity. The International Transport Workers' Federation, founded in 1896, and today a federation of 604 transport trade unions in 137 nations, promotes independent and democratic unionism as well as democratic government. The ITF supports its affiliates to network among each other and, when necessary, to take solidarity action with each other. The ITF also conducts international campaigns to spotlight concerns such as safety abuses in substandard shipping, and fatigue among transport workers. The ITF represents transport workers in the myriad international governmental agencies that impact their lives, including, among others, the International Maritime Organization (IMO), the ILO, and the Organisation for Economic Cooperation and Development (OECD).

In the case of Trico, discussed further below, when the ITF learned of Trico's strong anti-union stance and its refusal to allow its Gulf offshore mariners their own free choice as to collective bargaining representation, the Federation urged its affiliates to assist Trico mariners with a show of trade union solidarity. That response was typical of the ITF's many demonstrations of international trade union solidarity in recent years, which include calls for solidarity with airport workers in Fiji and banana workers in Ecuador; fighting the unfair arrests of Korean rail union leaders; fighting the murders of transport trade unionists in Columbia; supporting the workers in New York and Washington, D.C. who saved lives on 9/11/01 and who have since been cleaning and rebuilding what was destroyed in the terrorist attacks; protesting the failure of the Philippine government to apply basic employment standards in the rail sector; campaigning for freedom in Burma against the military junta there; and supporting the Icelandic fisheries strike.

5. In short, workers and labor unions around the world have traditionally exercised their fundamental rights of association and expression to provide mutual aid and support for each others' labor struggles, based on the principle that an injury to one is the concern of all. But today's accelerating pace of globalization, and the growing power and influence of trans-national corporations and financial institutions, only reinforce the commonality of workers' concerns and the importance of global communication, association and solidarity. Our key industry sectors such as energy, technology and telecommunications are worldwide in scope, and the major firms in those sectors transcend the boundaries, laws, capital markets and physical workplaces of any one nation. Indeed, given the substantial foreign ownership of ostensibly "domestic" companies in nearly all sectors of our economy, and the extensive holdings of U.S.-based firms abroad, corporate national identity today can appear as elusive and transitory as a maritime flag of convenience. Regardless of its site of incorporation, the day-to-day operations of a multinational enterprise will necessarily affect a wide range of "stakeholders"–including workers, investors, consumers, communities and governments– across the globe. And the collapse or mis-management of an Enron or a WorldCom can have serious human, economic and political impact worldwide. To an increasing extent, moreover, the fate of workers and other stakeholders around the world also depends on global, extra-governmental institutions such as the International Monetary Fund and the World Bank. Like private business enterprises, these powerful "public" institutions operate beyond the control and influence of any single affected workforce, community or government.

As the ILO recognized more than 80 years ago, any move to reduce economic standards, dilute social welfare protections or weaken workers' rights in one part of the world can jeopardize the well-being of workers and citizens everywhere. This is so whether the downward pressure arises from the conduct of particular companies, the pro-business initiatives of a given national government, or the policies of the IMF and the World Bank. Given the nature of the forces that affect their interests today, workers and their organizations find it more essential than ever to cooperate across national lines to hold corporations, sovereign governments and global financial institutions accountable, while preserving the highest common denominator.

6. Labor organizations are particularly well suited for that international monitoring and advocacy role. In addition to their history and tradition of global solidarity on employment and economic issues, trade unions have developed significant relationships with human rights,

environmental, consumer and grass-roots organizations throughout the world. Moreover, because workers' retirement and benefit funds, both here and abroad, have a substantial ownership stake in multinational corporations and international ventures, workers' organizations have taken on an increasingly active and important role in protecting shareholders' rights and promoting high standards of corporate governance and transparency worldwide.

The scope of international labor activism has always been broad, as trade unionists seek not only to change the policies and conduct of individual companies, but also to bring about fundamental, democratic change in political systems. As the Committee Members know, multinational union coalitions, pension fund divestiture campaigns and concerted labor protests against major corporations played a key role in the long struggle to end apartheid in South Africa. During that same period, American trade unions provided crucial economic as well as political support for the historic Solidarity movement in Poland. More recently, the U.S. labor movement and its allies have been working together on, among other things, campaigns to fight sweatshop labor conditions domestically and abroad, to remedy China's persecution of labor activists and challenge the access of Chinese state enterprise to private capital markets, to stop the reign of terror and violence against trade unionists in Columbia, to oppose corporate dealings with notorious human rights violators such as Burma, and to free imprisoned union and human rights activists throughout the world. Just two weeks ago, during the controversial meetings of international financial institutions here in Washington, D.C., the AFL-CIO conducted its own Global Workers Forum to highlight the adverse impact of the IMF, the World Bank and corporate mismanagement on employees and communities throughout the world.[1] The AFL-CIO has also joined in coalition with major environmental, human rights, faith-based and social justice organizations to sponsor the ongoing "International Right to Know Campaign," an initiative aimed at achieving global public disclosure of basic information about the operations of U.S. based corporations in other countries.[2]

In recent years, moreover, the growing movement to hold corporate behavior to universal standards of freedom of association, respect for communities and respect for the environment, has expanded its institutional influence and reach. Three years ago, United Nations Secretary-General Kofi Annan proposed the Global Compact to world business leaders as a mechanism to make the global economy work for all people. The nine principles of the voluntary Global Compact recognize human rights, the need for greater corporate responsibility on environmental issues, and worker rights, including recognition of freedom of association and the right to collective bargaining. The Global Sullivan Principles, developed by Reverend Leon H. Sullivan,

---

[1] Attached to this testimony, as Exhibit A, are copies of publicly posted information regarding the September 26, 2002 Global Workers Forum.

[2] Attached as Exhibit B are copies of publicly posted information regarding the International Right to Know Campaign. This effort is sponsored by a coalition including, among other organizations, Amnesty International, the Natural Resources Defense Council, the Lawyers Committee for Human Rights, Friends of the Earth, OxFam America and the AFL-CIO.

represent another worldwide movement for greater corporate responsibility. Rev. Sullivan first developed this human rights and worker rights code of conduct as an effective and peaceful means to end workplace discrimination against Blacks in South Africa, and thus a key to ending apartheid. Since then, the Global Sullivan Principles have been expanded to cover all communities. Companies that endorse the Global Sullivan Principles agree to respect employees' voluntary freedom of association, among other rights. Similarly, the OECD has developed and endorsed a set of formal Guidelines which set high standards for corporate behavior in worldwide operations, again including respect for organizing and collective bargaining rights.

7. In any given international solidarity initiative, the modes of protest and influence that can be brought to bear, and the extent of their impact, will necessarily vary from country to country. We all understand that there are places today where activists cannot confront their public officials, or cannot freely criticize a major corporation, as part of a concerted effort such as the International Right to Know Campaign or the campaign against forced labor and political abuse in Burma.

In the United Kingdom, for example, protesters who speak out against corporate practices could face daunting legal attacks, and even prior restraint of critical publications, because the law of that jurisdiction may not adequately protect freedom of expression. The U.S. Constitution, by contrast, forbids such prior restraint and protects the free expression of critical, negative publicity and opinion, even when that persuasive advocacy in the marketplace, the legislature or the courts may have an adverse economic impact on the criticized business.[3] It is no surprise, then, that an international campaign's most forceful public advocacy and lobbying would be conducted by activists in the U.S. and other forums where the law strongly protects critical speech. On the other hand, the laws of many nations give greater protection to protest actions such as general work stoppages, sympathy strikes and labor boycotts, than does the draconian law of the United

[3] See, e.g., Edward G. DeBartolo v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568 (1988) (peaceful labor speech calling for "secondary" consumer boycott of firms not directly involved in labor dispute); NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) (disruptive boycott of local businesses by civil rights activists); National Assoc. of Letter Carriers v. Austin, 418 U.S. 264 (1974), and Linn v. United Plant Guard Workers, 383 U.S. 53 (1966) (protective First Amendment standards partially preempt common law in defamation actions arising from labor speech); NLRB v. Servette, Inc., 377 U.S. 46 (1964) (peaceful appeals to corporate managers to cease doing business with firm engaged in labor dispute). Labor and other advocacy groups also benefit from an equally important body of law, the Noerr-Pennington doctrine, holding that the First Amendment "right to petition" the government includes lobbying and litigation that may have adverse economic impact on businesses. See, e.g., Professional Real Estate Investors v. Columbia Pictures, Inc., 508 U.S. 49 (1993); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972); United Mine Workers v. Pennington, 381 U.S. 657 (1965); Eastern RR Presidents' Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961).

States.[4] Consequently, foreign trade unionists are likely to have greater influence than their U.S. counterparts when they take economic protest action in conformity with the rules in their home jurisdictions. U.S. law recognizes, in effect, that these variations are a fact of life when autonomous unions around the world come to each other's aid in global solidarity actions. Though each organization may be responsible for its own conduct, a U.S. trade union does not violate U.S. law when its foreign counterpart takes protest action in its own country that it could not take here in the United States.[5]

8. Against this background, there is nothing remarkable about international labor communication and protests involving Trico Marine Services. Trico is a corporation that operates supply vessels for the offshore oil industry worldwide. Outside the U.S.– including in the North Sea, where Trico conducts its most profitable operations– Trico's mariners are represented by labor unions, and to the best of our knowledge Trico maintains cooperative, constructive collective bargaining relationships abroad. But in the U.S. Gulf of Mexico, Trico has declared itself a union-free company and has systematically opposed organizing efforts among its mariners. Trico's anti-union course of conduct is backed by the Offshore Marine Service Association (OMSA), the employer association representing Trico and its counterparts in the industry. OMSA has openly campaigned on a variety of fronts to ensure that the entire Gulf offshore marine industry remains effectively off-limits to collective bargaining. As OMSA President Robert Alario declared in an editorial last year for the Association's newsletter:

For over two years, OMSA and its members have worked hard and steadily to design and

---

[4] According to a recent human rights report, U.S. law flatly prohibiting so-called "secondary" strikes and work boycotts "contrasts sharply with practice of most other countries and runs counter to principles developed by the ILO Committee on Freedom of Association over many decades of treating cases under Conventions 87 and 98." Human Rights Watch, Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards 210-212 (August 2000) (noting that Japanese labor law contains no prohibition comparable to Section 8(b)(4) of the NLRA; that all EU member states except the United Kingdom recognize the lawfulness of workers' solidarity job actions and seek to regulate and channel, rather than ban, such activity; and that British legislation, modeled on U.S. labor law banning secondary boycotts, was deemed inconsistent with ILO principles and standards).

[5] See Int'l Longshoremen's Ass'n v. NLRB, 56 F.3d 205 (D.C. Cir. 1995), cert. den. 516 U.S. 1158 (1996) (ILA did not violate NLRA Section 8(b)(4) by persuading Japanese union to engage in a secondary work boycott in Japan to support ILA's domestic labor dispute; international solidarity among the labor organizations did not establish the principal-agent relationship required for liability under federal labor law). Accord: NLRB v. Sheet Metal Workers, Local 19, 154 F.3d 137 (3d Cir. 1998) (following D.C. Circuit, rejecting "joint venture" theory for imputing liability); BE&K Constr. Co. v. United Bro. of Carpenters, 90 F.3d 1318 (8th Cir. 1996) (following D.C. Circuit, joint solidarity pact and joint national publicity campaign among two autonomous unions did not establish agency relationship).

> develop a solid and successful strategy to prevent unions from penetrating our industry. So far, so good! At considerable expense, in both time and money invested, OMSA's Board and our members have directed and funded an effective resistance to union encroachment into the offshore oil and gas sector. . . . [W]e are fortunate to be able to claim that the offshore marine industry in the Gulf of Mexico, at least, is still union free. . . . But make no mistake. This fight is not over. There is much more to be done. We must be deliberate. We must be determined. Above all, we must be careful not to be undone by our confidence, and we must continue to urge others in our industry that they must become more actively engaged in this fight for the "soul" of this industry. "Our" fight is, after all, the <u>industry's</u> fight. The fight is for everyone – offshore drilling contractors, offshore diving and construction contractors, seismic, well-servicing contractors - - everyone . . .[6]

As part of their campaign to prevent collective bargaining in the Gulf, OMSA's employer members have also fostered an anti-union group known as Concerned Citizens for the Community (CCFC) to make sure that union sympathizers are not welcome in South Louisiana. CCFC's bright yellow anti-union signs are displayed not only at Trico and other boat companies' facilities, but at all major local businesses and in residents' yards, as well as along the public highways leading to the ports. For nearly two years, South Louisiana has also seen a steady stream of anti-union diatribes published by CCFC in local newspapers. Concurrently, the CCFC ran ominous radio ads stating that if you don't put up a CCFC sign in your yard today you'll be posting a "for sale" sign tomorrow. During this time, CCFC supporters have openly harassed and intimidated mariners and their families for perceived support of Offshore Mariners United (OMU), the union currently organizing among Gulf offshore workers. For example, a mariner was threatened that his sister could lose her job at a restaurant if he didn't stop supporting the union. Another pro-union mariner, who'd been fired by his boat company, received a visit from a CCFC delegation informing him that his brother would lose his job if the mariner stayed with the union.

Trico's own workplace campaign to prevent union representation has been intense and hostile from the outset. Early on, Trico issued written notices to all its boat captains declaring them "supervisors" excluded from the coverage and protection of the National Labor Relations Act. Captains were forced to sign statements acknowledging their supervisory status and were tasked with barring access to the boats by "unauthorized" persons (that is, union organizers). Trico subsequently fired two captains who spoke sympathetically about the need for a union, and word quickly spread among the Trico mariners. On board the ships, Trico held weekly captive audience meetings, rounding up all crewmembers– even mariners who'd been sleeping in their bunks– to view anti-union videos and hear anti-union propaganda. Mariners at those meetings who had the temerity to ask questions or make remarks suggesting pro-union sympathies were visibly taken aside and subjected to one-on-one pressure from Trico management. Trico further

---

[6] A copy of Mr. Alario's editorial column, entitled "Slow, but Sure?", is attached as Exhibit C.

notified all mariners they were prohibited from talking to any union representative on "company time," under penalty of immediate termination; since Trico pays its mariners by the 24-hour day when they're working, that decree meant that a mariner was still on "company time" and still under the "no-talking" rule even if he or she left the vessel, after a 12-hour shift, to make a phone call. With the cooperation and assistance of local police, Trico also blocked onshore contact between mariners and union organizers by ejecting OMU representatives from dock areas, and by having organizers tailed and harassed by parish police in their cruisers. Indeed, local police detained or arrested organizers even on public property where state law gave them a right to be. As one police officer succinctly put it, "F--k Louisiana State law, I work for the port and the boat companies don't want unions down here."

The story of Gulf offshore mariners' efforts to organize in the face of this concerted opposition and open hostility has been presented in several other forums, including a June 2002 hearing before the U.S. Senate. Moreover, legal proceedings are still pending here and abroad over the situation at Trico. Under those circumstances, I believe it is neither appropriate nor productive to detail all the contested allegations and claims of the parties involved. Instead, we should focus on the broader outlines of this dispute. Trico believes that it has every right to maintain its policy of opposing collective bargaining in the Gulf of Mexico, while enjoying union contracts and cooperation elsewhere in the world. Further, Trico apparently feels that it has every right to declare its Gulf offshore boat captains "supervisors," excluded from the protection of U.S. labor law, and to fire or intimidate captains at will if that's what it takes to deter union organizing. Be that as it may, the U.S. labor movement and its counterparts abroad have every right to publicly criticize that corporate policy and conduct. Moreover, any trade unionist who hears that criticism and agrees that Trico's Gulf mariners deserve the same collective bargaining representation that Trico's Brazilian, British and Norwegian mariners enjoy, should have the right to protest in his or her own country according to the laws of that country.

That is precisely what has happened in this case. Last year, OMU invited their union counterparts from Norway, Australia and the United Kingdom to come and see for themselves the obstacles that Gulf mariners face in trying to achieve collective bargaining representation. When these visiting trade unionists, including one of Trico's Norwegian mariners, attempted to deliver a letter to Trico's Louisiana representatives, they were rudely turned away and threatened with arrest. When they tried to visit docks or observe non-union facilities in the area, they were harassed and blockaded by security guards and police. Indeed, local law enforcement agents followed these international guests on public roadways, stopped their vehicles and made everyone exit, took their passports and identification papers, and detained the unionists under police custody, simply for having the gall to travel through this "union-free" region of the United States. Needless to say, the visiting trade unionists were appalled at this treatment– which was typical of the treatment OMU organizers experienced on a regular basis– and NOPEF representatives spread the word on their return to Norway, through eyewitness accounts and corroborating videotape evidence. After unsuccessful attempts to make their case to Trico through Norwegian channels, NOPEF ultimately announced its intention to stage a protest boycott of Trico's vessels in Norway. Before implementing any such boycott, however, NOPEF initiated a legal proceeding in the Norwegian courts seeking the equivalent of a declaratory judgment on the lawfulness of its proposed boycott protest under Norwegian law. That proceeding remains pending at this time, and NOPEF's proposed boycott action remains hypothetical. Meanwhile, NOPEF's underlying request– that Trico accept a "constructive resolution" including a non-coercive, card-check process for verifying whether mariners desire union representation– is a legitimate and proper request that Trico can honor without violating U.S. law.

Finally, we note that Trico responded to NOPEF's declaration of intent to boycott with an international campaign of its own. In addition to filing unfair labor practice charges in the U.S., Trico brought a legal action in the United Kingdom against the International Transport Federation, an international labor group in which NOPEF and other maritime unions around the world participate. Concurrently, Trico's trade association, OMSA, threatened a concerted business boycott of Norway in retaliation for the Norwegian union protest against Trico. Although Trico ultimately withdrew its British lawsuit after the first few days of hearings, to our knowledge OMSA has never rescinded its threatened commercial boycott of Norway.

In summary, the Trico situation represents a common occurrence in the global economy and the global marketplace of opinion: a multinational corporation is called to account in one country for conduct elsewhere that falls short of best practices. In many cases, the critics are American workers who would uphold American standards as the benchmark for corporate responsibility and fair treatment. In this case, our brother and sister unionists abroad are the ones who find the American anti-union culture and practice disturbing, and they would hold this corporation to a higher standard of respect for workers' rights. Trico and other challenged corporations are certainly free to dispute their critics in the global arena, using all the public relations outlets and commercial alliances at their disposal. But they cannot expect the government of the United States to muzzle their critics and suppress international solidarity. The strength and security of a global economy depends on the free flow of information, opinion and expression worldwide among informed global stakeholders, who are free to associate with each other in enforcing accountability.

AFL-CIO

Make the Global Economy WORK for working families

Workers Speak Out on Global Economy, Corporate Greed

When union activist Raquel Salazar Hernandez of San Salvador, El Salvador, was eight months pregnant, her bosses at the sweatshop that made clothing for Gap Inc. transferred her from a sitting to standing position for her nine-hour, 53-cent-an-hour shift. When she returned to work after giving birth, she was fired. Thanks to pressure from international labor groups, Salazar Hernandez was rehired. But when the workers organized in sufficient numbers to demand a contract, owners closed the plant.

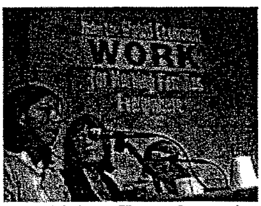
Salazar Hernandez was one of five workers from three continents who detailed their personal struggles with the effects of globalization and corporate malfeasance at a Sept. 26 Global Workers Forum at the AFL-CIO headquarters in Washington, D.C.

Co-sponsored by the Metropolitan Washington Council, AFL-CIO, Jobs with Justice and other community, faith-based and student organizations, the forum preceded a "CEO summit" hosted by *Business Week* magazine and the weekend meetings of the International Monetary Fund (IMF) and the World Bank.

More

- Workers hand CEOs 'Pink Slips,' call for corporate accountability.
- Meet the workers who spoke at the Sept. 26 forum.
- Learn more about the Oct. 19 National Day of Action and download an action toolkit.
- World Bank and IMF fact sheet.
- Responsible reform of the World Bank (PDF).
- International Right-to-Know campaign (PDF).
- Remark by AFL-CIO President John J. Sweeney at Global Workers Forum.

The IMF and World Bank often make loans to struggling nations contingent on privatizing public programs and resources. Then, multinational corporations rush in to set up shop, maximizing profits at workers' expense and creating a race to the bottom for the latter. "These workers are telling stories that are not being heard at the *Business Week*, IMF or World Bank meetings," said AFL-CIO Executive Vice President Linda Chavez-Thompson.



Raquel Salazar Hernandez speaks to the audience.

The other workers who spoke were Rose Sommer of Los Angeles, an SEIU member with 40 years in nursing who was fired when she protested inadequate staffing and supplies after a for-profit chain bought her community hospital; Cara Alcantar, a WorldCom worker from Phoenix, Ariz., who lost her job and savings when the telecom giant collapsed thanks to corporate fraud; Cristina Alves Campelo, a union activist and employee of a

EXHIBIT A

Brazilian phone company that WorldCom took over; Dan Pedroza, a Steelworker who, with hundreds of others, lost his job and health care benefits when Halliburton Co., a company then run by Vice President Dick Cheney, bought and closed it a few months later; and Nyameka Mafina, a South African community health nurse who sees 60 percent of her nation's health care resources go to 20 percent of its people.

Mafina said her country's women, many of whom are family breadwinners since the AIDS pandemic began tearing through the population, have to walk farther for water since its service was privatized.

The workers' stories clarified the connection between globalization that devastates workers and communities and domestic corporate malfeasance that destroys workers' livelihoods and retirements. "Ever since the Enron scandal let loose a tidal wave of corporate crime, we've been traveling the country and fighting to change the way business is done on Wall Street and the way business is done here in Washington," said AFL-CIO President John Sweeney. "Now we're here to make sure world leaders as well as our own leaders understand that we are just as determined to change the way business is done in the global marketplace. Just as we have been calling for accountability from corporate CEOs and corporate boards, we are demanding that the IMF and World Bank boards become accountable for the social impacts of the decisions they make."

TOP

[AFL-CIO Home]
[Make the Global Economy Work for Working Families]
[**Workers Speak Out on Global Economy, Corporate Greed**]

AFL-CIO Make the Global Economy WORK for working families

Meet the Workers Who Spoke at the Sept. 26 Forum

TELECOMMUNICATIONS WORKERS

Cara Alcantar, Phoenix, Ariz., U.S.A.
Cara Alcantar, a WorldCom worker, was shocked when she lost her job, her retirement savings plan and her stock options when the company crashed in the wake of corporate accounting fraud. She worked at WorldCom in the activations department and in customer service before the company declared bankruptcy. She was laid off along with thousands of others. Cara was a dedicated worker, regularly working more than 50 hours a week, who had invested all of her 401(k) savings in WorldCom.

Cristina Alves Campelo, Recife, Brazil
Cristina Alves Campelo is also a victim of the WorldCom scandal. She began her career in customer service for a national phone company of Brazil, Embratel (Empresa Brasileira de Telecomunicações). Brazil recently privatized Embratel, selling it to WorldCom. Cristina has held various elected positions in the Telecommunications Workers Union and now is Training Director of the Workers' Organizing Secretariat. Embratel—once WorldCom's premier international asset—has seen its share price fall 98 percent from its all-time high in March 2000. Cristina will discuss the impact of the privatization on Brazilian workers.

NURSES

Nyameka Mafani, Port Elizabeth, South Africa
Nyameka Mafani is a community health nurse who works primarily on HIV/AIDS initiatives after having watched this disease devastate so many in her nation. She works for the city of Port Elizabeth, where she has implemented several pilot services and currently works with some of the most vulnerable groups, including commercial sex workers. She is a member of the Democratic Nursing Organisation of South Africa and of the South African Municipal Workers' Union (SAMWU). She is an activist and leader within her union.

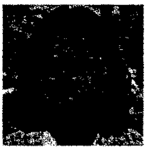
More

- Workers hand CEOs 'Pink Slips,' call for corporate accountability.
- Workers speak out on Global Economy, corporate greed.
- World Bank and IMF fact sheet.
- Learn more about the Oct. 19 National Day of Action and download an action toolkit.
- Responsible reform of the World Bank (PDF).
- International Right-to-Know campaign (PDF).
- Remark by AFL-CIO President John J. Sweeney at Global Workers Forum.

Rose Sommer, Los Angeles, Calif., U.S.A.

Rose Sommer, a cardiac intensive care nurse, and her co-workers watched for-profit health care squeeze staffing levels for too long. To try to protect their patients at Queen of Angels-Hollywood Presbyterian Medical Center, which is owned by Tenet Healthcare Corporation, she joined with her co-workers in the SEIU Nurse Alliance to try to improve patient care. She is one of 18 nurses who were fired in May 2002 for standing up about low staffing levels. The nurses eventually won their fight and a union contract that provides for a patient care committee and a new commitment from management to maintain adequate staffing.

MANUFACTURING WORKERS



Raquel Salazar Hernandez, San Salvador, El Salvador
Raquel Salazar Hernandez has worked for 10 years in El Salvador's garment industry and has sewn products for the Gap, Liz Claiborne, Ann Taylor, Phillips Van Heusen and other retailers. While employed at a Gap contractor, Tainan Enterprises, Raquel was fired when management found out she was pregnant. Raquel fought hard to help form a union that would combat labor abuses such as those she had experienced at Tainan and was able to get back her job. But after winning legal recognition for their union, Raquel and 1,000 others lost their jobs in April when the Gap pulled its orders and Tainan shut down the plant. Raquel is Secretary of Organization of her local union, part of the Industrial Union of Textile and Garment Workers of El Salvador (STIT). Raquel also studies law and has a two-year-old daughter.

Dan Pedroza, Dallas, Texas, U.S.A.
Dan Pedroza lost his job at a Dresser plant in DeSoto, Texas—along with 300 other workers—when the oil giant, Halliburton, bought his plant in 1998. Vice President Dick Cheney was the CEO of Halliburton at that time; Cheney made a reported $18.5 million profit selling his Halliburton shares in August 2000. Meanwhile, many workers—including management—at Dresser-Halliburton have lost millions of dollars in pension cuts, and retirees have lost substantial health care benefits. Today, Dan works as a machinist for Dresser-Halliburton in Dallas, which makes giant rock drills used in the global oil industry. He is a member of United Steelworkers of America Local 6580.

Remarks by AFL-CIO President John J. Sweeney
At Global Workers Forum
Washington, DC
September 26, 2002

Thank you, Jos. And thank you for all the good work you do on behalf of workers every day.

To all of you who are here today, welcome to AFL-CIO headquarters and thank you for joining us for this AGlobal Workers' Forum."

We're here to bring together two powerful movements—the movement for Global Justice, challenging corporate-led globalization . . . and the AFL-CIO "No More Business As Usual" campaign, demanding corporate change.

Today we ask ourselves, "Where do we go from here?"

We know that if we are to make the global economy work for working families everywhere, then we must challenge and change not only the corporate-led model of globalization, but corporations themselves.

Ever since the Enron scandal let loose a tidal wave of corporate crime, we've been traveling the country and fighting to change the way business is done on Wall Street and the way business is done here in Washington.

Now, we're here to make sure world leaders as well as our own leaders understand that we are just as determined to change the way business is done in the global marketplace.

Tomorrow, just a few blocks from here, the world's bankers will meet and make decisions that affect the lives of millions.

Today, in this room, are representatives of the people whose lives and livelihoods depend on those very decisions—the world's workers.

In just a few moments, you will meet and be able to listen to six workers who know what corporate domination and control are doing to our nation and our world.

One of them is a sister from Phoenix, Arizona, and one is a brother from Pittsburgh, Pennsylvania, who are among the millions of people who have suffered here in the United States.

She lost her job when her company, WorldCom, let her down.

He lost his job when a giant corporation, Halliburton, bought his company and stole not only his job security but the retirement security of the workers.

Two of our panelists are nurses — one from Port Elizabeth, South Africa, and the other from Los Angeles, California, and they are here to tell us what happens when corporations take over health care and start putting profits before people.

And finally, two of our "hermanas" are workers from Latin America, one from San Salvador, El Salvador, and the other from Recife, Brazil.

They are here to let us in on the global economy's biggest dirty little secret—namely that IMF and World Bank policies are enriching corporate profiteers, but failing to stimulate stable growth and speeding up the race to the bottom that puts workers last, and profits first.

As we meet here in Washington, our country is being battered by waves of war, recession and corporate greed, our world by an economic slowdown.

CEOs like Ken Lay at Enron, Gary Winnick at Global Crossing and Bernie Ebbers at WorldCom destroyed more than their companies and the savings of their employees and shareholders while taking down millions of dollars for themselves.

They also destroyed the faith of consumers and investors in American business.

The stock market slide continues to destroy workers' retirement savings and the economy President Bush describes as Afundamentally sound" has run aground.

More than two million men and women have been thrown out of work and our unemployment rate is the highest it's been in years.

To make matters worse, hundreds of thousands of workers have been out of work so long their unemployment benefits have run out.

And workers who still have jobs are finding their wages stagnant and their health care and pensions under attack.

Low-wage workers and recent immigrants and their families have been hit especially hard, literally hammered by the economy.

The safety net for them is really much more frayed than it is for the average worker—they are less likely to be eligible for unemployment benefits, less likely to have any employer-provided benefits, and completely unlikely to be unable to afford COBRA payments when they are thrown out of work.

And the joblessness is spreading—an estimated 30 million workers will soon lose their jobs across the world.

Tens of millions more face cutbacks of wages, hours and benefits.

This past month, the workers who were heroes on September 11 were celebrated in special ceremonies across our country.

But in the everyday policies of leaders and governments, workers and their families are treated with indifference—at best.

The same is true of the policies of the IMF and the World Bank.

In return for badly needed loans, countries are required to dismantle legal protections for workers, cut public sector jobs, privatize basic services like health care, education, and retirement pensions, and scrap market regulations to appease foreign multinationals like Enron and Halliburton.

Our scandalous corporations and the IMF and the World Bank have been following parallel and eerily similar roads to the bottom.

At Enron, Tyco, and WorldCom, top executives plundered the companies, while thousands of company workers lost their jobs and their life savings.

Big investors were told the score and made huge profits; small investors were kept in the dark and they lost big time.

When the IMF and the World Bank come calling, workers in developing countries are cut out of the loop as well, and can't find out what policies their governments have agreed to until after IMF and World Bank loans are approved.

They lose every time.

How did our corporations come to so much power?

They used money and political clout to rewrite the rules—they rigged the markets, and freed themselves from all accountability.

Then they used that freedom to fleece consumers, investors and even their own colleagues.

They pushed deregulation of basic necessities like energy and water.

They peddled privatization, and preferred speculation over investment, trading over production.

If those strategies sound familiar, it's because they are.

Those strategies are exactly what the IMF and the World Bank are forcing down the throats of working people across the world.

Over two decades ago, the global corporations and banks set out to create a new global market.

They made the rules, so it's no mystery why those rules defend property rights, but ignore workers' rights.

Capital is protected; workers' rights and the environment are not.

Private speculators are liberated; governments are locked in an economic straight jacket.

This is corporate economics on a global scale—deregulation, privatization,

speculation over investment, trading at the expense of jobs—rules that benefit the few, and not the many.

Poor countries are burdened with debts that can never be repaid.

The global system protects foreign creditors over citizens.

The global bankers demand water systems and power plants be auctioned off, schools and hospitals closed, food crops uprooted for export crops - orchids, not wheat.

The AIDS pandemic devastates sub-Saharan Africa—but the global trading system protects patents over patients—the drug companies keep desperate countries from getting the medicine they need for their people.

We have seen the tragic results of corporate globalization—its celebrators said it would produce faster growth, rising incomes, democratic development . . . but reality mocks their claims.

Look around the world and you see slower growth, widening inequality, increasing instability.

First came Russia.

The IMF Ashock therapy" turned Russia into a wasteland.

It lost half of its national income.

Workers struggle to survive without pay for months at a time—it's a country reduced to barter.

Then came the Asian tigers.

They were pressured to open up their financial markets, deregulate their banks and float their currencies.

The resulting financial crisis erased in months what had taken years to build and millions of workers were thrust back into poverty overnight.

Now it is Argentina, where the government swallowed the IMF prescription whole.

Argentina opened its markets, cut back public welfare, disciplined labor, hardened its currency.

Now Argentina is suffering a crippling depression, $140 billion in debt, banks and utilities in foreign hands, its middle class ruined, its workers desperate, its prospects grim.

The global economy does not work for working people and that is why we are here in Washington to challenge corporate economics and demand corporate change.

—We are demanding that workers be put first - not last. The IMF and World Bank need to ensure that workers' rights are respected in all of their programs and they need to consult local unions before loans are finalized.

—We are calling for the same transparency and integrity we have been demanding in corporate board rooms to reach the boards of the IMF and the World Bank.

—Just as we have been calling for accountability from corporate CEOs and corporate boards, we are demanding that the IMF and World Bank boards become accountable for the social impacts of the decisions they make.

—We are joining with church activists, led by the Jubilee USA Network, to demand that the IMF and World Bank deepen debt relief for impoverished countries.

—We are joining workers and citizens of conscience across the world to demand that our world financial institutions invest in basic needs like health care and education and that they stop demanding privatization and cutbacks of basic services like Social Security.

—We are joining students across our country to challenge Nike, GAP and other sweatshop companies—now they're scrambling for cover, and while sweatshops continue to spread, so does the campaign against them.

—We are joining with doctors and human rights groups to confront "Big Pharma" and the drug companies—to demand that people be valued over patents, and that poor countries have the right to use affordable generic drugs in the treatment of AIDS.

—And finally, we are calling upon the U.S. Congress as they approve additional funding for the World Bank this year, to do their part to implement these crucial reforms.

Here is the message we bring to the IMF and World Bank meetings this week: We aren't going away . . . we are building an even bigger consensus . . . and making the global economy work for working families is becoming a reality.

In the end, we will win, not simply because of the power of our numbers, or the persuasion of peaceful protest, but because of the moral imperative of our cause.

Another world is possible.

A world that is free from hunger.

A world where human rights come first.

Where children go to school, not to work.

Where women are respected, not repressed.

Where workers are empowered and corporations are held accountable.

Another world is possible.

It may take years of unceasing efforts, but we have changed the world before against impossible odds.

We saw it in our struggles for the eight hour day.

We saw it in Gdansk.

We saw it in Soweto.

We saw it in the Civil Rights movement and the women's rights movement and the environmental movement.

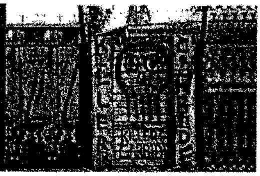
And we will see it in our movement, confident, as Dr. King taught us, that "the tragic wall that separates the outer city of wealth and comfort from the inner city of poverty and despair shall be crushed by the battering rams of the force of (global) justice.

Thank you and God bless you all.

Contact: Lane Windham 202-637-5018

INTERNATIONAL RIGHT TO KNOW CAMPAIGN

Do you know how U.S. corporations are treating the environment and people around the world?



Home

Action Center

What is IRTK?

Case Studies

Q & A

Endorse

Coalition Partners

Related Links

Contact Us

Click Here for Case Studies

TAKE ACTION!

BREAKING NEWS

JOIN THE IRTK ACTION NETWORK

When U.S. corporations operate here at home, they have to disclose basic information about their operations. These disclosures promote responsible business practices that help to protect workers and keep communities safe and clean.

But when American-owned corporations operate abroad, they don't have to disclose key information to the public about their environmental, labor, and human rights practices.

The International Right to Know coalition believes that everyone - both at home and abroad - should have the right to know whether U.S. corporations are responsible for workers' rights violations, environmental destruction, and human rights abuses.

Join activists from more than 200 environmental, labor, human rights, faith-based and social justice organizations who are speaking out in support of International Right to Know!

Friends of the Earth

AFL-CIO www.aflcio.org

amnestyusa.org

NRDC The Earth's Best Defense www.nrdc.org

EARTHRIGHTS INTERNATIONAL
www.earthrights.org

GLOBAL EXCHANGE
www.globalexchange.org

LAWYERS COMMITTEE FOR HUMAN RIGHTS
www.lchr.org

Oxfam America
www.oxfamamerica.org

Working Group on Community Right To Know
www.rtk.net/wcs/

INTERNATIONAL RIGHT TO KNOW CAMPAIGN

Case Studies

Home
Action Center
What is IRTK?
Case Studies
Q & A
Endorse
Coalition Partners
Related Links
Contact Us

As U.S. corporations expand their operations globally, their impact on human rights, the environment, and workers has grown around the world.

Case Studies

Unocal in Burma
Doe Run in Peru
Freeport-McMoRan Copper & Gold in Indonesia
Nike in China
ExxonMobil in Indonesia
ExxonMobil in Chad/Cameroon
Chevron in Nigeria
Enron in India
Union Carbide in Bhopal, India
Newmont in Indonesia

INTERNATIONAL RIGHT TO KNOW CAMPAIGN

Case Studies

Home
Action Center
What is IRTK?
Case Studies
Q & A
Endorse
Coalition Partners
Related Links
Contact Us

Unocal in Burma

Background

Unocal's North America Energy Operations and International Energy Operations groups are engaged in the exploration and production of crude oil and natural gas and project development in 14 countries around the world. In 2000, Unocal produced 175,000 barrels of petroleum liquids and 2,008 million cubic feet of gas per day -- mainly from United States' Gulf of Mexico region, Thailand, and Indonesia. Unocal has also been active in several repressive countries, such as Afghanistan.

Unocal claims to be committed to the respect for human rights and the environment in all of their activities and the promotion of responsibility for these ideals everywhere. The company puts the Universal Declaration of Human Rights on their website, speaks of multi-party stakeholder processes, and attempts to join the international humanitarian community.

Unocal in Burma

In 1991, Unocal teamed with Total (France), Petroleum Authority of Thailand Exploration and Production (PTTEP), and Myanma Oil and Gas Enterprise (MOGE), to finance and construct a natural gas pipeline extending from the Yadana gas field through Burma's Tenasserim region to Thailand. Unocal, as a member of this Yadana consortium, has partnered in business with Burma's brutal military regime to exploit Burma's natural resources. Unocal's support of the Burmese military dictatorship has led to devastating violations of environmental, human, and labor rights in Burma. Unocal is currently involved in litigation for a crime against humanity in which the plaintiffs are Burmese peasants who suffered a variety of egregious abuses at the hands of Burmese army units that were securing the pipeline route.

Unocal's involvement in the Yadana pipeline project has resulted in a variety of grave environmental abuses. The pipeline project has caused the fragmentation of habitat for numerous endangered species and the largescale destruction of Burma's natural resources. The destruction of wetlands, mangrove ecosystems, and Burma's unusually large diversity of flora and fauna, as well as forest clearing, the establishment of logging concessions, and increased poaching of endangered species, have all been reported as direct environmental impacts of the Yadana pipeline.

Unocal has been complicit in human rights violations perpetrated by Burma's military regime. To provide security for the pipeline, military presence along the pipeline has drastically increased. This military

Click Here for Case Studies

occupation has yielded a corresponding increase in gross human rights violations including rape, torture, forced labor, forceful displacement of thousands of local peoples from their homes and summary executions. In a case against Unocal (*Doe v. Unocal*), the Court stated, "Unocal knew that the military had a record of committing human rights abuses; that the Project hired the military to provide security for the Project, a military that forced villagers to work and entire villages to relocate for the benefit of the Project; that the military, while forcing villagers to work and relocate, committed numerous acts of violence; and that Unocal knew or should have known that the military did commit, was committing and would continue to commit these tortious acts."

Widespread forced labor and portering on the pipeline project has been well documented. The military has forced residents to work on the pipeline infrastructure and porter for military units guarding the environmentally damaged project. Even Unocal President John Imle admitted under oath that "[s]ome porters were conscripted."

Why International Right to Know?

An International Right to Know law would require Unocal to make public their security contract with the Burmese military. IRTK would obligate Unocal to divulge the environmental and human rights abuses in Burma. Had we had a right to know, Unocal may have been pressured to pull out of the Yadana pipeline project a decade ago. The exposure of this protected information could have prevented most of the environmental and human rights violations that have persisted over the last several years.

Sources:

- Action Resource Center's Burma campaign
- Corporate Criminals
- Total Denial Continues, Report by EarthRights International (May 2000)
- Unocal website
- EarthRights International's page on Doe v. Unocal

[Go to What is IRTK? for more info] [Back to top] [Back to Case Studies]

COCKTAILS: 5:45-7:00 P.M. (River Foyer - 4th Floor) Brilliant Chitchat!

DINNER: 7:00-9:00 P.M. (Salons D, E & F - 4th Floor)

SPECIAL ANNOUNCEMENTS Table of Contents

OMSA
3rd Annual
CAJUN TROPICS FISHING RODEO

Take note OMSA fishermen! **We have a new rodeo location and date**. This year's Cajun Tropics Fishing Rodeo will be launched from The Sand Dollar Marina in Grand Isle, Louisiana on Friday, June 29th with a Cajun Tropic Social. Saturday, June 30th will be the Fishing Tournament Day with fisherpersons out at safelight and returning per the weigh-in times scheduled.

Notices and registration forms with detailed information about the rodeo & Grand Isle will be mailed shortly. In the interim, I am providing some "start-up" information for those who are not familiar with the area. Grand Isle is approximately 2 hours south of Baton Rouge or New Orleans. Please note that the rodeo is the weekend before 4th of July. Therefore, some of you may want to begin to make marina and room arrangements now.

DATE:	June 29 & 30th
RODEO HEADQUARTERS:	SAND DOLLAR MARINA, MOTELDELI & LOUNGE 158 Sand Dollar Court Grand Isle, LA 70358 Located at: Highway 1 and Cheramie Road
PHONE:	Marina (985) 787-2500 Motel (985) 787-2893 Fax (985) 787-3800

See the insert for motels, marinas and guides.

PRESIDENT'S MESSAGE Table of Contents

Slow, but Sure?

For over two years, OMSA and its members have worked hard and steadily to design and develop a solid and successful strategy to prevent unions from penetrating our industry. So far, so good!

At considerable expense, in both time and money invested, OMSA's Board and our members have directed and funded an effective resistance to union encroachment into the offshore oil and gas sector. Despite aggressive union campaigns against a handful of selected corporate targets, and a thick blanket of union propaganda aimed broadly at the entire industry, not one offshore vessel operator has succumbed to the union blitzkrieg. To date, the joint forces and collective finances of the International Transportation Workers Federation (ITF), the AFL-CIO's five maritime trade unions, the Offshore Mariners United (OMU) and GCMA have not been able to persuade enough offshore mariners and workers to accept the union's transparent, self serving propaganda and to betray the employers in our industry that have, over many years, provided extraordinary job employment opportunities for them, with more to come. So far, so good.

But remember this. The AFL-CIO's "southern" and offshore strategy does not contemplate short-term victories. They will welcome easy wins. But they do not expect them. Against Offshore Logistics, several years ago, the OPEIU made relatively short work of this major helicopter service firm and organized the company in one burst. The same was true with respect to the McDermott situation in Amelia. But, in the case of Petroleum Helicopters (PHI), over the course of four years, the unions lost two elections before they finally and very narrowly won the third encounter.

EXHIBIT C

...l's credit, they negotiated in good faith, as the law requires. But, they have continued to fight and ...essfully resist, to date, the most obnoxious and potentially damaging demands of the union (OPEIU), ...is their legal right. "The jury" is still out in this case, and it won't be over until the pretty (and tough) lady sings.

Notwithstanding the losses by management to the unions at Offshore Logistics and the McDermott Shipyard in Amelia, and the ongoing, still unsettled battle at PHI, therefore, we are fortunate to be able to claim that the offshore marine industry in the Gulf of Mexico, at least, is still union free. But it would be foolish indeed if we became complacent and assumed that the AFL-CIO's strategic plan to organize the offshore industry will be easily and/or soon abandoned.

We should take heart from the fact that we have been and continue to be largely successful against such an aggressive well-financed machine. This can and should give us confidence that we <u>are</u> beating them, that we can beat them again, and that we <u>will</u>, finally, beat them in the end. But make no mistake. This fight is <u>not</u> over. There is much more to be done. We must be deliberate. We must be determined. Above all, we must be careful not to be undone by our confidence, and we must continue to urge others in our industry that they must become more actively engaged in this fight for the "soul" of this industry.

"Our" fight is, after all, the <u>industry's</u> fight. The fight is for everyone- offshore drilling contractors, offshore diving and construction contractors, seismic, well servicing, contractors - everyone - not just helicopter or vessel operators. Surprisingly, other sectors of our industry and our suppliers have been relatively slow to fully appreciate and act on the threat posed by these unions to all of us, although we have seen signs, recently, that we and others have been making at least a slight dent in the general apathy that has frustrated us mightily for two years. Undenialibly, progress in this respect has been painfully slow. But, (and we hope we are correct), the signs that awareness is growing have improved; too slowly, to be sure, but growing, nonetheless.

A handful of companies - not many, but some - have recently contacted us about how they can help. Also, a new group called the Gulf Coast Employers Association has been formed to raise industry awareness of the union threat and encourage pro-employee initiatives throughout the Gulf of Mexico region. We certainly welcome their efforts.

What everyone should recognize, however, is this: Slow, but sure may just not cut it. The perception that union activity is limited to the handful of campaigns that have been mentioned in this message is a disarmingly dangerous and potentially destructive perception. While OMSA has been raising hell about the length and breadth of actual and prospective union encroachment under the AFL-CIO's broad program to unionize the entire Gulf South, many offshore industry CEO's continue to believe that the threat, if any, is relatively isolated and superficial. Bad assumption.

IT MAY BE of INTEREST to KNOW THAT <u>IN THIS PAST YEAR ALONE</u>, our program partners, PTI LABOR RESEARCH, INC., report that between April 2000 and April 2001, union petitions to the NLRB in Regions 12,15, and 16 (Primarily Gulf South Region) number nearly 400. This roughly <u>triples</u> the number of petitions last year. And if that number of petitions have actually been filed, one can assume that their infiltration of companies under attack and influence with employees is actually much deeper than that.

Not unlike the old sucker trick where one guy points up and looks into the sky at an "imaginary" item, the stooges are distracted, while accomplices pick their pockets.
So, in our case, while everyone is watching the fireworks between the offshore industry and union attempts to organize a handful of helicopter and boat companies, the AFL-CIO, Teamsters, ILA and miscellaneous other unions, according to the PTI research, are working below industry radar and scooping up prospects left and right. Every company is fair game. This union play is really a bigger scam than meets the eye.
Is anyone listening?

Bob Alario

UNION NEWS ALERT | **Table of Contents**

The Offshore Industry Union-Free Operations Program | **Table of Contents**

APPENDIX H - WRITTEN STATEMENT OF THOMAS E. FAIRLEY, PRESIDENT AND CEO, TRICO MARINE SERVICES, INC., HOUMA, LA

STATEMENT OF

THOMAS E. FAIRLEY
PRESIDENT AND CHIEF EXECUTVE OFFICER
TRICO MARINE SERVICES, INC.

BEFORE THE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS OF THE HOUSE COMMITTEE ON EDUCATION AND WORKFORCE

OCTOBER 8, 2002

TESTIMONY OF THOMAS E. FAIRLEY
PRESIDENT AND CHIEF EXECUTVE OFFICER
TRICO MARINE SERVICES, INC.
HOUSTON, TEXAS
HOUMA, LOUISIANA

BEFORE THE SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
COMMITTEE ON EDUCATION AND WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.
OCTOBER 8, 2002

Chairman Johnson and Distinguished Members of the Subcommittee, thank you very much for inviting me to address you this afternoon. It is a privilege and an honor.

My name is Thomas Fairley, and I am the President and Chief Executive Officer of Trico Marine Services, Inc. Trico is an offshore vessel company serving the offshore oil and gas industry in the Gulf of Mexico and throughout the world, with principal offices in Houston, Texas and Houma, Louisiana. The company provides supply vessels and crew boats to the industry. My history is that I began work as a deck hand on board such boats and worked my way up to the level of captain, after which, through some good opportunities, I was able to form a boat company with my colleague, Ron Palmer, in the early 1980s which became Trico.

For almost two and a half years Trico and its employees have been the subject of an intense and harassing corporate campaign to organize Trico's mariners by a U.S. federation of maritime unions called The Offshore Mariners United, or OMU, which is supported by the AFL-CIO's Center for Strategic Research, Department of Corporate Affairs. This campaign, which is essentially a membership drive, is directed at the approximately 70 offshore vessel companies operating in the Gulf of Mexico which serve the offshore rigs and platforms of the oil and gas industry. Trico Marine has become the target company.

After 29 months, neither Trico employees nor the employees at the other boat companies in the Gulf area have chosen to be represented by the OMU, nor has a National Labor Relations Board (NLRB) petition for a secret ballot election been filed by the OMU, a process that requires only 30% signatures from the workforce of a company. Trico was chosen as the target company, I believe, because the OMU and its international allies had to focus their resources on one company and because of Trico's status as a public corporation and its overseas operations -- particularly in Norway. Public corporations and corporations with foreign subsidiaries are more susceptible to labor union pressures and harassment during disputes or organizing membership drives.

Trico believes that its employees in the U.S., and throughout the world, should have the freedom to choose a union to represent them or equally choose not to be represented by a union. For our U.S. employees, the most secure and favored method would be a secret ballot election conducted by the NLRB.

Trico's employees have almost universally volunteered that they do not wish to be represented by OMU. A good number are former members of the maritime unions behind OMU, and they have volunteered that they have no interest. Our entire U.S. fleet, after the 29th month of the campaign, has either been contacted by or knows how to contact the OMU. Clearly, the OMU has been unable to interest the minimum 30% of Trico's mariners for a NLRB secret ballot election. Yet, the OMU continues its propaganda campaign against Trico without regard to the employees' sentiments.

Throughout this campaign, Trico has honored our nation's labor laws. In the past 29 months, Trico has received only one unfair labor practice charge seeking vessel access, but facing dismissal of that charge it was withdrawn by OMU after a one year NLRB investigation. I am also proud to say that Trico has a very good wage and benefit program for its employees, and through 2001, vessel personnel averaged wage increases of 20% per year for the last five years.

On the safety front, the maritime industry is one of the most regulated industries in the world. Trico's vessels meet U.S. and international maritime safety standards, including the United States Coast Guard, American Bureau of Shipping, the International Safety Management Code, and the Standards for Training, Certifications, and Watchkeeping. Our fleet is well maintained, and it passes certification standards. Hours worked are regulated by the U.S. Coast Guard, and Trico adheres to them. It has been asserted that Trico operates with fewer personnel per vessel in the Gulf of Mexico than in the North Sea, implying some type of safety deficiency. Trico typically staffs its vessels with more personnel than required by the U.S. Coast Guard, and a comparison to Trico's North Sea operations is one of apples to oranges. In the North Sea, the conditions are rougher, the vessels larger, and the personnel need greater.

What makes this organizing campaign against Trico unusual is that after the failure to persuade Trico's employees to enlist, the OMU has recruited international unions to continue the attack on Trico's operations and customers throughout the world, including Singapore, Brazil, Nigeria, and Trinidad -- but, particularly in Norway. The actions have included repeated contacts with customers reporting false information or accusations about Trico and veiled threats of union interference or boycotts to our customers to pressure them not to do business with Trico unless Trico facilitates and/or promotes the OMU drive to enlist Trico's employees -- which would be against their wishes and U.S. labor law.

In Norway, Trico has a subsidiary -- Trico Supply ASA. Trico Supply operates 19 vessels servicing the rigs and platforms off the coast of Norway. The company has 400 mariners in the North Sea who have been represented for some time by three Norwegian maritime unions. Our mariners decided to join these unions of their own free will and in accordance with Norwegian law. Trico respects their choice and deals with their union representatives.

On October 18, 2001, the Norwegian Oil and Petrochemical Workers Union, known as NOPEF, a large and powerful union which represents the dock and platform workers in the North Sea, filed a lawsuit under Norway's boycott statute against Trico Supply. Trico Supply has no relationship or connection with NOPEF, nor do its employees, who are represented by the Norwegian maritime unions. NOPEF filed the suit at the call of the largest federation of transportation unions in the world -- the International Transport Workers Federation (ITF) -- of which it is a member. The case is lodged in the small town of Volda, and a three week trial is scheduled to begin on November 4. NOPEF seeks court pre-approval of an announced boycott against Trico Supply's vessels operating in the North Sea. The only issue at trial in Norway will be Trico's conduct in the U.S.

The boycott is occasioned solely by the corporate campaign occurring in the U.S., and its goal is for Trico to facilitate the OMU's domestic campaign against the wishes of Trico's employees. Secondary boycotts are illegal under the U.S. National Labor Relations Act, but may be legal in Norway if deemed fair and without a disproportionate impact. NOPEF has admitted that there is no dispute in Norway since Trico's subsidiary operates there with three maritime unions. Trico's Norwegian employees and the unions representing them have objected to the proposed boycott, but NOPEF has disregarded their objections.

Principal to Trico's defense in Norway is the fact that it has observed and honored U.S. labor law. In response, NOPEF, with the help of the AFL-CIO and other international unions, has launched an attack in their Norwegian pleadings against the National Labor Relations Act. NOPEF is asking the district court in Volda to rule that Trico's compliance with U.S. law -- The National Labor Relations Act (NLRA) -- does not offer a defense to the boycott since U.S. labor law does not adequately protect U.S. citizens. The AFL-CIO is providing a witness in Norway to support this point. Trico will counter this absurd contention by offering as an expert witness, Charles I. Cohen — a former Member of the National Labor Relations Board and a panel member here today — and Edward E. Potter — representative to the ILO with United States Council for International Business.

NOPEF is contending that the NLRA is defective by the standards of the International Labor Organization Conventions 87 and 98, unratified by the U.S., that deal with the right to organize and freedom of association. NOPEF also contends that U.S. labor law does not meet "European humanistic standards."

Of particular interest to this Subcommittee is that NOPEF in its pleadings has argued that the NLRA is less protective of workers' rights than the labor laws of Afghanistan, Burma, and banana republics which have ratified the two previously mentioned International Conventions.

Following the trial, a ruling could be issued that U.S. labor law, the National Labor Relations Act, does not sufficiently protect its own citizens and that Trico's compliance with U.S. law offers no defense and that NOPEF's planned boycott against Trico's vessels in the North Sea is legitimate. I have been told that no court from a first world nation, or for that matter, any nation, has ever passed judgment on the legitimacy of U.S. labor law. Such a ruling would become precedent in Norway. Any U.S. company operating in Norway, but involved in a domestic or international labor dispute or membership drive, could be boycotted even when in compliance with U.S. labor law -- without a predetermination trial.

Since the vast majority of U.S. corporations operating in the offshore oil and gas industry in both the Gulf of Mexico and in the North Sea are non-union in their U.S. Gulf operations, a successful boycott against Trico will likely spawn more boycotts against U.S. companies that operate in both locations.

Such a decision rejecting U.S. labor law could also impact U.S. corporations throughout the world. In addition to potential boycotts, the decision could be used by foreign companies against U.S. companies competing for business. It could be argued that a particular piece of foreign business should not be awarded to a U.S. company because U.S. law has been found not to protect U.S. citizens adequately by a competent European court.

I have been told that an adverse ruling against Trico might be used in contexts beyond the labor field. For example, the European Union might seek to use the case to argue that the United States environmental laws are deficient because the U.S. government has not ratified the Kyoto Convention; therefore, the EU has the right to impose countervailing duties on United States products to "level off the playing field" for EU companies that must pay higher prices for products, like oil, that contribute to greenhouse gas emissions. Also, U.S. subsidiary corporations overseas could be targeted with boycotts and other actions for the failure of the U.S. to ratify a treaty or international convention, citing deficient U.S. law on a particular subject.

Trico alone is shouldering the responsibility of defending our nation's labor laws. We are bringing expert witnesses, vessel personnel, and managers to the town of Volda to help in the defense. We have sought the assistance of the U.S. State Department, but have been told that the United States government is not prepared to intervene in the case at this stage.

Our best hope to end the Norway legal proceeding and the boycott threat lies here in the U.S. before the National Labor Relations Board. In July and August of 2001, Trico filed unfair labor practice charges alleging an illegal secondary boycott under U.S. law against the OMU and the ITF for their open and active roles, including financial, in organizing and implementing in the U.S. the current boycott threat in Norway. I am told that there is strong evidence and legal

precedent to support a decision by General Counsel to seek injunctive relief against these two principal parties in the boycott and to issue complaints against them. At this time, the charges are still pending before General Counsel. We believe that such action by the NLRB in the U.S. would lead to an end to the Norway boycott case against Trico.

I would like to thank the Subcommittee for the opportunity to address it. I would be pleased to answer any questions.

APPENDIX I – SUBMITTED FOR THE RECORD, LETTER FROM ROBERT J. VERDISCO, PRESIDENT, IMRA TO PRESIDENT GEORGE W. BUSH, OCTOBER 3, 2002

INTERNATIONAL MASS RETAIL ASSOCIATION

October 3, 2002

President George W. Bush
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear President Bush:

The International Mass Retail Association (IMRA) respectfully urges you to use your powers under Federal Law to appoint a Board of Inquiry to investigate how the closing of the West Coast ports is harming the nation's economy. The work stoppage due to an impasse between the Pacific Maritime Association and the International Longshore and Warehouse Union is causing serious harm to every segment of the U.S. economy. Each day imposes new hardships and costs on a wide range of American industries, their customers, their employees and their shareholders.

The International Mass Retail Association—the world's leading alliance of retailers and their product and service suppliers—is committed to bringing price-competitive value to the world's consumers. IMRA members represent over $1 trillion in sales annually and operate over 100,000 stores, manufacturing facilities, and distribution centers nationwide. Our member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of Americans.

The ports have now been shut down for six days, costing the U.S. economy over $6 billion dollars thus far. These damages will increase exponentially if the shutdown continues. Even if the ports were to reopen tomorrow, it could still take several months to recover from the backlog the shutdown has caused.

This shutdown has hit every sector of the U.S. economy -- importers, exporters, manufacturers, agriculture and transportation. No U.S. business can afford to take the economic hit that this lockout has caused. It is damaging every company's bottom line, and hit every consumer's wallet.

IMRA has supported mediation to resolve the situation, but it is now clearly evident that the two parties are unable to end this impasse as quickly as both economic and national security require. Prompt action is needed to ensure timely reopening of the nation's West Coast ports.

IMRA stands ready to assist in any way efforts for a speedy resolution of this impact. Please feel free to contact me or Jonathan Gold, IMRA's Director of International Trade Policy, if we can be of any assistance. Thank you for your consideration of this important issue.

Sincerely,

Robert J. Verdisco

Robert J. Verdisco
President, IMRA

CC: Donald L. Evans, Secretary of Commerce
Elaine L. Chao, Secretary of Labor
Norman Y. Mineta, Secretary of Transportation
Paul H. O'Neill, Secretary of Treasury
Robert B. Zoellick, United States Trade Representative

1700 North Moore Street • Suite 2250 • Arlington, VA 22209
Phone: (703) 841-2300 • Fax: (703) 841-1184

APPENDIX J – SUBMITTED FOR THE RECORD, LETTER FROM JOHN VICTOR JOKINEN, PRESIDENT, E.J. VICTOR FURNITURE COMPANY, TO CONGRESSMAN CASS BALLENGER, OCTOBER 5, 2002

E. J. VICTOR, 110 WAMSUTTA MILL RD., PO BOX 309, MORGANTON, NC 28655 (828) 437-1991 FAX (828) 438-0744

EJ Victor

Dear Congressmen, SATURDAY OCTOBER 5, 2002

Our company is a high end furniture manufacturer located in Morganton, North Carolina. We employ over two hundred fine workers in a town of eighteen thousand population.

While we domestically produce about seventy-five percent of our production, we do rely on imports for certain products such as dining chairs, small tables and a recently new line of accessories (lighting, ceramics, wall art, etc)

As of now, we are awaiting arrival of new samples that were to be shown at the High Point International Furniture Market that begins on October 16th. These samples are on containers that are sitting on the Long Beach docks and one still on a ship off shore.

The potential economic impact for our company is a loss of three to four million in sales over the next six months. We have also just completed a major expansion of our showroom at a cost of over a million dollars in anticipation of showing these new products.

We not only are awaiting arrival of sold dining room chairs needed for production for peak season sales, but also have exports on the same docks sold to Asian customers.

My concerns are naturally centered on our own company's critical immediate needs, however, several companies that I know personally about have like concerns. Hundreds more are probably equally affected.

I ask your help in seeking some resolution in this lockout that materially worsens our already battered economy, and the understanding of the critical nature of immediate action.

Sincerely yours.

John Victor Johnson

APPENDIX K – SUBMITTED FOR THE RECORD, GREENHOUSE, STEVEN, "A UNION WINS THE GLOBAL GAME", NEW YORK TIMES, OCTOBER 6, 2002

October 6, 2002

New York Times

A Union Wins the Global Game

By STEVEN GREENHOUSE

OAKLAND, Calif. - TO American unions, globalization is a nefarious force that has wiped out the jobs of millions of well-paid blue-collar workers.

But the members of one union have played the global-trading system as well as any international investor: the longshoremen. They wield so much power that they have managed to obtain cradle-to-grave benefits and salaries to make many white-collar college graduates envious. In fact, for the longshoremen, globalization has been nothing but a blessing.

Full-time West Coast dockworkers who load and unload ships make on average nearly $100,000 a year, while clerks who keep track of cargo movements average $120,000. Not only does the medical coverage for active longshoremen require no out-of-pocket expenses, but the same holds true for retirees.

The benefits package, according to management, averages $42,000 a year, more than many Americans make in a year. Sometimes embarrassed by these numbers, union officials often note that many longshoremen earn only $65,000 a year.

One other benefit: they get a paid day off to celebrate the birth of their Marxist founder, Harry Bridges.

There is a simple explanation why the longshoremen have benefited so much from globalization. They control the chokepoints that can halt the flow of imports and exports that American consumers and businesses depend on. In other words, the 10,500 longshoremen on the West Coast have the power to paralyze the $300 billion in cargo that flows through these ports every year.

In the past, management has often surrendered to the demands of dockworkers - granting them fat wages and benefits - instead of enduring a strike or slowdown. This time, officials with the Pacific Maritime Association, which represents port operators and shipping lines, shut 29 ports last week and locked out the workers after complaining that the workers were engaged in a slowdown. The association wants the right to introduce new technology to speed cargo handling, while the International Longshore and Warehouse Union wants the remaining jobs to be under its jurisdiction.

The longshoremen hold an unusually strong hand. "They are one of the highest paid blue-collar group because of their strategic location in terms of controlling where goods funnel from ports to the nation's roads and railroads," said Howard Kimeldorf, a University of Michigan professor who wrote a book on dockworkers. "They have enormous bargaining clout because they have the power to stop all those goods."

Because of their handsome pay, the longshoremen can easily endure a prolonged work stoppage. Management is hard put to use strikebreakers to replace them, not wanting to risk using inexperienced people to operate cranes that move containers half the size of railroad cars.

If workers at U.S. Steel or Caterpillar strike, it is easy for their customers to buy steel or tractors from competitors. But if the longshoremen walk out, shipping lines cannot divert their cargo to other ports. Mexico's ports and roads cannot handle the cargo, Canadian longshoremen won't unload the diverted ships and East Coast ports are unavailable because the Panama Canal is too small to handle the huge Pacific ships.

In the past, retailers, farmers and manufacturers, who rely on trade, often pushed management to settle quickly by capitulating to the longshoremen. The just-in-time delivery system used by many factories and retailers leaves little margin for delay.

"The unusually time-sensitive nature of the cargo gives disproportionate power to these workers," said David J. Olson, an expert on port operations at the University of Washington.

Taking globalization to heart, the union has found partners in Europe, Japan and elsewhere, where longshoreman are also the blue-collar elite. The longshoremen have often used their clout to back each other up against lower-wage nonunion competitors. Several years ago, for example, Japanese dockworkers, which have almost total control over shipping operations in Japan, heeded a request from American longshoremen not to unload fruit shipped from a nonunion port in Florida.

If other labor unions had all these unusual advantages working on their behalf - and they all wish they did - their members would probably be earning far more then they do now, and American unions would be far more powerful than they are.

The longshoremen have also benefited from an unusual solidarity. New workers must takes courses about the union's history. And besides getting a day off for the union's founder, they also get to take Bloody Thursday, commemorating the day during a 1934 strike when two longshoremen were killed in San Francisco. The painted outlines of where the workers fell remain a longshoremen's shrine.

American port workers have a history of earning more than other blue-collar workers; in 1874, for example, New York dockworkers already earned more than twice what railroad loaders earned.

In modern times, far more than other unions, the longshoremen have used technological change to their advantage. In 1960, the West Coast longshoremen agreed to far-reaching automation that replaced inefficient break-bulk cargo, which relied on hooks to move the cargo, with containerized cargo, which relies on cranes. In accepting automation, the union recognized that productivity would soar and the number of longshoremen needed would plunge; there are now 10,500 West Coast longshoremen, down from 100,000 in the 1950's.

In exchange, the union received an unusual promise: port operators pledged to share the fruits of the new automation. Management promised all longshoremen a guaranteed level of pay, even if there was not work for everyone. Management also promised to share the wealth.

"The productivity gains were so phenomenal that it was easy for the employers to pay high salaries," said Harley Shaiken, an expert on labor relations at the University of California at Berkeley.

With containerization in place, the tonnage handled by the West Coast ports has quadrupled since 1970, even though there are fewer workers than three decades ago. Wages have soared along with productivity.

"The question shouldn't be, `Why does this group of blue-collar workers earn so much?' " said Steve Stallone, the union's spokesman. "The question should be, `Why shouldn't blue-collar workers be able to share in the benefits of increased productivity? Why shouldn't blue-collar workers be able to earn a lot of money, too?' "

APPENDIX L – SUBMITTED FOR THE RECORD, STATEMENT OF CONGRESSMAN JOHN BOOZMAN, 3RD DISTRICT OF ARKANSAS, U.S. HOUSE OF REPRESENTATIVES

JOHN BOOZMAN
3RD DISTRICT, ARKANSAS

COMMITTEES:
VETERANS' AFFAIRS
SUBCOMMITTEES:
HEALTH
OVERSIGHT AND INVESTIGATIONS

TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES:
AVIATION
WATER RESOURCES AND ENVIRONMENT

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE:
1421 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4301
FAX: (202) 225-5713

DISTRICT OFFICES:
207 WEST CENTER STREET
FAYETTEVILLE, AR 72701
(479) 442-5258
FAX: (479) 442-0937

30 SOUTH 6, ROOM 240
FORT SMITH, AR 72901
(479) 782-7787
FAX: (479) 783-7662

402 NORTH WALNUT, SUITE 210
HARRISON, AR 72601
(870) 741-6900
FAX: (870) 741-7741

October 7, 2002

The Honorable Sam Johnson
Chairman
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Johnson:

Please accept these remarks into the written record of the testimony for the Employer-Employee Relations hearing tomorrow, October 8, 2002, on the West Coast Ports shutdown.

Sincerely,

John Boozman
Member of Congress

JOHN BOOZMAN
3RD DISTRICT, ARKANSAS

COMMITTEES:
VETERANS' AFFAIRS
SUBCOMMITTEES:
HEALTH
OVERSIGHT AND INVESTIGATIONS

TRANSPORTATION AND
INFRASTRUCTURE
SUBCOMMITTEES:
AVIATION
WATER RESOURCES AND
ENVIRONMENT

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE:
1421 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4301
FAX: (202) 225-5713

DISTRICT OFFICES:
207 WEST CENTER STREET
FAYETTEVILLE, AR 72701
(479) 442-5258
FAX: (479) 442-0937

30 SOUTH 6, ROOM 240
FORT SMITH, AR 72901
(479) 782-7787
FAX: (479) 783-7662

402 NORTH WALNUT, SUITE 210
HARRISON, AR 72601
(870) 741-6900
FAX: (870) 741-7741

Emerging Trends in Employment and Labor Laws: Labor-Management Relations in a Global Economy
Employer-Employee Relations Subcommittee
October 8, 2002

Mr. Chairman, I would like to take this opportunity to share with the subcommittee the effects that the West Coast Port shutdown is having on commerce in my district and throughout the country.

The Third District of Arkansas, being home to several of the nation's largest importers and exporters, is suffering tremendously from this situation. Companies such as Wal-Mart, Tyson's Inc., J.B. Hunt, OK Foods, and Arkansas Best Freightways, which are headquartered in my district, all rely heavily on the West Coast Ports to conduct daily business. I am receiving calls daily from these companies saying they are on the verge of laying off workers because trucks cannot leave the distribution centers as they have no where to go.

In today's economy, we cannot afford for this to happen. It is estimated that the economy is losing close to $2 billion per day, with costs going up every day the ports remain closed.

I am sure you are aware, almost every industry in America utilizes these ports to move their goods. It is estimated that West Coast ports handle about half of the nation's oceangoing cargo, accounting for more than 7% of the gross domestic product. Factories ship about 35% of all their goods during the fourth quarter, and at this time approximately 162 cargo ships containing electronics, auto parts and other goods are waiting to be unloaded. Should the shutdown continue, this year's holiday season supply of inventory would be lower, inevitably causing higher prices during this hard economic time.

It is critical that the ports open immediately and the longshoremen resume work at a normal pace. As it stands today, the ports already have more than a month of backlogged goods on the docks. I understand that compromises will take time; unfortunately we do not have the luxury of time at this point. I urge the workers to go back to work under the expired contract until a new compromise with management is reached.

In today's global economy the United States cannot afford for one labor dispute to have such a controlling effect on the economy. It is important that laborer's rights and working conditions are protected to the fullest extent of the law, but not at the ultimate demise of the American and global economies. Due to the tremendous negative economic effect this situation is having, I believe it is time to reexamine the labor laws and adjust them to be as effective and proactive in the global economy of the twenty-first century as they were almost 60 years ago when they were created.

Mr. Chairman, I appreciate you giving me this opportunity to share my concerns, and if I can be of any service to you and your committee on this issue, I will be happy to do so.

APPENDIX M – SUBMITTED FOR THE RECORD, PRESIDENTIAL DOCUMENTS, EXECUTIVE ORDER 13275, OCTOBER 7, 2002

Presidential Documents

Executive Order 13275 of October 7, 2002

Creating a Board of Inquiry To Report on Certain Labor Disputes Affecting the Maritime Industry of the United States

WHEREAS, there exists a labor dispute between, on the one hand, employees represented by the International Longshore and Warehouse Union and, on the other hand, employers and the bargaining association of employers who are (1) U.S. and foreign steamship companies operating ships or employed as agents for ships engaged in service to or from the Pacific Coast ports in California, Oregon, and Washington, and (2) stevedore and terminal companies operating at ports in California, Oregon, and Washington; and

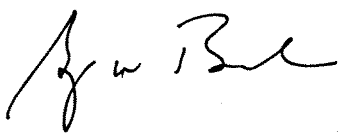
WHEREAS, such dispute has resulted in a lock-out that affects a substantial part of the maritime industry, an industry engaged in trade, commerce, transportation (including the transportation of military supplies), transmission, and communication among the several States and with foreign nations; and

WHEREAS, a continuation of this lock-out, if permitted to continue, will imperil the national health and safety;

NOW, THEREFORE, by virtue of the authority vested in me by section 206 of the Labor Management Relations Act, 1947 (61 Stat. 155; 29 U.S.C. 176) (the "Act"), I hereby create a Board of Inquiry consisting of such members as I shall appoint to inquire into the issues involved in such dispute.

The Board shall have powers and duties as set forth in title II of the Act. The Board shall report to me in accordance with the provisions of section 206 of the Act no later than October 8, 2002.

Upon the submission of its report, the Board shall continue in existence in order to perform any additional functions under the Act, including those functions set forth in section 209(b), but shall terminate no later than upon completion of such functions.



THE WHITE HOUSE,
October 7, 2002.

[FR Doc. 02-25900
Filed 10-8-02; 8:45 am]
Billing code 3195-01-P

APPENDIX N – SUBMITTED FOR THE RECORD, REPORT TO THE PRESIDENT, SUBMITTED BY THE PRESIDENT'S BOARD OF INQUIRY ON THE WORK STOPPAGE IN THE WEST COAST PORTS, CREATED BY EXECUTIVE ORDER, WILLIAM E. BROCK, CHAIRMAN, PATRICK HARDIN, DENNIS R. NOLAN, SAN FRANCISCO, CA, OCTOBER 8, 2002

October 8, 2002

The President

The White House

Dear Mr. President:

On October 7, 2002, by way of Executive Order, you appointed this Board of Inquiry to report to you on the work stoppage in the West Coast ports.

We have the honor of submitting this report. It represents in all respects the unanimous views of the members of the Board.

Respectfully,

William E. Brock, Chairman

Patrick Hardin

Dennis R. Nolan

cc: Honorable Elaine L. Chao, Secretary of Labor
Honorable Alberto R. Gonzales, Counsel to the President

REPORT TO THE PRESIDENT

SUBMITTED BY

THE PRESIDENT'S BOARD OF INQUIRY ON THE WORK STOPPAGE
IN THE WEST COAST PORTS

CREATED BY

EXECUTIVE ORDER DATED OCTOBER 7, 2002

William E. Brock, Chairman

Patrick Hardin

Dennis R. Nolan

San Francisco, California
October 8, 2002

Background of Dispute

On October 7, 2002, the President of the United States created this Board of Inquiry by Executive Order. The President directed this Board of Inquiry to report to him by October 8 on the current labor dispute causing the shutdown of the West Coast ports.

The labor dispute involves disagreements between the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA). The PMA is the bargaining representative for virtually all domestic and international shipping companies and stevedores operating on the West Coast ports. The ILWU represents approximately 10,500 longshore workers and marine clerks actively working at these ports.

The contract between the parties expired on July 1, 2002. Before the expiration of the contract, in May 2002, the parties began to negotiate over a new contract. Negotiations proved unsuccessful and, after the contract expired, the parties began to operate under short-term extensions of the contract. On September 1, 2002, the parties' practice of operating under short-term extensions of the contract ceased.

On September 26, the ILWU instructed its members to engage in what the ILWU terms a "safety program," in part to pressure the PMA in negotiations. The safety program substantially reduced the workers' output. The PMA asserts that productivity fell by sixty percent because of this conduct. On September 27, the PMA responded with economic pressure by locking out the bargaining unit. That shut down the West Coast ports.

The parties began meeting with representatives of the Federal Mediation and Conciliation Service (FMCS) in early October. Despite some apparent but limited progress, the parties have been unsuccessful in resolving their differences. On October 7, the President of the United States created this Board of Inquiry. The Board conducted a fact-finding hearing the same day.

Under the national emergency provisions of the Taft-Hartley Act, the Board's function is to inquire into the issues involved in the dispute, to ascertain the facts with respect to the causes and circumstances of the dispute, and to make a written report to the President. 29 U.S.C. §§ 176-177. The Act does not allow the report of the Board to contain recommendations. Id. § 176.

Facts Concerning the Dispute

On October 7, the Board conducted a hearing, closed to the public, in San Francisco. Representatives of the PMA and the ILWU made oral presentations and submitted written statements. The Board has carefully considered the party's presentations and submissions.

Two main issues create the current impasse. As described by the parties, the "fulcrum" of the dispute concerns the introduction of new technology in the ports and the implications of that introduction for job security and work preservation. The parties also disagree about the appropriate arbitration process in the next collective bargaining agreement.

The Technology Issue

Neither party disputes that the employers must implement new technology. The West Coast ports lag behind – in many cases far behind – the efficiency of other ports in the United States and around the world. Introducing needed technology will eliminate jobs held by marine clerks of the ILWU. The PMA has offered to guarantee marine clerk work and pay to the individuals currently holding those jobs until they retire. Beyond this point, the parties do not agree on how to handle the jobs to be created, eliminated, and changed by the implementation of new technology.

The ILWU views the issue as one of work and job preservation. For years, the ILWU has claimed, and the PMA has denied, that employers of the PMA have outsourced certain "planning jobs" to workers outside of the ILWU. Planning work is the work of charting the specific placement of cargo on vessels, dockside yards, and rail cars. To recoup what it claims to be lost jobs and to counter the possible loss of jobs that will come with new technology, the ILWU demands that all work that is functionally equivalent to work now or previously performed by marine clerks continue to be performed by ILWU members, without regard to where that work is performed.

In the PMA's view, this ILWU demand would obstruct "the free flow of information." The PMA views this demand as a specific impediment to modernization. According to the PMA, neither the ILWU nor any other entity has an exclusive right to process information regarding the movement of cargo. The PMA counters the ILWU demand with an offer to have certain new jobs, which the PMA asserts will come with the new technology, in the bargaining unit. The ILWU argues that the PMA has not provided any details whatsoever regarding the "new jobs" promised.

The Arbitration Issue

The essence of the arbitration dispute centers on the qualifications of prospective arbitrators. Under the expired agreement, "Area Arbitrators" quickly resolved disputes on the docks. Area Arbitrators came from the ranks of union and industry officials. The agreement also had an appeals process, concluding with the "Coast Arbitrator," a position that for many years has been held by a professional neutral enjoying the respect of both the PMA and the ILWU.

The PMA insists that under a new agreement, the successor Coast Arbitrator should continue to be a professional neutral. The ILWU insists that the Coast Arbitrator should, like the Area Arbitrators, be drawn from within the industry.

Other disputes exist between the parties, such as terms involving wage increases, pension increases, and port security issues. Both parties, however, anticipate that they could reach agreement on these matters once the core issues involving technology and arbitration are resolved.

Board's Comments

We believe that the seeds of distrust have been widely sown, poisoning the atmosphere of mutual trust and respect which could enable a resolution of seemingly intractable issues. For example, the parties have been unable to agree even on such matters as the length of proposed temporary contract extensions although both know that their standoff costs the Nation billions of dollars. We have no confidence that the parties will resolve the West Coast ports dispute within a reasonable time.

William E. Brock, Chairman

Patrick Hardin

Dennis Nolan

APPENDIX O – SUBMITTED FOR THE RECORD, ICFTU INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS CHART, (A) "WHY MULTINATIONAL BARGAINING NEITHER EXISTS NOR IS DESIRABLE", HERBERT R. NORTHRUP, (B) CODES OF CONDUCT/FRAMEWORK AGREEMENTS CHART, (C) "THE INTERNATIONAL TRANSPORT WORKERS' FEDERATION FLAG OF CONVENIENCE SHIPPING CAMPAIGN: 1983-1995, HERBERT R. NORTHRUP, PETER B. SCRASE, TRANSPORTATION LAW JOURNAL, VOLUME 23, NUMBER 3, SPRING 1996

ICTU Address Book

ICFTU International Confederation of Free Trade Unions

Belgium	Education International (EI)
Belgium	International Federation of Chemical Energy, Mine & General Workers' Unions (ICEM)
Belgium	International Federation of Journalists (IFJ)
Belgium	International Textile, Garment & Leather Workers' Federation (ITGLWF)
France	Public Service International (PSI)
Great Britain	International Transport Workers' Federation (ITF)
Switzerland	International Federation of Building and Woodworkers (IFBWW)
Switzerland	International Metalworkers' Federation (IMF)
Switzerland	International Union of Food Agric. Hotel Rest.Cater.Tobac.& Allied Work. Assoc. (IUF)
Switzerland	Union Network International (UNI)

Note: Country is where the headquarters of these organizations are located. The ICTFU is the coordinator for the other organizations.

www.icftu.org

Appendix A-2

Why Multinational Bargaining Neither Exists Nor is Desirable*

By HERBERT R. NORTHRUP

Professor of Industry and Director, Industrial Research Unit, The Wharton School, Philadelphia, Pennsylvania.

MULTINATIONAL COLLECTIVE BARGAINING HAS OFTEN been claimed or suggested but to my knowledge, has never occurred except in the unique American environment of Canada and the United States. Even there it is highly atypical. Professor Richard L. Rowan and I have spent a large part of six years tracking down virtually every claim that multinational bargaining occurred,[1] or that international union "trade secretariats,"[2] regional unions, or coalitions of national unions have banded together to deal with, coerce or influence company behavior or action across national boundaries. We have found several cases of information exchange between multinational corporations and multinational union groups and a very few instances of regular multinational union-management

* This article was first prepared as an address for the Midwinter Meeting, International Labor Law Committee, Labor Law Section, American Bar Association, Caribe Hilton Hotel, San Juan, Puerto Rico, on March 10, 1978.

[1] See the following articles, all by Herbert R. Northrup and Richard L. Rowan: "Multinational Collective Bargaining Activity: The Factual Record in Chemicals, Glass, and Rubber Tires," Parts I and II, *Columbia Journal of World Business*, Vol. IX (Spring 1974), pp. 112-24, and (Summer 1974), pp. 49-63; "Multinational Bargaining in Food and Allied Industries: Approaches and Prospects," *Wharton Quarterly*, Vol. VII (Spring 1974), pp. 32-40; "The ICF-IFPCW Dispute," *Columbia Journal of World Business*, Vol. IX (Winter 1974), pp. 109-119; "Multinational Bargaining in Metals and Electrical Industries: Approaches and Prospects," *Journal of Industrial Relations* (Australia), Vol. 17 (March 1975), pp. 1-29; "Multinational Bargaining in the Telecommunications Industry," *British Journal of Industrial Relations*, Vol. XIII (July 1975), pp. 257-262; "Multinational Bargaining Approaches in the Western European Flat Glass Industry," *Industrial and Labor Relations Review*, Vol. 30 (October 1976), pp. 32-46; "Multinational Union Activity and the 1976 U. S. Rubber Tire Strike," *Sloan Management Review*, Vol. 18 (Spring 1977), pp. 17-28; "Multinational Union-Management Consultation: The European Experience," *International Labour Review*, Vol. 116 (September-October 1977), pp. 153-170; "International Enforcement of Union Standards in Ocean Transport," *British Journal of Industrial Relations*, Vol. XV (November 1977), pp. 338-355, (M. J. Immediata, also co-author); and Kingsley Laffer, "Australian Maritime Unions and the International Transport Workers' Federation," *Journal of Industrial Relations* (Australia), Vol. 19 (June 1977), pp. 113-132.

[2] For succinct explanations of the organization of the world trade union movement and the role of the international trade secretariats, see John P. Windmuller, *Labor Internationals*, Bulletin 61 (Ithaca: New York State School of Industrial and Labor Relations, Cornell University, 1969)

consultation.[3] We have also found that one secretariat—the International Transport Workers' Federation (ITF)—makes agreements directly with shipping companies.[4]

These findings are, of course, in direct contrast to the many claims of some of the international unions, particularly the International Federation of Chemical, Energy and General Workers' Unions (ICEF, formerly ICF), which has made the most elaborate claims in this regard.[5] Examining the documentary evidence, however, demonstrates beyond a shadow of a doubt that these claims are, at best, figments of a fertile imagination bulwarked by an extraordinary publicity sense, and, at worst, downright fabrications.[6] The press has spread these imaginative, and mostly wholly untrue, speculations apparently because they are interesting and sensational; and the academics, too lazy or too limited to research for the facts, have given them further credence.[7] It is, therefore, perhaps not surprising that these imaginative speculations would be resurrected by a busy public figure, not familiar with the facts,[8] and given new interest thereby.

My purpose today is to explain why, despite all these speculations and fanciful accounts, multinational bargaining has neither occurred nor, if it does surface, will serve a constructive purpose. Finally, I shall deal with certain governmental actions which could impact decisively on the question.

There are many reasons why multinational collective bargaining has not occurred, despite the fact that multinational union-management information exchange and/or consultation meetings have taken place between various union groups and some major multinational corporations. These same reasons explain why multinational bargaining is neither on the horizon nor likely to be seen by governments, corporate management, or union leadership as a means to the solution of current economic and trade problems. Such reasons fall into four categories: law and practice, management reluctance, union reluctance, and lack of employee interest. I shall discuss each of these with examples.

Varying Law and Practice

Most Americans who become enchanted with the idea of multinational collective bargaining tend to see the

[3] See "Multinational Union-Management Consultation: The European Experience," cited at note 1.

[4] See "International Enforcement of Union Standards in Ocean Transport," and "Australian Maritime Unions and the International Transport Workers' Federation," cited at note 1.

[5] Many of these claims are found in Charles Levinson, *International Trade Unionism*, Ruskin House Series in Trade Union Studies (London: George Allen & Unwin Ltd., 1972). There is virtually no documentation in this book.

[6] Many of the claims set forth in the Levinson book, as well as later ones, are examined in depth in the articles set forth in note 1 *supra* dealing with the chemical, glass, and rubber tire industries.

[7] For examples of academic articles which repeat unsupported claims, see I. A. Litvak and B. J. Maule, "Unions and International Corporations," *Industrial Relations*, Vol. 9 (February 1972), pp. 62-71; and Lloyd Ulman, "Multinational Unionism: Incentives, Barriers and Alternatives," *Industrial Relations*, Vol. 14 (February 1975), pp. 1-31. This journal's editors have twice rejected articles which would counterbalance these less well-researched ones The articles cited in note 1 examine, in light of documentary evidence, numerous other factually inaccurate stories, based primarily on union press releases, which have appeared in the business press and journals.

[8] Betty Southard Murphy, "Multinational Corporations and Free Coordinated Transnational Bargaining: An Alternative to Protectionism," *Labor Law Journal*, Vol. 28 (October 1977), pp. 619-631. Mrs. Murphy also made a second published speech on this subject. See *Daily Labor Report*, No. 55, March 21, 1978, pp. D-1-3.

world in the image of United States labor law and practice.[9] In actual fact, nothing could be more misleading. Except in Canada, which provides many similarities, as well as significant differences, with our labor law and practice, virtually no country in the world provides even a remotely similar institutional scene to ours.

Nowhere in Europe, for example, does our system of majority rule and exclusive jurisdiction govern union representation. Much more common is a situation in which union representation is split on ideological or religious lines. Companies in most countries must deal with a union regardless of whether it represents a majority, or even a sizable minority, and regardless of whether other unions also represent employees in the same bargaining unit.

Representation in Europe is also split between unions and works councils. There are no local unions. The works councils, which are independent of unions, have varying authority from country to country, but generally are the key local institutions for settling local matters. In some countries, Germany and the Netherlands, for example, works councils have a virtual veto power over management's right to increase hours, to schedule overtime, and to add work shifts, or to reduce hours or employment, to name just a few issues. In Great Britain and Australia, local stewards play a somewhat similar role. Whether works councils or stewards are involved, agreements made by unions are either not compellingly binding, or cannot cover areas where the councils or stewards have jurisdiction.

In Japan, unions are organized on an enterprise basis and include virtually all employees, blue collar, clerical, and managerial, in the enterprise. National organizations are relatively weak confederations, with power residing in the enterprise organizations.

The situation in underdeveloped countries varies considerably, with unions usually closely aligned with the ruling political parties, but in Latin American, many splits along ideological lines exist. The extent and power of unionism in these countries is widely dependent upon legal and political support mechanisms.

Bargaining structure also varies tremendously. In Britain, it is so fragmented that any deals in some companies are subject to almost immediate modification or repudiation by another group in the same establishment. In Australia, compulsory arbitration prevails, but unions can, and do, use the weapons of conflict to push for greater benefits regardless of what the law provides. In some countries of Europe, conditions are set nationally or regionally. In Germany, which comes closest to our exclusive jurisdiction system, bargaining is on a regional basis and covers large groupings; all metals and electricals, for example, in one group bargain with Industriegewerkschaft Metall (I G Metall). The situation varies in other countries, but employers' associations are very much more likely to represent groupings of companies or industries than is the case in the United States. Thus, a bargaining unit for multinational bargaining purposes would be most difficult to establish.

Finally, it should be emphasized that law, rather than bargaining, sets the terms and conditions to a much greater extent in most countries than in the United States. Moreover, many countries limit managerial authority to decrease employment, shorten hours, reduce shifts, move facilities or even to alter the product mix, either directly,

[9] Mrs. Murphy's article, cited at note 8, clearly implies such a mirrorlike viewpoint.

or indirectly by requiring union and/or works council approval of such moves. In fact, the scope of bargaining varies considerably from one country to another. Thus there is considerable variation not only in who would be the representatives of employees and employers in a multinational bargaining arrangement, and what would be their authority, but also in what would be the scope of the bargaining and how would the bargaining arrangements comport with the national law.

Such fundamental variations in law and practice apply not only to comparisons between the United States and other free world countries, but even among neighboring nations. Within the European Community, for example, there has been little or no harmonization of basic labor relations law. Tiny neighboring countries like Belgium, Luxembourg, and the Netherlands have quite different laws and practices. Obviously proposals for multinational bargaining which ignore these fundamental institutional problems cannot be seriously entertained.

Management Opposition

Virtually all managements are firmly opposed to multinational bargaining, and I believe, with sound reasons. Most businessmen see multinational bargaining as creating the potential for a complicating factor that would add a third level of risk of work stoppages, not only with no compensatory relief, but with considerable additional cost as well. This is difficult to refute.

The varied and complex arrangements which would be required to establish collective bargaining on a multinational basis would seem to demand a three-level structure. This would involve multinational discussions followed by national ones, and, in turn, by local bargaining. Companies, as well as unions, would have difficulty in assigning responsibilities and priorities for the three levels. If, however, that were accomplished, the company would face a strike risk at each level of bargaining. Moreover, it is not unlikely that the results of bargaining would be more costly, because each bargaining level would have constituents to satisfy.

The experience under the bargaining system in America appears to add credence to the argument against widening of bargaining coverage. General Motors, Ford, and Chrysler each bargain on a national basis for overall economic and policy issues; they then bargain with local unions on a multitude of local issues involving plant rules, seniority, etc. Initially, national settlements meant a virtual guarantee against local stoppages. More and more, however, regardless of national settlements, strikes have occurred over local issues, sometimes with far-reaching effects on total company production, as local union officials attempt to gain for their members what is important locally, insignificant nationally, but costly, or potentially so, to the corporations.

It is not far-fetched to envision multinational bargaining followed by a few years of labor peace and then a gradual breakdown, as local and national interests, tired of having their desires and aspirations "swept under the rug" by multinational negotiators who see only the large view, institute an increasing number of strikes to satisfy their constituents. It is this vision, combined with a fear of flexibility loss and bargaining power decline, which causes nearly all managements to avoid any relationships which might lead to multinational bargaining.

A fundamental weakness of coordinated, or coalition bargaining, whether national or international, is its tendency to force wages and conditions on an several, rather than only one industry. Within one company, some of the products made are often capital intensive, others labor intensive. The wider the bargaining unit, the less it suits the needs of diversity and the more likely that it will result in costs to a segment that cannot bear them. Multinational bargaining by its very nature is too broad to meet the needs of a varied product mix. To advocate such wide bargaining as a means of preserving employment is a delusion. The net result is likely to be more unemployment instead.

Who would represent management in a multinational collective bargaining arrangement also poses serious problems. As already noted, practice in many European countries is to have negotiations carried out by staff of employers' associations. Yet their presence would indicate a coverage at the bargaining table far beyond that of a multinational company which might be involved. Moreover, the limits of responsibilities given to an association executive under such circumstances could be difficult to determine.

Examples

Actually, we have uncovered only two multinational union-management meetings directly involving employer associations. A small international secretariat, the International Graphical Federation, has had three meetings with the International Master Printers' Association since 1970. Discussions have centered on safety, apprenticeship skill requirements, and the possible establishment of an industry committee at ter Printers has been that no multinational bargaining items would be discussed.[11]

The European Metalworkers' Federation had one meeting with the European Metal Trades Employers' Organization (WEM), but none since 1975. Apparently WEM agreed to the meeting in order to reduce pressure for individual companies to meet, but it has since declined to schedule additional meetings.[12]

Employee relations policies of multinational corporations appear to be left to the discretion of national and local firm managers to a surprising degree. In our research on multinational industrial relations, we have repeatedly discovered that the central personnel department of a large company has little up-to-date information on developments in foreign-based subsidiaries and no policy regarding multinational union contacts. Moreover, operating personnel have often been found to be making decisions in industrial and union relations matters without consultation with knowledgeable specialists within their own companies.

A case in point is how Rothmans International became involved in meetings with the International Union of Food and Allied Workers Associations (IUF). Three such meetings have been held, all devoted to information exchange, with no bargaining occurring. The initial company decision to meet with the IUF was made by a since deposed managing director, and the initial meeting was carried out by him and two aides without the benefit of

[10] See William N. Chernish, *Coalition Bargaining*, Major Study No. 45 (Philadelphia: Industrial Research Unit, The Wharton School, University of Pennsylvania, 1969).

[11] Interview, Heinz Göke, general secretary, International Graphical Federation, Bern, Switzerland, September 22, 1977.

[12] Interview, WEM secretariat, Cologne, Germany, September 13, 1977.

staff expertise or advice.[13] A reorganization of the company then brought more specialized personnel into the consultations, but the original format of the meetings was determined without their assistance. In such a situation, the company is on the defensive if it attempts to rearrange meeting priorities or policy to conform with what industrial relations expertise deems appropriate.

Continental Can's European managing director has met with the head of the European Metalworkers' Federation on an annual basis for a number of years. The company purposely excludes the personnel experts in order to impress upon the union side that industrial relations matters are not to be a concern of the meeting. For the same reason, representatives of national unions are excluded from these meetings. Here, however, the company is applying a deliberate policy and not just permitting things to happen as they may and possibly blunder into a situation it may come to regret.

A number of other companies have had consultative—not bargaining—meetings with multinational union groups of various kinds. Unaccountably, most have agreed to such meetings without a prearranged agenda. Unless one knows the subjects for discussion in advance, it is difficult to have the right staff present and to be prepared with information and answers. Again, this illustrates the unstructured approach to multinational industrial relations adopted by many corporations. Conversely, those corporations which have thought out the problem and have still decided to meet on a multinational basis with union representatives usually have insisted on an agreed upon agenda and have staff members present who are knowledgeable about the matters to be discussed. This includes key personnel from affected subsidiaries. The meeting chairman is often a top company official who may be the corporation's chief personnel officer. If the latter is not the chairman, he is usually a major, or chief, spokesman for the company.

Finally, businessmen fear dealing on a multinational basis because they seriously doubt that unions can develop workable mechanisms for decision making on an international basis. They see a situation where each member union of the multinational union coalition can veto any agreement, but no one can commit the whole group. That this is a realistic assessment will be clear after we examine why unions, too, are not favorable to multinational bargaining.

Union Reluctance

At a recent meeting in Davos, Switzerland, key United States, British, and German labor officials emphasized their lack of enthusiasm for multinational bargaining.[14] The reasons for this viewpoint are many. Not the least important is the question of who will represent and/or coordinate an international union group.

Many observers have assumed that the international trade secretariats would be the natural representative, or at least coordinator, of the union side in

[13] For a summary of the IUF-Rothmans meetings, see "Multinational Union-Management Consultation: The European Experience," cited at note 1, pp. 155-157.

[14] Those announcing their opposition to multinational bargaining were Jack Jones, emeritus general secretary of the British Transport and General Workers' Union; Lane Kirkland, secretary-treasurer of the AFL-CIO; and Heinz Oskar Vetter, president of the Deutscher Gewerkschaftsbund (DGB). See "Business Forum in Europe Hears Labor News It Likes," *Wall Street Journal*, January 31, 1978, p. 2.

multinational bargaining arrangements.[15] Yet, although the secretariats have served as a forum for the exchange of information among national unions, they have not managed to extend their activities to the coordination of collective bargaining. Even the International Metalworkers' Federation (IMF), the strongest secretariat in terms of financial support, leadership, and staff, has had little success in the few times that it attempted to inject itself into collective bargaining establishments.[16] The claims of the International Federation of Chemical, Energy, and General Workers' Unions (ICEF) that it has successfully coordinated bargaining efforts of its affiliates across national boundaries cannot be supported by the evidence.[17] Other secretariats, which, like the ICEF, have limited income and staffs, are less likely than the IMF to transform information exchange into collective bargaining.

The secretariats' worldwide interests and affiliations also militate against their potential for bargaining coordination. If multinational bargaining is ever to occur, it would seem to require that the national unions involved have a reasonable community of interest. To involve unions from all over the world, including those both from developed and underdeveloped countries, is more likely to preclude bargaining than to further it. Even combining European and American unions adds to the many complications that already exist within such diverse groupings. When the IUF included American and Canadian unionists in its second meeting with Rothmans International, the company, having contemplated a European meeting only, was concerned about how wide such information exchange should extend and what would be its implications.

European regional union organizations, grouped into committees of the European Trade Union Confederation (ETUC), appear better placed to move toward multinational bargaining. This is an avowed goal of the European Metalworkers' Federation (EMF), the most active of the ETUC committees. Unaffiliated with the secretariats and more unitary in outlook, the EMF and other ETUC committees have met with a number of multinational companies for information exchange and consultation (not bargaining). But even in these more homogeneous situations, disputes have arisen as to the function of these European regional committees vis-à-vis national unions, or works councils, or even their role relative to the secretariats.

Thus, between 1967 and 1972, the giant Dutch electrical manufacturer, Philips, had four meetings with an EMF European union committee. Meetings ceased when the EMF demanded that they be transformed into collective bargaining sessions and that a representative of the IMF be present. Philips refused the first because it felt that bargaining was properly conducted nationally and locally, and the second because it had agreed to consultation only within an European context, and the IMF presence at least implied a wider geographic reference. When EMF

[15] For example, see the excellent article of Professor B. C. Roberts, "Multinational Collective Bargaining: A European Prospect?," *British Journal of Industrial Relations*, Vol. IX (March 1973), pp. 6-11.

[16] See, e.g., "Multinational Bargaining in Metals and Electrical Industries . . .," cited at note 1.

[17] See, "Multinational Collective Bargaining Activity: The Factual Record in Chemicals, Glass and Rubber Tires," Parts I and II; "Multinational Bargaining Approaches in the Western European Flat Glass Industry"; "Multinational Union Activity in the 1976 U. S. Rubber Tire Strike"; and "Multinational Union-Management Consultation: The European Experience," pp. 161-163, all cited at note 1.

insisted on an IMF presence and Philips held to its position, the long postponed fifth meeting of the parties, scheduled for May 30, 1975, was cancelled by the EMF.[18]

The EMF also had six consultative meetings with the German-Dutch aerospace concern, VFW Fokker. An IMF representative was present at some of these meetings, although the company questioned the propriety of such presence. As in Philips, EMF attempted to move these meetings toward bargaining, but without success. No meetings have been held since May 22, 1974. Instead, the company has reduced or eliminated EMF pressures to meet by emphasizing the necessity for its Dutch and German works councils to meet jointly for discussion of multinational problems. The German works council brings union representatives from Germany as advisors into the meetings, but the Dutch do not.[19]

The ideological and religious split among unions also complicates the representation issue, especially for the secretariats. The IMF, for example, will not accept affiliation of the Communist unions, which are the major bloc in France and Italy, and which, as also do the dwindling Christian unions, have their own, if limited, secretariats. Multinational companies operating in France and Italy, where the largest segment of their employees is likely to be represented by an affiliate of the Communist federation, or with plants in the Low Countries where the Christian group is strong, would be eliminating major segments of their employees from representation if they recognized a secretariat as a bargaining partner.

The ETUC and its committees, including the EMF, have affiliated the Christian unions and the Italian Communist federation, but not the French one. They thus have more, if not complete, representation in the European Community.

Complicating Factors

Even where completely representative through pertinent affiliated unions, however, the presence of an official from a secretariat or regional union organization, especially in a coordinating role, can bring complicating factors. If bargaining becomes multinational, there must be a power transfer from the national unions to the international bargaining authority and, therefore, from some officials to others. Obviously, this is a reason for national union officials to pause before advocating multinational union action. From the individual union official's point of view, such transfer of power could reduce his importance in the eyes of his constituents and therefore reduce his opportunities for maintaining his position against intra-union challenges.

Moreover, the internationalization of union officials is affected by the business cycle, and in times of economic adversity, such internationalism diminishes substantially. Demands for tariffs, import quotas, and the exclusive utilization of domestic products are frequent union policies when unemployment rises, and are incompatible with multinational bargaining. If a secretariat or regional union official is the spokesman for a multinational union bargaining group and advocates a position that the rank and file of a national union find contrary to theirs, the political repercussions will rebound to the

[18] See "Multinational Bargaining in Metals and Electrical Industries . . .," note 1 *supra*, pp. 23-26; "Multinational Union-Management Consultation: The European Experience," cited at note 1, pp. 157-159.

[19] *Ibid.*, pp. 26-27 and pp. 159-160, respec-

officials of that national union. Such officials thus have very practical reasons for being wary of multinational bargaining.

Union coalitions across national boundaries are certain to be difficult to manage and to make viable if they occur. One can envisage that decision making within such a coalition would be very difficult, as already noted, because each national union would want to reserve the right to veto any agreement which it found undesirable for its members. At the same time, however, these same national unions would be extremely reluctant to cede authority for agreement to any official, or even to a majority.

If, for example, a company proposal were likely to cause unemployment in one area, but increase employment in another, it is difficult to see how the national union representative from the former area could agree; but by opposing it, he would stand in the way of progress for other members of the coalition. The problems of sustaining a multinational union bargaining group are as difficult as those involved in forming it.

Commentators have held that, if unemployment and plant layoffs were key issues, then unions would come together for multinational bargaining.[20] This too remains to be demonstrated. Akzo, the Dutch-based fiber and chemical company, has twice consulted with multinational coalitions of unions in regard to plant closings. In the first case, in 1972, a sit-in led by adherents of the Dutch Catholic union federation, NKV, forced the company to abandon its attempt. Despite the fact that company officials met with a coalition of German, Dutch, and Belgian unionists, the action was local in nature. Press claims to the effect that the ICEF was involved are not factual.[21]

When the fibers market collapsed again in 1975, Akzo again sought union concurrence to reduce employment and to close facilities. The company rejected ICEF's claim for representation, but invited all the unions representing its employees in Belgium, Germany, and the Netherlands to meet with company personnel to discuss its problems and plans. Two meetings were held, but a third cancelled when, under the influence of the ICEF, which was neither present nor represented at the meetings, some of the unions rejected Akzo's plan for action and demanded consultation on company investment policy.

Following that, the union coalition disintegrated. The Belgians withdrew after their government purchased control of Akzo's subsidiary there and kept the plant running. The Dutch and Germans then negotiated separately, and agreement on plant closings and redundancies were reached with each.[22]

When the French glass firm BSN-Gervais Danone closed a plant in Belgium and reduced employment in French plants in 1975, French and Belgian unionists agitated together in both countries. When the time came for negotiations, however, there was no multinational involvement.

BSN is the only multinational which has a regular multinational consultative arrangement based upon a written

[20] See, e.g., Roberts, *op. cit.*, especially p. 10.

[21] See "Multinational Collective Bargaining Activity: The Factual Record in Chemicals, Glass and Rubber Tires," cited at note 1, Part II, pp. 49-53.

[22] See "Multinational Union-Management Consultation: The European Experience," note 1 *supra*, pp. 161-163. An article by Professor Rowan and myself telling the complete story of the Akzo involvement with international union activity will be published shortly by the *Industrial Relations Journal* (United Kingdom).

accord. Twice per year the company meets with a multinational committee of Belgian, Dutch, French, German, and Austrian unionists. The meetings are purely consultative and involve information exchange, not bargaining. No secretariat or regional union official is involved. The secretary general of the ICEF participated in a formative meeting of the group, but he issued a press release following this meeting which exaggerated his role and the significance of the meeting. The company has since barred him from the meetings.

Although the BSN consultative arrangement could presumably develop into bargaining, it has not done so. The reluctance of national union officials to cede authority to other representative groups is one reason why it seems less likely to move in this direction. Union rivalry is another. Three smaller unions in France are parties to the BSN agreement, but the two largest have declined to participate, apparently because of ideological commitments and internal rivalries.[23]

Lack of Employee Interest

It seems very clear that employee interest in multinational union action is probably close to zero. The idea that workers of one country will enthusiastically, or even reluctantly, support the cause of their brothers and sisters in another country is a figment of the intelligentsia imagination that persists over the years without either occurring to or permeating the thoughts of those who are expected to lose pay to make it come true. A union official who attempts to commit his members to such sympathetic acts is courting political disaster.

Consider the situation in the American and Canadian rubber tire industries. In February 1974, workers at the Firestone Canadian plant went on strike, and in April of that year, they were joined by Canadian Goodyear workers. The strikes did not end till December 1974. These workers, like those on the United States side, are members of the United Rubber, Cork, Linoleum and Plastic Workers (URW). Yet the companies, with considerable capacity as a result of then depressed automobile sales, supplied the Canadian market from the United States. URW tried to institute a boycott, but American local unions gave it no heed. ICEF supported the strike and the boycott with no discernible impact.

Then in 1976, the URW struck the Goodyear, Firestone, Uniroyal, and Goodrich companies in the United States. The president of the URW hurried to an ICEF meeting in Geneva, and a worldwide boycott was instituted, with Firestone as a particular target. The secretary general of the ICEF proclaimed that the boycott was enthusiastically supported by ICEF affiliates throughout the strike, and that this was "an important advance in ICEF's action program against multinationals."

Nothing could be farther from the facts. There is no evidence that anyone paid any attention whatsoever to the boycott appeal. U. S. Department of Commerce data show that, during the strike, tires were imported in unprecedented numbers, especially from Canada, but also from every major tire manufacturing country in the western world, Japan and Korea. Companies sent molds abroad, and tires were made

[23] See "Multinational Bargaining Approaches in the Western European Flat Glass Industry," note 1, *supra*, pp. 40-45; and "Multinational Union-Management Consultation ...," cited at note 1, pp. 164-167.

therefrom without any incident or interference whatsoever.[24]

International secretariats, especially the ICEF, have made numerous claims of "solidarity actions." We have investigated the bulk of such claims. Most involve simply a letter or cable of solidarity to the union involved; others, a message to the company headquarters deploring whatever is alleged to be happening. It is the most rare occurrence when anything significant comes from such communications. Usually at most a leaflet is distributed advising the strikers that the unions in other countries expressed solidarity.

The assistance proffered by the International Textile, Garment and Leather Workers in the boycott against J. P. Stevens Company is a case in point. Whatever the impact of the boycott here in the United States, it is very unlikely to be materially strengthened by such solidarity action, nor are promises of support by Canadian, Mexican, Australian, New Zealand, French, or Japanese unions likely to develop into any measurable actions beyond their propaganda value.[25]

Governmental Moves

Despite their disagreement on bargaining, unions and the international secretariats have pushed controls over multinational corporations, ostensibly in the public interest, but actually in terms of their quest for power. These controls have taken two forms. The first is codes of conduct, now established by the Organization for Economic Cooperation and Development (OECD), the International Labour Organization (ILO),[26] and probably in the future, by the United Nations. The European Community is also moving in that direction. These codes, all voluntary thus far, aim to require corporations to adhere to certain practices, which the secretariats hope will include, or be interpreted, to mean that multinational union-management consultation, or even bargaining, will be required.

Second, the secretariats have persuaded German unions to support the election of four international union persons as worker representatives to German supervisory boards.[27] The extent to which such persons can pressure companies to recognize international unions is, however, debatable, since they would need the support of German unions to achieve this goal, as well as management predisposition to accept it.

Although these moves do not seem likely to achieve a change in attitudes quickly, they could move bargaining toward a multinational basis. Before that, however, unions would have to be agreeable and laws would have to be harmonized. We have already dwelt on the obstacles involved.

These moves may not, however, result entirely in blessings for the in-

[24] For the full story of international activity in the 1976 U. S. rubber tire strike and its negligible impact, see "Multinational Union Activity in the 1976 U. S. Rubber Tire Strike," cited at note 1.

[25] Mrs. Murphy uses this alleged boycott assistance as an instance of international solidarity and bargaining activity, *op. cit.*, p. 630, note 54.

[26] OECD, *Declaration on International Investment and Multinational Enterprises*, June 1977; ILO, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, 1977.

[27] The secretary general of the ICEF has been elected to the supervisory board of DuPont's German company; the general secretary and an assistant general secretary of the IMF have been elected to supervisory boards of German subsidiaries of Ford Motor and ITT, respectively; and the general secretary of the EMF to the supervisory board of the German subsidiary of Philips.

ternational union movement. Codes of conduct for multinational corporations have already raised interest in similar codes for international unions which could interfere with the latter's freedom of operations. And international union officials' presence on German supervisory boards has drawn fire from Dutch and French unions which see a fundamental conflict of interest in such representation.[28]

Concluding Comment

Multinational bargaining proposals based upon ignorance or disregard of the facts can be easily presented, generate much publicity, but are without a basis for implementation. In a second article, Mrs. Murphy restated her speculations and maintained her claim that such bargaining was on the immediate horizon. She cited numerous documents, none either factual or relevant to the claim, but carefully refrained from taking cognizance of the articles cited in note one or the facts there presented. She concluded with the comment that "There is no acceptable alternative," an extraordinary statement in view of her lack of research and, equally, the lack of acceptance by any party of multinational bargaining.[29]

Trade problems are far more complicated as well. To achieve a solution of the latter through the former, one would have to solve first the legal, institutional, and political barriers just described. Then, somehow, it would be necessary to induce Japanese and underdeveloped country unions (where they exist) to bargain away some of their lower labor cost advantages. It is difficult to believe that this is a viable approach. Certainly, there *are* alternatives.

Perhaps the most dangerous of the Murphy proposals is to use the National Labor Relations Board somehow to regulate foreign investment and therefore employment. The whole idea seems to assume that all multinational corporations are American and that labor law abroad would tolerate such gross interference. Multinational corporations can exist only if they are good corporate citizens *where they operate*, just as foreign companies operating in the United States must conform to the laws of countries in which they are located. Attempting to regulate expansion or contraction of American companies abroad could put such companies in an impossible regulatory paradox, result in foreign retaliation against them, and indeed make it extremely difficult for them to exist. This in turn could hurt their ability to finance jobs at home as well as abroad. The whole idea of involving the NLRB in the foreign trade act is nonsense at best, pernicious at worst.

On the other hand, one can well understand the disquiet which trade problems are causing. I, for one, believe that our trade negotiators have

[28] For the well publicized comments of the largest Dutch union, Industriebond, NVV, see *Financieel Dagblad*, March 7, 1978.

[29] Cited at note 8. In footnote 19 of this second article, Mrs. Murphy refers to the "excellent address" of Paul Shaw, formerly vice-president, Chase Manhattan Bank, and states that he "gave many examples of his own transnational dealings with international unions." In fact, having heard that address, I can state unequivocably that Mr. Shaw gave no example whatsoever of such dealings, if by "dealings" bargaining or something approaching it is indicated. Indeed, the only example that Mr. Shaw could dredge up was the alleged coordination of bargaining by the ICEF against Saint-Gobain in 1967. Our research has shown this claim, beyond a shadow of a doubt, to be mostly fabrication, the rest public relations, with no substance whatsoever. See "Multinational Collective Bargaining Activity: The Factual Record in Chemicals, Glass, and Rubber Tires," Part I, *Columbia Journal of World Business*, Vol. IX (Spring 1974) pp. 112-119; and "Multinational Bargaining Approaches in the Western European Flat Glass Industry," pp. 32-39; cited at note 1.

Appendix B

Codes of Conduct /Framework Agreements *

Concluded between Transnational Companies and Global Union Federations (GUF)

Company	Country	Branch	GUF	Year
Danone	Switzerland	Food Processing	IUF	1988
Accor	France	Hotels	IUF	1995
IKEA	Sweden	Furniture	IFBWW	1998
Statoil	Norway	Oil Industry	ICEM	1998
Faber-Castell	Germany	Office Material	IFBWW	1999
Freudenberg	Germany	Chemical Industry	ICEM	2000
Hochtief	Germany	Construction	IFBWW	2000
Carrefour	France	Commerce	UNI	2001
Chiquita	USA	Agriculture	IUF	2001
OTE Telecom	Greece	Telecommunication	UNI	2001
Skanska	Sweden	Construction	IFBWW	2001
Telefonica	Spain	Telecommunication	UNI	2001
Merloni	Italy	Metal Industry	IMF	2002
Ballast Nedam	Netherlands	Construction	IFBWW	2002

Sorted by year of concluding/signing the agreement
© Robert Steiert (IMF)/Marion Hellmann (IFBWW) - 2002

* Some GUF's call the agreements "Framework Agreements" not Code of Conduct because there had been only a few principles fixed in the first agreement which often haven been extended by additional agreement. For instance in the case of Danone the first agreement of 1988 has meanwhile been developed by 6 other agreements.

Explanations

ICEM = International Federation of Chemical, Energy, Mine and General Workers Unions
IFBWW = International Federation of Building and Woodworkers
IUF = International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
IMF = International Metalworkers' Federation
UNI = Union Network International

P.S. As of July 2002
add VW to this list

Since the ship traveled to various neutral sites, and eventually came to rest in a dry dock owned by a neutral employer, the union was able to picket the primary employer only at a neutral's premises.

Balancing the rights of the striking union under Section 7 and the neutral employer under Section 8(b)(4), the Board held that a union may picket at the neutral site only if:

1) the picketing is strictly limited to times when the situs of dispute is located on the secondary employer's premises;

2) at the time of the picketing the primary employer is engaged in its normal business at the *situs*.

3) the picketing is limited to places reasonably close to the location of the *situs*; and

4) the picketing discloses clearly that the dispute is with the primary employer.[250]

The reviewing courts quickly embraced the Board's four-part test,[251] and the Supreme Court cited favorably to *Moore Dry Dock* in *General Electric.*.[252] Before we examine each of the four rules in detail, though, it is necessary to consider some of the general principles governing application of the *Moore Dry Dock* test in the neutral situs context.

The NLRB originally applied *Moore Dry Dock* s mechanically, arbitrarily and a-conextually. Any violation of one of the *Moore Dry Dock* rules, however technical, insubstantial, or otherwise harmless, condemned the union picketing. One encounters in early post-*Moore Dry Dock* Board decisions statements to the effect that "[i]f. . . [the *Moore*] standards are observed, the picketing is lawful, and any incidental impact thereof on neutral

---

250 *Moore Dry Dock Co.*, 92 N.L.R.B. at 549 (footnotes omitted). For a short while the Board's decision in Brewery Drivers Local 67 (Washington Coca-Cola Bottling Works, Inc.), 107 N.L.R.B. 299 (1953), *aff'd*, 220 F.2d 380 (D.C. Cir. 1955), was sometimes read to impose a fifth criterion in neutral situs cases. For a discussion of this case, *see infra* text accompanying notes 389-96. Note that the union not violate all of the *Moore Dry Dock* rules to run afoul of the Act. A violation of *any one* of the four rules will suffice. *See, e.g.*, Int'l Union of Operating Eng'g, Local 150 (Harsco Corp.), 313 N.L.R.B. 659, 668 (1994), *enf'd*, 47 F.3d 218 (1995), and cases cited therein; United Ass'n. of Journeymen and Apprentices of the Plumbing and Pipefitting Indus., Local 388 (Charles Featherly Constr.), 252 N.L.R.B. 452, 100 (1980), *enf'd*, 703 F.2d 565 (6th Cir. 1982).

251 *See, e.g.*, NLRB v. Local 55, Carpenters Dist. Council, 218 F.2d 226 (10th Cir. 1954).

252 *See supra* text accompanying note 97.

APPENDIX - C

TRANSPORTATION LAW JOURNAL

Industry Leader in Multi-Modal Law, Economics & Policy

UNIVERSITY OF DENVER • COLLEGE OF LAW

The International Transport Workers' Federation Flag of Convenience Shipping Campaign: 1983-1995

HERBERT R. NORTHRUP
PETER B. SCRASE

VOLUME 23 • NUMBER 3 • SPRING 1996

The International Transport Workers' Federation Flag of Convenience Shipping Campaign: 1983-1995

Herbert R. Northrup*
Peter B. Scrase**

TABLE OF CONTENTS

* Professor Emeritus of Management; formerly, Director, Industrial Research Unit; Chairman, Labor Relations Council; and Chairman, Department of Industry, The Wharton School, University of Pennsylvania. A.B., Duke University, 1939; A.M., 1941, Ph.D. (Economics), 1942, Harvard University.

** Partner, Holman, Fenwick & Willan - Solicitors, London. B.A. (Mechanical Sciences), 1965; M.A., 1968, Cambridge University. Solicitor, 1978; concentration in Maritime and Labor Law.

Roger E. McElrath developed the charts and tables, and contributed to the writing of Part III of this article.

I. INTRODUCTION

In the introduction of the earlier study of this subject, it was stated:

> The International Transport Workers' Federation (ITF) is unique among the International Trade Union Secretariats (ITSs)[1] in several ways. Unlike the other ITSs, the ITF directly represents employees, sometimes with their consent, and often without authorization; it signs agreements with individual companies; it has even negotiated an agreement with its counterpart, the International Shipping Federation [ISF]; by virtue of the strategic location of many of its affiliates, it has been able to exert enormous economic power through boycotts in order to gain its objectives; and as a result of this power, it has accumulated considerable financial reserves.[2]

1. ITSs are organizations which affiliate unions in particular industries from around the world. A general description of ITSs and the international labor movement is found in HERBERT R. NORTHRUP and R.L. ROWAN, MULTINATIONAL COLLECTIVE BARGAINING ATTEMPTS, at 11 (1979). The principal change in the organization of the international labor organizations since 1979 has been the virtual end of the World Federation of Trade Unions and its affiliated ITSs. These were the communist organizations which were dominated by the Soviet Union, and adhered to the Soviet foreign policy line.

2. HERBERT R. NORTHRUP and R.L. ROWAN, THE INTERNATIONAL TRANSPORT WORKERS' FEDERATION AND FLAG OF CONVENIENCE SHIPPING, at 1 (1983)

Since the publication of that book, the ITF has been involved in significant litigation, especially in Europe and the United States, its finances have substantially increased, and it has most recently begun to alter some of its policies. It continues, however, to attempt to strengthen its campaign against Flag of Convenience ("FOC") shipping, that is, ships which bear the flags of countries other than those of the beneficial owners.

The ITF affiliates national unions in all branches of transportation. In December 1993, it had 398 affiliated unions in 105 countries who had 4.3 million members.[3] Of these, only 680,000, or 16 percent, were members of seamen's unions.[4] Yet the ITF's principal power and the bulk of its considerable wealth are derived from the maritime industry.

This article updates the earlier book by examining ITF policies and practices in the maritime industry since 1983. Special attention is given to ITF finances which are derived from the FOC campaign, to the "double bookkeeping" controversies and litigation in the United States, and to litigation resulting from ITF-associated boycotts, or threats thereof, in Europe. A review and update of the continuing ITF-FOC campaign provides the setting for these recent developments.[5]

II. A Summary of the ITF's FOC Campaign

The ITF-FOC campaign is handled today very much as described in the *ITF-FOC Book*,[6] but there are some new developments. Basically, it is an attempt to overcome by direct action the market effect of lower costs, and thereby to prevent the loss of registries and jobs by developed countries and their seamen to Third World countries and their seamen.

A. Development and Rationale of FOC Campaign

Registering ships in countries other than those of the beneficial owners has been traced back to the 1920s and was growing more common prior to World War II. It has expanded greatly since World War II, and as shown in Figure 1, is still an expanding phenomenon. In December 1994, FOC ships, which are overwhelmingly staffed by crews from Third World countries, comprised 43 percent of the world gross registered tonnage ("GRT"). For 1994, the ITF general secretary[7] stated that FOC ships

---

[hereinafter *ITF-FOC Book*]. The agreement with the ISF was in effect 1973-78, and pertained to the employment of Indian subcontinent seamen on British-flag ships. *Id.* at 97.

3. International Transport Worker's Federation, Report on Activities, 1990-1993 (1994), at 15 [hereinafter *ITF Report* 1990-1993].

4. *Id.* at 77.

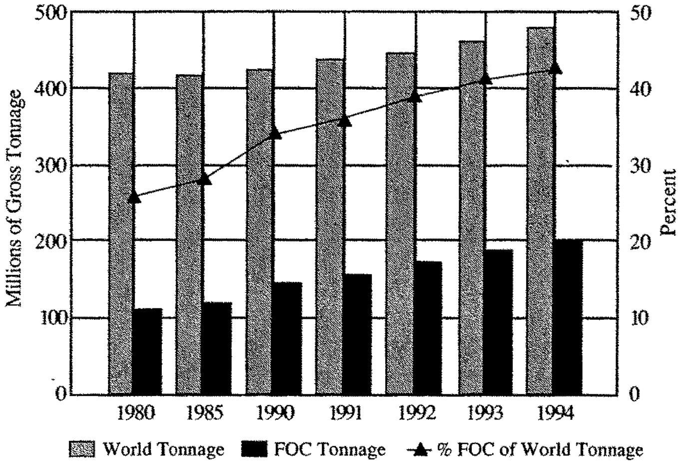
5. *See ITF-FOC Book, supra* note 2, at Chapter II, (detailing the ITF's history, organization, structure, and government).

6. *Id.* at Chapters III and IV.

7. The general secretary is the chief administrative officer of the ITF, as in all ITSs. The

were in the majority.[8] The leading countries in which the beneficial owners who utilize FOC shipping are headquartered are Greece, the United States, and Japan.[9]

FIGURE 1. GROWTH OF FOC SHIPPING



Note: 1994 is an estimate. The countries for which data are not available represent less than 1 percent of FOC tonnage.
Sources: Lloyd's Register, World Fleet Statistics, various years; ITF, Report on Activities, 1990-91-92-93 (1994, Table 1).

FOC shipping was once dominated by the flags of Panama, Liberia, and Honduras. Today, Honduras is no longer a major factor, but Panama and Liberia are not only the largest FOC ship registries, but as shown in Table 1, the largest registries in the world, accounting for more than one-fourth of the world's gross tonnage. Many other countries in Asia, the South Pacific, as well as Bermuda and other developing nations now invite ship registry as a source of government revenue and employment of their citizens.

The listing of FOC countries is subject to varying definitions and in-

president, vice-presidents, and executive boards are chosen from the officers of affiliated national unions, and serve on a part-time basis. The general secretary in the ITF, and in many other ITSs that can afford more than a one-person permanent officer, is assisted by several assistant general secretaries. This form of union governance is based upon the typical European national union model. *See, ITF-FOC Book, supra* note 2, at 6.

8. David Cockroft, Address to the 1994 North American Maritime Ministry Conference, *The ITF and the Maritime Ministry* at 4 (1994) (on file with the ITF) [hereinafter *Maritime Ministry Address*]. For our definition, we used that of the ITF in 1993. It is not clear why Cockroft's data show a larger percentage than that of the *World Fleet Statistics*, 6 LLOYD'S REGISTER (1994).

9. *Id.*

TABLE 1

FLEET REGISTRATION AND GROSS TONNAGE IN 1994

(TWENTY LARGEST FLEET REGISTERS)

	Ships	*Gross Tonnage*	*%G.T.*		*Ships*	*Gross Tonnage*	*%G.T.*
Panama	5,799	64,170,219	13.5	United States	5,270	13,655,438	2.9
Liberia	1,621	57,647,708	12.1	Singapore	1,239	11,894,846	2.5
Greece	1,923	30,161,758	6.3	Philippines	1,518	9,413,228	2.0
Cyprus	1,619	23,292,956	4.9	Hong Kong	358	7,703,410	1.6
Bahamas	1,159	22,915,349	4.8	South Korea	2,121	7,004,199	1.5
Japan	9,706	22,101,606	4.6	Italy	1,434	6,818,178	1.4
Norway (NIS)	749	19,976,489	4.2	India	881	6,485,374	1.4
Russia	5,285	16,503,871	3.5	Taiwan	642	5,996,103	1.3
China	2,701	15,826,688	3.3	Germany	1,200	5,696,088	1.2
Malta	1,086	15,455,370	3.2	Turkey	1,000	5,452,798	1.1

Source: Lloyd's Register, World Fleet Statistics, 1994.

terpretations. For example, a shipowner in a developed country may agree to a bareboat charter[10] to a Philippine organization, which then transfers the ship to the Philippine flag and employs a Philippine crew under Philippine conditions. The ITF may claim that this is an FOC ship. Philippine authorities, however, strongly disagree, noting that the Philippines is far in the lead as the world's largest supplier of seamen, that this country encourages the training and employment of its citizens on all ships, including FOC-registered ones, as a means of expanding employment and accumulating foreign currency,[11] but that the bareboat chartered ship is a Philippine one operated completely by a Philippine organization.

To stem the loss of employment and share of the shipping market, some European countries have established "international" or "second" registers. These registers employ seamen at reduced rates, often utilizing Third World personnel for ordinary seamen and national personnel for officers. The most successful second register is that of Norway, in 1994 as

10. Under a bareboat charter the shipowner, for an agreed consideration, turns over all operations of the ship including crewing to a second party. This type of charter may, or may not, involve a flag transfer.

11. The Philippines has about 350,000 seamen who have been accredited to work on ships. Often, many are unemployed, but as in most Third World countries, competition for the jobs is great because the wages are among the highest in the land for blue collar work. The laws of this country provide that 80 percent of the seaman's base rate (the statutory allotment) is sent monthly in U.S. dollars to the agent, who then monthly remits that amount in pesos to the bank account of the seaman. Otherwise, the allotment could not be used by the family for support during the often ten months in which the seaman is gone. The exchange also provides the Philippines with badly needed U.S. dollars (hard currency). Dr. Northrup's interview with Cresencio M. Siddayao, Dept. Administrator, Philippines Dept. of Labor & Employment (on file with author).

shown in Table 1, the seventh largest in the world. As discussed in section II.G, below, the ITF has designated some second registers as FOCs, but not the two most successful ones.

Also discussed in section II.G, below, is the status of dependency registers such as Kerguelan for France, and the Isle of Man and Hong Kong for the United Kingdom. The last named, as set forth in Table 1, is the fourteenth largest register, and has existed for many years.

The driving forces generating the expansion of the FOC fleet are two major costs: taxes and labor. The former are much lower in FOC-flag registries; the latter are significantly so, particularly when costs of manning requirements, work rules, and fringe benefits are added to wage costs. FOC shipping thus involves the transfer not only of the registries but also of the jobs in developed countries to underdeveloped ones. Since the ITF, like most ITSs, was founded by European socialist-oriented unions, and has been dominated by them since its inception, it is not surprising that the organization's FOC campaign quickly evolved into one to "regain" the lost jobs — i.e., transfer them back from Third World seamen to those in developed nations. As the ITF's general secretary stated in a 1994 address, this remains the official goal of the campaign:

> The ITF is, and has always been an organization led by its members. The majority of those members come from the traditional maritime countries [32 percent from Western Europe in December 1993][12] - the shipowning countries, and the Flag of Convenience Campaign . . . has been and still is led primarily by the desire of those unions to defend and maintain their jobs.[13]

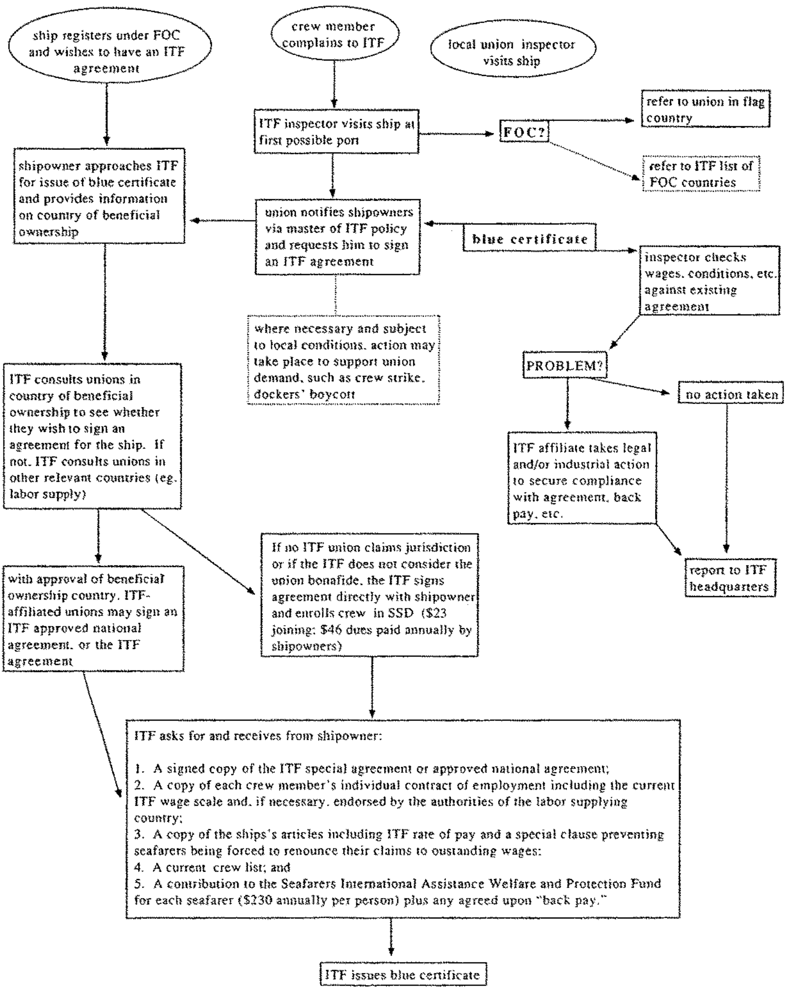
Policies for the FOC campaign are established by the ITF's Fair Practice Committee ("FPC") which was originally manned almost exclusively by delegates from unions in developed countries. After several incidents came close to causing a rupture with unions in Asia, particularly India and Singapore, the FPC was enlarged to include representation from these and other countries.[14]

B. The FOC Campaign in Practice

The FOC campaign follows a standard procedure in most ports, as diagrammed in Figure 2.

12. *ITF Report, 1990-93, supra* note 3, at 35.
13. *Maritime Ministry Address, supra* note 8, at 2.
14. *See, ITF-FOC Book, supra* note 2, at 96.

FIGURE 2. A SUMMARY OF THE ITF-FOC CAMPAIGN



After determining that a given ship may be an FOC-flag one, ITF inspectors, who are members of ITF-affiliated unions and have been trained and are compensated by the ITF to perform this function,[15] board a ship in port and request to see the wage and manning schedule and the ITF's "blue certificate," which is given to ships that are in compliance with ITF standards. It states: "It is hereby certified that the [name of ship] is covered by agreements acceptable to the International Transport Workers' Federation. This certificate is valid to [date]," provided it is signed by an ITF official "for [the] general secretary."

If no blue certificate is produced, if the wage schedule is otherwise unsatisfactory to the inspector, and if the shipowner declines to sign an agreement which is dictated by the ITF, an attempt is made to have longshoremen, other dock workers, or tugboat operators boycott handling the ship, or otherwise to prevent it from leaving port. The terms of the ITF-dictated agreement include wage rates unilaterally established by the ITF as equal to wages on the European average standard, described in section II.C, below. Additionally, the ITF demands "back pay," which is sometimes negotiable, but which is unilaterally determined by the ITF representative as the amount "owed" to the crew based upon voyage or voyages present and past; and dues to the ITF welfare fund of US$230 per crew member per year, plus back dues charged. With a ship complement of twenty-two, the dues, exclusive of back pay, amount to US$5,060 per year. This is often dwarfed by back pay which can mean a wage increase exceeding US$500 per crew member per month for a crew of twenty-two. On a nine-month voyage, this amounts to approximately US$100,000.

If the shipowner agrees to these demands and signs the ITF-dictated agreement, the blue certificate is provided by the ITF. The owner then avoids the high costs of having the ship literally held captive in a port, and thereby being unable to deliver or to take on cargo as required by shippers, or to meet cargo commitments in other ports.

In 1994, the ITF reported that as of December 1993, 2,358 FOC ships were under "acceptable" agreements, and that during this year, "around 355 were boycotted or faced with the immediate threat of boycott action." During 1993, the ITF collected US$8,940,213.68 from 315 ships in "arrears of wages and other cash benefits obtained for and paid to crew members" as a result of the FOC campaign.[16] Table 2 shows for four years the number of ships under "acceptable" contracts, the "arrears of

---

15. *See, e.g., FOC Inspectors Hold Worldwide Seminar,* ITF NEWS, Sept. 1990, at 8. This is one of many articles on inspector training found in the ITF NEWS over the years. Additionally, the ITF's general secretary has announced an expansion of the number and duties of inspectors. *See ITF Report* 1990-1993, *supra* note 3, at 94.

16. *ITF Report* 1990-1993, *supra* note 3, at 95.

wages and other cash benefits obtained for and paid to crew members," and the number of ships involved in these collections. These substantial collections and ships involved followed a period in the late 1980s during which "the number of ships covered by ITF acceptable collective agreements fell significantly . . ." from a high of 2,200 ships in 1982 to 1,565 in 1989.[17]

TABLE 2

SHIPS COVERED BY ITF "ACCEPTABLE" AGREEMENTS,"ARREARS" WAGES AND WELFARE FUNDS COLLECTED, AND NO. OF BOYCOTTED SHIPS

1990-1993

Year	*Ships with ITF Agreements*	*"Arrears" Pay Funds Collected*	*No. Boycotted Ships Involved*
1990	1,533	US$13,202,971.77	263
1991	2,078	6,444,666.68	222
1992	2,862	13,413,482.52	363
1993	2,358	8,940,213.68	315

Source: ITF, Report on Activities, 1990-1991-1992-1993 (1994), at 95.

In order to engineer these boycotts, the ITF requires the cooperation of local or national maritime, tugboat, or longshore and other dock workers' unions, national laws which permit boycotts of this nature, and a crew of inspectors. The countries where historically and currently boycotts have enjoyed the most freedom from legal restraints are Australia, Finland, and Sweden,[18] to a somewhat lesser extent, Norway, and more recently, British Columbia, Canada.[19] Even in countries in which such boycotts can be enjoined by the courts, however, delays can be very expensive while a shipowner seeks legal redress. As a result, some shipowners find that it is less expensive to agree to the ITF terms than to seek court action. Charterers and terminal operators increasingly require that

17. *Id.* at 93; and ITF REPORT ON ACTIVITIES, 1986-89, at 88 [hereinafter *ITF Report 1986-89*]. A thorough examination of ITF fund collections and finances is found in Part III, *infra*.

18. *See, ITF-FOC Book, supra* note 2, at 56-70, and 89-94.

19. *See, ITF Report, 1990-93, supra* note 3, at 96. The International Longshoremen's and Warehousemens' Union ("ILWU"), the dominant longshore union on the U.S. and Canada West Coast and Hawaii, affiliated with the AFL-CIO in 1993 after long years of being independent and supporting the communist international organizations. Since then, it has also affiliated with the ITF and supported ITF activities, including boycotts which are legal in British Columbia. U.S. West Coast maritime attorneys have advised the authors that no such boycotts have occurred or been threatened in U. S. ports there, undoubtedly because of much more stringent anti-boycott legislation in U.S. than in British Columbia. Some reports to Dr. Northrup question this, claiming that such stoppages have occurred, but are not contested by shipowners who wish "to avoid further trouble".

ships obtain blue certificates in order to avoid any threat of boycotts. In some cases, companies which actively resist ITF demands permit their chartering departments to insist that independent operators obtain blue certificates. These facts are important sources of the ITF's wealth, analyzed in section III, below.

C. The ITF Agreement and Blue Certificate Issuance

The ITF agreement requires wages at the level unilaterally established by it as equal to wages on the European average standard; since 1994 that has been US$856 per month for an able-bodied ("AB") seaman. To this, overtime, fringe benefits, and other costs are added, bringing the actual "consolidated earnings" to US$1,804 per month.[20] Moreover, the ITF standard agreement also includes manning requirements and wage rates and conditions for all other classifications, which further increase costs.[21]

As a compromise with its affiliated seamen's unions from Third World countries, particularly those in Asia which had threatened to leave the ITF over its unique attempts to establish unilaterally a common international wage,[22] the concept of "total crew costs" ("TCC") was developed. This concept provides for a minimum total cost for AB seamen, now set at US$1,100 per month, which is, of course, considerably less than the standard ITF rate, and which the ITF has vowed to raise as soon as possible to the standard rate. Not surprisingly, the ITF general secretary reported that "[a]lthough the number of ships covered by ITF Standard Agreements has fallen significantly, there has been a marked increase in the number of Total Crew Cost . . . agreements signed."[23]

The widespread use of TCC agreements would on its face seem to mean that the attempt of the ITF to establish an uniform worldwide wage has in practice been abandoned to a major extent. Yet, this may well not be correct. According the secretary of the ISF:

> Initially, ITF accepted that virtually any cost to employers could be added to the list [that went into deriving the cost of a TCC wage], as well major items such as basic wage, overtime, leave, etc., but over the years they have gradually and successfully restricted the elements they will accept. The situation now is that there are so many ITF restrictions — that TCC contracts are

20. This "benchmark" rate was frozen at $821 per month from 1983 until it was raised in 1993, effective Jan. 1, 1994. *See, ITF Increases Wages for Flag of Convenience Crews*, ITF News, May-June 1993, at 1.

21. ITF Standard Collective Agreement (Jan. 1994) (on file with ITF). This document, which is published by the ITF, contains all conditions for agreements for shipowners in considerable detail.

22. *See ITF-FOC Book, supra* note 2, at 96-105 (describing the tension between Asian seafarers' and ITF-affiliated unions).

23. *ITF Report* 1990-93, *supra* note 3, at 77.

> becoming very standard, for example, each rank/rating, category must receive a precise ratio of wages related to the ABs rate; e.g., Master must be 3.061 and trainees 0.75 the wage costs multiplied by the manning of the ship must amount to 61% of the costs under the Standard Agreement and social costs must be less than 10% of the total, etc. Far from abandoning attempts to enforce a worldwide uniform wage, ITF are closer to achieving it than before.[24]

The ISF secretary has also found that the ITF is now making efforts to standardize TCC contracts so that one document will be applicable to all nationalities. They "have produced such a document and have persuaded a number of employers to adopt it," including the German Shipowners' Association for GIS, that country's second register,[25] as discussed in section II,G below.

This drive by the ITF to standardize and upgrade TCC agreements has produced a shipowner reaction. In 1993 an organization of maritime employers was reorganized under the name of the International Maritime Employers' Committee ("IMEC") to oppose the ITF policy of "picking off" individual employers by establishing negotiating committees covering employers in particular countries. This was done for the Philippines and India in 1994, and more recently has been attempted in Poland. The claim is that through this mechanism a better deal for shipowners and charterers was effectuated in the former two countries.[26]

To obtain a blue certificate when TCC is utilized by the ship, the ITF also requires a collective bargaining agreement from the crews' home country where the affiliated union has recommended the issuance of the certificate subject to the approval of the ITF national headquarters, and the incorporation of regulations specified above. Since the ITF's 1983 (Madrid) congress, approval of the ITF-affiliated unions which represent seamen in the country of the ship's beneficial ownership is also necessary unless this right is not asserted within four weeks of a blue certificate request.[27] This last requirement, originally known as the "Madrid Policy," and modified by the "Geneva Policy" at the 1994 convention, resulted from numerous charges that blue certificates were provided despite substandard conditions, particularly by the Korean Seamen's Union ("KSU"), which as of March 1983 had issued 712 blue certificates, an "astounding 41 percent of the total" then extant.[28]

---

24. Letter from Dearsley, Secretary, International Shipping Federation, to Dr. Northrup (Sept. 7, 1995) (on file with author) [hereinafter *Dearsley, Sept. 7, 1995*].

25. Letter from David Dearsley, Secretary, International Shipping Federation, to Dr. Northrup (Nov. 20, 1995) [hereinafter *Dearsley Nov. 20, 1995*].

26. *Id.*

27. *See*, ITF Guidelines for Affiliates Signing TCCs (Jan. 1994), for detailed requirements for approval of TCC agreements.

28. *See*, *ITF-FOC Book*, *supra* note 2, at 132.

For a considerable time, the Madrid Policy does not appear to have been widely enforced despite a 1990 declaration by the Fair Practices Committee that "[t]he ITF and its affiliates must continue to adhere to it."[29] In the United States, the National Maritime Union ("NMU") attempted to assume this role by establishing a satellite, the International Maritime Union, to carry out this function, but the ITF refused to sanction it, probably because it gave no role to the larger Seafarers International Union ("SIU").

After the 1994 Geneva Policy was agreed upon, however, the NMU and the SIU formed a joint organization, the Union of International Seamen ("UIS"), which has an address in Panama and a legal residence in the Caiman islands and, therefore, is presumably outside the jurisdiction of U.S. labor legislation. By thus establishing headquarters abroad presumably to escape domestic labor legislation, which is what the SIU and the NMU repeatedly have charged beneficial shipowners do, the UIS became what might be termed a "Flag of Convenience Union (FOCU)."

The UIS has asserted jurisdiction over whether a TCC agreement covering a ship, whose beneficial owners are American, and who also operates U.S. flag ships with NMU or SIU members, may be approved by the ITF. Correspondence provided to the authors indicated that this organization demands approximately $6,500 per ship for such approval. This apparently is over and above the $5,060 payable directly to the ITF. There is no indication that either the seamen or the shipowners receive any service for this charge other than assurance of obtaining a blue certificate.[30]

Similar policies are practiced elsewhere. Court records in the double bookkeeping cases discussed in section IV, below, indicate that the Japanese unions played a similar role in the contracts with Filipino crewmen and the Greek unions with Maldives Islands crews. Others such as the Dutch, the Norwegians, as well as the Japanese, use the beneficial ownership power apparently to maintain a presence at the bargaining table and to attract welfare or other funds that have declined with declining memberships.[31]

29. *ITF Report, 1990-93, supra* note 3, at 149.

30. The correspondence, dated in the summer of 1994, is from Robert Parise, UIS President, whose residence is in Florida, and is apparently directed to a shipowner whose name is blacked out, with copies to the then general secretary of the National Union of Seafarers of India, an official of a Philippine ship officers' union, and a gentleman in Manila. It includes a contract which states the payments required for a blue certificate. These payments are set at US$16 per year per man charged to the company, and an additional $.70 per man per day for UIS membership fees. The agreement also "permits" the Filipino union to represent the crew, who are apparently from that country.

31. *Dearsley, Sept. 7, 1995, supra* note 24.

According to the ITF general secretary:

> the Geneva Policy . . . [provides that] unions in beneficial ownership countries have the negotiating rights on their ships. They have the right (implicit rather than explicit) to levy union dues or other charges in respect of the seafarers on board those vessels, both national or non-national. There is currently no ITF policy governing such arrangements, which are quite common in other countries too. Our main concern in such a situation is that the seafarers concerned receive proper trade union services and this is also something which is currently under active review. As an aside I must add, however, that the sums of money referred to are a tiny fraction of the saving achieved by shipowners in substituting foreign for US seafarers and no-one would be happier than the US unions if US owners were to hire their own countrymen.[32]

The difficulty with this explanation is, first, that the ITF has no authority to grant "negotiating rights" to any union, or to grant a union the "right . . . to levy union dues or other charges in respect to seafarers." Rather, such matters are a function of national law and policy. Second, at least in the United States, the collectors of the monies, who have located themselves in foreign territory presumably to avoid U.S. law and policy, can apparently present no evidence that the monies paid provide anything to the seamen, but rather merely levy a tax against the shipowner.

It would appear, therefore, that the Geneva Policy is a method of attempting to shore up the depleting resources of developed country maritime unions, all of which are suffering financially from declining memberships. Unfortunately, the policy also appears open at least to financial mismanagement. Given the large amounts of monies involved in ITF boycott activities, as discussed below in section III, it is perhaps not surprising that questionable activity relating to the ITF-FOC campaign has been widely rumored in the past, as well as having been found in cases involving Australian, British, and Swedish unions, and more recently, the Russian unions.[33] Meanwhile, the ISF secretary has "written formally [to the UIS] to enquire by what right they are making their demands."[34]

D. Substandard and "Best in the World" FOC Shipowners

There is no doubt that some FOC ships, and some national flag ships as well, are substandard in terms of safety, working conditions, and wages.[35] For seafarers on such ships, the ITF has played an important

---

32. Letter from David Cockroft, ITF general secretary, to Dr. Northrup (April 5, 1995).

33. *See, ITF-FOC Book, supra* note 2, at 93 (Australia), 104 (Britain), and 105 (Sweden). Corruption in Russia is, of course, both widespread and widely publicized. There have been repeated reports of this among shipowners to whom we have talked.

34. *Dearsley, Sept. 7, 1995, supra* note 24.

35. A virtual catalogue of such ships is found in Paul K. Chapman, Trouble on Board

and humanitarian role. It has called the attention of the world to their conditions, demanded that their standards be improved before they can leave port, literally provided rescue, relief, and sustenance to those thus disadvantaged, and successfully pleaded their case before national and international governmental bodies.

There is also no doubt that, contrary to some ITF claims and literature, FOC ships cannot be characterized as providing either all bad or all good wages and conditions. Thus, a former general secretary of the ITF stated:

> Among extremes associated with Flags of Convenience, making generalization hazardous, is that some owners are among the best employers in the world, e.g., the U.S. oil companies, while others are certainly the worst.[36]

The ITF's official booklet in regard to the FOC campaign likewise distinguishes the "good" from the "bad" with the former including only those who sign an ITF agreement:

> Not all shipowners operating FOC vessels are as bad as the worst contingent who scrimp on wages and safety measures, save on food and clothing for crew, and budget by not manning their ships properly.
>
> The ITF has a good relationship with many companies . . . who take their responsibilities seriously. These are shipowners who have seen the sense of signing an ITF Agreement, and who have then strictly complied with it. In our experience, their ships are relatively safe, and on-board conditions are generally good . . . .[37]

The Liberian FOC fleet in large part is comprised of U.S. oil and bulk-carrier ships. In his book, a catalogue of alleged abuses involving FOC ships, Chapman states:

> There is at least one well-organized and effective international ship registry, that of Liberia. Liberia has demonstrated that an international registry can function efficiently and humanely. In recent years, whenever the Center for Seafarers' Rights [a division of the Seaman's Church Institute] has contacted the Liberian ship registry on behalf of an individual seafarer or an entire crew, the international registry office, located in Reston, Virginia, has investigated the complaint . . . . [and sought to ameliorate the situation.] If the Center for Seafarers' Rights . . . complained directly to the shipowner, the response might not have been so decisive. But the Liberian registry could bring the weight of its authority to bear on the problem and there was a positive outcome.[38]

(1992). Mr. Chapman was formerly an official of the Seamen's Church Institute, New York City, and played an active role in the double bookkeeping cases described in Part IV, *infra*.

36. Charles H. Blyth, Address to Company of Master Marines, (London, Dec. 3, 1975). The late Mr. Blyth served as ITF general secretary, 1968-77.

37. Flags of Convenience — The ITF's Campaign, at 39 (on file with ITF and author).

38. *Chapman, supra* note 35, at 134.

Despite these statements, FOC ships owned by U.S. oil companies and other Liberian-registered ships have been boycotted on numerous occasions regardless of the ship's condition, safety record, or the terms of employment merely because they did not carry a blue certificate.[39] Moreover, in an address to the 1994 ISF Manpower Conference, the newly elected ITF general secretary has apparently hardened ITF policy:

> The ITF is growing stronger while many of its affiliates are growing weaker . . . . Indeed, like the growth in the number of ITF approved collective agreements, it is in many ways a sign of failure. A failure to achieve the central political objective of the Flag of Convenience campaign — drive ships back to their genuine national flag and to the regulations laws and conditions of the shipowners' country. A failure so far to defeat the Flag of Convenience system.
>
> Yet this remains our central political aim and we have no intention of abandoning it. We shall continue to concentrate our attack not [on] the individual shipowner who is obliged to make use of the flag of convenience because his competitors are doing so too, but on the system itself. Although we are aware that safety records vary from flag to flag, there really is no "good" FOC. In the end, any open register which really took its responsibilities seriously and acted as a flag state should act would lose its market to other, less scrupulous, countries. It is the FOC system itself which has caused such a marked deterioration in safety standards and the growth of the short term quick buck mentality . . . .
>
> We have no desire to interfere with the collective bargaining arrangements applying to genuine national flag vessels. Subject to the standards laid down by the ILO, [International Labor Organization], national owners and national unions can exercise all the flexibility they like on national flag ships. When, however, a vessel moves to an FOC, then it becomes a matter for the ITF as a whole, acting collectively on behalf of all our affiliates. When we intervene to secure ITF standards on such a vessel, our ultimate objective is not just to sign an agreement, still less is it to secure a financial contribution to ITF funds. Our ultimate goal is to discourage the owner from re-flagging the vessel.[40]

When asked to comment about the apparent contradiction between the booklet and the speech, the general secretary wrote:

> The FOC brochure states the basic principle of ITF policy, which is that the FOC system is bad and that all FOCs are therefore bad things. This is true in the end simply because no FOC can exercise real control over "its" ships

39. *See*, *ITF-FOC Book*, *supra* note 2, at Chapter III. Such boycotts continue from time to time where national law does not outlaw them. *See*, *e.g.*, the case of the *Phillips Arkansas*, a Liberian flag ship, noted in FREDERICK W. WENTKER, JR., *Double Bookkeeping and ITF Activities - Double Wage Penalty Claims in the US*, 21 INT'L BUS. LAW. (1993), at 426.

40. David Cockroft, Address to the ISF Manpower Conference, *Taking the Moral High Ground: Priorities in Labour Standards - The ITF View* (London 1994), at 7 [hereinafter *ISF Address*].

> . . . . This doesn't mean, however, that statistically there are not registers which have a higher ratio of well managed ships than others. It is no secret that the Liberian registry is at the top end of the scale . . . because it has always been the flag of preference for US tanker operators . . . rather than any intrinsically "better" behaviour on the part of the Liberian registry.[41]

The fact remains that all FOC ships by far are not substandard. The ITF's failure to recognize this in practice is the result of its focus on raising the costs of all FOC-flag ships so that vessels flying developed country flags can better compete rather than necessarily on removing dangerous or substandard shipping from the world fleet.

E. ITF Worldwide Wage Minima v. ILO Minima

Although the ITF general secretary refers to "the standards laid down by the ILO," there is a major difference between the wage standards promoted by the ITF, and those recommended by the ILO. The ILO recommendations are established by its Joint Maritime Commission ("JMC"), a bipartite committee established under ILO governing policies. The JMC has a government-appointed chairperson but is composed solely of representatives of employers and workers from major shipowning and labor supplying countries in the maritime industry. The ITF secretariat has regularly served as secretary of the workers group and vice-chairman of the Commission; the ISF provides the same service for the employers' group.

The ILO Commission has recommended increases in the AB seamen's rate three times during the 1990s, the last effective January 1, 1995, at US$385 per month.[42] This was a joint recommendation of employer and worker representatives in which the ITF participated. Yet the ITF has set a worldwide standard wage of more than twice the ILO standard.

The ILO wage is established as a reasonable minimum that some underdeveloped countries, in many of which seafarers' jobs are among the highest paid, can meet without destabilizing national wage levels. Others, however, such as India, find this rate burdensome, and have objected to each increase in the ILO rate.

The ITF standard rate, on the other hand, appears dedicated to reducing, and eventually eliminating, the cost advantages of utilizing FOC flags and crews, thereby assisting in its objective of "regaining" the jobs for the seamen from developed world countries. Indeed, the ITF has made it plain that "one of the main objectives of the . . . [FOC] campaign

---

41. *Cockroft*, *supra* note 32.

42. Joint Shipowner/Seafarer Resolution. Resolution Concerning the ILO Minimum for Able Seamen (Geneva, Dec. 1994), at 1 (on file with ITF).

had been to defeat the free play of market forces which sought to supply crews at the lowest rates the market would bear."[43] Actually, of course, the ITF has been compelled by economic forces and the needs of the Third World seamen and countries to settle in most cases for the lower TCC rates, and thus to put off any potential to "regain" the lost jobs by use of a much higher standard rate. The increasingly regular reinterpretation of the TCC rates, which have moved them closer to the standard rate, is, however, designed to nullify the TCC rate advantage, and therefore, to make it more difficult for Third World countries to compete.

The ITF has actually recognized the ILO minima by stating that wage rates and working conditions set for "bona fide national flag vessels must not fall below the ILO recommended minimum wages for an AB (recommendation 109) as interpreted by the ITF and other conditions laid down as recommended in the relevant ILO instruments." The ISF, however, disagrees with a number of the ITF's interpretations of the ILO standard, which again all have the effect of raising the costs.[44]

F. ITF Policy and National Country Flag Shipping

Prior to the fall of communism, the ITF did not challenge the flag ships of the Soviet Union and its satellites on the grounds that they were not FOC shipping. Yet it was generally conceded that such countries' shipping had inferior conditions and lower wages than did most FOC ships. Now that communism has been discarded, some newly formed unions in these countries have affiliated with the ITF. In June 1994, they comprised 16 percent of the ITF affiliated membership.[45]

The ITF is concerned that these countries will become very low wage FOC havens. Already some seamen therefrom have been recruited by FOC flags, and some Russian ships have been flagged out to lower wage paying ex-communist country registries,[46] and others have been flagged out for quite different reasons. According to the ISF secretary:

43. Statement of Harold Lewis, General Secretary, ITF, 1977-93, in Proceedings of the 36th ITF Congress, Florence, August 2-9, 1990, at 8.

44. ITF Policy on Minimum Conditions of Service and Negotiating Rights on Merchant Ships. (Geneva Policy, 1994). The disagreements between the ITF and the ISF interpretations of the ILO wage resolution concern the definition of the standard number of days per week and per month. This affects the overtime calculation, and the number of leave days in a month. *See*, Letter from David Dearsley, ISF secretary, to A. Selander, assistant secretary, ITF, (Mar. 15, 1995).

45. *ITF Report, 1990-93, supra* note 3, at 38.

46. It has been reported, e.g., that Russian crewmen have been utilized on Greek-owned Adriatic tankers, and that Russian ships have been flagged out to the Ukraine. *See*, *ITF Seeks Talks with Adriatic Tankers*; and *Russian Crews Fight Use of Ukrainians*, Trade Winds, Dec. 30, 1994, at 5. *See also*, *Russian Crews for Export*, ITF News, July 1989, at 9; and Craig Mellow, *Russia: Making Cash from Chaos*, 131 Fortune, Apr. 17, 1995, at 148, 150 (which notes that one Russian entrepreneur founded an agency "to provide Russian sailors for Greek ships," and an-

> Many ships owned in former communist countries have been flagged-out to open registers [FOCs] but the reasons and the consequences are complicated. The need to attract foreign currency for fleet renewal and the demands by Western banks for the assets to be registered in countries with known and safe laws dealing with mortgages, etc., is probably the major reason. But the consequences have been bizarre as in many cases Russian crews who are members of Russian ITF affiliated unions, employed by Russian companies on Russian-owned ships flying, say, the Maltese flag, have to be paid ITF rates of pay. This puts them in the mega-star pay bracket by Russian standards and has resulted in many companies having to employ armed guards to protect crews from the local mafia on their return home![47]

The 1995 increase in the ITF standard and TCC wage minima has apparently upset Asian countries who fear that this might reduce employment for their seamen because of the new competition from ex-communist countries.[48] This has added to the long series of disagreements between Asian ITF affiliates and the ITF secretariat.[49]

The underlying causes of this problem have been the ITF's unilateral willingness to declare a national union illegitimate, to boycott the ship, and to enroll the seamen involved who were not members of a union that was legitimate in the ITF's opinion into its Special Seafarers' Department ("SSD"). This then requires shipowners desiring a blue certificate to pay to the ITF entrance (initiation) fees of US$23 and annual dues of US$46 per seafarer in addition to the other charges noted in Figure 2 and related text, above, and to forward these monies to the ITF secretariat.[50] No other ITS has such provisions for individual memberships. In the United States, of course, this procedure without a recognized showing of assent by the bargaining unit employees would raise questions of legality pursuant to National Labor Relations Act ("NLRA"), as amended.[51]

As workers in Third World countries have organized their own unions, such ITF action has diminished. In 1988, the SSD was consolidated with the Seafarers' Department as its membership declined, falling from its 1988 membership peak of 9,834 to 6,344 the following year.[52]

According to the ITF general secretary, the SSD has been so overwhelmed by a heavy workload since the fall of communism and the large number of calls for its assistance that it does not have accurate current

---

other has taken over a fleet of ships from the government and will use Russian sailors on Russian ships).

47. *Dearsley, Sept. 7, 1995, supra* note 24.

48. A meeting of the ITF's Asian/Pacific Seafarers, as described in the ITF News, Mar. 1990, at 7, gives hints of this. Conversations with shipping officials have confirmed this situation, and the ITF general secretary refers to it in his *Maritime Ministry Address, supra* note 8, at 3.

49. *See, ITF-FOC Book, supra* note 2, at 41, 54, 96, and 140.

50. *ITF Standard Collective Agreement, supra* note 21, at 11.

51. Pub. L. No. 74-108, 49 Stat. 449 (codified as amended at 29 U.S.C. §§ 141-197 (1982)).

52. *ITF Report, 1986-89, supra* note 17, at 86 and 139.

SSD membership data. He also states that in areas, such as China, where free unionism does not exist, and in other countries where either a union's constitution or national legislation proscribe admittance of non-domiciled seamen, SSD membership is required, but that generally, ITF's "policy is that whenever possible seafarers should belong to an appropriate ITF affiliated union."[53] Nevertheless, he has noted that the ITF will continue to make judgments about whether it will act on its own initiative despite the existence of national unions if it sees the need:

> Let me make it quite clear . . . the ITF and its affiliates are prepared to take action against any sub-standard ship whatever its flag if its physical condition or operational standards put seafarers' lives at risk. . . .[54]

G. Dependency and International, or "Second" Registers

For many years, dependency territory registers, such as Hong Kong for Great Britain, and more recently, also Isle of Man, and for France, Kerguelen, have existed, utilizing Third World crews and often officers from the ruling country, or for Britain, or another Commonwealth nation.

Job losses by the developed country ship registers have during the last decade induced a number of European countries led by Norway to establish international, or "second registers" which permit much lower than union or country scale wages and the use of non-domiciled seamen, but usually provide benefits, such as medical protection and pension credits, as well as good and safe working conditions.[55] Such registers are designed to prevent re-flagging to FOC registers by reducing costs to levels that are reasonably competitive to the FOC level.

The rise of the second registers has been contentious within the ITF. The ITF leadership and some national unions are opposed to second registers, and national legislation that permits their operation. Thus, the German unions recently requested that the ITF designate GIS, the German second register, as an FOC flag, and forced the German owners to accept the ITF TCC contract for GIS which establishes higher than competitive rates and is designed not only to protect jobs and wage rates for the German officers on board, but also to comply with the ITF standard TCC contract applicable to all nationalities.[56]

As a result of national government policy, ITF affiliates, with those in Norway and Denmark being the most successful, have negotiated agreements covering second registry ships. As Table 1 showed, Norway's

---

53. Cockroft, *supra* note 32.

54. *ISF Address, supra* note 40, at 8.

55. Telephone interview, cruise ship company official which flags some of its ships with NIS, the Norwegian second register.

56. *Dearsley, Nov. 20, 1995, supra* note 25.

second register was the seventh largest in the world in 1994: Denmark's was No. 24. Unlike the situation in Germany, the Norwegian and Danish unions have opposed pressure from the ITF and some of its affiliates to designate their second registers as FOC flags. They point out that their countries have adopted laws governing these registers, and that their existence, and in Norway, legislation, gives them some control of the terms and conditions of employment, which is far superior for them than to have the shipowners in their countries "flag out" to one or more or the existing FOC registers.

The record demonstrates the wisdom of the policies of the Norwegian and Danish unions. In 1980, the Norwegian regular register embraced 22 million gross tons of shipping. By 1987 when NIS was instituted, the regular register was down to 5.4 gross tons. In 1994, the regular register stood at 2.4 gross tons while NIS was up to 19.9. In 1985 the Norwegian fleet was manned almost exclusively by Norwegians; in 1994, 26,800 seafarers were employed, of whom only 6,800 were natives. It would also appear that some former Norwegian registers which flagged out have returned under NIS.

In Denmark, the data show that DIS has stabilized the national fleet. The regular register declined from 5.4 gross tons in 1980 to 0.5 in 1994 while DIS grew from 4.0 in 1989, its first year, to 5.1 in 1994.[57]

> Other second or international registers have been created or utilized by owners. Luxembourg has become the (perhaps temporary) home for the Belgium owned fleet and as a flag state Belgium has ceased to exist. . . . Others, however, have had less success, for example the Canary Islands register and Madeira have been reformed for Spanish, Portuguese and other owners albeit so far with little impact.[58]

The ITF has adopted policies which demand the right for unions in the second register country to bargain for non-domiciled seamen wages and conditions on these registers.[59] The wishes of the non-domiciled seamen are apparently not consulted. Where such bargaining occurs, the ITF policies apply "considerations" involving ship safety, union negotiating rights, maintenance of social security, and tax relief to seafarers and shipowners. It further provides that no ITF affiliates "shall sign agreements for second register vessels which fall below the ITF benchmark and the ITF standards, as amended from time to time." If a union affiliate in a second register country so requests, or if it decides where "circumstances so dictate," the FPC "reserves the right to declare any second

57. *Id.*

58. *Id.*

59. *See,* ITF Fair Practices Committee, *Resolution on Second Registers,* (London, June 14-16, 1995), for the official ITF policy on such registers.

register an FOC,"[60] as it has done in regard to the German one.[61] Thus far, however, the ITF has had very limited success in controlling second register employment policies in no small part because of the fundamental disagreements among affiliates as indicated by the German case on the one hand, and those of Norway and Denmark on the other. The Norwegian and Danish unions attempt to escape ITF censure by negotiating for the Third World crews and meeting somewhat closely ITF standards. They also are probably themselves mollified by some funding for these efforts.

These second registers, plus the almost extinction of the once dominant United States fleet,[62] demonstrate the difficulties of developed countries attempting to compete in the maritime industry without various subsidies or restrictive legislation. The future for any ITF-led "regaining" of this work appears dim indeed.

III. The Finances of the ITF

There is no other ITS for which an analysis of its finances is more instructive in understanding its operating principles and priorities than the ITF. Unlike other union federations, the ITF does not receive the bulk of its income from member affiliates' dues, but rather from employers in the shipping industry. Moreover, as already noted, only 16 percent of the workers represented by ITF affiliates are employees of the shipping industry. Yet the preponderance of the ITF's financial resources derive from its Seafarers Department and the "taxes" imposed on shipowners as part of the FOC campaign. The sizable revenues flowing from this campaign combined with the inability (or unwillingness) of the ITF to disburse its resources among its affiliated national unions has made the ITF by far the wealthiest international trade secretariat.[63] By 1994, the ITF had accumulated assets exceeding the equivalent of $100 million with negligible debt. A conservative investment portfolio would yield at least $5 million annually in interest income alone.

60. *Id.*

61. *ITF Rates Increased*, ITF News, Aug./Sept. 1995, at 10.

62. The last two major U.S. flag carriers, Sealand and American President, are seeking FOC status for at least some of their vessels, leaving the coastwise territory only for the U.S. flag, and this because the eighteenth century Jones Act permits only U.S. flag ships to handle U.S. port-to-port traffic. Other countries have similar legislation.

63. Most international trade secretariats have a difficult time balancing their operating budgets which are dependent largely on affiliated union dues. Except for the International Metal Workers Federation ("IMF"), whose affiliates include some of the largest unions in the free world, the typical ITS has little accumulated financial resources.

A. Financial Structure

Prior to 1984, the ITF included in its *Report on Activities* detailed data concerning its finances. The data for those years have been published previously.[64] Beginning in 1984, financial data were omitted from these reports and other published ITF documents, but the ITF, as a union federation, has been required to report such information to the British Government on Form AR21, "Annual Return for a Trade Union," pursuant to the Trade Union and Labour Relations Act 1974. As of January 1996, the latest ITF Form AR21 report available from the British Government relates to 1994-95.

In 1981, the ITF established the Seafarers' Trust ("Trust"), a registered trust, in order to avoid paying corporation taxes on the Welfare Fund's investment income, and to distribute grants to seafarer affiliates and other friendly organizations. The Trust receives the Welfare Fund's investment income by covenant to charity as well as other donations therefrom. It is required to submit financial reports to the United Kingdom Charity Commission. The data presented are taken from the Welfare Fund and Trust reports to these British government agencies, plus two annual reports issued by the Trust in 1994 and 1995.

Although the ITF receives substantial income, its financial structure is relatively easy to comprehend. For accounting purposes, revenues and expenditures are recorded in two principal funds: the General Fund and the ITF Seafarers' International Assistance, Welfare, and Protection Fund ("Welfare Fund"), which was established to allocate grants and assistance to seamen.[65]

The General Fund, which ostensibly supports the main operating costs of the ITF regardless of the industry involved, is financed primarily by revenue from affiliate dues. It is tasked with funding administration, i.e., salaries, rent, office equipment and supplies, travel, conferences, general overhead, and grants and donations, and regional education programs not specifically pertaining to the FOC program or other seafarer matters.

Since the late 1970s, however, the General Fund has provided a decreasing proportion of the ITF's total funding. Instead, the Welfare Fund, the overwhelming source of revenue for which is derived from the FOC campaign to compel contributions from shipowners, has been the dominant financial vehicle for the ITF. This is not altogether surprising. Given that the Welfare Fund is supposed to support only those activities relating to seafarers, the sharply rising expenditures on the FOC campaign in recent years naturally caused the Welfare Fund's share of the

64. *See*, *ITF-FOC Book*, *supra* note 2, at 135.

65. *See* Table 3.

ITF's spending to climb. Nevertheless, the Welfare Fund has been burdened with an increasing share of non-FOC campaign expenses; in 1984 the Welfare Fund was charged with 30 percent of non-FOC expenditures but by 1991-92 this had reached 54 percent. Subsequently, it has fallen to 48 percent in 1993-94 and 47 percent in 1994-95.[66]

Moreover, this does not tell the whole story. The Welfare Fund built and owned one of the two buildings formerly occupied by the ITF's staff, and no doubt also financed the new building and its refurbishing into which the ITF moved in October 1995 to consolidate the location of its London personnel.[67] Numerous expenses and overhead can be charged to the Welfare Fund as if they pertained only to seafarers, but actually cover other activities as well. There is no question that the Welfare Fund has greatly enhanced the ability of the ITF to operate on a much greater scale than was possible before the inauguration of the FOC campaign.

Table 3 summarizes the most important aspects of the ITF's finances by consolidating the two Funds and the Seafarers' Trust through 1994-95, and by listing only those revenue and expense items which are of material importance. Over the past decade, the ITF's total income did not grow appreciably — even though that of the General Fund more than doubled — while its expenses tripled from £3 million to nearly £9.5 million. Fastest growing among expenditures were those relating to the FOC campaign and to general administration, the most significant of the latter being staff salaries.

Figure 3 points out the critical role of the Welfare Fund in financing the ITF's expansive spending during the 1980s. Without the Welfare Fund and the Seafarers' Trust, which receives its income from the Welfare Fund, the ITF would be a very modest organization, financially; this is shown by the fact that the General Fund's income did not account for more than 19 percent of the ITF's total income in any of the years from 1984 through 1994-95. Thus, the maritime activities of the ITF, and in particular those relating to the FOC campaign, provide the brunt of the ITF's financing for all its activities regardless of the industry involved.

The Welfare Fund has been so lucrative that the ITF's vastly increased expenditures have not resulted in a reduction in the ITF's total asset base. From 1984 to 1994-95, the ITF's assets rose from £37 million to £75 million (the latter amount being equivalent to more than US$100 million). In fact, greatly increased revenues flowing into the Welfare

66. Some portion of non-FOC campaign expenditures are of course related to the ITF's maritime activities, but it is not possible to determine the breakdown. There is no doubt, however, that income from the FOC campaign contributes substantially to funding ITF expenditures unrelated to seafarers.

67. *See*, ITF NEWS, November 1995 at 2, for a picture of the new ITF headquarters and its address.

TABLE 3

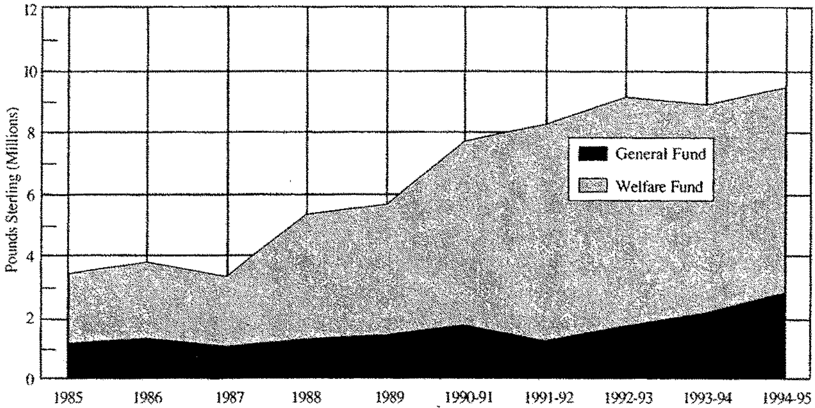
TEN YEAR FINANCIAL SUMMERY OF THE ITF

(POUNDS STERLING)

	1985	*1986*	*1987*	*1988*	*1989*	*1990-91*	*1991-92*	*1992-93*	*1993-94*	*1994-95*
INCOME	11,896,930	13,935,480	11,439,814	12,463,554	13,087,879	14,908,503	14,346,306	16,651,988	13,028,184	16,641,148
General Fund	1,200,964	1,328.801	1,231,298	1,422,981	1,463,128	2,206,663	1,852,081	2,370,817	2,534,025	2,877,870
Subscriptions	899,672	1,004,593	1,058,668	1,164,482	1,229,220	2,032,725	1,593,203	1,872,203	2,166,263	2,382,231
Welfare Fund	10,695,966	12,606,679	10,208,516	11,040,573	11,624,751	12,701,840	12,494,225	14,281,171	10,494,159	13,763,278
Shipowners' Contrib.	7,619,630	6,017,460	5,470,948	5,669,961	5,876,553	7,413,136	7,167,506	8,273,128	8,118,128	10,544,313
Investment Income	2,113,863	1,959,278	1,871,093	2,168,255	2,721,095	3,255,699	3,046,518	1,964,200	1,263,390	1,330,129
EXPENSES	3,414,839	3,837,110	3,328,973	5,389,343	5,735,142	7,819,613	8,327,061	9,218,456	8,979,058	9,579,568
Administrative	1,087,329	1,658,165	1,587,507	1,874,904	2,255,650	2,969,659	2,508,440	3,045,514	3,544,595	4,855,940
FOC Campaign	1,771,298	1,662,765	1,165,701	2,851,831	2,950,597	4,373,595	5,488,125	5,750,271	4,752,568	4,723,628
Legal	601,554	929,056	524,804	836,316	1,288,883	1,733,579	1,787,510	1.708,514	1,221,375	1,180,582
Inspectors Fees	748,586	511,030	431,618	1,649,047	1,391,838	2,255,796	3,310,456	3,720,415	3,080,797	3,050,236
Travel	378,517	222,679	209,279	366,468	269,876	384,220	390,159	321,342	450,396	492,810
Other	556,212	521,180	575,765	662,608	528,895	476,359	330,496	422,671	681,895	0
ASSETS	43,125,459	51,427,479	55,538,272	55,449,624	58,252,804	63,297,813	67,053,094	74,287,679	73,020,978	74,671,489
General Fund	233,313	207,124	235,822	295,627	281,791	367,000	915,553	1,491,086	1,800,906	1,791,921
Welfare Fund	27,658,382	34,822,209	34,097,257	27,953,379	28,844,642	28,127,707	27,604,082	30,810,335	32,031,072	36,191,568
Seafarers' Trust	15,233,761	16,398,145	21,205,193	27,200,618	29,126,371	34,803,106	38,533,459	41,986,258	39,189,000	36,688,000
DEBITS										
Backpay to be Distributed	1,833,111	1,094,402	1,511,293	1,816,135	2,225,605	2,023,889	2,851,986	3,755,011	3,148,371	3,282,208
Interest Due on Backpay	1,009,000	1,186,500	1,338,500	1,510,500	1,797,500	2,148,501	1,500,000	1,700,000	1,700,000	1,700,000
Total Assets in U.S. Dollars	$55,360,024	$75,406,861	$90,748,810	$98,777,960	$95,517,123	$112,967,607	$118,643,745	$131,154,897	$109,677,509	$114,366,853

Notes: (1) administrative expenses are those not relating to the ITF's ongoing Flag of Convience campaign; (2) exchange rates are average for year.
Source: ITF, Annual Return for a Trade Union, Form AR 21, 1985 - 1994-95; Report to the U.K. Charity Commission, 1985 - 1992-93; Annual Report of the Seafarers' Trust, 1993-94 and 1994-95.

FIGURE 3. THE FINANCIAL IMPORTANCE OF THE WELFARE FUND
(TOTAL ITF EXPENDITURES AS CHARGED TO EACH FUND)



Source: ITF, Annual Return for a Trade Union, U.K., Form AR 21, 1985- 1994-95.

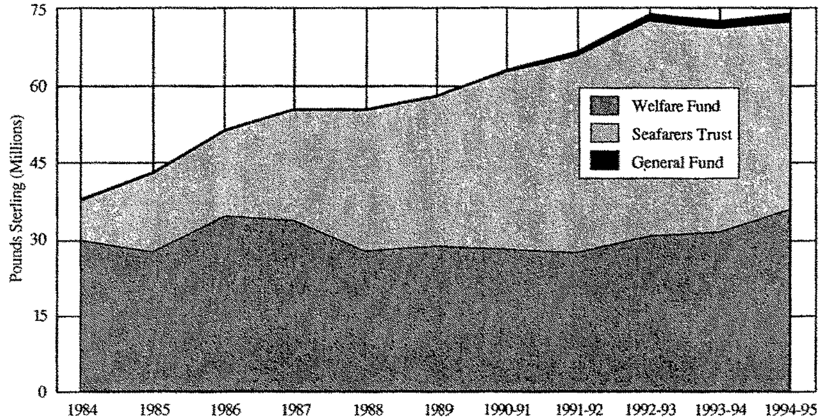
Fund resulted in the decision to establish the Seafarers' Trust in 1981. The evolution of the ITF's assets and financial power, which are unmatched by any other ITS, is shown in Figure 4. The General Fund represents a very small percentage of the ITF's assets, whereas the Seafarers' Trust has grown considerably since the mid-1980s and now accounts for 50 percent.

B. THE WELFARE FUND

In 1965, the Welfare Fund was established as a distinct financial entity with the purpose of providing assistance and welfare disbursements to seamen. A small percentage of its revenue accrues from subscription payments made by members of the ITF's Seafarers' Department and by those seaman who are covered by ITF agreements but who do not belong to any union or to a union affiliated with the ITF.

The data in Table 3 also shows that the Welfare Fund benefits from interest collected on back pay won for seamen on FOC ships — US$5 million in fiscal 1994-95 remained undistributed. These funds are distributed to seamen, but it often requires time to find them or obtain their addresses because of the mobility in the industry and the problems of locating personnel in Third World countries where the infrastructure is

FIGURE 4. THE ITF'S FINANCIAL POWER
(TOTAL ASSETS)



Sources: ITF, Annual Return for a Trade Union, U.K., Form AR 21, 1984- 1994-95; Seafarers' Trust, Report to the U.K. Charity Commission, 1984- 1992-93; Annual Report of the Seafarers' Trust, 1993-94 and 1994-95.

weak. Some are never found despite energetic efforts by the ITF administrators to locate them. The ITF benefits by being able to use the "float" which, as Table 3 shows, has been a sizable amount each year.

Because the Welfare Fund's revenues underwrite much of the ITF's total expenditures on all of its programs and as such have permitted the ITF to operate on a much greater scale than was possible before the inauguration of the FOC campaign, it logically follows that shipowners in effect provide the resources that allow the ITF to pursue its objectives, including the extraction of further contributions. For example, from 1984 through 1989, and again in 1994-95, shipowners' welfare contributions exceeded by a good measure the entire expense budget of the ITF covering all transport sectors under the ITF's umbrella. As already noted, revenue figures alone do not tell the whole story of the critical nature of the Welfare Fund as a financing vehicle. Besides financing ITF's headquarters, for which the ITF pays rent, the Welfare Fund undoubtedly provides other financing, such as for ITF's sophisticated office equipment.

Spending by the Welfare Fund over the past decade has been dominated by expenditures for administration of the FOC campaign, outlays to the Seafarers' Trust through the Covenant to Charity and other donations, and to a much lesser extent by welfare grants to seaman — supposedly the Fund's principal mission. In 1989, for instance, the Welfare Fund allocated welfare grants and assistance to seaman totalling less than 1 percent of that year's income; this rose to nearly 5.5 percent in 1994-95, still quite small.

Although the Welfare Fund has in recent years significantly increased its spending on welfare grants and donations to the Seafarers' Trust, the Welfare Fund still accrued surpluses and possesses huge financial reserves. At the end of fiscal year 1994-95, the Welfare Fund's assets were £36 million, which generated investment income that exceeded the General Fund's income from affiliate subscriptions or dues in 1990-91, 1991-92, and 1992-93.

The sharp increase in administrative expenses starting in the late 1980s is related to the escalating costs of the FOC campaign. In particular, legal charges have exploded as a result of court challenges to the ITF's attempt to force payments from shipowners. In 1984, legal and professional fees totaled £727,039, but by 1989 they amounted to £1.3 million, and in 1992-93 to £1.7 million, and stood at £1.2 million in 1994-95. Rising even faster than legal costs have been expenditures on inspectors' fees, which have jumped from £592,329 in 1984 to over £3 million in 1994-95, a result in part of a substantial expansion of the number of inspectors employed in recent years. One factor driving this increase, in addition to the hope that it will result in greater shipowner acceptance of blue certificates, may be increased reliance on such fees and on shipowners' welfare contributions for financial support by unions in western countries as their memberships continue to decline. Lending credence to this view is the fact that the level of "contributions" made by shipowners has changed relatively little over the past decade — from £7.4 million in 1984 to £10.5 million in 1994-95, — implying that either the contributions have become far more difficult to collect, thus requiring a greater number of more highly trained inspectors, or that reimbursements for inspections are being utilized to offset in part declining memberships in developed country maritime unions as the proportion of the world fleet that are FOC ships or second registers continues to increase.

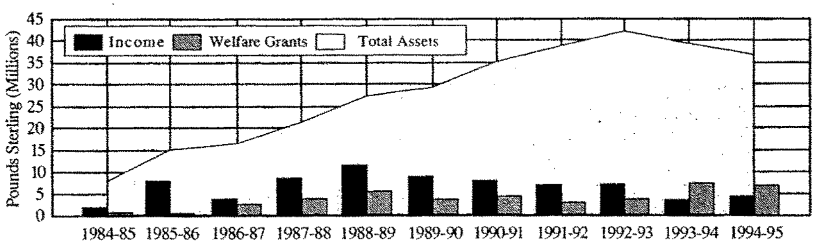
The expansion of payments by the ITF to affiliates from the Welfare Fund seems certain to enhance the power of the ITF vis-a-vis its affiliates. If an affiliate desires to be a beneficiary of such funding, it surely enhances its standing by supporting the policies of the current administration. This is not unusual in the intra-politics of organizations. Given the declining nature of national maritime unions in developed countries and the financial power of the ITF, such a development in the hands of a strong general secretary is even more likely.

C. The Seafarers' Trust

The Seafarers' Trust has operated for most of its existence as a mechanism to minimize taxes on the FOC campaign's revenue and to issue grants. ITF personnel comprise the Trust's board of trustees and officials. Following an initial input of £4 million in 1981, the Trust has been "donated," under a Deed of Covenant, the investment income realized by the assets of the Welfare Fund since 1983. The Welfare Fund has also periodically made donations to the Trust, in addition to those associated with the Covenant, as a means of sheltering even more FOC revenue from taxation.

Figure 5 tracks the evolution of the Trust's assets since 1984. The Covenant donations have accounted for the majority of the Trust's income, although in the late 1980s the non-Covenant donations were likewise very large. Over this ten-year period, the Trust received in excess of £61 million in income. Tax-reducing donations from the Welfare Fund were in excess of £45 million. As shown in the financial summary of the ITF provided in Table 3, above, the total assets of the Trust rose from £7.7 million in 1984 to almost £37 million (or nearly $56 million) in 1994.

Figure 5. Seafarers' Trust (Welfare Grants Relative to Income)



Sources: Seafarers' Trust, Annual Report to the U.K. Charity Commission, 1984-85 - 1992-93; Annual Report of the Seafarers' Trust, 1993-94 and 1994-95.

Given that the Trust is a registered charity, one would expect that its expenditure accounts would reflect this fact by showing significant outlays on charitable activities. According to the Trust's first annual report, issued for 1993-94:

> The Trust's principal objects are providing, or assisting in providing, for the

> social welfare of seafarers of all nations and assisting them and their dependents in conditions of sickness, hardship and distress.[68]

What is most notable about the Trust is the apparent lack of accord between its stated objectives — i.e., those for which it has been granted beneficial tax status — and those it has pursued for most of its existence, particularly the lack of significant charitable outlays until recently, relative to its income and total assets.

As shown in Figure 5, except for its two latest fiscal years, the amount of welfare grants dispersed annually fell considerably short of the Trust's income and, to a far greater extent, its total assets. In only six years of the Trust's entire existence have welfare grants risen above 50 percent of its income and in only two years have welfare grant expenditures been sufficient to reduce the Trust's assets. Consequently, the Trust accumulated an ever-growing trove of riches; a cynic would believe this to be the reason that the ITF never issued an annual report for the Trust prior to 1993-94, when it could show substantial outlays on welfare grants. As of 1994-95, the total income received by the Trust since its creation in 1981 had reached £82.7 million; expenditures on welfare grants amounted to £44.7 million at the end of its fiscal year 1994-95, and combined with administrative expenses, totaled £46.1 million. The Trust's assets at the end of fiscal 1994-95, therefore, measured £36.6 million, which for the first time fell below the entirety of welfare grants issued by the Trust since its founding.

In terms of geographic distribution, the nature of the Trust's welfare grants is as noteworthy as their relative magnitude. The great bulk of the welfare grants have historically been issued for union-sponsored activities in developed countries. For example, only 9 percent of the funds transferred to the Trust in 1981 were expended. Twenty-eight of the thirty-two grants made by May 7, 1982, were to union projects in developed countries.[69] Twelve years later in fiscal year 1992-93, about 80 percent of welfare grants were destined for countries belonging to the Organization for Economic Cooperation and Development ("OECD"),[70] and in other years the distribution was doubtless also heavily skewed toward wealthy western nations, Australia and Japan.

One possible explanation, as stated in the ITF's first ever annual report of the Trust is "a lack of knowledge on the part of some agencies [in Third World countries] of the Trust's existence and also the degree to

68. *See*, ITF SEAFARERS' TRUST, 1993-94 Financial Report, at number 2.

69. *See*, *ITF-FOC Book*, *supra* note 2, at 140-41.

70. THE ITF SEAFARERS' TRUST, *supra* note 67, at 8. OECD is the international organization of the wealthier developed countries.

which they were prepared to seek alternative sources of finance."[71] Perhaps at least equally significant, however, is the fact that all of the Trust's trustees have been, and continue to be, members of the ITF executive board or of its staff, all are citizens of developed countries, and it is administered by an organization located in Europe and dominated by European unions. The apportionment of the Trust's grants has predictably elicited complaints from developing country organizations,[72] and has led the Trust to commence a new strategy for allocating a higher percentage of grants to them.

The new Trust policy for targeting grants is based upon a formula that considers the number of seafarers originating in and working in a region and the amount of trade conducting in a region by seaborne means.[73] This reallocation of Trust grants has resulted in a decline of disbursements to developed countries from approximately 80 percent of the total in 1993-93 to about 64 percent in 1994-95.[74]

A substantial part of the increases in funding for Third World countries was provided to the "Asian Tigers" — Hong Kong, South Korea, Singapore, and Taiwan — none of which can realistically be considered as underdeveloped, but are Asian. These countries combined received less than 10 percent of the 1994-95 Trust grants as compared with 3 percent the previous year. This may reflect a temporary situation, or a healthy degree of prudence by the ITF in recognition that many developing countries cannot productively absorb large inflows of funds or equipment.

On a regional basis, grants for European groups were reduced from 69 to 30, and from £3.5 million to £2.2 million between 1993-94 and 1994-95. On the other hand, those in the Asia-Pacific region declined slightly in numbers, but increased somewhat in amounts from £2.1 million to £2.3 million. Of this total, Australia received £530,044 in 1994-95, about one-half of its 1993-94 total, but still 23.2 percent of the regional total as compared with the 1993-94 ratio of 52.4 percent. On the other hand, Japan received £534,827 in 1994-95, 23.4 percent of the regional total, as compared with £160,210, 7.7 percent of the regional total, in 1993-94. Other major grants in 1994-95 went to Taiwan (£470,150, 20.5 percent of the total regional grants), Thailand with the largest Third World country grant (£400,000, 17.5 percent of the regional total), and Samoa (£114,403, 5 percent of the regional total). There were no other six-figure grants.

---

71. *Id.* at 9.

72. The ITF estimates that at least 60 percent of seafarers are now from Asian countries, and when adding in those from other developing areas, the total number of seafarers from non-western countries probably surpasses 80 percent.

73. ITF Seafarers' Trust, Annual Report, 1994-95, at 9.

74. All data relating to this issue are from the 1993-94 and 1994-95 ITF Seafarers' Trust Annual Reports.

Thus, the increase in distribution of Trust grants for the Asia-Pacific region saw only two underdeveloped countries, Thailand and Samoa, gain major grants while Australia and Japan, two OECD countries, received 46.6 percent of the grant money, and another 20.5 percent went to Taiwan, a fast-rising "tiger". It is unfair to base criticisms on one or two years of an attempt to reorient the Trust grant policy, but it is fair to note that there must be considerable more change if the grants are to make a substantial contribution to the countries which supply the largest number of the world's seafarers.

D. The ITF's New Proactive Use of the Trust

Soon after assuming the post of ITF general secretary in 1993, David Cockroft was quoted publicly that the Trust was poorly administered:

> Administration has been almost non-existent . . . . Trust meetings have tended to take place three times a year at lunchtime in between other meetings. This has got to become more systematic and we have already had a full-day meeting . . . to look at it and there are more to come.[75]

True to his word, Cockroft has appointed an administrator for the fund, issued its first two annual reports, and as already discussed, considerably increased its donations, and moved to alter the concentration of grants to developed countries particularly by increasing those to welfare projects in Asia from which the majority of present day seamen are recruited.

The new Trust administration has also declared that "[d]eveloping a proactive approach to the future activities of the Trust is one of our main priorities."[76] Being more "proactive" includes instigating grants on its own motion instead of just waiting for affiliated unions to propose them, and altering the geographic grant distribution by permitting grants in underdeveloped areas where the ITF has no affiliates. It is also clearly in line with what appears to be Cockroft's determination to utilize grants to increase the ITF's visibility, to enhance its public image, and to further its FOC campaign.

Thus, the ITF scored a public relations coup by donating $1 million to endow a chair at the World Maritime University, located in Malo, Sweden, and agreeing "to provide initial funding for the establishment of an independent international institution dedicated to research into the whole range of seafarers' occupational safety and health problems," located in Wales.[77] The Trust has also agreed to provide a grant of £270,000 per year for three years to the International Committee on Seafarers'

75. *ITF Admits Controversial Fund is Badly Administered*, TradeWinds, Aug. 6, 1993, at 9.
76. ITF Seafarers' Trust, Annual Report, *supra* note 67, at 13.
77. *ISF Address*, *supra*, note 35, at 6.

Welfare ("ICSW") in order to establish a full-time secretariat, located in London.[78] Since these organizations are all headquartered in Europe, they will not alter the past geographical distribution of grants, but there has also been a grant of £500,000 to a Thailand project.

Interestingly, in view of the new emphasis on health and safety is the fact that in the past only 0.6 percent of the Trust grants were related to health and medical matters, which is a smaller share than that given for sports and entertainment. Moreover, it remains to be seen whether these new organizational grants will duplicate activities of the ILO, and whether the result will be to emphasize items under the health and safety banner which will support ITF policies on hours, crew manning, time off, and other collective bargaining issues.

The Cockroft administration does not plan to alter the concentration of recipient organizations which have received Trust grants in the past. The majority of the nearly 700 grants since 1981 have gone to "established seafarers' welfare bodies such as those sponsored by various churches."[79] There is good reason for this besides the fact that numerous churches do provide missions, rest areas, and other welfare services to seamen in ports throughout the world. In recent years, for example, one such church body, the Seamen's Church Institute, New York, dedicated itself, in the words of its then director, to "the problems of exploitation of seamen aboard ship."[80] In this work, it has cooperated and assisted the ITF, as discussed in Part IV, *infra*. Cockroft has noted in regard to church representatives:

> We [the ITF and the church] provide complementary and not competing service to seafarers. Not only can you deal with the many complex problems which are beyond our competence, but you can also . . . "boldly go" where ITF inspectors would normally get thrown off the ship.[81]

It would appear, therefore, that proactive changes in the Trust will alter some patterns of grant donations but maintain others. The key variable determining grant action will henceforth undoubtedly be the effect on ITF policies, practices, and aspirations, particularly in regard to the FOC campaign.

---

78. ICSW is a coordinating body involving ISF, ITF and various organizations providing port welfare, such as religious-sponsored missions. Ake Selander, for many years an ITF assistant general secretary with responsibility for the FOC campaign, is scheduled to become the secretariat for ICSW on his retirement from ITF early in 1966.

79. ITF Seafarers' Trust, Annual Report, *supra* note 67, at Foreword.

80. Richard F. Shepard, *Ahoy, Mates, the Institute Back at the Seaport*, N.Y. Times, May 6, 1991, at B3.

81. *Maritime Ministry Address*, *supra* note 8, at 3.

IV. Double Bookkeeping And Litigation In The United States

To avoid ITF boycotts, to step aside from controversy, and to adhere to requirements of charterers who insist that ships avoid boycotts, shipowners predominately from the Far East for many years signed ITF-approved agreements, paid into the ITF Welfare Fund, but also signed separate agreements with their national unions where they exist, or otherwise paid wages at a much lower rate than either the ITF standard or approved TCC scales dictated by the ITF. This was historically relatively easy to do prior to the recently enforced Madrid and Geneva policies because ITF's affiliated unions approved the issuance by the ITF in London of blue certificates to vessels which had signed the ITF agreements.

It is preposterous to believe that the Far Eastern unions or seamen were unaware of the double bookkeeping involved. In interviews with shipowner and ship operator personnel, maritime union officials, and government officials in Japan, Thailand, Singapore, and Hong Kong in 1983, double bookkeeping was talked about freely as clearly prevalent in all countries visited except Singapore, and parties interviewed declared that it was common in the Philippines, Taiwan, and South Korea as well. They all regarded it as necessary to operate, particularly in the Australian trade.[82] Additionally, in Third World countries except Singapore, the wages actually paid seamen at the country rate are among the highest that could be earned as blue collar workers.[83]

Double bookkeeping by Western standards is clearly unacceptable; certainly these authors do not support its use. The Asian view, however, looked at it differently. Those who have utilized double bookkeeping point to the circumstances created by the ITF attempt — the only effort of its kind — to establish a worldwide wage standard despite the vast differences in living conditions, living costs, and job opportunities in various areas of the world, and particularly the differences in these standards between developed and Third World countries. They combined these considerations with the view that double bookkeeping is a practical solution to a practical problem of being able to operate ships and to avoid

82. *ITF-FOC Book, supra* note 2, at 106 (summarizing these interviews, together with other information concerning double bookkeeping).

83. This has been attested to one of the authors by American companies who utilize particularly Filipino seamen, as well as by authorities in the Philippines, both in person in 1983, and by telephone and fax ten years later. The large number of applicants attempting to enroll in training schools in the Philippines, and the resultant oversupply of applicants and trained seafarers there attest to this situation. Wage data for such countries are found in the Yearbook of Labour Statistics published by the ILO, but even though these data are the most reliable available for underdeveloped countries, they lack rigor and are usually quite out of date. Wentker, *supra* note 39, at n. 4: "Currently [1993] a Filipino AB earns about US $700 a month base, overtime and vacation. The average wage for a labourer in the Philippines is about US $100-125 per month".

controversies that probably could not be won. From their point of view, therefore, double bookkeeping became an understandable and reasonable solution to a problem.

It was usually not meant to cheat seamen, whose union officials, and probably most of the seamen themselves, must always have been aware of the double bookkeeping. In the Philippines, for example, manning agents licensed by the government, who are by law the only source of seafarer hiring, recruited seamen with the understanding that double bookkeeping was involved. It was explained to seamen that double bookkeeping was a method to maintain their jobs in economies in which jobs are very scarce. Some Filipino seamen prior to a voyage received a bonus and bonuses each month while on voyage for participating in the ruse. Moreover, they surely knew that if they complained about double bookkeeping, they could find it difficult in the future to gain these coveted jobs for which the supply generally exceeded the demand.

The seamen were paid the country or market wage throughout their terms of employment and signed receipts for those wages. Seamen also signed receipts for payment on the basis of the ITF wage schedule. The ITF wage schedule was often written into the ship's articles and two sets of books were kept: one reflecting the actual wage schedule, the other the ITF one.

The ITF had, of course, been aware of double bookkeeping for many years, but found it very difficult to obtain evidence or otherwise to curtail its practice. As its *Report on Activities* stated to the 1986 congress:

> Manning agents circulate owners with details of their own special "guarantees" regarding the evasion of ITF standards once the ITF Blue Certificate has been obtained, thereby cheating both the crews and the charterers who insist on f-o-c ships being in possession of the Blue Certificate as a way of ensuring employment standards that are acceptable to ITF affiliates. The increasing sophistication of the "double accounts," coupled with what can only be described as terrorization of crews, presents ITF inspectors with tremendous problems in carrying out routine checks on compliance with ITF agreements.[84]

All this was altered insofar as trade through United States ports is concerned when the ITF teamed up with a resourceful attorney and the Seamen's Church Institute. As some Chinese shipowners predicted would happen a decade earlier, the seamen who blew the whistle were largely Filipino.[85]

---

84. *See, ITF Report, supra* note 3, at 117.
85. *See, ITF-FOC Book, supra* note 2, at 106.

A. United States Law and Double Bookkeeping

The attempts of the ITF and its affiliates to boycott FOC ships in United States ports were, after what appeared to be a successful start, drastically curtailed by a series of U.S. Supreme Court rulings during the 1960s and early 1970s. Directing its "attention . . . to the well-established rule of international law that the law of the flag ordinarily governs the internal affairs of a ship," and absent a clear affirmative direction from Congress otherwise, the Court ruled that there was no basis for the exercise of National Labor Relations Board jurisdiction over FOC ships.[86] It then ruled that since picketing of foreign flag ships by American seamen was not an act protected by U.S. labor legislation, state courts could enjoin such action.[87] ITF actions against FOC ships in American ports were thereafter largely halted until the double bookkeeping controversy erupted in late 1989.

United States law, however, has provided special protection to aspects of seafarers' wages and working conditions almost from the inception of the Republic. The Seamen's Wage Act[88] dates from 1790; it was amended in 1872, 1898, and 1915. Key sections of this legislation are as follows:[89]

> (a) A seamen's entitlement to wages and provisions begins when the seaman begins work or when specified in the agreement required by § 10302 of this title (46 U.S.C. § 10302) for the seaman to begin work or be present on board, whichever is earlier.
> (e) After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement and is entitled to payment of all wages earned. Notwithstanding a release signed by the seaman under § 10312 of this title, a court having jurisdiction may set aside for good cause

86. McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10 (1963). This case and related ones are fully discussed in the *ITF-FOC Book*, *supra* note 2, at 50.

87. Windward Shipping (London) Ltd. v. Am. Radio Ass'n, 415 U.S. 104 (1974).

88. 46 U.S.C. § 10313 (1988). We are indebted to Frederick W. Wentker, Jr., Lillick & Charles, San Francisco; Craig C. Murphy and Robert I. Sanders, Wood, Tatum, Wonacott, & Landis, Portland, OR, for assistance in analyzing this legislation and the related court decisions; to Richard J. Dodson, Dodson & Vidrine, Baton Rouge, LA, and to Charles F. Lozes and David B. Lawton, Terriberry, Carroll & Yancey, New Orleans, LA, for providing further information about the cases; and to the late Paul N. Wonacott and Kathleen A. McKeon, also of the Wood, Tatum firm for use of their summary of the statute.

89. Other sections of the Act that have been brought up in the course of the litigation include §§ 10314 and 10315, which prohibit or limit advances and allotments of wages. 46 U.S.C. §§ 10314, 10315 (1988).

> shown, a release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.
> (f) At the end of a voyage, the master shall pay each seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.
> (g) When payment is not made as provided under subsection (f) . . . without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.
> (i) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section.

The double bookkeeping cases involved whether this law could be interpreted in an expansive manner, and whether damages for fraud, emotional distress, and other alleged injuries could be obtained where double bookkeeping was found. Initially, all these questions were won by the plaintiffs, with resultant large damage awards. Despite an initial victory on the west coast, however, the results there were quite modest in terms of financial awards. Nevertheless, settlements and litigation have probably ended double bookkeeping on ships that enter American ports.

B. The Early Cases

According to Richard J. Dodson, the attorney who handled these cases for the plaintiff seamen,[90] about ten cases against double bookkeeping were brought. The earliest involved a 1988 case brought against a Hong Kong ship, the *M/V Palvia*, registered in Liberia, arrested in New Orleans, and placed under a large pre-trial bond by the Parish of St. James Louisiana District Court. Settlement was achieved for $451,080, and then $263,494 more when the company did not abide by a seamen's protective order in the settlement agreement.[91]

The 1989 case that first brought the perils of double bookkeeping in American ports to the maritime world's attention involved the *M/V Fareast Trader* in the port of Galveston, Texas. Like most of the cases, this was brought to Dodson's attention by John Sansone, a member of the International Longshoremen's Association ("ILA"), then an ITF inspector in the Gulf of Mexico area, who in turn was alerted by a port religious

90. Interview with Mr. Richard J. Dodson, in Baton Rouge, LA, (March 22, 1995).

91. Tomas C. Urdas v. Pauley Inc. and Eckoxa Co., Ltd., 23rd Judicial District Court, Parish of St. James, State of Louisiana (1988). The second case was adjudicated in Hong Kong; *See also*, Dodson interview, *supra* note 89; and *Multi Million Dollar Damages for Crew Cheated of ITF Wages*, ITF News, Sept. 1990, at 7.

group.[92]

The shipowners, headquartered in Hong Kong with a Filipino crew, compounded their problems by dispatching agents who threatened the crew. Dodson had provided the crew with tape recorders, his usual practice, and this became part of the evidence. The background of double bookkeeping and ITF policies was apparently also unknown to the defense. The shipowners settled on a very lavish interpretation of the Wage Act, plus damages, for a total of $1,174,000.[93]

The ITF was ecstatic with this result. Since its loss of the secondary boycott cases in the courts in the 1960s and 1970s, it had been seeking a legal approach to attack FOC shipping in United States ports. Because the United States has the second largest beneficial ownership of FOC registry ships, the successful attack on double bookkeeping in the *Fareast Trader* case appeared to be an answer. The ITF NEWS announced:

> Historic Victory for FOC Campaign . . . . The ITF's campaign against flag of convenience shipping has received a major boost with a record-breaking US court settlement of $1,174,000 for 24 crew members from the Panamanian flag *Fareast Trader* . . . it also represents a significant breakthrough in the use of US law . . . . An entirely new legal front in the FOC campaign has now been successfully established. . . .[94]

A second large award was made in the Japanese-owned, Panama flag ship, *Pioneer Leader*, case in Jacksonville, Florida. The shipowner settled for $1,030,000 on wage claims of only $188,000. In all such cases, the ability of Dodson to obtain a huge protective order, such as $7,100,000 in the *Pioneer Leader* case, almost insured the result. Shipowners' inability to raise bond money for such amounts literally forced them to settle on Dodson's terms.[95]

C. THE WASHINGTON-OREGON TRILOGY

Four key cases were brought on double bookkeeping charges in west coast cases involving Japanese-owned ships; three with Filipino crews and one with a Korean crew reached the courts in the same general period, 1989-90. The first to be decided, and one of a trilogy that the Court of

92. Sansone is now coordinator of ITF North America inspectors, headquartered in the AFL-CIO building in Washington, D.C. Dodson received nearly all his double bookkeeping cases (and many others) via either Sansone or directly from a religious group.

93. Angad v. M/V Fareast Trader, in rem, Fareast Trader Navigation, S.A. Wah Tung Shipping Agency Co., Ltd., *Receipt, Release, and Settlement Agreement*, S.D. Texas, Galveston Div., C.A. No. 6-89-221 (Aug. 24, 1989); *See also,* Dodson interview, *supra* note 89.

94. *Historic Victory for FOC Campaign*, ITF NEWS, September 1989, at 1; *See also, Double-Bookkeeping*, ITF NEWS, May-June, 1990, at 15.

95. *Penalty Award for Pioneer Leader Crew in USA*, ITF NEWS, Jan. 1990, at 13; *Double-Bookkeeping*, ITF NEWS, May-June, 1990, at 15; and Dodson interview, *supra* note 89.

Appeals, Ninth Circuit, combined into one decision, involved the *Pine Forest*, a Vanuatu flag ship, arrested in Tacoma, Washington. The owners tendered $267,586 as back wages under the ITF standard agreement to thirteen crew members who left the ship there, hoping to settle the case. The seafarers nevertheless sued.

The result was Dodson's greatest, but a short-lived victory. The U.S. District court, Western District, Washington, awarded the seafarers $32,657,536, plus attorneys' fees. This included the whole panoply of the Dodson charges: statutory penalties, loss of future income, emotional stress, and punitive damages, not only for those that left the ship in Seattle, but for eight discharged overseas as well.

When defendants sought to appeal and wished to stay execution, the Court set supersedeas bond at $59,000,000. The defendant appealed to the Ninth Circuit, which reversed as to the bond because the lower court erred when it failed to allow for payment of back wages which would stop the running of penalties, and remanded the case to the District court "for the limited purpose of setting a new bond."[96] The case was then appealed to the Ninth Circuit on its merits.

The second case involved the *Southern Aster*. All the seamen in this case were discharged overseas. The U.S. District Court, District of Oregon, dismissed the statutory claims on the grounds that seafarers discharged in foreign ports from foreign-owned and -flagged ships were not covered by the statute, and dismissed their tort claims on grounds of *forum non conveniens*. As a condition of the dismissal, the shipowners agreed to submit to the jurisdiction of a Korean court.[97]

Rounding out this trilogy was the case involving the *M/V Fir Grove*, a sister ship to the *Pine Forest*, but arrested in Oregon, not Washington and, therefore, heard by the same court as was the *Southern Aster*, with results quite different from that reached by the Washington court. The shipowners paid back wages according to the ITF standard agreement, and the ship was released upon payment of a bond. Subsequently the seamen were discharged in Oregon.

In a series of decisions, the court granted summary judgment against plaintiffs' fraud claims;[98] applied conflict of law analysis to find Philippine law should apply to pendent tort claims;[99] and denied plaintiffs' demand for a jury trial.[100] In its final decision, this court held that the ITF standard wage rates were the shipowners' obligation because they were exe-

96. Nelson R. Raby v. M/V Pine Forest, 1990 A.M.C. 2441 (W.D. Wash. 1990); *rev'd*, 918 F.2d 80 (9th Cir. 1990); *cert. denied*, 111 S.Ct. 2015 (1991).
97. L. Hyeon Su v. M/V Southern Aster, 1990 A.M.C. 1217 (D. Org. 1990).
98. Jose v. M/V Fir Grove, 765 F. Supp. 1015 (D. Ore 1990).
99. *Id.* at 1024.
100. *Id.*, 765 F. Supp. 1037 (D. Ore. 1991).

cuted in the shipping articles, rather than the lower wages promised before the voyage. In arriving at its decision, the court ruled that worthless sea water carried as ballast was not "cargo" within the meaning of the Act, and that "end of voyage" as used in the Act was not each trip or port stop, but rather the voyage was completed when the seamen were discharged even though they had not completed their contractual obligations.

As in *Southern Aster*, this court concluded that foreign seamen discharged in a foreign port are not covered by the Act. It, therefore, denied the attempt of former seamen of the *Fir Grove* in this category to intervene in the case. It rejected the expansive reading of the Act that because the withholding of wages was part of an ongoing scheme during the entire course of the voyage, conduct integral to that scheme occurred in the United States, thus satisfying the Act's jurisdictional requirement.

This Court also rejected the seamen's attempt to invoke penalties for the Act's half-wages-upon-demand penalty clause because the seamen did not notify the ship's masters of their claims. Signing wage receipts as part of the double bookkeeping arrangements was not found to be a substitute for notification. The claims of substantial tort damages under various theories, fraud claims, and misrepresentations of wage schedules, and emotional distress were all dismissed as unproved. Blacklisting charges because the cause of discharge was written in the seamen's books were likewise denied. The Court did, however, award attorneys' fees for seamen discharged in the United States.[101]

On appeal, the consolidated opinion of the Ninth Circuit in these three cases was well-grounded in the origin of the disputes. After pointing out that each case required the resolution of whether the Wage Act's projections extend to foreign crews discharged from foreign ships in foreign ports, the Court stated:

> Although Congress likely could have extended the Wage Act this far, we conclude that it did not. The structure, history and more important, the plain language of the Act all point to this result. Congress must speak clearly to overcome the strong presumption against extraterritorial application of United States law, and this it has not done.[102]

Then, after stating that the dispute over whether ITF or lower wages should apply, the court noted that it understood the underlying issue of the double bookkeeping disputes:

> Underlying the men's claims is an ongoing dispute between shipowners and the International Transport Workers' Federation, an umbrella labor organi-

101. Jose v. M/V Fir Grove, 801 F. Supp. 358 (D. Ore. 1992).

102. Su v. M/V Southern Aster; Jose v. M/V Fir Grove; and Raby v. Pine Forest, 978 F.2d 462, (9th Cir. 1992); *cert. denied*, 113 S. Ct. 2331 (1993).

zation of affiliated seafarers' unions. The unions seek to maintain worldwide wage rates that far exceed what seafarers from underdeveloped countries demand.[103]

After summarizing the history and issues involved in the three cases, the Ninth Circuit affirmed the dismissal of the *Southern Aster* case and the key points of *Fir Grove*, and reversed those of *Pine Forest*; the U.S. Supreme Court denied certiorari.

The Washington-Oregon trilogy would appear to have ended controversies about the meaning of the Wage Act and related claims. The Ninth Circuit's opinion determined that seafarers had the burden of proving that they were underpaid, but that the wage rates set forth in the shipping articles were the rates that must be paid; that the foreign seamen discharged in any American port were covered by the Act, but those discharged in foreign ports were not; that ballast is not cargo, and that a voyage was not just the leg of one trip, but rather included all trips until the seafarers were discharged; that the half wage provision requires an effective demand by seafarers to the ship's master of their claims; and that none of the evidence adduced supported awards for substantial tort damages, fraud, emotional distress, or blacklisting. Nevertheless, a key case in San Francisco that had been pending was also appealed to the Ninth Circuit.

D. The San Francisco Case

This case, involving the *M/S Kiso*, a general cargo vessel owned by a Liberian company which was controlled by a Japanese company utilizing a Filipino crew, was being litigated even before *Fir Grove*, and was the first litigation to place the double bookkeeping matter in the context of the ITF campaign against FOC shipping. In summary judgment, the District Court, Northern District of California, ruled against making the case a class action suit covering all victims of double bookkeeping or all seamen who served on the *M/S Kiso* or other vessels owned by the same company; then ruled that the ITF agreement contained in the ship's articles defined the employment relationship; that "end of voyage" is established at the final port of destination and was not determined by the discharge of cargo at intermediate points; that seamen discharged in foreign ports are not covered by the Act; and that claims for wages required a full hearing.[104]

The plaintiffs then claimed that certain fringe benefits were not paid. These claims were dismissed.[105] Following trial, the District Court ruled

103. *Id.*
104. Mateo v. M/S Kiso, 805 F. Supp. 761 (N.D. Cal. 1991).
105. Mateo v. M/S Kiso, 1993 A.M.C. 2278 (N.D. Cal. 1993).

against the seafarers on the remaining *in rem* claims for unpaid wages and statutory penalty wages. The trial court agreed that wages due were in fact paid, including vacation pay, in a timely manner, or if not timely, were paid appropriately because any delays were attributable to the seamen's failure to request payment.[106] On appeal, the Ninth Circuit affirmed these decisions.[107]

E. The Maldives Cases

These cases involving Cyprus-flag ships, manned largely by Maldive Islands seamen and Greek officers, and owned by Forum Maritime, a Greek company, were brought in local courts in Louisiana by Dodson in the fall of 1992, on behalf of some Maldivian seamen. These cases may not have been strictly double bookkeeping ones although there were similar claims at least initially.

> The Maldivian plaintiffs were FOC seamen who claimed that they were not receiving the pay they were entitled to under their contracts because of double bookkeeping. There were also allegations of blacklisting of the seamen and anti-union activities by the authorities in the Maldives. . . .
> Testimony . . . indicated Forum paid the money claimed, in part directly to the seamen, and in part through a crewing agency which then made the payments in the Maldives. This procedure was allegedly in conformance with the law of the Maldives. The crew allege[d] that not all the money reached the intended final payees and there were several months of delays in some instances . . . .
> [Later] . . . seamen filed . . . suit in state court for alleged torts only, seeking damages for blacklisting, distress allegedly caused by coercion and intimidation, [but] . . . not specifically . . . wage claims. Forum . . . removed the cases to federal court under the Foreign Sovereign Immunities Act.[108]

Dodson brought five cases in state court, and was able to arrest the ships and have bonds set at very high amounts for allegations involving relatively small claims — $3 and $4 million in two cases involving claims in thousands, or even hundreds. When the cases were remanded to federal court, these bonds were reduced to $300,000 or less.[109] With pressure thus materially reduced for the defendants, the five cases were

106. Mateo v. M/S Kiso, 1993 U.S.D. Lexis 3004 (N.D. Cal., Mar. 1, 1993).

107. Mateo v. M/S Kiso, 41 F.3d 1283 (9th Cir. 1994). The seamen chose not to seek further review by the United States Supreme Court.

108. Wentker, *supra* note 39, at 431.

109. In response to an "invitation to assign reasons" from the Court of Appeals, Fifth Circuit, to which Dodson had appealed after the district court had materially reduced the amount of bonds, U.S. District Court Judge Peter Beer wrote:

> I firmly believe that this U.S. District Court and others similarly situated are being subjected to an unwitting participation in attempts to manipulate exorbitant settlements of questionable wage claims by the serious and often incredibly expensive method of stopping a voyage and holding a vessel in arrest through the use of exorbi-

settled for payments of $5,000 or less for approximately a dozen seamen, plus $293,000 attorney's expenses for Dodson, which included maintaining ten Maldivian seamen in motels for over one year. These ships with Maldivian seamen have returned to the Port of New Orleans on voyages since then without interference.[110]

F. Double Bookkeeping — Concluding Comment

The double bookkeeping cases were largely a blip, if a significant one, in the ITF's attempt to enhance its power in American ports. Thanks largely to Dodson, with assistance from the ITF and the port church groups, it is most unlikely that shipowners or charterers will permit such practices to be utilized for ships which enter American ports. The cases discussed herein, however, have not provided a method whereby the ITF can circumvent the United States laws governing boycotts, and thereby attack FOC shipping. Moreover, except for calling attention to the methods and prevalence of double bookkeeping, these cases do not affect double bookkeeping in ports of other countries. It may well be that in ports outside of North America and probably certain European countries, double bookkeeping is as prevalent as it undoubtedly was before Dodson commenced his successful campaign to eliminate it in the United States.

V. Developments In European Litigation

As the ITF boycott campaign grew in strength, it was inevitable that in Europe with its many countries there would be not merely isolated legal proceedings, but continuous chains and groups of proceedings in different jurisdictions to clarify the boundaries between the conflicting interests which the law seeks to protect. On the one hand, there is the right of unions and workers to secure satisfactory working conditions, but on the other hand there is the right of shipowners to trade their vessels internationally without being detained by extra-legal action in countries which have no connection with the owner, the crew or the union. To the ITF, the countries where boycotts were permitted were oases of justice in a hostile exploitive world, and to the shipowner they were areas of un-

---

> tant and exaggerated claims of a nature in all respects identical to those which are put forward here.
>
> There is, in my opinion, no reasonably demonstrated basis for these exorbitant claims. Indeed, the amount of the bond I set is more than responsive to that of the claim that common sense dictates is viable.

Hussain Shakit v. Forum Trader, *per curiam*, (C.A. 92-3713, Sec. N, D.E.D. La., Nov. 20, 1992).

110. This summary of the Maldivian cases has been materially assisted by interviews with Attorney Dodson, Mar. 22, 1995, and with Charles F. Lozes and David B. Lawton, attorneys for Forum Maritime and the Maldive Islands government, New Orleans, Mar. 23, 1995.

warranted intervention and lawlessness which vessels entered at their peril.

A shipowner confronted for the first time with a boycott could reasonably expect a demand by the ITF for the vessel to change its flag from a flag of convenience back to its national flag. This is after all the declared policy of the ITF. However, there are no reported cases of any such demand ever having been made, although there have been situations where owners have changed the flag and sometimes the crew, and the ITF intervention has ceased. The question of whether such a demand would be lawful seems never to have been asked, let alone answered, but if it were, the answer might be that even the jurisdictions most favorable to the ITF, which would be prepared to tolerate a boycott to obtain ITF wages, would not tolerate a boycott to force a change of flag. While this may well be the answer, it is surprising that the point has never been tested, bearing in mind the comments concerning British labor law of Lord Diplock in the *Nawala* case.[111]

> If a demand on an employer by the union is about terms and conditions of employment, the fact that it appears to the court to be unreasonable because compliance with it is so difficult as to be commercially impractical, or will bankrupt the employer or drive him out of business, does not prevent its being a dispute connected with terms and conditions of employment . . . . Even if the predominant object were to bring down the fabric of the present economic system by raising wages to unrealistic levels, or to drive Asian seamen from the seas except when they serve in ships beneficially owned by nationals of their own countries, this would not, in my view, make it any less a dispute connected with terms and conditions of employment and thus a trade dispute, if the actual demand that is resisted by the employer is as to the terms and conditions on which his workers are to be employed.[112]

It would seem that at least a respectable argument could have been made by the ITF that the flag of the vessel was one of the terms and conditions of employment, which it required to be changed, and thus the ITF would have been entitled to the protection given to trade unions acting in a trade dispute in the United Kingdom. Such an argument, however, which would have given the highest credibility to the ITF in its

111. NWL Ltd. v. Woods, NWL Ltd. v. Nelson and others, 1 W.L.R. 1294 (1980). This case in 1979 concerned a threatened boycott at an English port of a Hong Kong flag vessel with Chinese crew and suspected beneficial ownership not in Hong Kong. The crew was entirely satisfied with its terms and conditions and actually opposed the intervention of the ITF. The question in issue was whether in such a situation the unilateral action of the ITF justified the plea of trade union immunity. Lord Diplock made it clear that the law was widely framed, and that any demand about terms and conditions of employment, however unreasonable, would attract immunity. *See*, *ITF-FOC Book*, *supra* note 2, at 69, 85.

112. *Id.* at 8.

campaign, has never been mounted in any boycott proceedings in Europe or elsewhere.

Given that the ITF's declared policy is to oppose all FOC vessels and yet not to insist on the return to national flag under threat of boycott, the only other way to enforce the policy is to make the rates of pay so punitive that the shipowner will sooner or later return to the national flag or be defeated in a competitive market by owners remaining with their national flags.

It was inevitable that shipowners faced with very substantial demands which would undermine their competitiveness would turn to their lawyers to see what redress was available. In common with most other situations where legal redress is sought, the choice was between stopping the hostile activity by injunction or treating it as duress and seeking to recover damages and/or restitution afterwards. The legal developments in Europe during the past twenty years have centered on these two major remedies.

A. The Issues To Be Addressed

Before it could be stated with any certainty whether ITF or crew action in any jurisdiction was permitted, a number of major issues had to be resolved, all of which were unlikely to be encompassed in any one case:

> Is the law equally effective to prevent a strike or boycott in advance as it is to enable recovery in restitution or damages afterwards?
> Does the concept of economic duress exist in a trade dispute context?
> Can a union effect a lawful boycott on its own without the authority of the crew?
> Can there be a lawful boycott, which is secondary industrial action in support of a primary dispute, where the crew members are not themselves on strike?
> Can the ITF or its local affiliate make lawful demands against a vessel where there is a valid foreign collective bargaining agreement with a bona fide foreign trade union?
> Is it lawful for the ITF to demand payment to its own Welfare Fund as one of the terms for permitting the release of a vessel from boycott?
> If a vessel is subject to boycott, should the legality of the boycott be decided by the law of that jurisdiction or by some other system of law, i.e., the law of the flag or the country where the crew was recruited?
> Does a different system of law apply to a claim in restitution than to a claim in tort?

All the above issues had to be decided by test cases in different jurisdictions. Most of these points have now been resolved, with the result that shipowners, crew, and the ITF know where they stand on the legality of any primary or secondary action in any particular jurisdiction. There remains, however, a diminishing group of cases on more exotic and rarefied legal points, and also a number of developing cases in jurisdictions in which the law has been changed by statute where there is a need for further litigation to identify its new meaning. This has in particular occurred in the United Kingdom under the conservative Thatcher government between 1979 and 1990, which ended by making all secondary boycotts unlawful, and in Sweden by the Lex Britannia enacted by a socialist government which restored the ITF's liberty to boycott even vessels covered by bona fide foreign collective bargaining agreements.

Although labor law can be substantially different in different jurisdictions because it is often more closely related to politics than commerce, there were nevertheless definite trends in the litigation between shipowners and the ITF in different jurisdictions. The Scandinavian countries mainly held out with a slant towards labor, but the balance tipped away from the ITF in the remainder of Europe. In particular, there was a trend toward decisions which outlawed ITF intervention where a secondary boycott was mounted although in fact no primary dispute between the shipowner and the crew existed. A number of other European countries still permit secondary boycotts in some circumstances where there is a clearly identified primary dispute.

B. Injunction or Restitution?

Twenty years ago, the first reaction of an attorney consulted by a shipowner asking whether an injunction could be obtained to forbid a boycott would be to consider the matter according to his own local domestic law. The port was after all within his own country's jurisdiction. The shipowner invariably felt dissatisfaction and stated that on board a ship the law of the flag should prevail, an argument which had appealed to the U.S. Supreme Court in its early rulings in the 1960s and early 1970s.[113] From the point of view of United Kingdom law, and indeed civil law on the continent of Europe, this was not an argument which at that time appeared likely to prevail over the effect of the local domestic law as applied in its own jurisdiction, albeit against a visiting foreign vessel.

As shipowners found themselves advised by their lawyers that there was no redress to prevent a boycott because such boycott was permitted by the local law, the question was asked whether there was an alternative remedy of claiming damages and/or restitution for what had been paid, after the duress of the boycott had been lifted and the vessel had sailed from the port. This alternative remedy had the added advantage of not delaying the ship while the issue was being tested in Court.

113. *See, ITF-FOC Book, supra* note 2, at 50.

1. *Universe Sentinel*

The first case to test whether a restitutionary claim could succeed against the ITF was the English case of the *Universe Sentinel.*[114]

At the time of the proceedings in the early 1980s in this case, the United Kingdom law of economic duress was in its infancy. However, this case, which reached the House of Lords (the U.K. Supreme Court), drew on dicta in earlier decisions and held that economic duress could indeed be relied on to avoid contracts entered into in a situation where resistance to the demands would have caused harsh economic loss. As a result, restitution of sums paid under duress could succeed. The judgment related only to the payment to the Welfare Fund because the shipowners conceded that in the light of the *Nawala* case, in which judgment was handed down during the currency of the *Universe Sentinel* proceedings, they could not claim back in restitution that which the ITF could not have been prevented from demanding under threat of boycott in the first place. The issue was whether the demand was connected with terms and conditions of employment. By three judges to two it was held that the Welfare Fund payment was not so connected and was therefore refundable.

Later in the 1980s the same issue was tried in the Norwegian Appeal Court in the case of the *Dorthe Oldendorff*[115] with precisely the same result. Three judges held that the Welfare Fund was not adequately connected with terms and conditions of employment, and the minority of two judges stated the contrary.

The proper or applicable law of the agreement entered into as a result of the boycott of the *Universe Sentinel* at Milford Haven, Wales, was never considered and was not in issue, but possibly from the success of this case the point began to germinate throughout the 1980s, leading to the important decisions of the *Saudi Independence*[116] in the Netherlands,

---

114. Universe Tankships Inc., of Monrovia v. Int'l Transport Workers Federation, and others. App. Cas. 366 (H.L. 1983). The *Universe Sentinel* flew the Liberian flag, but was beneficially owned in the United States and had a mixed crew, including Indonesians. The vessel was detained by ITF boycott at the Welsh port of Milford Haven, with the ITF demanding full ITF worldwide conditions. The detention of the vessel would have had serious economic consequences involving more than one ship, due to the conditions in a fleet mortgage. The owners felt that they had no choice but to pay, but were determined to claim the money back again. Therefore as soon as the vessel sailed after signing up on ITF terms and making the necessary payments, notice of avoidance of the agreements was given and a Writ issued for restitution of all the money paid including back pay.

115. Eidsivating [Norway] Court of Appeals, May 19 1989.

116. Hoge Raad 16 December 1983, Nederlandse Jurisprudentie 1985, nummer 311; Schip & Schade 1984, nummer 25.

followed by the *Evia Luck*[117] in the United Kingdom, and the *Nervion*[118] and the *JSS Britannia*[119] in Sweden.

2. *Saudi Independence*

The case of the *Saudi Independence*, which went to the Dutch Supreme Court, was the first case in Europe to grapple with the conflict between domestic law pertaining to the legality of strikes and the chosen foreign law in a contract of employment. The *Saudi Independence* sailed under the flag of Saudi Arabia, and employed a Filipino crew under Filipino employment contracts, which were stated to be subject to the law of the Philippines. The crew had a number of grievances and sought the assistance of the ITF while the vessel was at a Dutch port. The ITF advised the crew to strike. The owners commenced proceedings against both the ITF and the crew, seeking an injunction restraining the strike.

The court accepted the argument that the question of whether the crew was permitted to strike should be decided in accordance with the law of the employment contracts. It was held that under Filipino law the strike was unlawful and therefore the injunction was granted. The decision was upheld both in the Dutch Court of Appeal and the Dutch Supreme Court.

The ITF argued that irrespective of whether the action of the crew should be decided in accordance with Filipino law, the legality of the action taken by the ITF should be decided under Dutch law where the act of promoting the strike occurred. The Dutch Supreme court, however, confirmed the Appeal Court decision, that even if Dutch law should apply to the ITF's conduct, such conduct would be unlawful under Dutch law because it was inducing a strike which was unlawful under the applicable foreign law, that of the Philippines.

3. *Evia Luck*

In the mid-1980s after the United Kingdom legislation to limit secondary industrial action, shipowners believed that they were more likely to be successful in litigation in the United Kingdom and conversely the ITF believed that it would be more successful in Scandinavia. In the result, for unexpected reasons, both were proved wrong.

The *Evia Luck* was subject to boycott in Sweden and the boycott was lifted in exchange for the owners signing up on ITF terms subject to pay-

117. Dimskal Shipping Co., SA v. Int'l Transport Workers Federation, 2 App. Cas. 152 (H.L. 1992).

118. *Nervion* (HD 1987:152) Swedish Supreme Court, 1987 No. 152; NJA [Sweden] 1987 at 885.

119. *JSS Britannia* (AD 120/89), Swedish Labour Court, No. 120, 1988.

ing back to the ITF's account in London and signing agreements which were stated to be subject to English law. The owners then took the novel step of suing the ITF in London (where its headquarters is located) rather than in Sweden where the boycott had occurred. The ITF responded, seeking a stay on grounds of *forum non conveniens*. Judge Hirst in the Commercial Court in London, however, ruled in February 1986, that the ITF's application failed and that the case could continue in London.

The action proceeded as a claim for damages and restitution in the Commercial Court in London. The damages claim was ultimately abandoned, but the restitution claim was pursued to the House of Lords. The issue was straightforward. Both parties agreed that the claim was subject to the English law of restitution. The ITF, however, argued that the legitimacy of the duress applied should be tested in accordance with the domestic law of the place where the boycott happened, i.e., Sweden. The owners argued that given that the parties had made the agreements entered into under threat of boycott subject to English law, it should apply to all aspects of the claim, including the test of the legitimacy of the boycott.

At first instance the owners failed as the respected Commercial Judge Phillips, stated that he considered the owners' case to be "ludicrous." However, in the Court of Appeal, two judges out of three considered that the ITF, having chosen English law, could not complain at English law being applied to the whole situation, including the test of the legitimacy of duress. The ITF then appealed further to the House of Lords, where it again lost with four judges finding for the owners and one for the ITF.

The owners abandoned their claim for damages in tort under the English double actionability rule in Boys v. Chaplin,[120] which says that to succeed in an English Court for a notionally tortious act committed abroad, it is necessary to show not only that the act in question is tortious under English law, but that the claim could also be actionable in the foreign country where the act was committed. During the proceedings it became quite clear that under Swedish domestic law, the boycott was lawful. Faced with this the owners abandoned their claim for damages.

Another interesting point which emerged was that although the claim would have failed under Swedish domestic law, had the case been brought in a Swedish Court, the Swedish Court would probably have applied English law as the applicable law and owners would therefore have won. This had become apparent from the Swedish case of the *Nervion*, which had by then been heard at first instance. Thus, although owners eventually won in the United Kingdom, it appears that they would have

120. Chaplin v. Boys, App. Cas 356 (H.L. 1971).

won in any event in Sweden, to which country the ITF had unsuccessfully tried to have the case remitted! It is well established under English law that when considering foreign law, only the foreign domestic law is applied and not its private international law rules. Therefore, it was of no concern to the English Court that the claims would in fact have succeeded in Sweden under its private international law rules even though it would have failed under Swedish domestic law.

4. Nervion

In the early 1980s, shipowners feared to go to the Northern Scandinavian countries, Norway, Sweden, and Finland. The law appeared to be very heavily weighted in favor of unions and employees against employers. However, the labor movement received a sudden and unexpected shock by the decision in the *Nervion.*

The *Nervion* had been subject to boycott in a Swedish port and had been signed up on ITF terms. Owners did not, however, pay the crew in accordance with the ITF employment contracts and the crew, supported by the ITF, decided to pursue a claim for ITF wages. This it did not by industrial action, but by the simple expedient of making a maritime claim against the ship for outstanding wages. In order to obtain security for its claim by arresting the vessel, the crew had to sue in the Commercial Court rather than the Labor Court.

For the first time, the Swedish Commercial Court grappled with the question of what law should be applied to test the validity of contracts entered into as a result of industrial action. In the absence of any express stipulation, it ruled in favor of the law of the flag, which was Panama. In accordance with Panamanian law, such contracts were voidable by reason of duress, even though this would not have been the case under Swedish domestic law.

Owners, therefore, won their claim in restitution, and this was subsequently affirmed by the Swedish Supreme Court. It is interesting to contemplate what might have been the outcome had the case gone first to the Labor Court from which there is no appeal to the Swedish Supreme Court.

The cases of the *Evia Luck*, where the chosen system of law was followed, and the *Nervion*, where no system of law was chosen, left open the question of what should happen where the ITF insisted under threat of boycott on choosing a system of law favorable only to the ITF but not to the shipowner. Could such a "choice" of law be disregarded in favor of the system of law with which the contract would otherwise have been most closely connected? This interesting question started to be litigated in the unreported case of the *Annabella Two* in the Commercial Court in

London, but it was never taken to a conclusion, possibly because it would no longer have been a useful test case. This was because during the proceedings the English common law rules on the choice of "proper" law were superseded by the "applicable" law under the Rome Convention,[121] as enacted in the United Kingdom by the Contracts (Applicable Law) Act 1990.

Article 8 of the Rome Convention says that the material validity of a contract should be decided in accordance with the law which would apply if the contract were valid. This does not leave scope to argue that such law should be ignored, although under Article 8, Rule 2, it could be argued that the question of consent should be decided in accordance with the law of the plaintiff's residence. Also, there is a provision under Article 16 that the Convention does not apply if it would be contrary to the public policy of the forum. These points remain to be argued in some future case in the United Kingdom or any other country which has adopted the Rome Convention.

Not surprisingly, after the *Evia Luck* and the *Nervion* decisions, the ITF inserted a specific Swedish choice of law clause into agreements entered into under boycott in Sweden. This tactic was unsuccessful in the Swedish Court in the case of *Phillips Arkansas*[122] where the ship was subject to boycott at a Swedish port and the court affirmed that the agreements were effectively avoided under Liberian law, being the law of the flag. To date, however, the effectiveness of the choice of Swedish law has not been challenged in the United Kingdom courts, beyond the tentative proceedings in the *Annabella Two* case. Such proceedings in the English courts would have particular significance because there is always jurisdiction over the ITF in English courts as its headquarters is in London.

The ITF might have thought that it would have no further difficulties under Swedish law. This was not to be. It suffered an even greater shock from the *JSS Britannia* case.

5. *JSS Britannia*

The *JSS Britannia*, which was registered in Cyprus, called at Gothenburg and was subject to boycott by the Swedish Seafarers Union and the ITF, which unions requested an ITF agreement. The owners stood their ground, arguing that there was already a valid collective bargaining agreement ("CBA") with the crew's trade union in the Philippines. The court held that industrial action by a union against an employer who al-

121. The Rome Convention is the name given to the agreement by European Community members as to the law applicable to contractual obligations open for signature in Rome, June 19, 1980, which harmonized the private international law rules for member countries of the European Community, now the European Union.

122. *Phillips Arkansas* (AD 10/92). Swedish Labour Court, No. 10, 1992.

ready had a subsisting CBA with a bona fide foreign union was unlawful. An injunction was therefore granted to restrain the boycott, and the vessel sailed without further intervention.

Shipowners' joy at the success of the *JSS Britannia* case was short lived. The then Labor government of Sweden, as one of its last acts in office before losing power to a conservative Government, amended Swedish labor law in such a way that although intervention with a Swedish CBA would remain unlawful, it would be permitted where the CBA was with a foreign trade union. This amendment to the Swedish Co-determination Act is now colloquially known as the "Lex Britannia." Although the incoming Conservative government had said that it would reverse Lex Britannia, it never did so before being replaced again by a Labor government. Thus, Lex Britannia remains the law, the effect of which was made clear in the *Estoril* case.[123]

6. Estoril

The Lex Britannia came into force on July 1, 1991, and in January 1993 the French-owned Kerguelen flag *Estoril* was subject to boycott at the Swedish port of Wallhamn. The Portuguese crew had a valid CBA under a union which was federated to the ITF. Nevertheless, the ITF caused the vessel to be subject to boycott in support of a demand for ITF wages. The matter was heard by the Swedish Labor Court which held that in view of the Lex Britannia the union intervention was not unlawful and that a request for an injunction should therefore be refused.

C. European Law and Lex Britannia

At the time of the hearing of the *Estoril*, Sweden had not yet become a member of the European Union, and so the question was never put to the test as to whether the Lex Britannia is contrary to the terms of the Treaty of Rome[124] and European Maritime Law.

Since the entry of Sweden to the European Union on January 1, 1995, however, numerous academic and practicing lawyers in Sweden and elsewhere have voiced the opinion that Lex Britannia is contrary to various provisions of Community law, in particular Article 6 on discrimination on grounds of nationality, Article 59 on the provision of services, and Article 65 which indicates that as long as restrictions exist, it must be done without distinction on grounds of nationality, echoing the funda-

---

123. *Estoril* (AD Interim Decision 28/93), Swedish Labor Court No. 28, 1993.

124. The Treaty of Rome is the name given to the treaty made in 1957 between the founding members of what became the European Union, and subsequent amendments and accessions thereto. It is essentially the constitution of the European Union, and is loosely referred to as meaning the entire body of European Law.

mental prohibition of discrimination based on nationality contained in Article 6. There is also possible violation of Article 61 of the Treaty in relation to the provision of maritime transport between member states. It thus would appear to be only a matter of time before the validity of Lex Britannia is challenged either in the Swedish Courts or in the European Court.

VI. Conclusion

In the balance of the world, ITF activities continue. Australia remains a key sector of ITF strength.[125] Antitrust legislation, which once served as redress for shipowners, has been amended by the Labor government there, and new labor legislation does not appear to block ITF boycott pressures. The Waterside (longshore) Workers' union, a strong ITF supporter, and the long-time communist-led Seamen's Union have merged, adding to the ITF's control. Petroleum companies, which once defied the ITF in Australian ports, now either contract out their voyages to independent charterers holding a blue certificate, or send in their own tankers flying flags from a country flag ship which has the certificate. Whether some Asian or other flagged ships still engage in double bookkeeping to escape the ITF pressure in Australian ports, as they certainly did in the 1980s, is not known.

Japan has seen its once strong Seamen's union, for many years the only Japanese union that engaged in nationwide collective bargaining, decline in numbers and strength precipitously as Japan has become the third largest country of beneficial owners of FOC ships. As do the log carriers in the United States trade, many if not most of these ships continue to use Japanese officers with their Philippine or other Third World crews.[126] There have been a few boycotts and resulting litigation in this country of peaceful labor relations, but generally the traditional quiet atmosphere prevails.

The uneasy relationship between the Asian underdeveloped countries and the ITF has been relatively calm in recent years, but tensions could rise in the future.[127] Under David Cockroft's leadership, the ITF has been attempting to expand its Asian presence and to improve its relationships there. The Trust Fund is, as noted in this study, slated for a key role in this. On the other hand, the Asian countries have already been concerned about the 1995 increases in the ITF's unilaterally determined

125. *See*, *ITF-FOC Book*, *supra* note 2, at 89; and Wentker, *supra* note 39, at 428 (for update). *See also*, Clifford B. Donn and G. Phelan, *Australian Maritime Unions and Flag of Convenience Vessels*, 31 J. Indus. Rel. 329 (1991).

126. *See*, *ITF-FOC Book*, *supra* note 2, at 94; and Wentker, *supra* note 39, at 429, for background and update.

127. *See ITF-FOC Book*, *supra* note 2 at 96; and Wentker, *supra* note 39, at 428.

standard and TCC wage rates in part because of Eastern European country competition. This unease will surely be aggravated because the ITF's Fair Practice Committee at its June 1995 meeting announced that these rates will be raised 9 percent beginning January 1, 1998. The new rates will be set at $934 per month for the standard rate and $1,200 for the TCC one.[128]

The ITF campaign against FOC shipping has ebbed and flowed in its intensity over the years. Now under Cockroft, the campaign is being increased. A new blacklist which will target whole fleets and their owners, managers, and related manning agents is being effectuated. Apparently, the object is to induce boycotts against any ship with particular owners or managers regardless of conditions on the particular ship if the ITF finds conditions on the shipowners' fleet is general objectionable.[129] How this will play out remains to be seen other than it appears certain to invite considerable litigation, most of which has not been going well for the ITF in recent years both in the United States and in Europe. The real question is whether the new blacklist policy will be used against operators of genuinely poor condition "rust buckets," or whether it will be a further attack on FOC shipping regardless of shipboard conditions.

The ITF has the advantage of fighting a campaign as a single body, with a single policy, and with almost unlimited funds to carry it out. Owners, on the other hand, are not united. Although there have been a few isolated occasions of cooperation by owners in providing funds for key litigations, such occasions have been rare. Shipowning organizations have always shown interest at the prospect of cases being successfully fought by FOC owners against the ITF, but when it comes to assisting in the funding of such cases, their interest has waned. Whether the incipient IMEC can alter this short-term outlook, remains to be seen. It is, however, a step toward improved defense for the shipowners.

The major cases to be determined in Europe relate to the conflict between Swedish law and the provisions of the Rome Convention on Applicable Law within the European Community, and the extent to which claims for restitution can be successful where the chosen system of law allegedly put there under duress can be attacked. Being headquartered in London, the ITF is always subject to the jurisdiction of English courts unless or until it removes its headquarters to another country. In restitution cases, the question of validity under the Rome Convention must also be considered in any new case.

In the United States, the law is quite clear. The boycott question was

128. *ITF Rates Increased*, ITF NEWS (Aug./Sept. 1995), at 10.

129. *Id. See also*, James Brewer, *ITF Warns It May Widen Blacklisting*, LLOYD'S LIST, Jan. 3, 1995, at 4 (copy of ITF's blacklist statement on file with authors).

well settled in the 1960s and 1970s. The much more recent double bookkeeping cases have determined the reach of the statutes pertaining to this issue. A shipowner that in the future engages in double bookkeeping in United States ports is clearly and deservedly subject to substantial penalties.

As the ITF works hard to tighten its restrictions against FOC shipping, it increases its power vis-a-vis its affiliated unions in the developed world. These unions continue to weaken because of loss of membership and income. The ITF can do little, if anything, about the membership of affiliates in the developed world because there seems no hope that FOC shipping will be driven from the seas. The ITF's failure to recognize second registers as a superior answer to flagging out for declining developed country registers seems guaranteed to enhance the number and percentage of FOC shipping in the world fleet regardless of what anti-FOC policies the ITF adopts.

The ITF can, and does, aid developed country seamen union finances. To do this, the ITF uses patronage e,g., the appointment of union officials as port inspectors; it promulgates rules that such unions, as well as the ITF, can "tax" FOC shipowners by what may well be questionable methods, such as now being done by the American unions; and it provides grants from the Trust or the Welfare Fund. The net effect is a further increased dependency on the part of the affiliates, and an increase in power to the growing ITF bureaucracy and its general secretary.

An interesting paradox inherent in the ITF campaign against FOC shipping was called to attention in the 1983 ITF-FOC Book:

> Finally, the ITF is an organization that has vowed to eliminate all FOC ships from commerce. It has failed to do so, but has grown wealthy in the process. It now faces an interesting dilemma. In the unlikely event that it would succeed in its avowed purpose, the ITF would eliminate the source of its wealth.[130]

To put the matter another way, the ITF needs to continue to lose its war against FOC shipping in order to maintain its income and its power. Moreover, maritime unions in many countries are increasingly dependent upon the ITF's power and wealth, and probably could not survive without assistance through this income stream.

The expansion of FOC shipping since 1983 has, therefore, resulted in enhanced wealth for the ITF. The Cockroft administration is utilizing this wealth to expand the ITF's bureaucracy and activities to further an enlarged effort against FOC shipping. If history is any guide, FOC shipping will continue to increase its market share because developed country

130. *See, ITF-FOC Book, supra* note 2, at 151.

seamen and their unions have priced themselves out of most markets. Meanwhile, most shipowners are unlikely to join forces against the ITF tactics, but instead will acquire blue certificates as a cheaper alternative, (which it usually is in the short run). Consequently, the ITF will grow ever more wealthy as it continues its efforts against FOC shipping's ever-increasing market share.

Wharton
The Wharton School of the University of Pennsylvania

Herbert R. Northrup, Ph.D.
Professor Emeritus of Management

RESUME

FORMER WHARTON POSITIONS:

1961 - 1988	Professor of Industry
1964 - 1988	Director, Industrial Research Unit
1968 - 1985	Chairman, Labor Relations Council
1964 - 1969	Chairman, Department of Industry (now Department of Management)

PERSONAL: Born - New Jersey, March 6, 1918
Married, five children

EDUCATION: A.B., Duke University, 1939
A.M., Harvard University, 1941
Ph.D., Harvard University, 1942 (Economics)

PREVIOUS EMPLOYMENT:

1958 - 1961 Employee Relations Manager
General Electric Company

Full staff responsibility for all aspects of employee relations covering seventy-one General Electric plants employing 100,000 employees. Member, national negotiating committee and handled third-stage grievances under national contracts.

1955 - 1958 Vice President, Industrial Relations
Penn-Texas Corporation (now Coltec, Inc.)

Full staff responsibility for all phases of personnel and union relations in multiplant diversified company of 15,000 employees, including management organization of subsidiaries, executive recruitment, relations with ten unions, pensions, insurance, and plant security.

1952 - 1955 Industrial Relations Consultant
Ebasco Services Incorporated

Consultation with industrial clients on a variety of management and personnel problems including organization and controls, union relations, communications, and executive recruitment. Developed more consulting and business than anyone in history of department.

(Also served as consultant, U.S. Salary Stabilization Board during 1952.)

205 Avon Road, Haverford, PA 19041-1612 • Tel: (610) 642-1293 • Fax: (610) 642-1576

Herbert R. Northrup

1949 - 1952	Labor Economist National Industrial Conference Board Research and consultation on various economic and personnel problems.
1945 - 1949	Assistant Professor, Industrial Relations, Columbia University; Visiting Professor, Summer Sessions, New York University and University of California (Berkeley) In addition to teaching, considerable time spent in research, publication and management consultation.
1943 - 1945	Economist and Senior Hearing Officer, National War Labor Board, Detroit and New York Regions
1942 - 1943	Instructor in Economics, Cornell University

CONSULTANT in industrial relations, labor, and manpower policies and programs to numerous "Fortune 500" companies.

ARBITRATOR in labor disputes.

MEMBERSHIPS: American Economic Association; Industrial Relations Research Association; Society for Human Resources; American Arbitration Association; Academy of International Business; International Industrial Relations Association.

BIBLIOGRAPHY: Author of over 300 articles in various professional, business, and popular journals and of 35 books and monographs, including co-author of The Economics of Labor Relations, 1st Edition, 1950, 9th Edition, 1981, for many years the most widely used college text in the field. Other major studies include Union Corporate Campaigns and Inside Games As a Strike Form, 1994; The Railway Labor Act: Time for Repeal, 1990; Government Protection of Employees Involved in Mergers and Acquisitions, 1989; Personnel Policies for Engineers and Scientists: An Analysis of Major Corporate Practice, 1985; Open Shop Construction Revisited, 1984; The Rise and Demise of PATCO, 1984; The International Transport Workers' Federation and Flag of Convenience Shipping, 1983; Employee Relations and Regulation in the 80s, 1982; Multinational Collective Bargaining Attempts, 1979; The Impact of Government Manpower Programs, 1975; Negro Employment in Basic Industry, 1970; Restrictive Labor Practices in the Supermarket Industry, 1967; Compulsory Arbitration and Government Intervention in Labor Disputes, 1965; Boulwarism, 1964; Government and Labor, 1963; Unionization of Professional Engineers and Chemists, 1946; and Organized Labor and the Negro, 1944, reprinted 1971.

HERBERT R. NORTHRUP

MULTINATIONAL EMPLOYEE RELATIONS PUBLICATIONS, 1974-

A. Books and Monographs

1. Multinational Collective Bargaining Attempts: The Record, the Cases, and the Prospects, Wharton Industrial Research Unit, 1979.

2. Directory of Labour Organisations Volume I, International and European Regional Bodies, Management Centre Europe, 1980.

3. Multinational Union Organizations in the Manufacturing Industries, Wharton Industrial Research Unit, 1980.

4. The International Transport Workers' Federation and Flag of Convenience Shipping. Wharton Industrial Research Unit, 1983.

B. Articles

5-6. "Multinational Collective Bargaining Activity: The Factual Record in Chemicals, Glass and Rubber Tires," Columbia Journal of World Business, IX (Spring and Summer 1974), 112-124 and 49-63.

7. "Multinational Bargaining in Food and Allied Industries: Approaches and Prospects," Wharton Quarterly, VII (Spring 1974), 32-40.

8. "The ICF-IFPCW Conflict," Columbia Journal of World Business, IX (Winter 1974), 109-119.

9. "Multinational Bargaining in Metals and Electrical Industries: Approaches and Prospects," Journal of Industrial Relations (Australia), XVII (March 1975), 1-29.

10. "Multinational Bargaining in the Telecommunications Industry," British Journal of Industrial Relations, XIII (July 1975), 257-262.

11. "Multinational Bargaining Approaches in the Western European Flat Glass Industry," Industrial & Labor Relations Review, XXX (October 1976), 32-46.

12. "Multinational Union Activity in the 1976 U.S. Rubber Tire Strike," Sloan Management Review, XVIII (Spring 1977), 17-28.

13. "Multinational Union Management Consultation: The European Experience," International Labour Review, 116 (September-October 1976), 32-46.

14. "International Enforcement of Union Standards in Ocean Transport," British Journal of Industrial Relations, XV (November 1977), 338-355.

15. "Why Multinational Bargaining Neither Exists Nor is Desirable," Labor Law Journal, XXIX (June 1978), 330-342.

16. "Multinational Union Activities and Plant Closings: The Case of Akzo," Industrial Relations Journal (U.K.), IX (Spring 1978), 27-36.

17. "Power Games Within Multinationals," Vision (Brussels), May 1979, 31-34. Interview debate with Roger Blanpain.

18. "Multinational Union Activity in the Paper Industry," Relations Industrielles, XXXIV (no. 4, 1979, released February 1980), 722-731 (English); 732-739 (French, translated by Betty J. Slowinski).

19. "Multinational Union-Management Contacts in the Graphical and Publishing Industries," British Journal of Industrial Relations, XVIII (July 1980), 254-259.

20. "Management Response to Mult national Union Pressures: The International Union of Food and Allied Workers' Associations, Unilever in South Africa, and Coca-Cola in Guatemala," South African Journal of Labour Relations, V (June 1981), 9-20.

21. "Multinationale Gewerkschaftsaktivitat in der Erdolindustrie," Die Betriebs Wirtschaft, XLII (No. 3, 1982), 383-395. (German, translated by Christian F. Schneider).

22. "'Professionalism' vs. 'Unionism' in International Air Transport Labor Relations," Columbia Journal of World Business, XVIII (Summer 1983), 101-110.

23. "Multinational Union-Management Consultation in Europe: Resurgence in the 1980s?," International Labour Review, CXXVII (No. 5, 1988), 525-543.

24. "Did PATCO Really Lead to the British Miners' Strike?," Industrial Relations Journal (U.K.), XIX (Summer 1988), 154-158.

25. "The International Transport Workers' Federation Flag of Convenience Shipping Campaign: 1933-1995," Transportation Law Journal, XXIII (Spring 1996), 369-423.

HERBERT R. NORTHRUP

Transportation Employee Relations Publications
1942-

A. Books and Monographs

1. Organized Labor and the Negro (Harper 1944; reprinted by Kraus Reprint Co., 1971). Chapter III, "Railroads;" Chapter VI, "Longshoremen;" Chapter X, "Shipbuilding."

2. Strike Controls in Essential Industries, The Conference Board, 1951 (Urban Transit).

3. Government and Labor, Richard D. Irwin, 1963 (All Transport).

4. Compulsory Arbitration and Government Intervention in Labor Disputes, Labor Policy Association, Inc., 1966 (All Transport).

5. Negro Employment in Land and Air Transport, Wharton Industrial Research Unit, 1971.

6. Negro Employment in the Maritime Industries, Wharton Industrial Research Unit, 1974.

7. The International Transport Workers' Federation and Flag of Convenience Shipping, Wharton Industrial Research Unit, 1983.

8. Government Protection of Employees Involved in Mergers and Acquisitions, (Wharton Industrial Research Unit, 1989). Chapter VII, "Labor Protection in the Railroad Industry;" Chapter VIII, "Labor Protective Provisions in the Airline Industry;" and Chapter IX, "Protection of Employees in the Public Acquisition and Operation of Mass Urban Transit."

B. Articles

9. "The New Orleans Longshoremen," Political Science Quarterly, Vol. 47 (December 1942) pp. 526-544.

10. "The Appropriate Bargaining Unit Question under the Railway Labor Act," Quarterly Journal of Economics, Vol. 40 (February 1946), pp. 250-269.

11. "The Railway Labor Act and Railway Labor Disputes in Wartime," American Economic Review, Vol. 36 (June 1946), pp. 324-343.

12. "Collective Bargaining by Airline Pilots," Quarterly Journal of Economics, Vol. 41 (August 1947), pp. 533-576.

13. "Industrial Relations on the Railroads," Chapter XX, pp. 449-456 in Labor in Postwar America, Remsen Press, 1949.

14. "Emergency Disputes under the Railway Labor Act," Proceedings of the First Annual Meeting of the Industrial Relations Research Association, 1948, pp. 78-97.

15. "Unfair Labor Practice Prevention under the Railway Labor Act," Industrial and Labor Relations Review, Vol. 3 (April 1950), pp. 323-340.

16-17. "Railroad Grievance Machinery: A Critical Analysis," Industrial and Labor Relations Review, Vol. 5 (April 1952), pp. 365-382, and (July 1952), pp. 540-559.

18. "Arbitration and Collective Bargaining: An Analysis of State Experience," Labor Law Journal, Vol. 14 (February 1963), pp. 178-191.

19. "State Seizure in Public Interest Disputes," Journal of Business, Vol. 36 (April 1963), pp. 210-227 (Urban Transit).

20. "Fact-Finding in Labor Disputes: The States' Experience," Industrial and Labor Relations Review, Vol. 27 (October 1963), pp. 114-134 (Urban Transit).

21. "Labor Relations in Urban Transit: Bleak Future for the 1970s," in Frontiers of Urban Transportation, University of Pennsylvania Transportation Center, 1971), pp. 1-25.

22. "The Railway Labor Act: A Critical Reappraisal," Industrial and Labor Relations Review, Vol. 25 (October 1971), pp. 3-31.

23. "Airline Strike Insurance," Industrial and Labor Relations Review, Vol. 30 (April 1977), pp. 364-372.

24. "International Enforcement of Union Standards in Ocean Transport," British Journal of Industrial Relations, Vol. 15 (November 1977) pp. 338-355.

25. "The New Employee Relations Climate in Airlines," Industrial and Labor Relations Review, Vol. 36 (January 1983), pp. 167-181.

26. "'Professionalism' vs. 'Unionism' in International Air Transport Labor Relations," Columbia Journal of World Business, Vol. 18 (Summer 1983), pp. 101-110.

27. "Deregulation: Impact on Private Carriers," The Private Carrier, (October 1983), pp. 12-24.

28. "The Rise and Demise of PATCO," Industrial and Labor Relations Review, Vol. 37 (January 1984), pp. 167-184.

29. "Airline Labor Protective Provisions: An Economic Analysis," Journal of Air Law and Commerce, Vol. 52 (Issue 2, 1987), pp. 401-465.

30. "Did PATCO Really Lead to the British Miners' Strike?" Industrial Relations Journal (U.K.), Vol. 19 (Summer 1988), pp. 154-158.

APPENDIX P – SUBMITTED FOR THE RECORD, LETTER FROM THOMAS E. FAIRLEY, PRESIDENT AND CEO, TRICO MARINE SERVICES, INC., TO CONGRESSMAN SAM JOHNSON, OCTOBER 16, 2002

TRICO MARINE SERVICES, INC.

October 16, 2002

Congressman Sam Johnson, Chairman
Subcommittee on Employer-Employee Relations
U.S. House of Representatives
B-346 Rayburn House Office Building
Washington, DC 20515-6100

RE: Hearing on Emerging Trends in Employment and Labor Law: Labor -Management Relations in a Global Economy October 8, 2002

Dear Congressman Johnson:

You and the members of the Subcommittee were most generous to allow me to testify on behalf of my company, Trico Marine Services, Inc. in the above referenced hearing. Thank you for the opportunity to be heard on an issue which many consider significant, not only to my company, but also to American business and the U.S. government. I would also like to take this opportunity to supplement my testimony at the hearing in that I believe certain issues which came up need to be clarified and request that this letter be included as part of the October 8 hearing record.

There were aspects of the testimony by the Associate General Counsel, AFL-CIO, which deserve a focused, but brief response in order to round out the record. Most relate to her comments concerning the conduct of Trico Marine during the last 29 months of the corporate campaign against it, none of which were made the subject of any legal action, save one seeking vessel access which was withdrawn.

Trico Marine's actions during this campaign were not correctly portrayed or explained in the testimony. It is asserted that Trico called the police to have OMU representatives leave the dock areas where they were trying to communicate with vessel personnel. This is not true; Trico did not call the police. Trico does not own nor control the dock facilities where its vessels and those of the other boat companies' moor. The facilities are geographically dispersed and are owned either by the oil and gas companies or their contractors. As would be expected, access is restricted at some for safety and security reasons; at others, however, access is less regulated, and OMU representatives have had access to the boats. Many of Trico's vessel personnel have had conversations with OMU representatives on the docks, in the parking areas, in grocery stores, in restaurants, by telephone, by mail, and at their homes. No Trico employee was under penalty of immediate termination for talking to a union representative, and none have been terminated as a consequence of any such conversation.

TRICO

U.S. House of Representatives
October 16, 2002
Page 2

The testimony also made reference to a letter to Trico's boat captains declaring them "supervisors," as that term is defined under the National Labor Relations Act. Trico did send such a letter and trained its captains as to their legal responsibilities, and did so out of an abundance of prudence and caution to avoid the commission of unfair labor practice charges by its captains. Under the NLRA, supervisors are considered agents of a company and can bind a company and create legal liability by the mere use of words and by their actions. As I pointed out in my original testimony, throughout the 29 months that this campaign has endured, Trico has not violated any U.S. labor laws, and there have been no cases of illegal discrimination or termination. In fact, the company has received only one unfair labor practice charge, seeking vessel access, which was withdrawn, barring dismissal, after a thorough investigation by the NLRB.

It is asserted that Trico held "captive" audience meeting for vessel personnel, implying that attendance was forced under penalty of discipline. This is not true. Trico has held employee relations meetings covering a variety of subjects and topics. When the OMU came on the scene, it was obviously a topic of interest and discussion. The vast number of employees looked forward to these meetings and attended freely. Some employees who were asleep or working assignments clearly did not attend. There were no threats nor intimidation, and if there had been, I am sure that the OMU would have filed unfair labor practice charges against Trico, as it did with the vessel access charge, or as it recently did on October 10 against Guidry Brothers Towing for an alleged unlawful termination.

The testimony discusses the OMU's invitation to trade unionists from Norway, Australia, and the United Kingdom to come to Louisiana in the summer of 2001 on what was termed a "fact finding mission" about Trico, its conduct, and the activities of other companies. It was financed in large part by a major European federation of transportation unions which I referenced in my original testimony -- The International Transport Workers' Federation (ITF), headquartered in London. I believe that this group came not to find any true facts, but to create incidents which could be used later to support the boycott threat in Norway and the international campaign against my company. This group of approximately 20 to 25 foreign trade unionists came with a professional camera crew and news reporter from Europe to record the staged events, and subsequently a video was produced which has been shown to foreign governments, Trico's customers, and unions throughout the world. The film was produced and paid for by the ITF.

This group did not bother to make appointments for meetings with Trico nor any of the other visited companies. In several instances, the group drove past security points and trespassed on private property, protested leaving, and, when the police were called, claimed harassment. The group attempted to enter secured dock areas, without any prior warning, and were, of course, turned away. After several of these forays, the group was stopped on the highway by police, as would be normal under these provocative circumstances, and asked for identification. After it

TRICO

was provided, the police left. No one was taken into custody nor arrested. Of course, all of this was captured on film for subsequent exploitation.

When a large group of men appear, who are unknown, who show up in unmarked vans, who arrive without notice, who trespass or attempt to trespass on private property, and who have a demanding and angry demeanor, it would be expected for the police to take some action. In this instance, the police response was restrained and appropriate for the circumstances. It did not reach the level of illegal police harassment, because if it had, the OMU and the AFL-CIO would certainly have filed a major civil rights lawsuit against the police authorities. In fact, the NLRB investigated this matter and in a published advice memorandum found there was no police harassment.[1]

The Associate General Counsel at several points in her testimony emphasized and re-emphasized the significant importance to the unions of their rights of free speech and the free flow of information, opinion, and expression in this campaign against Trico. The Associate General Counsel apparently believes that a corporate campaign that is designed to harm palpably a company with its customers, its investors, and foreign governments, can be justified by invoking the fundamental right of free speech. Retreating to the protection of the safe harbor of free speech is most ironic because in the constructive resolution agreement which she references (i.e., neutrality agreement) <u>the OMU and AFL-CIO have specifically demanded that Trico give up its right of free speech</u> or else face the potential boycott and a continued campaign. Trico has needed its right of free speech to correct the many misleading statements made by OMU and its allies during the course of this campaign.

With respect to freedom of speech, the OMU and AFL-CIO have lost sight of who should have the ultimate freedom of expression -- Trico Marine's U.S. employees. As I said in my original testimony, the vast majority have volunteered that they are not interested in representation by the OMU. The unions have ignored their wishes, and having failed to enlist our employees in the U.S., the OMU and its international allies have taken the campaign overseas to achieve through action there what they could not do here legally. Since the wishes of our U.S. employees and the sovereignty of U.S. law to its own citizens should be the true measure of whether the boycott threat and campaign should continue, as exhibits to this letter I am enclosing a sample of unsolicited letters from a number of vessel personnel, including the spouse of an employee. Their words clearly capture the overwhelming sentiment of Trico's fleet personnel to the OMU and its campaign.

---

[1] I would like to note that there was also much discussion in the AFL-CIO testimony of activities of the Concerned Citizens for the Community (CCFC), a private citizens group which came together to counter balance the aggressive and often misleading corporate campaign against the boat companies working in the offshore oil and gas industry. Trico Marine is not a member of the CCFC.

TRICO

U.S. House of Representatives
October 16, 2002
Page 4

Thank you for the opportunity to testify before the Subcommittee.

Very truly yours,

Thomas E. Fairley

Thomas E. Fairley
President and CEO

BELOW IS A COPY OF CAPTAIN DAN VAUGHN'S LETTER.

Here are a few thought that I wanted to share...

Four copies of the latest issue of "The Rising Tide" were left on the deck of the boat today. As usual, I read it. I read everything the union puts out, as well as everything that I receive from Trico.

The first thing I noticed was the picture on the cover. The union is supposed to have massive support, etc. So why couldn't they muster more than two dozen people for their "rally" at the Offshore Technology Conference on April 30th? There aren't even any interested onlookers. They are vague as to exactly how many organizations participated in this epic event, but it appears that there were, on the average, three people from each organization present.

Throughout the newsletter, they make use of the term "we". Well, "we" are the actual working mariners. What makes these rabble-rousers think they have the right to include themselves in a group that includes me?

On the whole, the entire publication struck me as nothing more than an insult to my intelligence – as is the case with most of their material. The newsletter seems to repeat the suggestion that we need a union because the companies are taking advantage of us, and the union can protect us. The implication is that this has been going on forever, but we are too stupid to notice. Hence, we need David Eckstein and his henchmen to point out these discrepancies to us and to protect us from the big bad corporate wolves. Well, I can only speak for myself, but if I were being treated unfairly and taken advantage of, I would have noticed it by now. And I would have done something about it. I have the freedom to quit any time I want to. I don't need someone who has never even done my job to tell me what is wrong with it. I'm not trying to say that Trico is perfect, but I sincerely feel that the people in charge are doing the best job they can. And with Trico's 'open-door' policy, any shortcomings can be brought up and dealt with. Under a union, could I have the freedom that I now enjoy to call anyone in the office to discuss a problem if I feel the need to do so? I don't think so.

The union claims that Trico is 'anti-worker'. Even for a person with no knowledge of the company this is an ignorant statement. First and foremost, Trico is a service organization. The company sells a service – a service that is performed by the "workers". The union's statement that Trico is 'anti-worker' is about as sensible as talking about a cattle rancher that is 'anti-cow'. Besides, anybody who has been associated with this company knows that it simply isn't true. One example that leaps to mind was when things got slow in the oilfield not long after I came to this company. I believe it was in 1994. I was an AB at the time. I went to a boat that had something like four Captains and two Engineers on board. The vessel was obviously working on a pretty thin profit margin (probably more like a loss), but Trico was determined not to lay people off. If a boat was working, everybody who wanted to work was put to work. Things were tight, but nobody went without a paycheck unless they chose to. The work offered wasn't always exactly what we might have wanted, but the offer was made.

I see that since they aren't having any luck with the 'rank and file' the union has started badgering Trico's customers, or so they want us to think. They show us a picture of David Eckstein's back in the reception area at OSCA. We don't get to see him even talking to anyone. What happened, did they tell him to get lost? I think I would have.

In the article entitled "Keeping the Pressure on Trico" the union states that they "won't be intimidated by misinformation and the company's efforts to deny us our rights." They claim that Trico prevents them from contacting us. If this were true, I wouldn't receive countless pamphlets and newsletters from the union every time I turn around. If it were true, I would not receive calls from them when I am home (on my unlisted number), and even on my cellular phone. The fact that they have these two numbers tells me a lot about the credibility of their organization.

They go on to say that four members of Congress sent a letter to Trico "demanding that the company meet with union representatives to resolve these issues." Then on the next page, they show a copy of the letter. I have read it. The congressmen state their concerns over allegations. They also state a hope that Trico will review the findings of the Gulf Coast Workers' Justice Board and address any potential wrongdoing. I have read the letter several times. I have also read the definition of the word "demand". After reading the two, another word comes to mind. Several in fact. Words like: misinformation, falsehood, lie, propaganda. They babble on about Constitutional Rights. What about my right not to be harassed at home and in the workplace with information I don't want? I imagine that they would respond by saying that refusal to listen would make me ignorant of the information they are trying to put out. Fine, that too, is my right. If they come up with anything fresh, I would listen. But they keep re-hashing the same old lines. It's become quite tiring actually.

The union accuses Trico of a campaign of misinformation and intimidation. I can state categorically that I have never been threatened or coerced in any way by any person affiliated with Trico at any time. I have never felt that I needed to hide the fact that I read all of the information I receive from both 'sides'. As for misinformation and lies? Well, everything I have seen from Trico has been from credible sources and was very easily verified. The newsletters from the union are full of contradictions and half-truths.

The people that are trying to form this union need to realize that the National Labor Relations Act not only guarantees the right of workers to organize, it also affords the right to refrain from all such activity. Most of the mariners I have spoken to, Trico or otherwise, have stated that they have no interest in a union. The contact information for the union is readily available. Apparently there has not been a stampede of mariners knocking down their door. Mr. Eckstein and his cronies need to take the hint: "You are not wanted here – go home."

Dan Vaughan

A LETTER FROM CAPTAIN ROY WILKINS

Hello, My name is Captain Roy Wilkens. I have held a 1600-ton license for the last 15 years.

<u>I started without a union and I don't need one now!</u>

I joined the union with "great promises" of money and benefits but all I got was:

"Give us money" and "We can't represent you"

My first suspicion of things going wrong was when I had to pay for my own physical and drug screen, around $300.00. Then we had a $600.00 initiation fee plus $75.00 per quarter dues, whether you worked or not, on top of all that. I was informed that I was required to give money to the Political Campaign Fund, which was supposed to be voluntary – It wasn't. I was informed of how much I was to donate, if I wanted to work. This money was given to the candidate of **<u>their choice</u>**, not mine.

I started the job towing barges from the U.S. to Mexico. On the first Morning Report I called in on the radio, I heard other vessels of my company calling someone a scab and various other names not to be repeated. I was curious about who this person was that they were calling names. After a couple of Morning Reports, I noticed this only happend when I gave my reports. I couldn't understand why. When I asked my crewmembers their reply was that we were working a sweetheart contract. This contract could stop at any time. It was at lower wages than the rest of the fleet and with less benefits. I found out that the only reason someone could go straight to Captain without starting as Mate was that no other union Captain would take that job. The union's thoughts were to just get anyone (me) to take the job with a lower book (C), then when things got better, the (A) or (B) book would take the job from me. That is when I realized that I wasn't going to be here long.

Well, the job did shut down and we started stacking barges. I ended up in Florida with my vessel being laid off. The next morning we were awakened by the local union representative with airline tickets back to Houston. I told the union representative that I had talked to the office the previous day and requested to stay onboard and they said that it should not be a problem. The union representative told me that when a vessel is laid off in his district, he gets to crew the vessel with his local people. He said we had to go back to our local union hall and wait for a vessel to come there. We had no choice in the matter. When I made it to the local hall to register for a job, I mentioned that I had requested to stay onboard. My local representative said that was how things worked, but if I gave him $300.00 - $400.00 dollars, he could get me a harbor tug job as a Quartermaster. What's a Quartermaster, I asked? Well, he said, I would steer the tug from the dock to the job site and then go on deck as Lead Deckhand. I could not believe that he wanted me to pay him (bribe) to become a Deckhand. I declined, and quit the union.

<u>Other things that happened to me while I was with the union:</u>

- When I bought a new car and tried to use the union for job verification, they would not even admit that I worked there. They do not give out information on employment for credit applications.

- I witnessed other seamen buying (bribes) their jobs.

- We had crew meetings when we were in port with the union representative. One meeting was with all crewmembers and one was without officers. If the crew wanted someone off the vessel, including officers, there was a very good chance you could be voted off.

Believe me when I say; all these people (union reps) wanted was money, money and more money. I did not get the great pay, the great benefits, or the job security. All I got was a great letdown.

Thank You,

Captain Roy G. Wilkins

A Letter to Trico Employees,

Please, allow me to vent my frustrations over the lies of union representatives!! I'm concerned that some people will be "suckered in" by their propaganda.

Captain Marvin (Montero) says his experiences as a young man were that the unions always had their hands out for donations and that those who did not "contribute" did not work. His memories are so negative that he will not even look at their material. Everything goes straight from the mailbox to the trash can!

However, out of curiosity while he was offshore, I decided to read one of their brochures. They accused Trico of "dangling carrots" to employees by giving raises, etc. They disregard the fact that increased oil prices have led to greater oil production, thus more boats working at better pay rates, leading to higher wages for the employees. The union even claimed that pressure from them has forced Trico to make improvements. This infuriates me!!!

Where was the union about ten (10) years ago - during the big "down turn" in oil drilling in the Gulf - when Trico went to great measures to take care of it's people? There was no union around when Trico office personnel took pay cuts, right along with boat crews, so more men and women could continue working during hard times. As boats were stacked at the dock, out of work, many men were paid to stay on and maintain them, even though the company was losing money.

Trico considers the entire family of it's employees. They offer benefits - 401k, hospitalization, disability, etc. - that we have not had, in the past, with other companies. As wife of Capt. Marvin G. Montero, I feel free to call if I need information about any benefit or program and I'm treated with respect.

Also, this company makes arrangements for and pays for most of the training required for their employees. I could go on and on but I think I've made my point.

Trico Marine Operators, Inc. has always taken care of it's people - long before any union came into the picture! How dare they try to take credit for the good things this company has always done!!!!!

Thank you for allowing me to voice my opinion.

Brenda K. Montero

A LETTER TO MY FELLOW WORKERS

My name is Nam-I Van and I used to be in a union called the International Union of Operating Engineers (I.U.O.E.) local 25. What I am about to tell you are the experiences I have had with this union.

I was working on a dredge as a non-union member when the union rep. asked me if I wanted to join the union. I said yes because I really had no knowledge about unions. The reason most of us here in the south do not have much knowledge about unions is because we are in a "right-to-work" state. We have no need for unions just to be able to work. In the north, if a company is unionized, you must join the union in order to work or even apply for a job. Here you can.

To become a member I had to pay a **$500.00 book fee.** Until this fee was paid, I was not considered a member. In addition, I had to pay **$60.00 a month in union dues,** and on top of that I had to pay **$44.00 a month** which I have no idea for what.

After paying all this money, I asked what they were doing for me. Their reply was that they get me good wages, good working conditions and union representation. **Well I'm not super-smart, but I am smart enough to figure out I was paying for something that I could get for free.** Think about it, the Coast Guard makes sure I am working in a safe environment for free. The Captains, the SIP Program and the Engineers Report ensures that unsafe and hazardous conditions are taken care of for free. If I have a problem or complaint, I can take it to the office myself for free, and there is always someone who will listen.

So, I started to think that I didn't really need the union for anything. As far as wages go, here at Trico we receive our pay raises through our job performance and through educating ourselves in order to upgrade our licenses. Not so with a union contract.

What I can tell you about unions is this; they promise all these things but cannot deliver. They cannot go to the company and demand anything. All they can do is go before what you call a negotiating table and present their case to the company and hope the company accepts their terms. Yes, they say they are there to help you, but do you really think they do it for free? Whatever they get, they get from **YOUR PAYCHECK in dues** and **fees.** If the negotiations don't go well, the union may **ORDER** a strike and **ALL** union members **MUST** comply. A strike is a powerful thing but in a "right-to-work" state striking workers can be replaced **PERMANTLY.**

When you come off of a job, you get your name put on what the union calls an out of work list. This list is about 200 names long. If a job comes up, each person will be notified in turn. **After you have been on this list for 90 days, you must go get your name back on the list because after 3 months, they terminate the names on the list and start over. In four months, I NEVER GOT A CALL** and my union steward informed me that **I still had to pay dues even if I wasn't working.** He also said it was common for union workers to get little side jobs to hold them over until a union job came through.

"I CAN TRUTHFULLY SAY THAT I NEVER RECEIVED ONE SINGLE SOLITARY BENEFIT FROM THE UNION."

A couple more things I would like to mention; the I.U.O.E. had NO type of training program. To advance in your position you receive no help and pay for all schooling yourself.

Whatever the union promises you, please just take the time and think it over and you will see that it is already provided for you, anything else you can do yourself. **It cost me about $800.00 to find that out!** As your fellow co-worker, I hope it costs you nothing.

Just remember, we are already taxed too much on our paychecks, do you really want someone else to get another cut?

Sincerely,
Nam I Van

TO WHOM IT MAY CONCERN

From December 1994 to July 1998, I was a faithful "Union Man" with a TEAMSTERS Local. In May of 1990, there was a position that came open that I was interested in so I applied for it. Only one other person applied for this position. He was non-union but he was kin to the Project Manager. Well, The project Manager called up the head Union Official and luckily I was at the Union Hall when the call came in. The Union Official had the call on the speaker phone and I was in the hallway when the deal was cut to give the non-union man the position. Well, I immediately barged into the office and the Union Official started lying. I filed a grievance and it got lost so I filed it again and then I was approached and told that if I didn't drop it, it would be "Too Bad".

Now, here I've been paying 4% of my pay the whole time. They never did one thing they said they would do except take my money. Well, I finally had to get an attorney to get out of the union. In four years I paid at least $3,600.00. My friends, Unions are Big Business. They get Fatter and Fatter off of you and me. Let's face it, nobody will do anything for you without personal gain.

If you have to pay to work,

YOU HAVE THE WRONG JOB!

Kevin Pierce
Product Transfer Specialist

WORKBOAT

MAIL BAG

Union is full of 'baloney'

I've been employed by Trico Marine for almost 12 years. In that time, I've come to appreciate this company for its open ears and receptiveness they show to ideas from those who operate the vessels in its fleet. The open-door policy allows employees to air their concerns, grievances or make suggestions. Phone lines and office doors are open to any of us at any time. I can honestly say I've never been treated with disrespect or made to feel unwelcome by anyone in our office.

Those ex-employees who were eventually fired for infractions of company or Coast Guard rules should have no one to blame but themselves. Trico Marine, as I understand it, has a policy of pointing those with drinking or drug problems in the direction of treatment centers. For those who can't seem to solve their problem of abusing alcohol and drugs while on the job, I can't feel anything but pity for them. Those same people now crying to the union people about being treated unfairly need to step back and look in the mirror to see the real problem.

The union people who are trying to butt in uninvited to the oil patch are now trying to make the public think that we are being treated unfairly. That's a bunch of baloney. I for one feel no need to pay dues and other assessments to an organization of any kind that supposedly represents my best interests. No one can do that better than me. These organizers are like pesky telemarketers. The more they come around the less welcome they are. They all need to pack their bags and go back to where they live and attempt to do a good job at something they know about.

Reidar Frantsen
Center, Texas

APPENDIX Q – SUBMITTED FOR THE RECORD, LETTER FROM CONGRESSWOMAN CYNTHIA McKINNEY, TO AMBASSADOR ANTONIO DOS SANTOS FRANCA, SEPTEMBER 10, 2001

CYNTHIA A. McKINNEY
4th District, Georgia

COMMITTEE ON INTERNATIONAL RELATIONS
International Operations and Human Rights

COMMITTEE ON ARMED SERVICES
Military Procurement
Military Personnel

Congress of the United States
House of Representatives
Washington, DC 20515–1011

WASHINGTON OFFICE:
124 Cannon Building
Washington, DC 20515
FAX

DISTRICT OFFICE:
246 Sycamore Street
Suite 110
Decatur, GA
FAX

INTERNET ADDRESS:
cymck@hr.house.gov

September 10, 2001

His Excellency Antonio dos Santos Franca
Ambassador Extraordinary and Plenipotentiary
Embassy of the Republic of Angola
1615 M Street NW, Suite 900
Washington, DC 20036

Dear Ambassador dos Santos Franca:

As the ranking Democratic member of the House of Representatives Subcommittee on International Operations and Human Rights, I write to convey my concern with regard to a potential labor rights problem that has come to my attention. It is my understanding that the Sociedade Nacional de Combustiveis de Angola (Sonangol), in conjunction with a major multi-national oil company, has put out for tender a vessel contract to support oil and natural gas drilling off the Angolan coast.

According to financial analyst Wesley Maat at Dresdner Kleinwort Wasserstein, this tender offer will entail twelve to fifteen vessels (including a large horsepower AHTS vessel, several larger PSV's, one larger tug boat, two large well servicing vessels as well as other support vessels).

Also, according to Maat's report, a U.S.-based company known as Trico Marine Services, Inc. is likely to bid to perform this work. The bid will likely include the company's two newly built North Sea class PSV's - two UT 745 design PSV's that are scheduled for delivery in April and July 2002.

Trico Marine Services, Inc. is a provider of marine support vessels to the oil and gas industry, primarily in the United States Gulf of Mexico, the North Sea and Latin America. The services provided by the Company's diversified fleet include the transportation of drilling materials, supplies and crews to drilling rigs and other offshore facilities, towing drilling rigs and equipment from one location to another, and support for the construction, installation, maintenance and removal of offshore facilities. The company currently has a total fleet of approximately one hundred vessels including approximately fifty supply vessels, eleven large capacity platform supply vessels, seven large anchor handling, towing and supply vessels, thirteen crew boats, and nine line-handling vessels.

Unfortunately, Trico has launched an aggressive anti-union campaign against mariners in the U.S. Gulf of Mexico. Trico's campaign is designed to intimidate workers from joining together

His Excellency Antonio dos Santos Franca
September 6, 2001
Page Two

to have a voice at work. Trico has dismissed or discriminated against workers who have expressed support for the union. They have forced workers to attend intimidating, management-led anti-union meetings. They have included anti-union messages in workers' paychecks and created a climate in which workers fear they will lose their jobs if they stand up for their rights. I am enclosing a copy of a filing recently made with the United States Department of State under the Organization of Economic Cooperation and Development Guidelines for Multinational Corporations that will provide you with more details on Trico's anti-worker behavior.

I believe that the government of Angola and its national oil company should be fully briefed on Trico's practices regarding the human and labor rights of its workers. Trico's behavior in the U.S. is inconsistent with its treatment of workers elsewhere. Governments around the world must stand up and ensure that multinational corporations do not trample on the fundamental rights of free association.

I would appreciate your inquiries into this matter and a communication from you regarding the steps Sonangol and the Angolan government are prepared to take regarding the ethical practices of their subcontractors on this project. Please do not hesitate to contact me if I can provide you with any more information regarding this matter.

Sincerely,

Cynthia McKinney
Member of Congress

CM/jap

Enclosure
cc: The Honorable Tom Lantos, Ranking Member
U.S. House of Representatives Committee on International Relations

The Honorable Donald Payne, Ranking Member
U.S. House of Representatives Subcommittee on Africa

The Honorable Eddie Bernice Johnson, Chair
Congressional Black Caucus

Mr. J. Leite da Costa, Exploration and Production Director
Sociedade Nacional de Combustiveis de Angola

APPENDIX R – SUBMITTED FOR THE RECORD, LETTER FROM CONGRESSMAN WILLIAM J. JEFFERSON, TO THOMAS FAIRLEY, APRIL 24, 2001

WILLIAM J. JEFFERSON
SECOND DISTRICT, LOUISIANA

WASHINGTON OFFICE:
240 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1802
(202) 225-6636

LIONEL R. COLLINS, JR.
CHIEF OF STAFF

DISTRICT OFFICE:
1012 HALE BOGGS FEDERAL BUILDING
501 MAGAZINE STREET
NEW ORLEANS, LA 70130
(504) 589-2274

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-1802

COMMITTEES:
WAYS AND MEANS
SUBCOMMITTEES:
TRADE
HUMAN RESOURCES

DEMOCRATIC STEERING AND POLICY COMMITTEE

WHIP AT-LARGE

April 24, 2001

Mr. Thomas Fairley
Chief Executive Officer
Trico Marine Services, Inc.
250 North American Court
Houma, Louisiana 70363

Dear Mr. Fairley:

I am writing to express my concern about the findings and conclusions of the Gulf Coast Worker's Justice Board, an organization investing the efforts to organize a union for offshore workers.

Offshore Marine United (OMU), I understand, has been working for several months to inform offshore workers about their legal and constitutional right to form a union. OMU. alleges that several companies, including Trico, have interfered with their right to disseminate information to employees. In addition, they allege that two captains were dismissed from Trico because of their vocal support of workers' right to unionize.

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers or to refrain from all such activity. But, NLRA also forbids employers from interfering with, restraining or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization.

As a Member of Congress who represents workers from the offshore oil and gas industry, I am very concerned about these allegations. I hope that you will review the Boards findings and the NLRA and, then, respond in an appropriate manner to their concerns about possible violations of the NLRA.

Thank you for your attention to this matter. I look forward to your response.

Sincerely,

William J. Jefferson
Member of Congress

APPENDIX S – SUBMITTED FOR THE RECORD, LETTER FROM CONGRESSMAN GENE GREEN, CONGRESSMAN DAVID E. BONIOR, CONGRESSMAN NICK LAMPSON, AND CONGRESSWOMAN SHEILA JACKSON LEE, TO THOMAS FAIRLEY, FEBRUARY 9, 2001

Congress of the United States
House of Representatives
Washington, DC 20515
February 9, 2001

Mr. Thomas Fairley
Chief Executive Officer
Trico Marine Services, Inc.
250 North American Court
Houma, Louisiana 70363

Dear Mr. Fairley:

We are writing to express our concerns about the findings and conclusions of the Gulf Coast Workers' Justice Board, an organization investigating the efforts of Gulf workers' to organize a union.

Offshore Mariners United has been working for several months to inform offshore workers about their legal and constitutional right to form a union They have alleged that several companies, including Trico, have interfered with their right to disseminate information to employees. Even more troubling, they have asserted that two captains were dismissed from Trico because of their vocal support of workers' right to unionize.

The National Labor Relations Act guarantees the right of employees to organize and to bargain collectively with their employers or to refrain from all such activity. It also forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization.

As Representatives of workers employed in the offshore oil and gas industry, we are very concerned about these allegations. It is our hope that you will review the Board's findings, and will respond to their concerns about potential wrongdoing.

Thank you for you attention to this matter. We look forward to hearing from you.

Sincerely,

Sheila Jackson

cc: Mr. Robert Palmer, Chairman of the Board
Trico Marine Operations

Table of Indexes