
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CLARKE,)	No. 80520	Electronically Filed
)		Aug 24 2020 05:02 p.m.
<i>Appellant,</i>)		Elizabeth A. Brown
)		Clerk of Supreme Court
Vs.)		
)		
SERVICE EMPLOYEES)		
INTERNATIONAL UNION)		
("SEIU"); SEIU LOCAL 1107 AKA)		
SEIU NEVADA;)		
<i>Respondents.</i>)		
)		
)		
)		

Appendix IV

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INDEX

Excerpts from <i>Cabrera v. SEIU Local 1107</i> NLRB Trial.....	745
Pltfs' Counsel's Decl. RE: Legislative History.....	823
Excerpts from Legislative History LMRDA.....	827

1 Q. Did you make any recommendations to Martin about this
2 incident, whether discipline should follow?

3 A. Not about how we should move forward, just that the
4 issue happened.

5 Q. Did you discuss discipline with Martin Manteca at all
6 about this incident?

7 A. No, I did not. Not on that day, I guess.

8 Q. What about on other days?

9 A. I mean later. Maybe like a couple of days after because
10 Martin wasn't there. This is when I talked to him about,
11 hey, this is the situation at hand, how we -- like we -- that
12 I had notified him that it had become an issue and then the
13 issue that occurred on that day.

14 Q. But this was a couple of days after it happened?

15 A. Yes, because he wasn't -- yes, it was a couple of days
16 after.

17 Q. Because he wasn't there at the facility?

18 A. Um-hum.

19 Q. And what -- when you told him what had happened, the
20 incident, what you had to do, what was his response? Do you
21 remember?

22 A. Is that we needed -- I needed to proceed with this. So
23 I notified IFFA (ph.). That was how I ended up notifying
24 Javier that we were going to discipline him on the 24 -- on
25 the -- that he needed to have representation on the 25th. At

1 the time, it was for the 25th.

2 Q. And was that the only issue that you were going to
3 discuss with him on the 25th at that time?

4 A. At that time, yes.

5 Q. Okay. So then you discussed what had happened with
6 Javier Cabrera with Martin Manteca a couple of days after it
7 happened, right? Is that right?

8 A. Yes.

9 Q. He told you to proceed with it?

10 A. Yes.

11 Q. And then you scheduled an investigatory meeting with
12 Javier?

13 A. Um-hum.

14 Q. And that was originally scheduled for October 25th?

15 A. Yes.

16 Q. Is that a yes?

17 A. Yes.

18 Q. And at that time, the only thing that you were going to
19 discuss was the no call-no show?

20 A. Was the no call-no show.

21 Q. And then at what point did the other issues come up
22 during the investigation? Or did those come up at the
23 investigatory meeting?

24 A. No, the other issues came up I believe -- I notified him
25 the night of the 24th because I think I was doing something

1 with SNHD. So I wasn't a part of the team meeting and the
2 group debriefs and any of that. After he was done, at the
3 end of the night, I notified him that he needed to have
4 representation tomorrow, that he would need representation
5 tomorrow, he was going to have -- it was going to be
6 investigatory. Later that night I -- we discovered some of
7 the --

8 Q. Some of what?

9 A. Some of the other occurrences.

10 Q. Like what?

11 A. With the TWR cards and the debriefs.

12 Q. How did you discover that?

13 A. I discovered that through a conversation with Grace
14 Vergara.

15 JUDGE MONTEMAYOR: With who?

16 THE WITNESS: Grace. Grace.

17 JUDGE MONTEMAYOR: Okay.

18 Q. BY MR. ANZALDUA: Vergara?

19 A. Yes.

20 Q. And do you recall when that conversation occurred?

21 A. Late the night of -- during probably like the senior
22 debrief. The senior debrief later on that night.

23 Q. Of?

24 A. The 24th.

25 Q. What's a senior debrief?

1 A. Is when we all just notify each other about what's going
2 on with each of our teams and within our work and report all
3 the daily numbers and things.

4 Q. And when you say --

5 A. Compose the daily numbers.

6 Q. And when you say "we," who does that refer to?

7 A. It is me and myself and Grace. We may do one first with
8 the leads, then myself and Grace, then myself and Grace and
9 Martin will have a conversation.

10 Q. And who were the leads at the time?

11 A. The leads at the time? Barry, Barry wasn't there. It
12 was Helen, Yvette -- Helen and Yvette.

13 Q. Do you know Yvette's last name?

14 A. Saenz, I believe. S-a-e-n-z.

15 Q. And the leads would -- some of the organizers would be
16 assigned to a specific lead?

17 A. Correct.

18 Q. About how many organizers would be assigned to a lead?

19 A. It varies, depending on the campaign that was going on.
20 I mean it varies.

21 Q. Was it, you know, how would it vary? Would it be from 1
22 to 10 or --

23 A. No, not 10. Maybe like one to four or five.

24 Q. All right. So this conversation with Grace Vergara,
25 what was Grace's role with SEIU Local 1107 at the time?

1 A. She was coming in to be the field director or the chief
2 of staff at the time. It was in transition.

3 Q. Had she been there the entire time you were there?

4 A. No.

5 Q. Do you recall when you first started working with SEIU
6 Local 1107?

7 A. October 20 --

8 Q. 2017?

9 A. Um-hum.

10 JUDGE MONTEMAYOR: You said uh-huh again.

11 THE WITNESS: October 2017.

12 Q. BY MR. ANZALDUA: And what do you recall about that
13 conversation with Grace?

14 A. That she had recognized that some of the cards that came
15 in that were from Javier didn't look -- they were off, and
16 the handwriting, the handwriting was very similar on the
17 cards and that she could recognize -- she actually had
18 recognized the handwriting.

19 Q. As?

20 A. As Javier's.

21 Q. What else did she say do you recall?

22 A. I do not recall.

23 Q. All right. So how did you proceed? What happened from
24 that conversation to the date of the actual investigatory
25 meeting on October 26th? What did you do?

1 A. At this time, I think we launched an investigation -- we
2 launched an investigation fully into the cards. We had
3 people spot check the cards, calling, make sure to verify
4 members had actually signed them. We checked emails, made
5 sure we consulted with legal counsel on the matter, and just
6 continued to do stuff to investigate the matters, all of the
7 matters at hand.

8 Q. So the cards, you said you called members to see if they
9 signed the cards?

10 A. Correct.

11 Q. Wasn't it true that none of the cards were signed?

12 A. To see if they had even filled out the cards.

13 Q. Because none of the cards were signed, correct?

14 A. They weren't signed. I don't think they were.

15 Q. Is there any written rule that would preclude an
16 organizer to take that card, give it to the member and have
17 the member sign it?

18 A. No, I mean the protocol as an organizer, we make sure
19 that the members, even if it's from a new member, to a lead
20 obtaining one, make sure that they complete the card.

21 Q. My question is was there a written rule that would
22 preclude him from taking the card to that member, having them
23 sign it?

24 A. I don't know.

25 Q. Sorry.

1 A. No, I don't. Maybe I don't understand the question.

2 Q. Is there a written rule that says that an organizer
3 can't fill in the name and phone number, address of someone
4 and then have that person sign it?

5 A. No, there's not -- I don't know if there's a written
6 rule.

7 Q. You're not aware of any written rule about that?

8 A. No.

9 Q. Who consulted with legal counsel?

10 A. Myself and Grace would. Grace and myself.

11 Q. Was Martin Manteca involved in the investigation leading
12 up to the October 26th investigatory meeting?

13 A. He was not.

14 Q. And at the time, were you familiar with the debrief
15 sheets, the issue with the debrief sheets?

16 A. The issue?

17 Q. Yeah.

18 A. Not until the 20 -- like the day before the -- the day
19 before the investigatory. When he rescheduled it, that's
20 when we -- I found out about the debrief sheets because he
21 brought it to us.

22 Q. He had emailed you and said he thought he submitted
23 duplicate names, correct?

24 A. Yes, something in -- like right -- yeah. Yes.

25 Q. So prior to him informing you, you didn't know about the

1 debrief sheets?

2 A. Did I know that there was an --

3 Q. An issue with the --

4 A. -- issue with the debrief, no.

5 Q. Okay. And then after he informed you, what did you do
6 in regards to the debrief sheets?

7 A. With the debrief sheets, we compared them. We
8 checked -- we reviewed them, and we definitely concluded that
9 it didn't make -- it didn't really -- that the debrief sheets
10 didn't really add up.

11 Q. They didn't add up. What do you mean by that? Do you
12 recall what the issue was?

13 A. I believe when it came to the debrief sheets, he
14 submitted a new, like an addition or an addendum on the 25th
15 or something about the debrief sheets.

16 Q. In your experience with 1107, did organizers submit
17 debrief sheets to you?

18 A. Some -- at times. If I was the one that was actually
19 debriefing them, but at the end of the day, I -- in the
20 beginning especially, I was reviewing all the debrief sheets
21 that came in, debrief and contact sheets.

22 Q. And then what about not in the beginning? As you
23 progressed, was that responsibility put on someone else?

24 A. It was -- we started transitioning into -- made sure
25 that the leads -- the leads always checked them first, but

1 then it became myself, and then as I was, I was transitioning
2 into it, and so Grace, of course, became involved in the
3 checking of the debrief sheets, debrief contacts and debrief
4 process overall.

5 Q. So the leads would be like the first step to review
6 these debrief sheets?

7 A. Yes.

8 Q. And then for a time period, the leads were submitting
9 them to you?

10 A. Yes.

11 Q. And then what would you do with them?

12 A. We filed them.

13 Q. And what --

14 A. We put them in a binder actually. We would submit them
15 to the front desk, and then we would store them in a binder.

16 Q. And what was -- what were they used for after that? Are
17 they just -- were they just stored in the binder and never
18 brought up again, or what are they used for?

19 A. No, it was a log of where we were actually, the
20 conversations that we were having, as you'll see, like with
21 the TWR cards, how many phone -- how many phone numbers, how
22 many emails, did we actually collect. So we would compare
23 and keep a log of how many we were able to -- our contacts
24 and were we moving towards goal.

25 Q. When you say we would compare that, organizers would use

1 those to compare to their goals or would you --

2 A. Well, I would. The organizers also made copies. They
3 took -- they made copies before they even turned them in on
4 the first.

5 Q. But you used them as a way to see if you were meeting
6 the goals or not?

7 A. Meet the goals and it also checked, it also checked for
8 how -- like where are we at with sites that we visiting, how
9 many contacts are we making in a day, what was the progress,
10 and it was the tool which where are the organizers, like
11 where are the organizers spending their time throughout the
12 day.

13 Q. Besides Javier Cabrera's debrief sheets at issue, those
14 two that were at issue, did you ever compare debrief sheets
15 of other organizers?

16 A. When you say like compare their own towards that?

17 Q. Yeah, towards --

18 A. I mean if you're asking -- if it was something that we
19 needed to figure out like, hey, why are you not spending
20 enough time there, but not so much about the, not so much
21 about whether someone was -- most of the time it wasn't about
22 if they were where they were supposed to be. It's like were
23 they spending their time wisely and really being able to --
24 make sure they were able to maximize their turf, like being
25 able to get to their turf, and were they, you know -- like

1 are you really in DFS too much, like you should go spend time
2 at another site, things like that.

3 Q. So it was more of a comparison of location and time,
4 right?

5 A. Location and time.

6 Q. Okay. But have you --

7 A. Daily checking.

8 Q. Have you ever compared actual names on one debrief sheet
9 compared to a debrief sheet on -- to the names on a prior
10 debrief sheet?

11 A. I mean we have, but it's not so much about what did you
12 do. It's like, hey, why are you -- hey, why do we keep
13 talking to the same leader. Why are you talking to the same
14 person, and like why are we not moving that out?

15 Q. So there are instances that you remember that there's a
16 name that's on one debrief sheet and the same name comes up
17 on another debrief sheet?

18 A. There are -- there has been times that a name has
19 appeared on two debrief sheets.

20 Q. And for that organizer, were they disciplined in any
21 way?

22 A. No, because it's totally different. It was a totally
23 different situation.

24 Q. Okay. But in those circumstances, no one was
25 disciplined?

1 A. No, not -- no.

2 Q. Who attended the October 26th -- well, you said before
3 that it was originally scheduled for the 25th. What happened
4 to that date? Do you recall?

5 A. The 25th, Javier requested to reschedule it, and I
6 agreed.

7 Q. Is that because his union representative wasn't
8 available that day?

9 A. For some reason he wanted to reschedule it. So I let
10 him -- I do remember he requested to reschedule it because it
11 was originally set for the day after.

12 Q. So it took place on the 26th then?

13 A. Correct.

14 Q. And where was the meeting? Where did it take place?

15 A. At the office, the union office.

16 Q. Do you remember -- was it a conference room or someone's
17 office?

18 A. Probably the back office or conference room. I don't
19 know.

20 Q. Is that the same room that you held the other
21 investigatory meetings that you participated in?

22 A. We have them there or in the main -- in the trustee's
23 office.

24 Q. And that would be -- who was the trustee at the time?

25 A. Luisa and Martin.

1 Q. So they had their own office at the facility?

2 A. Yes.

3 Q. And sometimes you would meet there?

4 A. Yes.

5 Q. And what issues did you discuss in the investigatory
6 meeting with Javier Cabrera?

7 A. His no call-no show, his failure to set up the meeting
8 properly. We also discussed the cards, the debrief sheets in
9 question, and the "on file" cards.

10 Q. All right. So no call-no show, failure to set up a
11 meeting, TWR cards, debrief sheets and writing "on file" on
12 certain cards?

13 A. Yes.

14 Q. Was there any other issues that you discussed during
15 that meeting?

16 A. That's what I recall.

17 Q. So the meeting was originally for the no call-no show,
18 right?

19 A. In the beginning?

20 Q. Yeah.

21 A. When I first -- yes.

22 Q. And then it turned into these other issues as well?

23 A. Yes.

24 Q. Okay. And did you guys discuss the email communications
25 back and forth about his no call-no show? Did you have those

1 like during the meeting? Were they printed out or anything?

2 A. I think we did print them.

3 Q. And the failure to set up a meeting, is that a reference
4 to one of the meetings on October 17th?

5 A. The 17th.

6 Q. And what was your recollection about that? What did he
7 fail to set up?

8 A. Well, the biggest thing was when people weren't even --
9 people were asked at the last minute to prepare to actually
10 be able to man the sites and be able to actually be there to
11 actually put on -- to try to make sure the event was pulled
12 off.

13 However, we had discovered, when we got there, there was
14 no -- they didn't even have a room, but we found out there
15 were -- that the reason why was because it wasn't set up
16 until -- there was not even a request made until the night
17 before the event, when we had already asked all the
18 organizers, because we had calendared all this stuff out. So
19 there were emails and things like that that went out way in
20 advance of the event itself. So we asked them to set the
21 meetings up, make sure we had the right rooms, locations,
22 that we -- that basically everything was seamless, and we
23 gave people time to do it in advance after a staff meeting.

24 So we found it a little bit puzzling that it wasn't set
25 up when we got there on the 17th and that it wasn't even

1 requested until the night before.

2 Q. But Javier put a request in you said the night before,
3 right?

4 A. Correct.

5 Q. And that it then went forward, correct?

6 A. The event went forward, but the event -- it was
7 challenging to get it pulled off.

8 Q. But you pulled it off?

9 A. Of course.

10 Q. And do you know who he was -- Javier Cabrera contacted
11 to set up -- to reserve the room?

12 A. I don't remember who it was, but it was a person from
13 the county.

14 Q. And do you know anything about the working relationship
15 between Javier Cabrera and that person?

16 A. I do not.

17 Q. And do you know anything about the past practice on how
18 he reserved rooms with that person?

19 A. No, or maybe even a member would probably even set them
20 up, but no.

21 Q. So you don't know how in the past Javier had reserved
22 rooms with --

23 A. No, because normally they would go and we would find out
24 -- they would handle it on their own. So people wouldn't
25 find out that they -- if they did it or not.

1 Q. Isn't it true during the October 26th investigatory
2 meeting that Javier Cabrera told you that he planned on
3 getting the cards signed by the actual members?

4 A. That he said he was getting -- that he was going to get
5 the cards actually signed?

6 Q. Yeah.

7 A. That was not brought -- that was not something that I
8 recall. I remember him stating that he was -- he presented
9 like a new sheet that he was -- he presented a new sheet,
10 signed like a, I don't know, a legal notebook saying that
11 these was the members and that they signed up there and
12 they -- yeah, and that he was going to -- and he was going to
13 put them on the card for them, which is definitely not our
14 practice.

15 Q. And in the meeting, he explained that -- he gave an
16 explanation as to why the same names were on one debrief
17 sheet that were on another debrief sheet, correct?

18 A. He -- I don't remember exactly how it happened, but I
19 remember him saying that it was due to him being -- he was
20 going to transfer them over, and he couldn't remember if he
21 had placed them -- if he had submitted it earlier, which we
22 submitted debriefs on a regular basis. So that doesn't
23 really make sense.

24 Q. And you also mentioned these "on file" cards. In your
25 experience, have you seen a membership card or a TWR card

1 that said "on file" anywhere on it?

2 A. Anywhere on it?

3 Q. Yeah.

4 A. I've seen on a -- I never -- I do not recall ever seeing
5 it on a membership card.

6 Q. Right, because they're a new member?

7 A. New or recommitted. Even when they recommitted, I've
8 never seen it on any of it. In the beginning, we -- if they
9 did come back, we would send, we would send them back to the
10 organizer and get it all filled out. And we had even
11 notified them -- we had notified them verbally in September
12 specifically because people brought the question up, what if
13 someone puts "on file"? We had notified them that that's not
14 appropriate and that's not going to be -- that's not going to
15 suffice during this campaign because it was so important that
16 we had the cell phone and the contact information.

17 Q. You're talking specifically about TWR cards then?

18 A. Yes.

19 Q. And those cards didn't start coming out until September
20 of 2017?

21 A. Yes.

22 Q. And this training you said occurred was in mid-
23 September?

24 A. Mid-September, I think September 18th.

25 Q. And it was in response to a question from an organizer

1 about "on file"?

2 A. Um-hum. And I believe Javier was actually one of those
3 organizers that asked the question.

4 Q. And then initially you said you mentioned you sent the
5 organizer back. Back to do what?

6 A. You just go back -- you just say this card isn't -- you
7 need to go back and get it -- go back to the member.

8 Q. And then that organizer was expected to go back to the
9 member and get a complete card?

10 A. Yeah, and then submit that one.

11 Q. And did that actually happen? Do you recall
12 organizers --

13 A. Oh, organizers brought them back completed. And it
14 wasn't only him. It was only two people that it was
15 occurring with.

16 Q. Besides Mr. Cabrera, was anyone else disciplined or
17 discharged for any issues with the TWR cards?

18 A. No, he was not disciplined.

19 Q. Besides Javier?

20 A. No.

21 Q. Who was this other person that you're referring to?

22 A. Randy Peters.

23 Q. I'm sorry. What was the last name?

24 A. Randy Peters.

25 Q. Peters.

1 A. Peters.

2 Q. And who was that?

3 A. He was an organizer as well at the time. He still is an
4 organizer.

5 Q. He's still an organizer?

6 A. Yeah.

7 Q. And he had turned in TWR cards with -- that said "on
8 file" on them?

9 A. Like on a place, it said "on file," and we had Randy --
10 yes, we had him go back to the member.

11 Q. And Mr. Peters went back and got a new card or a
12 completed card?

13 A. Yes. Or he didn't, and so he didn't submit it.

14 Q. Was Mr. Peters disciplined in any way, a verbal warning,
15 written warning, a suspension?

16 A. No, I mean it was only like -- literally like two or
17 three cards from what I remember.

18 Q. So the answer is no, he wasn't disciplined in any way?

19 A. No, he was not disciplined. He was -- we had to coach
20 him with a conversation about it.

21 Q. Was there anything put in his personnel file?

22 A. No, it was not.

23 MR. ANZALDUA: Your Honor, I may have a few more
24 questions, but it might be a time to take a break.

25 JUDGE MONTEMAYOR: Okay. We'll take a short break here,

1 recess break, 10 minutes.

2 **We're off the record.**

3 **(Off the record from 10:31 a.m. to 10:47 a.m.)**

4 **JUDGE MONTEMAYOR: We're back on the record.**

5 I remind you that you're still under oath. Counsel, you
6 may continue.

7 MR. ANZALDUA: No further questions, Your Honor.

8 **CROSS-EXAMINATION**

9 Q. BY MR. McDONALD: Good morning, Mr. Godfrey. How you
10 doing?

11 A. All right.

12 Q. Remember to try to speak up, speak clearly.

13 A. Good morning, sir. How are you?

14 Q. Good morning. I just have a few things I want to try to
15 clean up a little bit. Directing your attention to your
16 testimony earlier about John Archer, do you have a
17 recollection of what the issues were with respect to
18 Mr. Archer?

19 A. I do not. It was -- I know he was struggling at some
20 goals. I don't even know if it was a true, if it was a -- we
21 had a conversation with him around his goals, around his
22 goals in the field.

23 Q. Did it involve cards?

24 A. No.

25 Q. Did it involve a no call-no show?

- 1 A. No.
- 2 Q. Did it involve a failure to set up an event correctly?
- 3 A. No, it did not.
- 4 Q. But were they just general performance issues?
- 5 A. Performance issues.
- 6 Q. Okay. Did they bear any relationship to the matters
- 7 under which Javier was investigated and ultimately
- 8 terminated?
- 9 A. No, it was different.
- 10 Q. I want to back up and get a little more foundation.
- 11 When did you say that you first came to Local 1107?
- 12 A. It was in end of April, beginning of May of 2017.
- 13 Q. This was right after the imposition of the trusteeship?
- 14 A. It was 2 days after the trusteeship started.
- 15 Q. And you said you then worked continuously until a point
- 16 in time?
- 17 A. Until I think it was November 6 of 2017.
- 18 Q. Where are you employed currently?
- 19 A. SEIU International.
- 20 Q. Okay. Are you on assignment to a local union at this
- 21 time?
- 22 A. Yes.
- 23 Q. Where are you on assignment?
- 24 A. 1107.
- 25 Q. Okay. So was there a gap in time then?

1 A. Yes.

2 Q. When did you come back to be working at Local 1107?

3 A. November of 2018.

4 Q. So approximately a year?

5 A. It was exactly -- it was like exactly a year.

6 Q. Okay. In your role now, are you doing the same sorts of
7 work that you were doing in the trusteeship?

8 MR. ANZALDUA: Objection, relevancy, Your Honor.

9 JUDGE MONTEMAYOR: I'll allow the question. It's
10 background.

11 THE WITNESS: It's a little bit, it's a little bit
12 different, but basically I'm watching in the field, but it's
13 a little bit of a different role.

14 Q. BY MR. McDONALD: Do you still have the same title you
15 had during the trusteeship or earlier in the trusteeship?

16 A. No.

17 Q. What's your title now?

18 A. Right now I'm coordinator with the -- coordinating with
19 the -- coordinating at the field with the --

20 Q. And what were you during the time, your first stint with
21 Local 1107?

22 A. During my first stint, I was basically the field
23 director at the time.

24 Q. How does it differ between then and now?

25 A. Then I had to oversee the field operations, the

1 representation, the data person, all those things. Right now
2 it's primarily the field.

3 Q. I want to direct your attention to your testimony about
4 LaNita Troyano. What was the issue that was under
5 investigation with respect to her?

6 MR. ANZALDUA: Objection. Asked and answered, Your
7 Honor.

8 THE WITNESS: One membership --

9 JUDGE MONTEMAYOR: Hold on. The objection is asked and
10 answered. I'll allow the question. I'll give some leeway
11 here. He's refocusing him. Continue.

12 Q. BY MR. McDONALD: What was the issue with LaNita
13 Troyano?

14 A. It was a membership card from Sunrise.

15 Q. So it was not a TWR card?

16 A. No, it was not.

17 Q. It was a membership card. Was the card a complete card,
18 meaning it had all of its information and it appeared to have
19 been signed by the member?

20 A. Oh, absolutely. Yes, absolutely.

21 Q. Did you have a suspicion? What was the issue that you
22 were alerted to with respect to that card?

23 A. A member -- the member said that they didn't complete
24 the card, that they were trying to, that they were trying to
25 drop the Union. They weren't trying to sign up for the

1 (Witness excused.)

2 JUDGE MONTEMAYOR: We'll go off the record.

3 (Off the record from 1:53 p.m. to 2:08 p.m.)

4 MR. ANZALDUA: General Counsel calls Grace Vergara.

5 JUDGE MONTEMAYOR: Okay. Would you raise your right
6 hand?

7 (Whereupon,

8 GRACE VERGARA-MACTAL

9 was called as a witness by and on behalf of the General
10 Counsel and, after having been first duly sworn, was examined
11 and testified as follows:)

12 JUDGE MONTEMAYOR: Please have a seat.

13 DIRECT EXAMINATION

14 Q. BY MR. ANZALDUA: Hi, Ms. Vergara. Can you state and
15 spell your name for the record?

16 A. Grace Vergara-Mactal, V-e-r-g-a-r-a - M-a-c-t-a-l.

17 Q. And are you familiar with SEIU Local 1107?

18 A. Yes.

19 Q. How so?

20 A. I was assigned there in -- by the International, and
21 it's my employer right now.

22 Q. So when was your first employment with Local 1107?

23 A. November 2017. I can't remember the exact date.

24 Q. And that's the first time you ever worked for SEIU Local
25 1107?

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- 1 A. No.
- 2 Q. When was the first time?
- 3 A. 2000 I was assigned by the International.
- 4 Q. And you worked at SEIU Local 1107 until when?
- 5 A. It was one campaign. It was an external campaign for
- 6 the American -- the AMR.
- 7 Q. Okay. So it was a year maybe?
- 8 A. Less than that, maybe 6, 8 months. My assignment is to
- 9 help the workers obtain their own union, and then after they
- 10 win, I leave --
- 11 Q. Okay.
- 12 A. -- and get reassigned somewhere.
- 13 Q. So between 2000 and 2017, did you work at other
- 14 locations besides SEIU Local 1107?
- 15 A. Oh, yeah.
- 16 Q. About how often would you be at 1107?
- 17 A. I was assigned at 1107 multiple times. I was there in
- 18 2000 -- I want to say 5, and then I was there in 2008. Then
- 19 I was there in 2013.
- 20 Q. Anything else?
- 21 A. Oh, I'm sorry. Yeah, and then I came back in 2017.
- 22 Q. Were you there during the trusteeship transition around
- 23 April 28, 2017?
- 24 A. No.
- 25 Q. And you came November of 2017; is that correct?

1 A. I was permanently employed by Local 1107 in November
2 2017, but I was there mid-October as an International staff,
3 2017.

4 Q. Why did you -- why were you brought in as an
5 International staff in mid-October 2017?

6 A. I was transitioning to obtain a position in Local 1107
7 for November.

8 Q. And what was your title beginning November of 2017?

9 A. I was the field director.

10 Q. And what does that position do?

11 A. I oversee the day-to-day operation of the field,
12 organizers, internal organizing, and employees'
13 representation.

14 Q. And as a field director, did you have direct reports
15 that reported to you?

16 A. I'm sorry.

17 Q. As a field director, did you have people who reported
18 directly to you?

19 A. Yes.

20 Q. Who are they?

21 A. The leads, the field staff, the organizers, and the
22 representation.

23 Q. About how many employees does that include?

24 A. Approximately 20, 23, I would say.

25 Q. Now, in mid-October, before you became the field

1 director, while you were at the Local, did you have any
2 people who reported directly to you?

3 A. Yes.

4 Q. Who were they?

5 A. Helen Sanders and Yvette as the leads, and then there
6 are organizers that reports under them.

7 Q. So even though you hadn't become the field director yet,
8 they still reported to you?

9 A. It's typical.

10 Q. Okay. Who told you -- who gave you the assignment to
11 come back to Local 1107 in mid-October?

12 A. While I was International, I -- during my last few years
13 at International, I reported to Luisa Blue.

14 Q. So, you know, prior to mid-October 2017, you reported to
15 Luisa Blue?

16 A. Yes.

17 Q. And she's the one who told you to -- that your
18 assignment -- your next assignment would be at the Local
19 1107?

20 A. Yeah, including the chief of staff of the International,
21 Deedee Fitzpatrick.

22 Q. Can you spell that first name, please?

23 A. D-e-e-d-e-e, and then Fitzpatrick is the last name.

24 Q. Okay. And did she inform you of anything that was going
25 on in Local 1107?

- 1 A. Yes, I know that it's in trusteeship.
- 2 Q. Through that conversation or before that you knew?
- 3 A. Through that conversation.
- 4 Q. So the first time you found out about the trusteeship
- 5 was when Luisa Blue told you --
- 6 A. Um-hum.
- 7 Q. -- when your next assignment was there?
- 8 A. No.
- 9 Q. When was -- when did she tell you?
- 10 A. When it was being trustee'd.
- 11 Q. Back in --
- 12 A. I wasn't assigned to 1107 because I report to her. So
- 13 during our conversation, it comes out that 1107 got trustee'd.
- 14 This is after it got trustee'd.
- 15 Q. So when was that -- when did you first become aware that
- 16 1107 was put in trusteeship?
- 17 A. I was working in the API community in Virginia. It was
- 18 in 2017. I would like to say it was during July, August, or
- 19 maybe August because I was in Virginia.
- 20 Q. What, if anything, did Luisa Blue tell you in regard to
- 21 the trusteeship or why it was put in trusteeship?
- 22 A. Nothing very detailed because I wasn't assigned there.
- 23 She just said that the executive board voted to put the Local
- 24 into trusteeship because I used to work in 1107. I was
- 25 assigned there. So that's why she mentioned it.

1 Q. And did you tell her about your experience at 1107?

2 A. What do you mean?

3 Q. Did you tell her about, you know, your work experience
4 there at 1107? Did she know that you previously worked
5 there?

6 A. Oh, yeah. Yes.

7 Q. Did you tell her about any staffing issues that you had
8 while you worked there?

9 A. Well, we didn't discuss it, you know. Staffing is --
10 let me just be clear, that I'm clear with the question. So
11 did I talk to Luisa about the staffing issues in 1107 prior
12 to the trusteeship? Is that what the question was?

13 Q. Yes.

14 A. No.

15 Q. Did you discuss the staffing issues that were going on
16 during the trusteeship?

17 A. When I was there or -- I have to qualify the question.
18 Is it -- what kind of staffing issues, and then when is the
19 timeline?

20 Q. So when you first became aware -- so you said about July
21 or August of 2017?

22 A. Yes.

23 Q. So between that time and mid-October, did you discuss
24 any individuals in particular in regards to staffing with
25 Luisa Blue?

- 1 A. No.
- 2 Q. What about generally?
- 3 A. No, I was in Virginia, focused on my assignment.
- 4 Q. What about the Staff Union? Did you mention the Staff
- 5 Union to her?
- 6 A. No.
- 7 Q. Did she bring up the Staff Union to you?
- 8 A. No.
- 9 Q. When you got there in mid-October of 2017, you said you
- 10 had direct reports or you supervised employees, correct?
- 11 A. Yes.
- 12 Q. And were you involved in any disciplinary issues with
- 13 any of them?
- 14 A. No.
- 15 Q. No.
- 16 A. Not in October. Is that the question?
- 17 Q. Right.
- 18 A. When I was there in October?
- 19 Q. Yeah.
- 20 A. No.
- 21 Q. What about -- were you involved in any investigations
- 22 into employees?
- 23 A. Yes.
- 24 Q. In October?
- 25 A. No.

1 Q. Which -- when did you start getting involved in
2 investigations?

3 A. It was, it was the -- God, I can't remember. It was --
4 was it December of -- I'm sorry. I can't recall the exact
5 date, the month.

6 Q. Was it in 2017 or 2018?

7 A. I might be 2018. I don't -- I really -- I honestly
8 can't remember.

9 Q. Well, how many investigatory -- investigations have you
10 participated in since you've been -- since you went back in
11 mid-October 2017?

12 A. Since October to now?

13 Q. Yes.

14 A. Two.

15 JUDGE MONTEMAYOR: Did you say two?

16 THE WITNESS: Two, yes.

17 Q. BY MR. ANZALDUA: And about when did those occur? Do
18 you know?

19 A. I can't remember, but it's sometime -- I'm trying to
20 remember. I really can't. Sorry.

21 Q. Do you remember who those individuals were?

22 A. Yes, it was Melody Rash and -- well, Susan is not an
23 investigatory meeting. So it was Melody Rash. I correct
24 myself. It's just one investigatory meeting.

25 Q. Melody Rash?

- 1 A. Yes.
- 2 Q. Okay. And you're not sure about the date?
- 3 A. I can't remember the date.
- 4 Q. And did you -- for Ms. Rash, did you attend the
- 5 investigatory meeting?
- 6 A. Yes.
- 7 Q. All right. Have you made any recommendations for
- 8 discipline since mid-October to now?
- 9 A. For Melody Rash, yes.
- 10 Q. What was her discipline over? Or was she disciplined?
- 11 A. I'm sorry.
- 12 Q. Was she given discipline?
- 13 A. Yes.
- 14 Q. What was she given?
- 15 A. She was suspended.
- 16 Q. What was the reason for her suspension?
- 17 A. She missed to schedule a FMCS in a fairly important
- 18 arbitration twice.
- 19 Q. FMCS, can you explain what that is?
- 20 A. It's the -- so what happened is, if there's an
- 21 arbitration, our staff, which in that situation, it was
- 22 Melody Rash usually will schedule who will be the arbitrator
- 23 for a case, and it has to be done in a very timely manner.
- 24 There is deadlines, and she missed a deadline twice, and if
- 25 that happens, then the management will not agree to arbitrate

1 and would have an adverse effect to our members, right. So
2 that's how important that FMCS is, federal mediation.

3 JUDGE MONTEMAYOR: Twice in the same case or two
4 different cases?

5 THE WITNESS: Two different cases.

6 JUDGE MONTEMAYOR: Say that again. I'm sorry.

7 THE WITNESS: Two different cases.

8 JUDGE MONTEMAYOR: Two different cases.

9 THE WITNESS: Yeah.

10 JUDGE MONTEMAYOR: Okay.

11 Q. BY MR. ANZALDUA: Was Ms. Rash -- you said her title was
12 an organizer?

13 A. No.

14 Q. What was her title?

15 A. She was a confidential assistant I think to -- she was a
16 confidential admin person, assistant to Martin Manteca, but
17 her scope of work includes the arbitration preparation.

18 Q. Was she in the bargaining unit?

19 A. No.

20 Q. Of the Staff Union?

21 A. No.

22 Q. So when this happened, did the members lose their
23 grievance or arbitration case?

24 A. Yes.

25 Q. And what effect, if any, did that have on the Union?

1 A. There's a potential of DFR that a member can sue the
2 Union. So it's crucial for us to be able to meet those
3 timelines.

4 Q. Has that happened in any other circumstances that you're
5 aware of?

6 A. No, outside these two, no.

7 Q. Would you say that missing the FMCS deadline is more
8 severe than say failing to obtain a room at an event timely?

9 A. Not if -- if it's just failing to set up a room?

10 Q. That was the question, yes.

11 A. Right. So if it's just that, no.

12 Q. So the FMCS thing is more severe than that?

13 A. Yes. By the way, Ms. Rash is terminated.

14 MR. ANZALDUA: Your Honor, I move to strike that answer
15 from the record. It wasn't responsive to the question.

16 THE WITNESS: Sorry.

17 JUDGE MONTEMAYOR: I will deny the request. I'll let
18 the record speak for itself.

19 Q. BY MR. ANZALDUA: I'm going to go back to October 2017.

20 A. Okay.

21 Q. Did you have any role in the investigation into Javier
22 Cabrera's conduct leading up to his discharge?

23 A. Preparation to the investigation meeting, yes.

24 Q. I'm sorry. What was that?

25 A. Preparation to the investigation meeting, yes.

1 Q. And what does that mean?

2 A. That means I helped clarify the cards that was in
3 question and the debrief forms that was discovered.

4 Q. And you said the debrief forms that were discovered, and
5 are you -- are those the same debrief forms that Mr. Cabrera
6 informed you about that he may have submitted duplicates?

7 A. Yes, there was a second debrief form. She said he
8 submitted a debrief form on the 24th, when I was debriefing
9 him, and then when the question on the cards came about, the
10 next day, he sent an email saying that those must be a
11 duplicate on the 18th -- so we pulled that debrief out of the
12 file.

13 Q. From -- you pulled the one from the 18th out of the
14 file?

15 A. Um-hum.

16 Q. Okay.

17 JUDGE MONTEMAYOR: When you say uh-huh, what do you
18 mean?

19 THE WITNESS: I'm sorry.

20 JUDGE MONTEMAYOR: You said uh-huh.

21 THE WITNESS: Yes. Sorry.

22 Q. BY MR. ANZALDUA: Did you normally receive debrief
23 sheets from Javier Cabrera?

24 A. When I debriefed the staff myself personally, I get
25 debriefs from, yes, from the staff including Mr. Cabrera.

1 Q. So starting -- this is mid-October. So from mid-
2 October, and he was discharged on October 30, 2017, correct?

3 A. Yes.

4 Q. So how many times did Mr. Cabrera -- did you debrief
5 with Mr. Cabrera?

6 A. I wouldn't recall because I do a -- when I get a chance,
7 I liked to debrief the staff myself. So I would -- so if I
8 have a chance and I have the time, I will debrief them, and
9 at times, the leads will debrief them and then I get the
10 debriefs, but on the 24th I debriefed the staff.

11 Q. So sitting here today, the only one time that you can
12 recall is October 24th?

13 A. Yes.

14 Q. And why would you debrief them instead of the leads?

15 A. I'm a hands-on person. So I like to hear what's going
16 on in the field. So like I said, when I have time, I debrief
17 staff myself. And prior to the 24th, I did debrief the staff
18 myself. I just don't have a specific date if it's 21, 23,
19 right. So it was -- I thought that that was the question, if
20 I have a specific date.

21 Q. Okay. So between mid-October when you arrived and the
22 end of October, how many times did you debrief the staff?
23 Can you approximate?

24 A. More than five, yeah.

25 Q. And then in those situations, you would -- take us

1 through a debrief meeting. What's a typical debrief meeting
2 look like?

3 A. All the staff comes in. I have my notes, notebook, and
4 I would ask each individual how many, how many attempts of
5 conversation they make, how many actual conversations they
6 have, and I will take notes of that, and how many cards,
7 membership cards, how many TWR cards they have, and what is
8 the highlight of the conversation, and then at times, we have
9 a back and forth. If I want to give them feedback on the
10 conversation or I'm looking at the cards, I give them
11 instruction, so on a day-to-day basis.

12 Q. Are there times when an organizer doesn't have
13 anything -- any contacts that day, so they -- you know,
14 events scheduled or something scheduled where they didn't go
15 out and talk to members?

16 A. No.

17 Q. Every day they would have contacts?

18 A. They would have even a few because they have a goal on
19 how many contacts they're supposed to make every day or how
20 many cards they're supposed to collect days, but they will
21 have contacts because they're supposed to be in the worksite.
22 So you've got to be able to talk -- they've talked to workers
23 in the worksite. So they will have contacts. They might not
24 meet the goal for the day, but they have contacts.

25 Q. What was the goal for the day?

1 A. Oh, wow. I've got to remember this. I think it's two
2 cards a day, membership cards a day. I want to say 10, 15
3 conversations, and I cannot honestly say how many TWR cards.
4 I think the TWR cards, I hate giving bad numbers. It's just
5 not me. The TWR, I want to say five a day, but I'm not
6 certain.

7 Q. Is this -- are these written goals or are they
8 individualized?

9 A. It is group goals for the staff, for each staff, and
10 it's in the wall when you're new. Everything's not formally
11 written, but it's in the wall when we meet with staff.

12 Q. It's on the wall like it's --

13 A. Flowchart.

14 Q. Like a flowchart.

15 A. Um-hum.

16 Q. And do they change often, the goals?

17 A. Not at that time. I'm only there -- when I get there,
18 no, it's already there but --

19 Q. When you say get there, you meant when you got there to
20 1107?

21 A. Yeah, October, the goal was already set.

22 Q. And since you've been there, have goals changed?

23 A. Yeah, it changed depending on the campaign.

24 Q. Well, wouldn't some organizers be working on a different
25 campaign than others?

1 A. At that time, the TWR, which is the Together We Rise, is
2 a national program --

3 Q. Um-hum.

4 A. -- that we had worked in quite a long time. From the
5 time -- before I get there. From the time that I'm there,
6 that I know of, from the time that I'm there, to -- and it
7 went for a few more months because it's a national program
8 that the Local -- different locals in the states participate
9 in, particularly 1107. So we have a campaign in different
10 timeline. So then we'll move onto another campaign. For
11 example, like now, we are -- the public staff is working on
12 the contract campaigns with the county, right. But the goal
13 we make is for all the organizers.

14 Q. So after the -- you said the TWR campaign ended after
15 2 or 3 months that you were there?

16 A. I think -- yeah, it was for a while because again, like
17 I said, this is a preparation for the Janus case. So it was
18 from the time that I get there, it's already there, and they
19 want us to go until Janus case, the decision came down, and
20 extended for a few more months. I don't have exact how many
21 months, but it was an extended campaign because it is a
22 national campaign that we cannot just pull out.

23 Q. But the TWR campaign did end at some point?

24 A. Yes.

25 Q. And are you -- you may not know, do you know whether or

1 not this -- you mentioned the Janus decision. Do you know
2 whether that impacted people in Nevada at all?

3 A. In a general -- it wouldn't because we are a right to
4 work state, and the Janus, you know, as we all know, the
5 Janus case is for the public sector in like California and in
6 closed shop states. But as a union, we are responding to it
7 because we believe that it is a start of union busting that
8 would shrink our ability to be able to grow in Nevada.

9 Q. Would you say that the main goal of the TWR campaign was
10 to increase membership?

11 A. The main goal nationally? No.

12 Q. What was the main goal?

13 A. The main goal of that is to prepare the, like I said,
14 the states that are not right to work states, to be able to
15 recommit our members. Like basically, the TWR is for our
16 members to be able to say, I want to stick to my union no
17 matter what happen in the Janus case. So then -- so it is a
18 way to engage our members and get them more active. So we're
19 committing them to make the growth of the Union despite of
20 what happened in the decision. The TWR program happened
21 before the decision or started before the decision.

22 Q. All right. So these TWR cards, what -- you know, you
23 mentioned the commitment. What legal consequence did these
24 cards have on anything?

25 A. Those cards have a language at the bottom that would

1 give the Union permission to be able to communicate with them
2 via text, and I know that those are language that we have
3 legal wrote it, to make sure that, you know, we're putting
4 the right languages in it. And what it does is, for example,
5 if I would -- if I'm a member or I'm a potential member, fill
6 out the card, put my phone number, my email, and sign it, I'm
7 giving the permission to the Union to be able to text me
8 because there is a program, different programs now, but it's
9 called Hustle that you can text. You can do a mass text by a
10 Bechtel (ph.) campaign, which I think -- which we believe
11 that if we don't have the permission, we're not going to be
12 able to use the Bechtel campaign via text or a -- what do
13 they call it? The calls -- predictive dialing calls.

14 Q. Is there another way for a member to grant that
15 permission?

16 A. There is sign-in sheets that is formatted. It's a
17 template. The same language is at the bottom of it. That's
18 the only way we can get permission.

19 Q. So if a member didn't sign either one of those, they
20 wouldn't receive text messages from the Union?

21 A. Texts, no.

22 Q. It's your position that if they didn't sign either one
23 of those, then they wouldn't receive any text messages?

24 A. To the best of my knowledge, they shouldn't, but if they
25 don't fill it out, they shouldn't get it. But to the best of

1 my knowledge, they can't. They're not going to be able to
2 get the texts. So what we do with those cards and the
3 sign-in sheets is we give it to the admin and we update the
4 database, making sure that these people who don't want to
5 give us the permission -- and the database is the one that we
6 use to text people.

7 Q. All right. You kind of mentioned these debrief
8 meetings. So when you conducted debriefs with staff, what
9 did the leads do? Were they there?

10 A. Yes.

11 Q. The leads were present?

12 A. Um-hum.

13 JUDGE MONTEMAYOR: Um-hum.

14 THE WITNESS: Yes. Yes, they are. Thank you. Sorry.

15 Q. BY MR. ANZALDUA: Can you briefly explain what the job
16 duties of the leads were?

17 A. The leads are to -- it's very fluid. The roles in a
18 union organizing setting, internal or external, is very
19 fluid, but at that time, the leads are -- they are assigned
20 certain amounts -- numbers of staff, and they are to oversee
21 their day-to-day work, work plans, what they're doing in the
22 field, provide, you know, any kind of support that the staff
23 needs, and make sure that the program at the Local is carried
24 on in the field.

25 Q. Would the organizers report to the leads -- like were

1 they their next direct supervisor?

2 A. Yes.

3 Q. What about staff issues, like if they had to call off
4 one day? Would they inform their lead?

5 A. They will.

6 Q. And would that lead then inform you, or could they just
7 do -- handle that issue themselves?

8 A. They have to inform me.

9 Q. They have to inform you?

10 A. Yes.

11 Q. You're aware of all the employees who have called off?

12 A. I hope so, yes.

13 Q. And what do you do with it when you get one?

14 A. What do you mean?

15 Q. Like are you informed by them just telling you, or do
16 they send you an email?

17 A. At times -- most of the time, they send me an email or
18 text.

19 Q. And what do you do with that email or text?

20 A. If it's taking sick leave, I make sure that the, you
21 know, the finance knows who's taking PTO for the day or
22 making sure that the coverage in the field is taken care of.
23 So make sure that the field is covered.

24 Q. Who informed you of Javier Cabrera's absence on the 17th
25 of October?

- 1 A. He emailed me.
- 2 Q. Who was his lead at the time?
- 3 A. Helen.
- 4 Q. Helen Sanders?
- 5 A. Yes.
- 6 Q. And what did you do in response to the email that you
- 7 received from Javier Cabrera?
- 8 A. So the email was about -- requesting for coverage on a
- 9 morning visit for DFS, and so I talked to -- I mean I emails
- 10 Davere and make sure, like I said, when somebody is going to
- 11 be out sick, I make sure that the coverage is taken care of.
- 12 So that's why the conversation happened, and --
- 13 Q. Were you successful in obtaining coverage for the events
- 14 that day?
- 15 A. Yeah. Yes, Davere and Helen took care of it.
- 16 Q. What did you do in terms of the PTO hours? Did you
- 17 submit anything on his behalf for PTO or sick time?
- 18 A. I don't recall.
- 19 Q. He was never paid for sick leave or anything like that?
- 20 A. I wasn't a permanent staff. So the PTO will not be my
- 21 responsibility at the time. Me reporting, you know, who's
- 22 absent, the day and times, is just a courtesy to make sure
- 23 that the finance know where the staff are.
- 24 Q. Did you --
- 25 A. But I don't --

- 1 Q. Did you inform finance that day about Javier's absence?
- 2 A. I don't remember. I did. I went to his office.
- 3 Q. Whose office?
- 4 A. Sorry, the finance director at that time is Ken Ubani.
- 5 Q. How do you spell the last name?
- 6 A. U-b-a-n-i.
- 7 Q. And what did you inform him?
- 8 A. I'm sorry.
- 9 Q. What did you tell him?
- 10 A. I just told him that Javier will be -- wait. Sorry. I
- 11 informed him about the 16 but not the 17. I said Javier will
- 12 be out on the 16 because of a toothache.
- 13 Q. And was that the previous -- sorry. Strike that.
- 14 But you didn't tell him about the 17th?
- 15 A. No.
- 16 Q. Why not?
- 17 A. I had the impression that he will be working after the
- 18 dental appointment.
- 19 Q. What about for that dental appointment?
- 20 A. The staff typically gets paid full day if they work more
- 21 than 4 hours. And my impression, when I looked at the email
- 22 is he will be back because the doctor said the procedure is I
- 23 think he said 90 minutes, and that he's going to be okay.
- 24 That's what he said, that he will be okay. So my impression
- 25 is he'll be back -- he'll be at work.

1 Q. Okay. Earlier when I asked you about your involvement
2 with Javier Cabrera investigation, you said you helped
3 clarify the cards in question. How did you do that?

4 A. So on the 24th, when -- and, again, I'm a hands-on
5 supervisor. I checked and I looked at cards and debriefs. I
6 like to read them. So I -- there was something different in
7 the cards that were submitted by Mr. Cabrera, and we -- I
8 formed the conclusion that it was the same handwriting as his
9 handwriting, those seven cards. So the next day, we want to
10 confirm what happens in the cards. So there was random calls
11 that was made with Yvette, that Yvette did, and it result
12 that the members that we talked to said that they don't
13 remember filling out the cards. They remember few days back
14 that they were -- they saw Mr. Cabrera, but they don't
15 remember filling out the cards. So we put those cards
16 together. I pulled the debrief on the 18th, because I have
17 24th debrief, and that's when I looked, and it has the same
18 seven names that was on the 18th and 19th, and I -- yeah,
19 that's what we did. We put all the things together.

20 Q. All right. Just a few follow-up questions. Were you
21 aware that -- at that time, you said these cards were
22 submitted on the 24th?

23 A. Yes.

24 Q. Were you aware that Javier Cabrera was going to have an
25 investigatory meeting scheduled?

1 A. No.

2 Q. When did you first become aware of that?

3 A. The 25th, the next day.

4 Q. And that day you had -- did you direct Yvette to call
5 members?

6 A. Yes, that evening. We did that in the evening.

7 Q. After you found out about the investigatory meeting?

8 A. You know, the events was we had suspicion in the card,
9 and then we -- I reported it to Martin the next day. We
10 looked at the cards and then had Yvette call people. Wait a
11 minute. Who told me there would be an investigation? Yeah,
12 I did find out on the 25th.

13 Q. Before you had Yvette call the members?

14 A. Yes.

15 Q. And when did you report the card issue to Martin
16 Manteca?

17 A. On the 24th.

18 Q. What time of day?

19 A. It was late evening. It was late night, after I leave
20 the office. I work late. So, yeah.

21 Q. When did you leave the office? Do you recall?

22 A. A typical day in the office is 8:30 in the morning until
23 8 o'clock at night, to 8:30 at night. That's my typical
24 days.

25 Q. And you called him or -- did you call him?

- 1 A. Um-hum. Yes.
- 2 Q. You called him after you left the office?
- 3 A. No, I called him in the office.
- 4 Q. But later in the day?
- 5 A. Yes.
- 6 Q. Because when did the debrief occur that day?
- 7 A. They debrief around 5.
- 8 Q. Now, did Javier Cabrera talk to you about his debrief
- 9 sheet, or did he just place it on your desk?
- 10 A. The debrief, when we were debriefing, they usually hand
- 11 it to me, and then I have an interaction with them on the
- 12 24th.
- 13 Q. Right. I'm saying on the 24th, did Javier Cabrera talk
- 14 to you about his debrief sheet, or did he just place it on
- 15 your desk?
- 16 A. He handed it to me. We had an interaction. I talked to
- 17 him about it. I talked to the staff. This is during the
- 18 debrief because I debriefed them that day. I personally
- 19 debriefed the staff that day on the 24th.
- 20 Q. And where do these debriefs take place?
- 21 A. Where?
- 22 Q. Yeah.
- 23 A. There is what they call the E-board room in the office,
- 24 and that's where everybody -- that's where I gather
- 25 everybody.

1 Q. Is there desks in there that they're sitting, chairs and
2 stuff?

3 A. Um-hum. Yes.

4 Q. When you called Martin Manteca later that day on the
5 24th, what did you tell him?

6 A. I said, well, we debriefed today. You usually debrief
7 today before I go home or when I'm in the car, and Davere and
8 I will talk about the staff gone, or I know I called Martin,
9 and I said there is a concern about the cards that was
10 submitted that day.

11 Q. And what did you tell him the concern was?

12 A. That's because it looks like the cards were filled out
13 by the same person, by Javier, because I recognized his
14 handwriting, and he gave it to me, and it has his initial on
15 the card.

16 Q. Each one has JC on them?

17 A. Yes.

18 Q. What did Martin Manteca say in response?

19 A. He said to -- now, what did he say? I don't recall what
20 he said. But we were -- I was given instruction to do a
21 further, you know, investigation and make sure that, you
22 know, it wasn't a mistake.

23 Q. You don't recall what he said, but you know that he told
24 you to do an investigation?

25 A. Yeah, I think -- I don't remember the exact

1 conversation, but I think I was told to get together -- I was
2 told to get together with Davere because Davere was acting
3 field director at the time, and just keep in mind, I just got
4 there. So I'm still transitioning. So to get -- inform
5 Davere as well and so that we can check what's in the card.

6 Q. And did you call Davere Godfrey that day or the next
7 day, or did you speak to him?

8 A. He's always in the office late night with me. I can't
9 remember that day. He was in the office.

10 Q. So you discussed it with him, too?

11 A. Yeah. Yes.

12 Q. Did he inform you that he was already doing an
13 investigation in terms of a no call-no show?

14 A. I don't recall. I can't remember.

15 Q. But did you discuss with him, you were going to have
16 Yvette call members?

17 A. No, we didn't. I didn't.

18 Q. So take me to that conversation. When did you -- did
19 you decide to have Yvette call members?

20 A. This is on the 25th.

21 Q. So the following day --

22 A. Um-hum. Yes.

23 Q. -- you made that decision?

24 A. I made a decision, and because I want to make sure --

25 Q. I just asked if you made the decision or not?

1 A. I did. Sorry.

2 Q. Did you -- why didn't you call Javier Cabrera before you
3 told Yvette to call the members?

4 A. The call of the members happens in the -- late evening.
5 So I think -- I felt that, you know, knowing that the events
6 happened where I found the cards, not knowing that -- I
7 didn't know that he was given notification for the
8 investigatory for no call, and then the next day, when Paul
9 get to the office and I was in looking at the cards and
10 preparing for and doing an investigation of the card, I felt
11 that when he -- because Davere told me at that time, the
12 evening around 4, 3 o'clock, when we were all together, he
13 informed me that Mr. Cabrera rescheduled his meeting, and
14 then few minutes later, he sent an email saying, oh, that is
15 a duplicate. The cards that I gave you was a duplicate from
16 the 18th. I felt that there's something wrong. So I did the
17 further investigation and asked Yvette. So, yes, I had
18 suspicion, and that's why I asked Yvette to do a random call
19 to the member.

20 Q. But couldn't you have just quickly called Javier to ask
21 if he filled out the cards?

22 A. I know he filled out the cards.

23 Q. But then why did you have Yvette call members to see if
24 he filled out the cards or not?

25 A. I wanted to make sure.

1 MR. ANZALDUA: Just one moment.

2 Q. BY MR. ANZALDUA: What did you tell Yvette to do in
3 terms of calling people?

4 A. I told her to randomly call the member or the potential
5 member and ask them if they remember filling out the TWR
6 cards.

7 Q. But at that time you knew that they hadn't?

8 A. I'm sorry.

9 Q. At that time, you already knew that they hadn't done
10 that?

11 A. At that time, I know that they have not signed the card?

12 Q. Yes.

13 A. Yeah, because I know Javier's handwriting.

14 Q. And his initials are on it?

15 A. And his initials are on it.

16 Q. Were any of the cards signed on the signature line?

17 A. No.

18 Q. Were they dated?

19 A. No.

20 Q. Were you looking for a reason to fire Javier Cabrera?

21 A. No.

22 Q. In your experience with working with him, has he always
23 been a good employee?

24 A. He has his moments.

25 Q. What does that mean?

- 1 A. He don't meet goals.
- 2 Q. Are those the goals that you referenced that were on
3 flip boards and that changed at times?
- 4 A. Yes.
- 5 Q. Okay. About how often do employees call off in your
6 experience, since you've been back at 1107?
- 7 A. How often -- say that again. I'm sorry.
- 8 Q. Do employees call off?
- 9 A. How often they call off?
- 10 Q. Like do you get one call-off a week, or is it once a
11 month?
- 12 A. It's only --
- 13 Q. Because you said you get the notice of vacations, right?
- 14 A. I do. You know, since October to now.
- 15 Q. Right.
- 16 A. Probably two, three a month.
- 17 Q. And what about no call-no shows?
- 18 A. None.
- 19 Q. That hasn't happened?
- 20 A. No.
- 21 Q. You're not aware of any other no call-no shows?
- 22 A. No.
- 23 Q. Do you at least agree that Javier Cabrera was excused
24 from work for the first part of October 17th?
- 25 A. The morning.

- 1 Q. The morning of October 17th?
- 2 A. The morning of October 17th, yeah.
- 3 Q. So that part isn't a no call-no show?
- 4 A. If you want to be technical about it, I guess not.
- 5 Q. What is that?
- 6 A. A doctor's appointment.
- 7 Q. It is excused.
- 8 A. It is an excused doctor's appointment, which is typical
- 9 for staff to do.
- 10 Q. Have you ever disciplined anyone either since October
- 11 2017 or before that for a no call-no show?
- 12 A. No.
- 13 Q. Javier's the first one?
- 14 A. Yes.
- 15 Q. In your time with 1107, you know, even your prior stints
- 16 with them, have you disciplined anyone for filling out a
- 17 membership card incorrectly?
- 18 A. Membership card? No.
- 19 Q. What about -- I guess the TWR campaign started
- 20 September. What about for a TWR card?
- 21 A. There's no other staff that filled out the TWR card
- 22 themselves except for Mr. Cabrera.
- 23 Q. My question was did you discipline any other employees
- 24 for incorrectly filling out a TWR card?
- 25 A. Incorrectly filling out? The staff don't -- are not

1 supposed to fill out the cards. So, no.

2 Q. What about incorrectly getting a card from a member that
3 was filled out incorrectly?

4 A. I do coaching at the time that I'm receiving the cards.

5 Q. So if an organizer gives you these cards and you see
6 something wrong with it, you will coach them?

7 A. Yes, I'll say you cannot give us a card that is missing
8 information or says info on record, and then we give it back
9 to them and say that it's really important. I explain to
10 them the importance of making sure that the members are
11 filling out the cards and give back the cards and so that
12 they can get their signatures again and complete the form.

13 Q. And about how many of these coachings did you have with
14 other employees?

15 A. I don't know the exact numbers, but you know, Javier
16 give those cards --

17 Q. I'm not talking about Mr. Cabrera. I'm saying how many
18 coachings did you have with other employees?

19 A. If I debrief them and I see the cards, I make sure that
20 they know and they understand that they cannot do that and
21 that they need to get more information. If the leads debrief
22 them, they come to me and I remind the leads to remind the
23 staff. So I really can't give you a number of how many times
24 I will tell the staff that they have to make sure that the
25 member or the potential members are the ones that needs to

1 fill out the cards.

2 Q. So less than 10 coachings, more than 10 coachings?

3 A. Okay. I'll guesstimate. Probably --

4 Q. A hundred coachings?

5 A. No. Two or three times.

6 Q. Okay. So other than your involvement with the --

7 clarifying the cards and the debrief forms, did you have any
8 other involvement into the investigation of any other issues
9 for Javier Cabrera?

10 A. No.

11 Q. Do you know if Javier Cabrera was paid for October 17th?

12 A. If he was paid, I wouldn't know.

13 Q. Who would know that?

14 A. Him or the finance director. I don't know. I wouldn't
15 know.

16 Q. And the finance director was?

17 A. Ken Ubani.

18 Q. Is he still there?

19 A. Yes.

20 Q. Has Martin Manteca ever directed you to do an
21 investigation into any other employees?

22 A. No.

23 Q. As a result of your investigation of the cards and the
24 debrief sheets, did you make any recommendations to anyone
25 about what discipline should issue?

- 1 A. No.
- 2 Q. Were you asked about what his discipline should be?
- 3 A. No.
- 4 Q. So at the end of October 25th, after Yvette made the
- 5 calls to the members, what did you do with all this
- 6 information?
- 7 A. It was all given to Davere and Martin.
- 8 Q. You gave it to Davere and Martin?
- 9 A. Davere was in the 25th, when we were doing the
- 10 preparation or looking at the cards.
- 11 Q. So -- and was Martin there doing this --
- 12 A. No.
- 13 Q. -- investigation too?
- 14 A. No.
- 15 Q. How did you inform him?
- 16 A. We called him.
- 17 Q. You and Davere?
- 18 A. Yes.
- 19 Q. When was that?
- 20 A. The 25th, late that night.
- 21 Q. Sometime after Yvette had called all the members?
- 22 A. Yes.
- 23 Q. So pretty late at night then?
- 24 A. Yes.
- 25 Q. Was anyone else involved in that conversation?

1 A. No.

2 Q. Just you, Manteca, and Godfrey?

3 A. Yes.

4 Q. Can you explain for us what was said and by whom in that
5 phone conversation?

6 A. What I recall is I believe I said -- I reported what my
7 impression on what happened in the events, in terms of the
8 cards, the debriefs, they're being duplicated, and that, you
9 know, the first, the debrief on the 24th, that was given to
10 me, leave me under the impression that those names in the
11 debrief were contacted that day, and then when we pulled the
12 18th, because he said that it was a duplicate, but he never
13 said that on the 24th. On the debrief that I have, but when
14 he emailed that, we pulled the debrief, and I'm explaining
15 this to my team, and so then we found out that the same seven
16 names that was on the 24th was also on the 18th debrief.

17 So my impression is the 24th is when he contacted these
18 people, and then the 18th, I raised the issue of --
19 concerning being dishonest in terms of that reporting. And
20 then I reported him that we did a call, that the members that
21 we were able to contact says that they don't recall signing
22 the cards or filling out the cards, and that's about it,
23 that's my reports to him, and I raised the issue of concern,
24 the timing of events when he sent the email, felt like there
25 was some cover-ups that are happening.

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1 Q. You told Manteca and Godfrey that?

2 A. I said on the phone that that's how I feel.

3 Q. What else was said during that phone conversation?

4 A. He said give it to Davere and they will take care of it.

5 Q. Martin said that to you?

6 A. Um-hum. Yes.

7 Q. What did Godfrey say during that conversation? Do you
8 recall?

9 A. I don't.

10 Q. Do you recall what -- anything else that Martin said to
11 you guys?

12 A. No.

13 Q. About how long was that phone conversation?

14 A. I don't recall.

15 Q. Have you had any other conversations with Martin Manteca
16 and Davere Godfrey in regards to any other employee?

17 A. What do you mean?

18 Q. In regards to any other potential disciplinary or
19 investigations of any other employees?

20 A. No.

21 Q. So that was an unusual phone call then. It wasn't
22 something that you normally had?

23 A. Yes, it triggers on the suspicions and concerns.

24 MR. ANZALDUA: Your Honor, can I have a few minutes just
25 to see if there's any more questions I have for the witness?

1 JUDGE MONTEMAYOR: Okay. You may. Go off the record
2 for a minute.

3 (Off the record from 3:09 p.m. to 3:16 p.m.)

4 MR. ANZALDUA: Just a few more questions.

5 JUDGE MONTEMAYOR: The door is open back there. Grab
6 that.

7 Q. BY MR. ANZALDUA: Were you aware that Javier Cabrera was
8 previously discharged and reinstated by Local 1107?

9 A. I was aware he was discharged.

10 Q. How are you aware of that?

11 A. I was with 1107 when that happened.

12 Q. What was your position then?

13 A. I was assigned an International coordinator.

14 Q. What does a coordinator do?

15 A. It oversees the day-to-day operation of the field.

16 Q. So were you Javier Cabrera's supervisor?

17 A. At the time that he was discharged, no.

18 Q. Who was -- do you know who his supervisor was?

19 A. Yes.

20 Q. Who was that?

21 A. Brian Shepherd.

22 Q. Did Mr. Shepherd report to you?

23 A. No.

24 Q. Who did he report to?

25 A. He's also from International. So he reports to my boss,

1 Mary Grillo.

2 Q. Did you play any role in his discharge?

3 A. No.

4 Q. The investigation?

5 A. No.

6 Q. Did you later on become aware that he was reinstated?

7 A. No. Yes.

8 Q. When did you first become aware that he was reinstated?

9 A. When I came back, I saw him.

10 Q. In mid-October of 2017?

11 A. Yes.

12 Q. Did you hold the position of coordinator throughout that
13 time period? Is this 2013 or 2014?

14 A. The way it works is as an International staff, my
15 position and my title is coordinator. So when we get
16 assigned to the Local, we assumed the position of what the
17 Local needs. So at that time, because they needed a field
18 director or an organizing director, then I would assume that
19 title. So -- but -- so, yeah, I was an acting field director
20 at the time.

21 Q. So you were still being paid by the International
22 though?

23 A. Yes.

24 Q. But you were running the day-to-day business of the
25 Local?

1 A. Yes, it's a typical assignment for International to do
2 that at the locals.

3 MR. ANZALDUA: No further questions, Your Honor.

4 JUDGE MONTEMAYOR: Before I turn the questioning over, I
5 neglected to get the correct spelling of your name for the
6 record.

7 THE WITNESS: My name, sir?

8 JUDGE MONTEMAYOR: Yes, uh-huh.

9 THE WITNESS: Grace, Grace, the last name, Vergara-
10 Mactal, V-e-r-g-a-r-a - M-a-c-t-a-l.

11 JUDGE MONTEMAYOR: Thank you.

12 Counsel.

13 MR. McDONALD: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 Q. BY MR. McDONALD: Just a few brief follow-up questions,
16 Ms. Vergara-Mactal.

17 With respect to Mr. Cabrera and the result of the events
18 that led up to his termination on October 30, 2017, did you
19 decide to terminate him?

20 A. No.

21 Q. Did you decide that he should face discipline?

22 A. No.

23 Q. Who did?

24 A. Martin.

25 Q. Martin Manteca?

1 A. Manteca, yes.

2 Q. Refocusing your attention to the October 17th absence in
3 the afternoon, why did you have the impression that
4 Mr. Cabrera would be at work in the afternoon?

5 A. Because when we were emailing back and forth on the 16th
6 at night, I believe my last email was letting him know that
7 he will be covered, and I will see him tomorrow, which is the
8 17th, and I didn't get any email or response that he would
9 not be.

10 JUDGE MONTEMAYOR: Are you referring to the DFS or the
11 public defender?

12 THE WITNESS: The last email, Your Honor, that I sent is
13 the DFS is covered, I can't remember exact wordings that I
14 did, but it was covered and then I'll say -- then I said at
15 the end, I'll see you tomorrow.

16 Q. BY MR. McDONALD: If it will help to refresh your
17 recollection, to your right, there should be exhibits,
18 General Counsel's Exhibit Number 9 which has been admitted
19 into evidence. If you want to put it in front of you.

20 A. Sorry. Yeah.

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. What is this?

24 A. This is the email that went back and forth on the 16th,
25 talking about the assignments or the events that -- the Union

1 events that Mr. Cabrera is supposed to have on the 17th.

2 Q. The email you were just referring to about the public
3 defender visit, is that the email that begins on the
4 bottom -- the second page of this exhibit, a page that's
5 marked SEIU Nevada 71?

6 A. Yes.

7 Q. Did Mr. Cabrera ever communicate to you that he would
8 have to miss more of the day on the 17th?

9 A. No.

10 Q. Was that a problem?

11 A. Yes.

12 Q. Why was it a problem?

13 A. Because like I said earlier, if we know that the staff
14 will not -- will be absent, we need to cover any events or
15 any appointments with members that we have in the field, and
16 on that day, me not knowing that he's not going to be in, I
17 did not make any arrangements with Davere or Helen about the
18 public defender, and I was also expecting him to be doing the
19 phone banking.

20 Q. I want to now refocus your attention to October 25th.
21 This is the night where the cards issue -- you were
22 investigating the cards issues. You mentioned something
23 about an email you had received sometime late in the day from
24 Javier about the cards. Can you explain in a little more
25 detail about that?

1 A. I didn't know that on the 24th, the evening, he was told
2 by Davere Godfrey that he's going to have an investigatory
3 meeting on the 25th. So on the 25th in the afternoon, I
4 receive an email saying that he wanted to reschedule that
5 meeting. Wait, no. That email was about saying that the
6 cards that he gave me was about the contacts that he had on
7 the 18th, that it was a duplicate. It was for the 18th
8 visit. That's what he says in the email, if I remember it
9 correctly.

10 Q. I think you used the phrase that you felt there were
11 some cover-ups going on?

12 A. All right. So that one, I can explain that. So that
13 was my feeling at the time. So if I put things together, so
14 there was a problem in the card on the 24th, right, and then
15 I didn't know the time that Mr. Godfrey had told him that he
16 has an investigatory meeting on the 25th. So -- but when I
17 was looking at the card and looking at the debriefs, so the
18 next day, we wanted to investigate more and figure out what
19 happens to the cards. I was told that he, Mr. Cabrera,
20 postponed or rescheduled the meeting for the investigatory,
21 and then he sent an email saying that those cards are cards
22 from the 18th. So my purpose that I informed him is he saw
23 me -- he saw us looking at the cards. Then he felt that the
24 investigatory meeting is about the card, and that's why he
25 put out that email that says that's for the 18th. So I felt

1 like he's covering his steps.

2 Q. Did you have any conversations with Mr. Cabrera about
3 the cards prior to receiving that email?

4 A. No.

5 Q. Are you aware if anybody had any conversations with him
6 about the cards prior to Mr. Cabrera sending that email?

7 A. No.

8 Q. With respect to coachings and counselings on filling out
9 of these cards correctly, had you had opportunity to coach
10 Mr. Cabrera on those issues?

11 A. I believe multiple times.

12 Q. What do you recall about the coachings that you had
13 given Mr. Cabrera in particular?

14 A. So when he give me cards that are incomplete, that would
15 only say "info on record," I will reiterate multiple times to
16 him and to the other staff that we cannot have those cards
17 turned in like that, so that -- and then I send it back to
18 him and said we have to correct it and get it filled out by
19 the members or potential members.

20 Q. Were these coachings, were they occurring in a group
21 setting with the entire debrief group, or were these one-on-
22 ones?

23 A. It's --

24 Q. Or did they vary?

25 A. Well, it varies, but it's a group setting like this, but

1 I will talk to him directly, because when I do the debriefs
2 with the staff, I do it one-on-one conversation with them,
3 but with the staff, but with other staff that are being in
4 the room.

5 Q. So all of the staff present would have been able to hear
6 the issues that were coming up and -- to be simultaneously
7 receiving the guidance?

8 A. Yes, because that's why I liked being in a group so
9 people can learn, right, and hear feedback so they can learn
10 from.

11 Q. Did other organizers have problems with the TWR cards in
12 terms of them not being complete?

13 A. At times, maybe one or two.

14 Q. Did -- do you -- can you recall anyone in particular?

15 A. I can't.

16 Q. Do you recall if problems persisted with any of the
17 organizers with respect to incomplete cards?

18 A. Mr. Cabrera's.

19 Q. Can you recall problems with anybody else that
20 persisted?

21 A. No.

22 Q. When did you first become aware that Mr. Cabrera was
23 going to be terminated?

24 A. When they were drafting the letter. When they were
25 drafting the letter -- I can't remember. I think it was

1 Martin had told me that they would be terminating him.

2 Q. You were being informed after the decision had been
3 made?

4 A. Yes.

5 Q. To your knowledge, has Mr. Cabrera complained about not
6 being paid correctly for October 17th?

7 A. No.

8 Q. Is this today the first you're learning that that may be
9 an issue?

10 A. Yes.

11 MR. ANZALDUA: Objection, Your Honor. Misrepresents the
12 record. I don't think anyone said it was an issue unless the
13 witness said. I can't testify.

14 JUDGE MONTEMAYOR: I'll allow the question. I think
15 there was some questioning about that topic, and I think
16 that's her interpretation. So I'll overrule the objection.
17 I don't think he's necessarily misstating the record, but
18 continue.

19 MR. McDONALD: I have nothing further on that thread,
20 Your Honor. And, in fact, I think I have nothing further for
21 this witness.

22 MR. ANZALDUA: Just a few follow-up questions, Your
23 Honor.

24 **REDIRECT EXAMINATION**

25 Q. BY MR. ANZALDUA: Who made the decision to terminate

1 Javier Cabrera?

2 A. To my knowledge, it's Martin Manteca.

3 Q. Luisa Blue wasn't involved?

4 A. I don't know.

5 Q. Did you have any communications with Luisa Blue?

6 A. About?

7 Q. About Javier Cabrera's termination or investigation or
8 anything like that?

9 A. No.

10 Q. Did you regularly communicate with her in your job?

11 A. Yeah. Yes.

12 Q. So in mid-October through Javier's discharge, did you
13 have any communications with Luisa?

14 A. Not often because she -- she's not in the office all the
15 time. She's there. She's the trustee. So her and Manteca
16 meet and talk. I'm in the field. I'm working in the field.

17 So --

18 Q. So during that time period that I referenced, you don't
19 recall any conversations with her?

20 A. About Mr. Cabrera being terminated?

21 Q. Or any conversations -- well, let's start with any
22 conversations at all during that time period?

23 A. We had conversations about -- because at the time also,
24 we're thinking about the API, which is the Asian-Pacific
25 Islander project. So there's not a lot of specific

1 conversations.

2 Q. But you don't recall any conversations specifically
3 about Javier during that time period?

4 A. No.

5 Q. To your knowledge, has anyone ever been disciplined for
6 missing a phone banking session?

7 A. No.

8 Q. And you referenced some coachings that you had with
9 employees, and you're saying these coachings occurred during
10 debriefs?

11 A. Yes. We'll have discussions on -- yeah, I reiterate the
12 importance of what we're doing, how the cards should be
13 filled out when somebody gives me a card that's not filled
14 out correctly.

15 Q. And coachings are listed in the CBA, correct?

16 A. I think so.

17 Q. As a level of discipline?

18 A. I think, I think so it is.

19 Q. So were you informing them that this is a coaching or
20 did they -- or were they aware that they were being coached
21 during these debriefing meetings with you?

22 A. No, I would tell -- here's my understanding is, and I
23 could be confused about this, that when I'm giving the staff
24 an instruction or like repeatedly correcting the things that
25 they're supposed to do or not do, that I would think it is

1 non-punitive coaching, that I'm just trying to help people to
2 make sure that they meet what they're supposed to do.

3 Q. So the ones that you are doing in these debrief meeting,
4 you consider those non-punitive coachings?

5 A. Yes.

6 Q. And say, for instance, say it's for something else. Say
7 it's for some other goal or performance issue and you
8 provided a coaching and that employee didn't correct the
9 action. What would be your next step?

10 A. I did not have that that I can recall.

11 Q. You never issued any other levels of discipline besides
12 coachings?

13 A. After Mr. Cabrera?

14 Q. Yeah, or anytime --

15 A. Yes, I did.

16 Q. What levels did you issue?

17 A. Well, one with Ms. Rash, Melody Rash, and I think it was
18 a verbal, but I can't remember. The one with Ms. Smith.

19 Q. And you did a verbal with her?

20 A. Yes, I think it's a verbal. I can't recall what the
21 level of discipline, but I did discipline her.

22 Q. Was Ms. Rash previously disciplined?

23 A. I wouldn't know. Before me?

24 Q. Right.

25 A. I wouldn't know.

1 Q. But in your determination of the issuing of suspension,
2 why didn't you discipline her at a lower level?

3 A. Because we believed that the offense was egregious
4 enough. It's impacted our members, and it's an important
5 task that she missed.

6 Q. Are any of these non-punitive coachings in the debrief
7 meetings recorded in person's personnel files?

8 A. No.

9 Q. So to your knowledge, there's nothing written to Javier
10 Cabrera saying this is how you should fill out the TWR cards?

11 A. Say that again.

12 Q. Is there anything written addressed to Javier Cabrera
13 indicating this is how he should fill out the TWR cards?

14 A. Well, formally now, but a tenure organizer, the
15 expectation is that they know what, you know, how to do and
16 what to do.

17 Q. My question is about anything written about TWR cards
18 addressed to Javier Cabrera? There's nothing that you're
19 aware of?

20 A. Nothing in formal writing.

21 Q. You said that you became aware of Javier Cabrera's
22 termination after the decision was made?

23 A. Yes.

24 Q. And Martin Manteca informed you?

25 A. Yes.

1 Q. What specifically did he tell you?

2 A. He said we're going to release Mr. Cabrera or Javier.

3 Q. He said release?

4 A. I can't remember if it's release or terminate, but
5 either of those two terms, those are the words.

6 Q. And then what else did he say?

7 A. Nothing.

8 Q. Did he just walk by you and say we're going to release
9 Javier Cabrera?

10 A. No, we were in a conversation. I'm trying to remember
11 the date, the time. Just keep in mind, I was the field
12 director at the time, or I would be assuming the position.
13 So I had multiple conversations with Mr. Manteca. That would
14 be difficult for me to segregate which one, but I remember
15 that he said in one of those conversations that Mr. Cabrera
16 will be terminated or released and -- because of what
17 happened, and then we moved onto another subject which
18 typically the conversation is what's the goal today, what
19 happened today, what happened tomorrow, what's the plan, you
20 know. So it's a typical conversation of reportings and
21 what's going on.

22 Q. Was one of the staff being discharged a typical
23 conversation you would have?

24 A. That was the only -- he would usually let us know, or
25 me, what's going on with the staff, but I'm not involved at

1 the time, so --

2 Q. But that's the only time that anyone has ever told you
3 or Martin has ever told you that someone was going to be
4 discharged, right?

5 A. Yes.

6 Q. And obviously, then, that was unusual for you to hear
7 that?

8 A. Yes.

9 Q. But you don't recall other than that statement, you
10 don't recall anything else about the conversation?

11 A. No. I don't even recall the day he said that. I just
12 know that in one of our conversations, he mentioned that
13 Mr. Cabrera will be released or terminated.

14 Q. What did you say in response when he informed you of
15 this?

16 A. I worked with International for 21 years, and one of the
17 things that we are trained to do is not to dwell on the local
18 politics or the local issues. So when I am trained, when
19 somebody says that, I'll say, because in my mind, it's their
20 decision. So I would just say, okay, and then I'll go on to
21 the next subject.

22 Q. So as far as you're concerned, you said okay and moved
23 onto the next subject?

24 A. That would be my answer to any inside politics of the
25 Union because I'm with International at the time.

1 Q. And why do you reference it as politics? As political,
2 is that another reason why he was discharged or --

3 A. No, no, no. Okay. No, that's not what I meant. What I
4 meant was normally in an International staff, right, so if
5 I'm assigned to a local, because I'm not a permanent staff of
6 the Local or anybody in the International staff are assigned
7 to the Local, we are not, we are not to engage in the -- in
8 any termination or, you know, we don't elaborate, right, on
9 what's happening, especially if the decision maker made the
10 decision already. So -- and when I say politics, I don't
11 mean the reason politics happened with Mr. Cabrera. I'm just
12 saying what's going on, the decisions that the decision
13 makers made. I typically or the International staff usually
14 don't get involved.

15 Q. Do you agree with Martin Manteca's decision to terminate
16 Javier Cabrera?

17 A. It's not my decision.

18 Q. I didn't ask if it was your decision. I asked do you
19 agree with it?

20 MR. McDONALD: Objection. Relevance.

21 MR. ANZALDUA: It goes towards motive and animus.

22 MR. McDONALD: I think the witness has already indicated
23 that she didn't exercise the decision. So --

24 MR. ANZALDUA: She was involved in events leading up to
25 his discharge though.

1 JUDGE MONTEMAYOR: Why is it relevant? If she --

2 MR. ANZALDUA: If she harbors animus during the animus,
3 and she reports it to the decision maker.

4 JUDGE MONTEMAYOR: The objection is overruled.

5 Q. BY MR. ANZALDUA: Do you agree with the decision that
6 Javier Cabrera was discharged?

7 A. Yes.

8 MR. ANZALDUA: No further questions, Your Honor.

9 MR. McDONALD: Just one brief question, Your Honor.

10 **RECROSS-EXAMINATION**

11 Q. BY MR. McDONALD: Why do you agree with it?

12 MR. ANZALDUA: Your Honor, I wasn't allowed another
13 follow-up on the -- I wasn't allowed leeway on an additional
14 follow-up?

15 JUDGE MONTEMAYOR: There's redirect, and then he gets a
16 follow-up.

17 MR. McDONALD: If it's within the scope, I think you'll
18 find that it is. I just want to ask the witness --

19 Q. BY MR. McDONALD: Why do you agree with the decision?

20 A. I've been doing this for a long time, 21 years, and we,
21 you know, we rely on the field staff honesty and integrity of
22 work to make decisions on what the strategy of the campaign
23 or the betterment of the growth of the Union and the members.
24 So if there is a question about the integrity of work and his
25 honesty and being fraudulent, then I believe that that person

1 is not trustworthy to -- it's hard to trust somebody that
2 they're reporting correctly to us, back to us what's
3 happening in the field, and it will be difficult for us to be
4 able to make a decision what's best for the members because
5 they are the first line in the field. So if they're
6 reporting incorrectly or if they are filling out cards that,
7 you know, is not filled by the members, especially in a very
8 important project nationally, I think that we all got to be
9 able to be proud of our job and have integrity with it.

10 MR. McDONALD: Nothing further.

11 JUDGE MONTEMAYOR: I just have one question about that
12 answer, and then I'll allow some follow-up from my question.

13 Strike that. I'm going to reserve for another witness
14 that question, okay.

15 THE WITNESS: Okay.

16 JUDGE MONTEMAYOR: You may step down.

17 THE WITNESS: Okay. Thank you, sir.

18 **(Witness excused.)**

19 JUDGE MONTEMAYOR: Go off the record here for a moment.

20 **(Whereupon, at 3:45 p.m., the hearing in the above-entitled**
21 **matter was continued, to resume the next day, Thursday,**
22 **February 28, 2019, at 9:00 a.m.)**

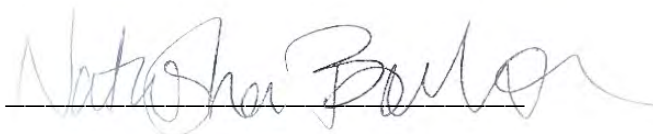
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CERTIFICATION

1
2 This is to certify that the attached proceedings before
3 the National Labor Relations Board (NLRB), Region 28, in the
4 matter of **SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1107**,
5 Case No. **28-CA-209109**, at Las Vegas, Nevada, on February 27,
6 2019, was held according to the record, and that this is the
7 original, complete, and true and accurate transcript that has
8 been compared to the recording, at the hearing, that the
9 exhibits are complete and no exhibits received in evidence or
10 in the rejected exhibit files are missing.

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17 Natasha Bachman

18 Official Reporter

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9 EIGHTH JUDICIAL DISTRICT COURT

10 DISTRICT OF NEVADA

11 * * * *

12 DANA GENTRY, an individual; and
13 ROBERT CLARKE, an individual,

14 Plaintiffs,

15 vs.

16 SERVICE EMPLOYEES INTERNATIONAL
17 UNION, a nonprofit cooperative corporation; *et*
18 *al.*

19 Defendants.

CASE NO.: A-17-764942-C

DEPT. NO.: 26

PLAINTIFFS' OPPOSITION TO
LOCAL 1107 DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

20 **APPENDIX I**

21 Dated this 11th day of November, 2019.

22 /s/ Michael J. Mcavaoyamaya

23 MICHAEL J. MCAVOYAMAYA, ESQ.
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Attorney for Plaintiffs

DECLARATION OF MICHAEL MCAVOYAMAYA ESQ.

I, MICHAEL MCAVOYAMAYA, ESQ., declare under penalty of perjury as follows:

1. I am the attorney of record in this case.

2. That in order to preserve and ensure that all arguments relating to preemption based on the legislative history of the LMRDA I am including in this appendix the entire 2000 page legislative history of the LMRDA.

3. The pdf is searchable.

4. The issue of federal preemption is discussed on the following pages of the legislative history: 258, 490, 497, 499-501, 993(2), 1023(3)-1024(1), 1029 (1-2), 1030 (1-3), 1108(2)-1113(3), 1120(2), 1142(3)-1159(2), 1165(3)-1174(2), 1180(3), 1246(1)-1253(1), 1266(1)-1269(2), 1272(1), 1287 (2,3), 1381(3)-1382(3), 1415(1), 1418(3)-1424(2), 1434(3)-1435(3), 1437 (1-2), 1503 (1-2), 1542(2), 1662(3)-1665(3), 1671 (1-2), 1753(1), 1766(3)-1768(3).

5. The following pages of the legislative history discuss the authority of state courts and agencies in asserting jurisdiction over claims involving unions. 24, 82, 141, 258, 333-334, 392-393, 400, 421-423, 450-451, 461, 469-470, 483, 498, 500-501, 515, 578-579, 618, 677-678, 746, 776-777, 852, 855, 940-941, 965, 972(2), 973(2), 976(2), 977(3), 979(3), 985 (2-3), 995(2), 1007(1)-1008(1), 1014(3), 1018(3), 1019 (2, 3), 1025 (1, 2), 1026 (1, 2), 1048(1), 1051(2)-1054(2), 1064(2), 1071(3), 1073 (1-3), 1081(3)-1082(1), 1084(2), 1141(3)-1159(2), 1165(3)-1174(2), 1262(3), 1272(3), 1289 (1-3), 1324(3)-1325(1), 1326(1), 1327(2), 1334(2), 1335(1), 1351 (1-2), 1360(3), 1361(3)-1371(3), 1373(2), 1377(2), 1378(3)-1380(2), 1382 (2-3), 1384(1), 1386(3), 1389(1), 1418(3)-1424(2), 1431(3), 1434(3)-1435(3), 1437 (1-2), 1443(2), 1444(3), 1446 (1, 2), 1447(1), 1454, 1480, 1488 (1-2), 1498 (2-3), 1522(2), 1538(1), 1552(1), 1554(3), 1555(3), 1565(3), 1578(3)-1580(2), 1582(2)-1583(1), 1586(3)-1587(2), 1617(3), 1628(3), 1644(2), 1647(3)-1648(1), 1662(3)-1665(3), 1671 (1-2), 1676(2)-1677(2), 1686 (1-3), 1687 (2-3), 1700(1), 1710(1), 1712, 1714(3), 1716(3), 1720 (1, 3), 1721 (1), 1722(1), 1723(3), 1728 (1-2), 1740(2)-1741(3), 1746(2), 1752(1), 1753(1), 1768(3)-1769(2), 1772(3), 1787(3), 1802(2), 1810(3), 1818(3)-1819(1), 1821(1), 1830 (1-2), 1832(3), 1834 (2-3), 1836(1)-1838(2), 1841(3), 1843(1), 1856(1).

6. The following pages of the legislative history discuss the interplay between federal and state jurisdiction. 23-24, 75-76, 82, 141, 332-334, 391-393, 398, 400, 421-423, 450-451, 461, 469-470, 480, 483, 498, 500-501, 515, 577-579, 592, 618, 677-678, 746, 760, 762, 763, 775-776,

807, 838, 841, 844, 852, 855, 858, 925, 940-941, 965, 969(2), 972(2), 973(2), 976(2), 977(3), 979(3), 985 (2-3), 991(1), 995 (1-2), 1002(1), 1007(1)-1008(1), 1014(3), 1018(3)-1019(3), 1023(3)-1024(1), 1025(2), 1026 (1, 2), 1029(1-2), 1030 (1-3), 1047(1), 1048 (1, 2), 1051(2)-1054(2), 1064(2), 1070(2), 1071(3), 1073 (1-3), 1081(3)-1082(1), 1084(2), 1103(3), 1141 (3)-1159(2), 1165(3)-1174(2), 1262(3), 1264(3), 1272(3)-1273(1), 1289 (1-3), 1315 (2-3), 1323 (1, 2), 1324(3)-1325(1), 1326(1), 1327(2), 1330(1), 1334(2), 1351 (1-2), 1360(3), 1361(3)-1371(3), 1373(2), 1375 (2-3), 1376 (1-2), 1377(2), 1378(3)-1380(2), 1381(3), 1382 (2-3), 1383(2), 1384(1), 1386(3), 1389(1), 1392(2), 1395, 1401(2), 1418(3)-1424(2), 1431(3), 1434(3)-1435(3), 1437 (1-2), 1443(2), 1444 (2-3), 1446 (1, 2), 1447(1), 1452(1), 1454, 1462(2), 1464(1), 1480, 1484(3), 1488 (1-2), 1498 (2-3), 1510(1), 1516 (1-2), 1522(2), 1535(3), 1538 (1-2), 1542(2), 1552(1), 1554(3)-1555 (1, 3), 1565(3), 1578(3)-1580(2), 1582(2)-1583(1), 1586 (3) -1587 (2), 1594(2), 1598(3), 1599(1), 1617(3), 1628(3), 1639(3)-1640(1), 1644(2), 1646(1), 1647 (2, 3)-1648(1), 1661(2), 1662(3)-1665(3), 1670(2), 1671 (1-2), 1676(2)-1677(2), 1686 (1-3), 1687 (2-3), 1689(2), 1700(1), 1703(3), 1710(1), 1712, 1714(3), 1716(3), 1718(3), 1720 (1, 3), 1721 (1-3), 1722(1), 1723(3), 1726(3), 1728 (1-3), 1736 (1-2), 1737(1), 1738 (1-2), 1740(2)-1741(3), 1746(2), 1752(1), 1753(1), 1756(1), 1767(2), 1768(3)-1769(2), 1770(3), 1772(3), 1775(2), 1778(2), 1780(2), 1782(3), 1794(2), 1802 (2-3), 1809 (1-3), 1810(3), 1818(3)-1819(2), 1821(1), 1822 (2, 3), 1823(2), 1830 (1-2), 1832(3), 1834 (2-3), 1836(1)-1838(2), 1841(3), 1842(3)-1843(1), 1855(3)-1856(1).

7. The following pages discuss the preservation of state right-to-work laws. *Id.* at 27, 78, 395, 425, 452, 580, 751, 778, 808, 929, 945, 967, 972(2), 985(3), 1085(1), 1262(3), 1325(1), 1327(2), 1488(2), 1587(2), 1643(3), 1773(3), 1819(2), 1823(3), 1838(2), 1842(1), 1860(1), 968(3), 972(2), 988(3), 1031(3), 1032 (1-2), 1040(3)-1041(1), 1271(2), 1285(1), 1459(2), 1464(3), 1469(2), 1510(3), 1551(3), 1572(1), 1718 (2-3), 1721 (2-3), 1726(1), 1727(2), 1728(2), 1731(2), 1741(2), 1767(3)-1768(3), 1782(3), 1798(3)-1799(2), 1809 (2-3), 1811(2), 1837(2), 1839(3), 1854(1).

8. This appendix is provided for the Court's ease of use, and to ensure the full legislative history will be in the docket for the purposes of any appeal.

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1 I declare under penalty of perjury that the foregoing is true and correct based on my own
2 personal knowledge.

3 Dated this 11th day of November, 2019.

4 /S/ Michael Mcavoyamaya

5 MICHAEL J. MCAVOYAMAYA, ESQ.
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86TH CONGRESS
1st Session

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SENATE

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REPORT
No. 187LABOR-MANAGEMENT REPORTING AND DISCLOSURE
ACT OF 1959

APRIL 14, 1959.—Ordered to be printed
Filed under authority of the order of the Senate of April 13, 1959

Mr. KENNEDY, from the Committee on Labor and Public Welfare,
submitted the following

REPORT

together with

MINORITY, SUPPLEMENTAL, AND INDIVIDUAL VIEWS

[To accompany S. 1555]

The Committee on Labor and Public Welfare, to whom was referred the bill (S. 1555) to provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, to provide standards with respect to the election of officers of labor organizations, and for other purposes, having considered the same, report favorably thereon, with amendments, and recommend that the bill do pass.

The amendments are as follows:

1. In line 22, page 3, strike out the word "employees" and insert in lieu thereof the word "employers".
2. In line 12, page 7, strike out the word "receive" and insert in lieu thereof the word "received".
3. In line 22, page 15, strike out the word "constructed" and insert in lieu thereof the word "construed".
4. In line 21, page 16, insert a comma after the word "person".
5. In line 9, page 17, strike out the words "labor organization or by such employer" and insert in lieu thereof the word "person".
6. In line 9, page 30, insert the word "labor" after the word "subordinate".
7. In line 12, page 37, strike out the word "recordings" and insert in lieu thereof the word "records".

8. In line 7, page 41, after the phrase "required by" strike the remainder of the sentence and insert in lieu thereof "its own constitution or bylaws except as otherwise provided by this title."

9. In line 17, page 44, strike out the word "expenditures" and insert in lieu thereof the word "expenditure".

10. In line 23, page 47, strike out the word "this" and insert in lieu thereof the word "the".

11. On page 49, strike out lines 8 through 13 and insert in lieu thereof the following:

tion to an employee but does not include the United States or any corporation wholly owned by the Government of the United States, or any State or political subdivision thereof."

12. In line 14, page 51, strike out the word "Railroad" and insert in lieu thereof the word "Railway".

13. In lines 5 and 6 on page 59 strike "the unit described in the petition" and substitute in lieu thereof "an appropriate unit".

All of the above amendments are of a technical, perfecting nature except No. 10. This amendment excludes unions of public employees who are not covered by the National Labor Relations Act or the Railway Labor Act from the coverage of the bill.

PART I—PURPOSE OF THE BILL

The committee reported bill is primarily designed to correct the abuses which have crept into labor and management and which have been the subject of investigation by the Committee on Improper Activities in the Labor and Management Field for the past several years. In its first interim report the McClellan committee made five legislative recommendations. One of these has been implemented in the passage of Public Law 85-836, the Welfare and Pension Plan Disclosure Act of 1958. The remaining recommendations: (1) To regulate and control union funds; (2) to insure union democracy; (3) to curb activities of middlemen in labor-management disputes; and (4) to clarify the "no man's land" between State and Federal authority; were the subject of a bill, S. 3974, which passed the Senate last year by an 88-to-1 vote, but failed to receive the approval of the House of Representatives. The committee-reported bill is based on the legislation approved by the Senate last year and thus it too implements the remaining recommendations of the McClellan committee. In brief, the bill, S. 1555, would accomplish the following:

- (1) Full reporting and public disclosure of union internal processes;
- (2) Full reporting and public disclosure of union financial operations;
- (3) All information required to be reported will be made available to union members in a manner prescribed by the Secretary;
- (4) Criminal penalties for failure to make such reports or for filing false reports;
- (5) Criminal penalties for false entries in and destruction of union records;
- (6) Full reporting and public disclosure of financial transactions and holdings, if any, by union officials which might give rise to conflicts of interest, including payments received from labor relations consultants;
- (7) Full reporting and public disclosures by employers of expenditures for the purpose of persuading employees to exercise, not to

exercise, or as to the manner of exercising their rights to organize and bargain collectively;

(8) Full reporting and public disclosure by employers of expenditures for the purpose of obtaining information concerning the activities of employees or unions in connection with a labor dispute;

(9) Full reports by employers of any direct or indirect loans to a labor organization or officer or employee of a labor organization;

(10) Criminal penalties for failing to file or falsification of reports required of employers and labor relations consultants;

(11) Provides Secretary with broad investigatory power, including the power of subpoena, to prevent violation of the reporting and other provisions of the bill;

(12) Authorizes the Secretary to bring a civil injunction in a district court of the United States to compel compliance with the reporting provisions of the act or any rules or regulations which he promulgates to insure compliance with these provisions;

(13) Criminal penalties for payments by "middlemen" to union officials;

(14) Full reports by employers of any arrangement with a labor relations consultant or other independent contractor by which such person undertakes to persuade employees to exercise or not to exercise or regarding the exercise of their rights to organize or bargain collectively;

(15) Full reports by any person who has an agreement with an employer to persuade employees to exercise or not to exercise or as to the manner of their exercising their rights to organize and bargain collectively; or who supplies information to an employer concerning the activities of employees or labor organizations in connection with a labor dispute;

(16) Prohibits persons who have been convicted of certain crimes from holding union office or employment within 5 years of having served any part of a prison term as a result of such conviction;

(17) Prohibits unions from paying the legal fees or fines of any person indicted or convicted of a violation of the bill;

(18) Full reporting and public disclosure of trusteeships imposed by national or international unions;

(19) Criminal penalties for failure to file or falsification of required reports relating to trusteeships;

(20) Prescribes minimum standards for establishment of trusteeships and sets limits on their duration;

(21) Authorizes Federal court proceedings to dissolve trusteeships when not imposed in accordance with provisions of the bill;

(22) Empowers Federal courts to preserve the assets of a trusteeship labor organization and limits the funds which may be transferred from a trusteeship labor organization to the international;

(23) Requires election of constitutional officers and members of executive boards of international unions at least every 5 years by secret ballot or by delegates elected by secret ballot;

(24) Requires election of constitutional officers and members of executive boards of local unions at least every 3 years by secret ballot;

(25) Protects freedom of opportunity to nominate candidates in union elections;

(26) Protects members' right to vote in union elections without being subject to improper interference or reprisals;

(27) Insures that every candidate for union office shall be afforded the opportunity to distribute at his own expense literature in support of his candidacy to all the members of the union;

(28) Requires that all candidates shall have the opportunity to have observers present at the balloting and at the counting of the ballots in a union election;

(29) Prohibits use of union funds to promote individual candidacy in union elections;

(30) Procedures whereby a union officer guilty of serious misconduct in office may be removed by a secret ballot vote after court proceedings if the union's constitution does not provide adequate machinery for such removal;

(31) Provides for investigations by the Secretary of members' complaints of improper procedures in union elections and court actions by the Secretary to set aside improperly conducted elections;

(32) Empowers Federal courts to direct new elections to be conducted under supervision of the Secretary where it finds union election was improperly conducted;

(33) Preserves members' rights to enforce union's constitution under State laws with respect to trusteeships and safeguarding fair procedures before an election;

(34) A congressional declaration of policy favoring voluntary self-policing, through adoption and implementation of codes of ethical practices, by labor organizations and employers;

(35) Establishment of an Advisory Committee on Ethical Practices composed of representatives of the public, labor organizations, and employers;

(36) Eliminates the "no-man's land" in labor-management relations by directing the National Labor Relations Board to exercise jurisdiction directly or with the aid of State agencies in all cases within its competence;

(37) State agencies may, by agreement with the National Labor Relations Board, administer the Federal act in accordance with procedures and substantive law applicable with regard to cases processed by the NLRB;

(38) Subjects shakedown picketing to criminal sanctions;

(39) Bans demand and acceptance by unions or union representatives of payments from interstate truckers of improper unloading fees;

(40) Permits with appropriate safeguards, prehire and 7-day union shop agreements in the building and construction industry;

(41) Clarification of the propriety of employer contributions to joint union-management apprenticeship funds;

(42) Restoration of voting rights to economic strikers;

(43) Criminal penalties for embezzlement, conversion, etc., of union funds;

(44) Establishes a prehearing election procedure with respect to labor disputes in which there are no substantive issues present in order to speed up the handling of cases by the National Labor Relations Board;

(45) Authorizes the President to appoint an acting General Counsel to the National Labor Relations Board when a vacancy occurs in that office.

These and other provisions of the bill not included in the foregoing brief summary represent a major attack on the abuses and problems

the candidate of his choice, without being subject to penalty, interference or reprisal of any kind by the union or its officers. This is a most important amendment submitted by the minority because to some degree it helps insure a democratic procedure in any election of union officers.

Section 302(b): The Secretary shall have the power to investigate complaints and where an invalid election is set aside, he shall supervise the conduct of the election *or hearing and vote upon the removal of officers.* Our amendment gives the Secretary the authority to supervise a hearing and vote upon the removal of officers. Further, the committee adopted our amendment which gives a court the power to preserve the assets of the union where a union election is being judicially challenged.

Section 302(c)(2): Where the court declares an election invalid and a new election is held *or the proceeding is for the removal of officers,* the Secretary shall certify the results of the election or the removal proceeding to the court for the issuance of a decree. Our amendment makes this procedure apply to the removal of officers as well as to the regular or usual election of union officers.

Section 303: This section provides that no labor union is required to hold elections with greater frequency than is required by this bill or its own constitution and bylaws. This means that a local union could continue to hold election of officers once every 5 years as provided by its constitution without violating the provisions of the bill even though the bill provides for elections at least every 3 years. This is a "gimmick" that the minority overlooked. The bill gives the appearance of requiring local unions to hold election of officers at least once every 3 years and internationals at least once every 5 years. But the language of this section provides the unions with an opportunity to amend their constitutions to require the holding of elections less frequently than provided in the bill, thus rendering the 3- and 5-year election provisions a nullity. It is the intention of the minority to offer an amendment on the floor to take care of this "gimmick."

Section 305(a): This section prohibits convicts from holding union office in certain cases *(other than an employee performing exclusively clerical or custodial duties).* Our amendment makes it clear that this prohibition does not apply to employees whose duties are purely clerical or custodial in nature.

Section 305(b): This section states that no person who is determined by the Secretary to have *"failed to file"* required information under the act can serve as a union officer. Our amendment substitutes "failed to file" for "violated" any provision of this title. The original language raises several points. First, the Secretary cannot determine who violates the act; that is for the court to determine. Second, where the Secretary did determine someone had violated the filing requirements, and the court subsequently finds the person not to have violated them because of, for instance, a proper plea of self-incrimination, that person would remain eligible to serve as an officer of the union. Our amendment rewrites this section so as to prohibit a person who is determined by the Secretary to have failed to file from holding union office, regardless of whether such failure to file is a "violation" of the bill.

This section also provides that a *labor union* or officer who knowingly permits a person to hold office in violation of this section would be

subject to a fine and imprisonment. Inasmuch as an officer holds office by permission of the union and not through another officer, our amendment makes it a crime for the union for violating the act. Without this amendment the provision would, for all practical purposes, have been a nullity.

Section 504: Our amendment adds a new section to the bill authorizing the Secretary to enter into arrangements or agreements with other Federal and State agencies. This provision would permit the Secretary to utilize the facilities of these agencies in order to aid him in carrying out the purposes of the act.

Section 506(a): Our amendment adds a new subsection to the bill making it unlawful for a union, its officer or any agent, to fine, suspend, or otherwise discipline a member for exercising his rights under this bill.

Section 506(b): Again, our amendment adds a new subsection to the bill making it unlawful for any person, by the use of force, violence or economic reprisal, to restrain, coerce, or intimidate a union member in the exercise of his rights under the bill. These two amendments provide the most important safeguards in the bill for protecting union members against reprisals for exercising even such inadequate rights as the bill confers upon them.

Section 507: *Nothing in this act shall be construed to impair or diminish the authority of any State to enact or enforce its own criminal laws.* Our amendment adds this section to the bill in order to preserve the authority of the States to apply their own criminal law against possible preemption by the Federal Government.

Section 602(a). It shall not be an unfair labor practice for an employer engaged in the building and construction industry to make an agreement covering employees engaged in the industry with a union because (4) such agreement specifies minimum training. In many crafts only union members can receive apprenticeship training inasmuch as only the union provides such apprenticeship training. Thus, our amendment, by striking out the word "apprenticeship", prevents the legalization of closed shop agreements which are now illegal under Taft-Hartley.

Section 606: Our amendment adds a new section to the bill authorizing the President to designate an officer or employee of the Board as acting General Counsel whenever a vacancy occurs in that office.

These amendments undoubtedly strengthen the safeguards for such rights as the committee bill bestows on employees and on rank and file union members. *Unfortunately, however, the bill, in fact, confers so few rights, and the few it appears to grant are so restricted and hedged about with difficult conditions and limitations, that the amendments successfully urged by the minority are like a stout lock on an empty strongbox. If the box had any treasure in it, the lock's presence would be invaluable. On an empty box the lock is meaningless.*

APPENDIX B

THE "GIMMICKS" IN THE COMMITTEE BILL

Even if the committee bill effectively did everything it appears to do, it would still be largely inadequate to accomplish the job of eliminating or even substantially diminishing abuses, corruption, and racketeering in the labor-management field. Its serious omissions in this respect, however, are considered in the body of the minority report. In this analysis the sole purpose will be to demonstrate that many of the provisions of the committee bill belie their own appearance, and in fact do not give employees and union members the rights, benefits, and protections which are claimed for them.

I. FIDUCIARY OBLIGATION OF UNION OFFICIALS (SEC. 2(b))

The bill does no more than declare that it encourages the faithful observance of fiduciary responsibilities by union officials by requiring them to make certain financial reports. But by the use of the word "fiduciary" in what is in fact merely the bill's preamble, an impression is created that something is being done about the fiduciary obligations of union officials. A minority amendment imposing fiduciary status on union officials and giving union members a right to sue in the Federal courts for breach thereof was rejected.

II. WHO IS A UNION "OFFICER"?

The sanctions of the committee bill are exclusively criminal and are directed mainly at union "officers" who fail to comply with its requirements—reporting of financial matters, and regulation of trusteeships, and of union elections. The U.S. Supreme Court has held that a union's "officers" are only those officials who are so designated by the union's constitution and that function is not the test. Thus, a union can rewrite its constitution so as to have only a single officer, its president for example. That means that those officials who perform the duties of vice president, secretary, treasurer, business agent, organizer, manager, member of an executive board, or other union governing body are not "officers" and hence completely free from the bill's requirements or sanctions. A minority amendment defining "union officers" to include all of these governing or policymaking officials was rejected.

III. LOANS BY UNIONS TO UNION OFFICERS, MEMBERS AND EMPLOYEES (SEC. 101(b)(4))

Unions must report all loans to union members and officials aggregating more than \$250. This enables the union leadership to make loans of \$250 or less to favored members or officials, to deny them to those union people who for one reason or another oppose the leadership, and to act in this discriminatory fashion without letting the membership know about it. A more effective device for permitting an incumbent union leadership to use union funds for perpetuating itself in office is difficult to imagine. Nevertheless, a minority amendment was rejected to require reporting of all such loans regardless of amount,

which by way of contrast, is just what the bill requires with respect to loans made by a union to any business enterprise.

IV. CONFLICT-OF-INTEREST REPORTING BY UNION OFFICIALS (SEC. 102(a))

Section 102(a) requires every union officer and every union employee receiving an annual gross from the union of more than \$5000 (except mere clerical employees) to report any conflict-of-interest transaction as set forth in the bill. Generally, these transactions are such as to put the union man on both sides of a labor-management situation at the same time, and they thus constitute a breach of his duty to his union. Because of the lack of definition of "officer" in the bill, all union policy-making and governing officials not designated as officers in the constitution, and who, if they are on the union payroll, receive less than \$5,000 per year, are freed from the requirement of reporting these fundamentally unethical transactions. This provides a gaping loophole for those dishonest union officials whose main source of income is derived not from their union salaries but from their conflict-of-interest transactions. A minority amendment was rejected to eliminate the \$5,000 salary limitation which would have then required all nonclerical union employees to report these transactions. By way of contrast, however, the majority did knock out the \$2,500 limitation on reporting of expenditures by employers for the purpose of influencing employees.

V. CONFLICT-OF-INTEREST BENEFITS DERIVED THROUGH A DUMMY OR STRAWMAN SETUP

A minority amendment designed to require reporting of benefits derived by a union official in a conflict-of-interest situation where the union official gets his unethical take from a third-party intermediary, was rejected.

VI. EXEMPTION OF SMALL UNIONS (SEC. 101(b))

Having agreed in subcommittee to a minority amendment eliminating the power of the Secretary to exempt small unions and employers from the financial reporting requirements, the majority, in full committee, put it back in again. Their argument was that such reporting would be burdensome to many small unions. However, the bill already contains a provision authorizing the Secretary to prescribe simplified reports where full reports would be burdensome. The result of retaining this exemption is to make it possible for some of the most corrupt unions, such as the Johnny Dio paper locals having few, or even no members, to evade the financial reporting requirements of the bill.

VII. INFORMATION IN REQUIRED FINANCIAL REPORTS TO BE MADE AVAILABLE TO UNION MEMBERS (SEC. 101(c))

This provision sounds as if union members would be given the information necessary for them to keep their union officials honest. Nothing could be more deceptive. Neither the union member, nor even the Secretary, can tell by looking at one of these required

those that require reporting by labor relations consultants, experts or advisers raise a problem in this regard because many of these people are lawyers and the people for whom they act are their clients. The American Bar Association within the past few weeks vigorously urged that the labor bills specifically protect this traditional aspect of the attorney-client relationship. The minority offered an amendment to that effect which was rejected, the argument being that it is already protected under existing law. As indicated, that is certainly true under State law—but it is questionable if Federal law would provide similar protection under the committee bill.

XXIV. REMOVAL OF OFFICERS (SECS. 301, 302)

Section 301(g) provides that if the Secretary, upon application of a member of a local union, finds that the constitution and bylaws of such local union do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed by the local's members so voting in a secret ballot election. The procedure allegedly provided for bringing this remedy into play is to be found in section 302. That section authorizes the Secretary to bring a civil action against the local union in a Federal court upon a complaint of a member of the local alleging that section 301 has been violated (i.e., that there is no adequate procedure for removal of officers in the local's constitution and bylaws) including violation "of the constitution and bylaws of the labor organization *pertaining to the election and removal of officers.*" Despite the italicized language which was added at the insistence of the minority, the phraseology of this provision (sec. 302(a)) is, at best, ambiguous in the extreme. It is exceedingly doubtful whether the Secretary is authorized to act on a complaint of a union member that his local's constitution and bylaws do contain an adequate procedure for the removal of officers, but the local or its officers is nevertheless refusing to comply with its own prescribed procedures in that regard. A close scrutiny of the language leads almost inevitably to the conclusion that these provisions establish a remedy in the courts through the Secretary *only* where the local's constitution and bylaws fail to provide an adequate procedure for removal of the local's elected officers, but do not give judicial relief where such a procedure exists but the local refuses to apply or follow it. The minority urged that section 301 (g) be modified to permit the Secretary to sue in the courts upon a finding that an adequate procedure was lacking or, where it was provided *was not being followed*, but the majority would not agree.

XXV. ALLOCATION OF JURISDICTION AS BETWEEN THE STATES AND THE FEDERAL GOVERNMENT AS CONTAINED IN VARIOUS PROVISIONS OF THE COMMITTEE BILL

The committee bill distributes its remedies as between the States and the Federal Government in accordance with no discernible standard or consistent principle. Some remedies are exclusively Federal, some are left to the States and denied to the Federal Government, some are given to the States but only if they apply Federal law, and some are allocated to both the States and Federal Government. In some instances, the majority insisted upon exclusive Federal juris-

diction asserting that absolute uniformity was essential; in others, it was insisted that diversity of treatment under varying State laws was absolutely necessary. The following are the eight major provisions in which an allocation of jurisdiction was made:

1. *Fiduciary obligations.*—The bill creates no Federal fiduciary obligation or remedy. This is left entirely to the States, which in fact, have no statutory law on the subject and very little case law. Interestingly, New York State has just enacted a labor reform bill which imposes stringent fiduciary obligations on union officials and gives union members themselves the right to sue for breach thereof. But the New York State AFL-CIO, the largest State labor federation in the country, with over 2 million members, opposed the bill, its principal objection being that State governments should permit the Federal Government to enact a law that would have a uniform effect throughout the country. This is exactly the reverse of the position taken by the majority in committee on the subject of fiduciary obligations and remedies.

2. *Suits to recover embezzled union funds.*—But, having taken this position on fiduciaries, the majority did an about-face and made an exception permitting union members to sue in either State or Federal courts under Federal law to recover embezzled union funds while preserving their right to bring a similar suit under State law in State courts. No reason for the difference in treatment is discernible.

3. *Embezzlement of union funds.*—This is made a Federal crime while preserving the right of the States to prosecute in State courts as a State crime.

4. *Extortion picketing.*—This adds a new Federal crime although it is already a crime under State law (which is not preempted) and probably a Federal crime as well under the Hobbs antiracketeering statute. What the effect is on the Hobbs Act, nobody knows.

5. *Extortion to permit unloading of trucks.*—Adds a new Federal crime although it is already a crime under State law (which is not preempted) and probably a Federal crime as well under the Hobbs Act, the effect upon which again is unknown.

6. *Trusteeships.*—(a) Creates a Federal court action by the Secretary of Labor for violation.

(b) Doesn't preempt State law remedies, but if a union member chooses the Federal remedy (through a suit by the Secretary) he can't use the State remedy.

7. *Election safeguards.*—(a) Creates a Federal court action by the Secretary to challenge an election which has already been held and preempts any similar State remedy. The Secretary's remedy is exclusive and is the only one the union member may use—he *loses* his State remedy.

(b) But if there are abuses in connection with an election prior to its being held, the bill provides no Federal remedy at all. The union member's only relief can come only through whatever State law may exist on this subject.

8. *The "no man's land."*—Here, everything is turned over entirely and exclusively to the Federal Government with a single unrealistic exception that the States may administer the Federal law *only* (Taft-Hartley) through administrative agencies and not the courts. These agencies would be virtually arms of the Federal Labor Board with little or no independent power or status, and in any event would be

permitted to take only those cases which were primarily local in character, and where although technically there was an effect on interstate commerce, such effect was remote and insubstantial.

APPENDIX C

DISCLOSURE OF CORPORATE FINANCIAL AFFAIRS

Aside from voluntary disclosures by many leading corporations to their shareholders and through their trade associations to the general public, there are mandatory or quasi-mandatory reporting requirements under State and Federal laws or under contractual agreements.

For the latter type, reference need only be made to the requirements of the New York Stock Exchange and other leading security exchanges. In order for a security to be listed the corporation must file an extensive preliminary statement of corporate conditions (capital stock setups; purpose of issue; character and application of the proceeds; a detailed list of subsidiary and controlled corporations; indebtedness; property owned; output for preceding 5 years; dividends owed or declared; balance sheets, income and surplus accounts of prescribed form and content) and agree to furnish prescribed annual reports (periodic statements of earnings, a balance sheet, income statement and surplus account).

STATE LAWS

Under State laws several methods are used to protect investors and the general public through various reporting and disclosure requirements. So-called blue sky laws are of two main types: fraud acts and regulatory acts. Virtually every State requires registration of new securities and filing of statements of corporate situation as a condition of the right to sell new securities within the State. The following State requirements are typical. This listing is not an exhaustive one.

SALE OF SECURITIES

Alabama: Every issuer whose securities have been registered must file periodic reports with the commission (attorney general), who is authorized to subpoena witnesses, examine them under oath, inspect records of issuer, investigate complaints * * *. The records of the commission are open to the public * * *.

Arizona: Registration required of officers or issuers includes statement of corporate structure, amount of securities outstanding and financial statements.

Arkansas: Detailed information must be submitted by corporation to State bank commissioner prior to sale of covered securities. Such information is open to the public.

California: No sale or offer of sale of covered securities is permissible without a permit of the corporation commissioner after filing required information giving full details.

Colorado: Issuers of securities within the scope of the act must file prospectus with commissioner of securities within 12 months next preceding offering: name and address of issuer; date business commenced; location and nature of undertaking; details of capital;

86TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } No. 741

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

JULY 30, 1959.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BARDEN, from the Committee on Education and Labor, submitted
the following

R E P O R T

[To accompany H.R. 8342]

The Committee on Education and Labor to whom was referred the bill (H.R. 8342) to provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass.

PART I. PURPOSE OF THE BILL

The committee reported bill is primarily intended to correct the abuses which have crept into the labor and management field and which have been the subject of investigation by the Senate Committee on Improper Activities in the Labor and Management Field for the past several years.

The first interim report of the McClellan committee contained a section which included certain legislative recommendations. The following is quoted from that report:

LEGISLATIVE RECOMMENDATIONS

The U.S. Senate Select Committee on Improper Activities in the Labor or Management Field recommends that the Congress of the United States give attention to the passage of legislation to curb abuses uncovered in 5 areas during our first year of hearings.

These recommendations are—

1. Legislation to regulate and control pension, health, and welfare funds;

2. Legislation to regulate and control union funds;
3. Legislation to insure union democracy;
4. Legislation to curb activities of middlemen in labor management disputes;
5. Legislation to clarify the "no man's land" in labor-management relations.

It must be noted that the committee has explored a member of other areas in labor-management relations and plans to present legislative proposals covering those areas at a future time. For instance, much testimony has been heard during past months on the infiltration of gangsters and racketeers into the labor movement. Additional testimony on this subject will be heard during the coming year and this, along with other subjects of committee interest, such as some phases of organizational picketing on which we have already had some testimony, will provide the basis for further legislative recommendations.

Since the above quoted report was issued, voluminous testimony has been heard by the McClellan committee and by the special subcommittee of the Committee on Education and Labor which emphasizes the need for legislation in the areas covered by the committee bill.

In brief the committee bill H.R. 8342 is intended to accomplish the following:

- (1) Require democratic procedures and safeguards within unions, designed to protect basic rights of union members;
- (2) Reporting and public disclosure of union internal processes;
- (3) Reporting and public disclosure of union financial operations;
- (4) All information required to be reported to be made available to union members;
- (5) Criminal penalties for failure to make such reports or for filing false reports;
- (6) Criminal penalties for false entries in and destruction of union records;
- (7) Reporting and public disclosure of financial transactions and holdings, if any, by union officials which might give rise to conflicts of interest, including payments received from labor relations consultants.
- (8) Report and public disclosure by employers of expenditures for the purpose of interfering with, restraining, and coercing employees in the exercise of their rights to organize and bargain collectively;
- (9) Reporting by employers of any direct or indirect loans to a labor organization or officer or employee of a labor organization;
- (10) Criminal penalties for failing to file or falsification of reports required by employers and labor relations consultants;
- (11) Provides Secretary of Labor with investigatory power, including the power of subpoena, to prevent violation of the reporting and other provisions of the bill other than title I;
- (12) Authorizes the Secretary to bring a civil action for an injunction in a district court of the United States to compel compliance with the reporting provisions of the act;
- (13) Criminal penalties for payments by "middlemen" to union officials;
- (14) Reports by employers of any arrangement with a labor relations consultant or other independent contractor by which such person

undertakes to interfere with, coerce, or restrain employees in the exercise of their rights to organize or bargain collectively;

(15) Reports by any person who has received payment pursuant to an agreement with an employer, to interfere with, coerce, or restrain employees in the exercise of their rights to organize and bargain collectively;

(16) Prohibit persons who are members of the Communist Party, or who have been convicted of certain crimes from holding union office or employment within 5 years of having served any part of a prison term as a result of such conviction except where such person having been convicted or imprisoned and his citizenship rights having been revoked, has such rights restored, or the U.S. Department of Justice Parole Board, authorizes such person's service as such officer, etc.

(17) Prohibit unions from paying the fines of any person convicted of a violation of this act;

(18) Reporting and public disclosure of trusteeships imposed by national or international unions;

(19) Criminal penalties for failure to file or falsification of required reports relating to trusteeships;

(20) Prescribe minimum standards for establishment of trusteeships and set limit on their duration;

(21) Authorize Federal court proceedings to dissolve trusteeships when not imposed or maintained in accordance with provisions of the bill;

(22) Empower Federal courts to preserve the assets of a trusteeship labor organization and limits the funds which may be transferred from a trusteeship labor organization to the international;

(23) Require election of constitutional officers and members of executive boards of international unions at least every 5 years by secret ballot of the members or by delegates elected by secret ballot of the members;

(24) Require election of constitutional officers and members of executive boards of local unions at least every 3 years by secret ballot of the members;

(25) Require that opportunity to nominate candidates in union elections be afforded union members;

(26) Protect members' rights to vote in union elections without being subject to improper interference or reprisals;

(27) Require that all candidates for union office shall have the opportunity to have observers present at the polls and at the count of the ballots;

(28) Prohibit use of union funds to promote individual candidacy in union elections;

(29) Require procedures whereby a union officer guilty of serious misconduct may be removed from office by secret ballot after court proceedings if the union constitution does not provide adequate machinery for such removal;

(30) Empower Federal courts to direct new election to be conducted under supervision of the Secretary where it finds union election was improperly conducted;

(31) Preserve members' rights to enforce union constitution under State laws with respect to trusteeships and safeguarding fair procedures before an election;

(32) Provide method of solution of the "no man's land" problem in labor-management relations by directing the National Labor Relations Board to assert its full jurisdiction and by providing for reorganization and enlargement of the Board to seven members to facilitate the handling of cases;

(33) Subject extortion picketing to criminal sanctions;

(34) Ban demand and acceptance by unions or union representatives of payments from interstate truckers of improper unloading fees;

(35) Permit prehire and 7-day union shop agreements in the building and construction industry;

(36) Repeal the provision in the National Labor Relations Act which prohibits economic strikers who have been replaced, from voting;

(37) Criminal penalties for embezzlement, conversion, etc., of union funds;

(38) Establish a prehearing election procedure where there are no substantial issues of fact or law and where no question of appropriate unit exists in representation cases handled by the National Labor Relations Board;

(39) Authorize the President to appoint an acting General Counsel to the National Labor Relations Board when a vacancy occurs in that office;

(40) Require bonding of officers and representatives of a labor organization and of a trust in which a labor organization is interested who handle funds or property of such organizations;

(41) Impose fiduciary obligations and responsibilities upon union officers and representatives;

The bill is intended to prevent, discourage, and make unprofitable improper conduct on the part of union officials, employers, and their representatives by required reporting of certain arrangements, actions, and interests. In some instances matters to be reported are not illegal and may not be improper but may serve to disclose conflicts of interest. Even in such instances disclosure will enable the persons whose rights are affected, the public, and the Government, to determine whether the arrangements or activities are justifiable, ethical, and legal.

In addition to comprehensive reporting the bill provides criminal penalties for actions which are clearly improper such as the embezzlement of union funds, tampering with or destroying union records, bribing employee representatives, and violation of the trusteeship or election provisions of the bill.

The joint subcommittee of the Committee on Education and Labor of the House of Representatives held extensive hearings. It developed voluminous records of testimony dealing with all areas covered by the committee bill. Upon conclusion of such hearings the Committee on Education and Labor went into executive session to consider the testimony available from the hearing reports of the joint subcommittee and all other available evidence, and to begin the task of writing a bill which would deal with the abuses which were disclosed by such evidence.

During the executive sessions the committee worked primarily from four major bills which were before the committee for consideration. Those bills were: S. 1555, as passed by the U.S. Senate, H.R. 4473, H.R. 7265, and H.R. 7680. Among other bills which were also re-

ferred to from time to time were S. 1137, H.R. 3540, S. 505, and H.R. 4474.

The committee bill H.R. 8342, which finally emerged from the deliberations of the committee after many executive sessions occurring during a period of more than 5 weeks, covers substantially the same areas of the labor-management field that are treated in S. 1555 as passed by the Senate.

Each of the two bills has seven titles and deals with the following major subjects.

1. Democratic procedures and basic rights of union members within labor organizations (title I of each bill).

2. Reporting of union financial and administrative practices by labor unions, and by officials and employees of unions relative to matters involving possible conflict of interest situations. Such reports to be made to the Secretary of Labor (title II of both bills).

3. Reports by employers and labor relations consultants in respect to certain activities involving labor-management relations. Such reports to be filed with the Secretary of Labor (title II of both bills).

4. Criminal penalties for failure to file and for falsification of reports and records.

5. Procedures to compel compliance with the reporting requirements.

6. Trusteeships—standards are established with respect to the establishment and continuance of such trusteeships, and reports thereon are required to be filed with the Secretary of Labor (title III of both bills).

7. Elections of union officers—Provisions to insure fair and honest elections at specified intervals (title IV of both bills).

8. Fiduciary and bonding requirements—Each bill imposes fiduciary responsibilities upon union representatives and requires bonding of representatives and employees of unions and of trusts in which labor organizations are interested, who handle or control funds or property of such organizations (title V of H.R. 8342 and title VI and III of S. 1555).

9. Amendments to the National Labor Relations Act, as amended, dealing with the no man's land problem, organization picketing, secondary boycotts, prehire agreements in the building and construction industry, voting by economic strikers, pre-hearing elections by the National Labor Relations Board in representation cases, appointment of an acting general counsel of the National Labor Relations Board by the President (title VII of both bills) and increasing the Board from five to seven members.

In some instances corresponding provisions of the two bills are identical. In other instances minor differences exist between corresponding provisions. In certain areas, however, major differences between the two bills do exist. Some of the latter variances involve substantive matter while others relate to procedures and remedies.

The Committee on Education and Labor after careful and lengthy consideration reports this bill favorably.

PART II. BACKGROUND AND NEED FOR LEGISLATION

The disclosures of the Committee on Improper Activities in the Labor and Management field resulting from the investigations conducted by that committee in the labor and management field during the past several years have revealed shocking abuses. Those abuses involve segments of the trade union movement and certain sections of management.

It is a fact beyond question that the trade union movement in the United States is facing difficult internal problems. Those problems have brought about tensions and repercussions which affect not only the trade unions and employers but the public as well.

Trade unions, during the past 30 years, have grown far beyond their beginnings as relatively small, closely knit associations of workmen. Many unions today number their members in the hundreds of thousands. Some of our trade unions now have in excess of 1 million members.

Some trade unions have acquired bureaucratic tendencies and characteristics. The relationship of the leaders of such unions to their members has in some instances become impersonal and autocratic. In some cases men who have acquired positions of power and responsibility within unions have abused their power and forsaken their responsibilities to the membership and to the public. The power and control of the affairs of a trade union by leaders who abuse their power and forsake their responsibilities inevitably leads to the elimination of efficient, honest and democratic practices within such union, and often results in irresponsible actions which are detrimental to the public interest.

Recognizing the need to bring about reforms in the trade union movement the American Federation of Labor-Congress of Industrial Organizations, formulated codes of ethical practices to guide its affiliated organizations in the conduct of their affairs in accordance with traditional principles of ethical conduct and democratic procedures. Nevertheless, effective measures to stamp out crime and corruption and guarantee internal union democracy cannot be applied to all unions except through the powers of Government nor is the federation demonstrably effective in policing specific abuses within its affiliated organizations. Furthermore, a large segment of the American trade union movement is not affiliated with the American Federation of Labor-Congress of Industrial Organizations.

The hearings of the McClellan committee have also disclosed evidence that some sections of management have refused to recognize that employees have a right to form and join unions without interference and to enjoy freely the right to bargain collectively with their employer concerning their wages, hours, and other conditions of employment. The hearings of the McClellan committee have shown that some employers have cooperated with crooks and racketeers in the labor movement at the expense of their own employees and contrary to the public interest. Some employers have employed so-called middlemen to organize "no-union committees" and engage in other activities to prevent union organization among their employees. It is essential that any legislation which purports to drive corruption and improper activities out of labor-management relations contain provisions dealing effectively with these problems.

from such types of harassment by an outside organization which is using such means to substitute itself as the representative of the employees of such employer; and (2) to preserve the dignity of the Board's election processes under the National Labor Relations Act, by outlawing picketing and threats to picket for such purposes within 9 months after a valid election has been held by the Board except where the picketing or threat to picket is by a labor organization which has been certified as the representative of such employees by the Board, or has been designated or selected as a representative for purposes of collective bargaining by a majority of the employees in a unit appropriate for such purposes.

PREHEARING ELECTIONS

The committee bill amends the National Labor Relations Act to provide for prehearing elections under certain circumstances. This provision should make an important contribution to speeding up the handling of a large percentage of election cases and eliminating a considerable amount of unnecessary work now performed by the Board's staff of legal assistants while at the same time providing substantive and procedural protection for parties at interest.

Section 9(c) of the National Labor Relations Act provides that when a question concerning representation exists a formal hearing must be held before an election unless such a hearing is waived by all of the parties. The result of this requirement is that time-consuming hearings are sometimes held on no-issues cases.

Section 704 of the committee bill would permit representation elections by secret ballot without the unnecessary delay accompanying many such cases under present procedures. During the last 19 months of the Wagner Act (7 months of fiscal 1946 and all of fiscal 1947), a form of prehearing election was used by the NLRB. The proceedings authorized by this new section would be similar to the earlier methods employed by the Board but would differ in two major and important respects. First, an election cannot be held under the pending proposal unless all parties have had the opportunity to present their views at a conference with the responsible officer of the Board. In 1946 and 1947 the election could be directed without holding the preliminary conference, and the propriety of the procedure could be tested only after the election had been held.

Second, in addition to the opportunity to be heard which section 704 gives every party at the conference, there is a provision for filing a stay of the election with the NLRB. In 1946 and 1947 the prehearing elections were almost exclusively on behalf of unions seeking representative status. Under the amendment, the prehearing election would be available not only to such unions, but also would be available in cases of petitions by employers and decertification petitions by employees.

Section 704 of the committee bill would permit elections to be directed as follows:

(a) Upon the petition being filed in the regional office, the agent of the Board determines if a consent election agreement can be signed; if not, he can ascertain if there are substantial issues of fact or law or if the appropriate unit is in dispute. If not, he can then call a joint conference of the parties.

(b) At such conference he may develop further whether there are substantial issues of law or fact and whether there is a dispute as to the appropriate unit.

(c) Absent substantial issues of fact or law and if the appropriate unit is not in dispute, a prehearing election could then be directed not sooner than 30 days from the date of receipt of notice of the filing of the petition.

(d) If one of the parties objected to the procedure he could file a motion for hearing with the Board, but such motion would not, unless specifically ordered by the Board, operate as a stay of the election.

(e) After the election was conducted either party would have the right to insist upon a hearing, the purpose of which would be to require the Board to pass upon the entire record of the case.

The committee believes that adoption of the prehearing election procedure as outlined above will result in a streamlining of Board procedures with resultant benefits to those directly concerned and others who use the Board's facilities. The procedure called for in section 704 preserves procedural due process and guards against "quickie" elections.

RIGHT OF ECONOMIC STRIKERS TO VOTE IN NLRB ELECTIONS

Section 9(c)(3) of the National Labor Relations Act, as amended, provides as follows:

No election shall be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

The committee bill would amend the above-quoted section by striking the second sentence which reads: "Employees on strike who are not entitled to reinstatement shall not be eligible to vote."

It is the opinion of the committee that the question of eligibility to vote should be determined by the Board after consideration of the particular circumstances involved whenever the question of whether such strikers are to be permitted to vote is presented.

RETENTION OF RIGHTS UNDER OTHER FEDERAL AND STATE LAWS

Section 603 of the committee bill states unequivocally that—

except as explicitly provided to the contrary, nothing in this act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and except as explicitly provided to the contrary, nothing in this act shall take away any right or bar any remedy to which the members

of a labor organization are entitled under such other Federal law or the law of any State.

OTHER IMPORTANT PROVISIONS

Acting General Counsel, National Labor Relations Board

The National Labor Relations Act, as amended, provides that the General Counsel of the Board shall be appointed by the President, by and with the consent of the Senate. The act places considerable responsibility on the General Counsel for it is he who issues complaints and performs other vital functions which, if there is a vacancy in the office, cannot be performed under the law by any other person. If such a vacancy occurs suddenly, or if there is delay in the nomination or confirmation of a nominee, the processing of labor relations cases through the Board machinery can virtually come to a halt.

The committee, recognizing this problem, agreed on the amendment which would permit the President to designate an officer or employee of the General Counsel's office to serve as an Acting General Counsel.

State criminal laws

Section 604 of the committee bill makes unequivocal the right of States to continue to operate in the criminal law field in the traditional, constitutional manner. The committee placed this provision in the bill to dispel any doubt that the Several States would not, under this bill, be deprived of their right to enact laws concerning or to prosecute any crimes including those crimes specifically mentioned in the bill, that is robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of the narcotics laws, murder, rape, assault with intent to kill, assault with intent to inflict grievous bodily injury, or conspiracy to commit any of such crimes. The committee by this provision simply reaffirms the established constitutional right of the States to exercise their police power with respect to those crimes mentioned in the bill, as well as all other crimes.

Powers of the Secretary of Labor

The committee bill places heavy reliance upon reporting and disclosure to union members, the Government, and the public to effect correction of abuses where they have occurred. However, the bill also endows the Secretary of Labor with power to insure effectuation of its objectives. While other sections of this report have referred to the role and power of the Secretary, this section recapitulates this power.

(1) The Secretary is empowered to receive, and examine for accuracy, information based on reports filed with him by unions, union officers, and employers covering union administrative and financial practice, trusteeships, union officer conflict of interests, employer expenditures and middlemen activity to interfere with the rights of employees under the National Labor Relations Act.

(2) The Secretary is also authorized to take certain actions to enforce various provisions of the bill and insure maintenance of minimum standards. He has power to—

(a) bring civil injunctions to compel compliance with the reporting provisions of the act;

(b) make investigations, armed with subpoena power, to determine whether there has been any violation of the act other than title I.

The committee believes that the powers granted to the Secretary by this bill combined with full reporting and disclosure to union members and the public provides a most effective combination of devices by which abuses can be remedied.

CRIMINAL CONTEMPT

Section 608 of the committee bill states unequivocally that—

No person shall be punished for any criminal contempt allegedly committed outside the immediate presence of the court in connection with any civil action prosecuted by the Secretary or any other person in any district court of the United States under the provisions of this act, unless the facts constituting such criminal contempt are established by the verdict of the jury in a proceeding in the district court of the United States, which jury shall be chosen and empaneled in the manner prescribed by the law governing trial juries in criminal prosecutions in a district court of the United States.

PRIORITY CASES

The committee bill contains a provision which would amend the National Labor Relations Act, as amended, to require the National Labor Relations Board to give priority to cases involving discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, over all other types of cases except cases given priority under subsection (1).

Inasmuch as such discrimination cases often involve an employee's loss of his job, and consequently the livelihood of himself and his dependents, the committee believes such cases warrant priority treatment.

SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1: Contains the short title of the bill "Labor-Management Reporting and Disclosure Act of 1959."

Section 2: Contains the congressional findings, purposes, and policy.

Section 3: Contains definitions of terms, as used in titles I, II, III, IV, V (except sec. 505), and VI of the bill.

Section 3(a): Defines "commerce" in substantially the same terms as does the National Labor Relations Act, as amended, and "State" as including any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf Lands Act (43 U.S.C. 1331-43).

Section 3(c): Defines "industry affecting commerce" as meaning any activity or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

ceeding shall be brought "except upon leave of the court obtained upon verified application and for good cause shown, which application may be ex parte." This subsection further provides that the court may allot a reasonable part out of any recovery in an action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member and to compensate such member for necessary expenses incurred by him in connection with the litigation.

Section 501(c): Provides that any person who embezzles, steals, or converts to his use or to the use of another any moneys or other property of a union of which he is an officer or by which he is employed directly or indirectly shall be punished by a maximum fine of \$10,000 or imprisonment for 5 years, or both.

BONDING

Section 502 (a): Requires bonding of officers, agents, shop stewards, or other representatives or employees of labor organizations who handle funds of such organizations or any trust in which such organization is interested. The bonding requirements of this subsection would not apply to labor organizations whose property and annual financial receipts do not exceed \$5,000 in value. Each bond shall be fixed at the beginning of the organization's fiscal year and is to be in an amount not less than 10 percent of the funds handled by the person to be bonded and his predecessors, if any, during the preceding fiscal year. Where there is no preceding fiscal year in the case of a local union, the bond shall be not less than \$1,000; in the case of an international union or trust, not less than \$10,000. The bond shall be individual or schedule in form and a corporate surety company is required to act as surety on the bond. It is specifically provided that no bond shall be placed through an agent or broker or with a surety company in which any union or any union officer, agent, shop steward, or other union representative has any direct or indirect interest. A surety company must be a corporate surety which holds a grant of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds. No person is to be allowed to handle or exercise custody or control of union or trust funds or property unless covered by a bond as hereinabove set forth.

Section 502(b): Makes willful violation of section 502 punishable by a maximum \$10,000 fine or imprisonment for 1 year, or both.

LOANS TO OFFICERS OF LABOR ORGANIZATIONS

Section 503(a): Prohibits unions from making loans to any union officer or employee which results in a total indebtedness to the union in excess of \$2,500.

Section 503(b): Prohibits employers or unions from directly or indirectly paying "the fine of any officer or employee convicted of any willful violation of this act."

PROHIBITION AGAINST COMMUNISTS, AND PERSONS CONVICTED OF
CERTAIN CRIMES HOLDING CERTAIN OFFICES AND EMPLOYMENT

Section 504(a): Bars any person who is a member of the Communist Party or who has been convicted of committing certain specified crimes, i.e., robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III, or conspiracy to commit any such crimes, from holding responsible union office or employment (except clerical or custodial employment) for a period of 5 years after such conviction or imprisonment. The identical sanctions apply with respect to labor relations consultants to persons engaged in an activity affecting commerce and officers, agents, or employees (except clerical or custodial employees) of employer associations "dealing with any labor organization." This subsection specifically provides that such persons may hold responsible union office or act as a labor relations consultant or as a responsible officer, agent, or employer of an employer association dealing with a labor organization if prior to the 5-year period, (1) his citizenship rights have been restored, or (2) the Board of Parole of the U.S. Department of Justice determines that such person's service in any capacity referred to hereinabove would not be contrary to the purposes of this bill. Requires that prior to making a determination, the Board shall hold an administrative hearing, after giving notice by certified mail to the State, county, and Federal prosecuting officials in the jurisdictions in which such person was convicted. The Parole Board's determination shall be final.

Section 504(b): Makes willful violation of section 504 punishable by a maximum fine of \$10,000 or imprisonment for 1 year, or both.

Section 504(c): Specifies that for purposes of section 405 a person who has been convicted is deemed to have been "convicted" and under disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of the judgment on appeal, whichever is later.

AMENDMENT TO SECTION 302, LABOR MANAGERMENTS
RELATIONS ACT, 1947

Section 505: Amends subsections (a), (b), and (c) of section 302 (relating to restrictions on payments to employee representatives) of the Labor Management Relations Act, 1947, as amended, in order to clarify certain ambiguities which have arisen under existing law. Under existing law it is illegal for an employer to pay or deliver anything of value to a representative of his employees, except in those instances permitted by subsection (c) of section 302. The purpose of these amendments to section 302 is to forbid any payment, loan, or bribe by an employer, employer association, or anyone acting on an employer's behalf, i.e., labor relations consultant. The demand or acceptance of such payment, loan, or bribe is also proscribed. This section also makes it unlawful for any labor union or its representative to demand or accept improper unloading fees from interstate truckers. This prohibition applies specifically to motor vehicles

as defined in part II of the Interstate Commerce Act.¹ However, the proviso makes clear that this prohibition is not intended to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

This section also provides that the general prohibitions in section 302 upon employer payments to unions is not to apply to specifically exempted payments, i.e., money deducted from the wages of employees pursuant to valid written assignment for union membership dues, payments to trust funds for medical care, insurance, or unemployment benefits, etc., pursuant to valid written agreement, nor to employer payments to trust funds for pooled vacation, holiday, severance, or similar benefits, or apprenticeship or other employee training programs.

TITLE VI. MISCELLANEOUS PROVISIONS

INVESTIGATIONS

Section 601(a): Provides that the Secretary of Labor shall, when he has probable cause to believe that any person has violated any provision of this act, other than a provision of title I, make an investigation, and in connection therewith he may inspect such records and accounts as may be necessary to enable him to determine the facts relative thereto.

Section 601(b): Provides that for the purpose of any investigation provided for in this act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor, or any officers designated by him.

EXTORTIONATE PICKETING

Section 602(a): Provides that it shall be unlawful to carry on picketing on or about the premises of any employer for the extortionate purpose of, or as part of any extortionate plan or conspiracy for the purpose of, taking or obtaining any money or other thing of value from any employer.

Section 602(b): Provides that any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned not more than 1 year or both.

RETENTION OF RIGHTS UNDER OTHER FEDERAL AND STATE LAWS

Section 603(a): Provides that except as explicitly provided to the contrary, nothing in this act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary,

¹ Part II of the Interstate Commerce Act (title 49, U.S.C., sec. 303), subsection (a), paragraph (13), provides: "(13) the Term 'motor vehicle' means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include any vehicle, locomotive, or car operated exclusively on rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service."

nothing in this act shall take away any right or bar any remedy to which members of a labor organization are entitled under any other Federal law or law of any State.

Section 603(b): Provides that nothing contained in titles I, II, III, IV, V (except sec. 505), or VI of this act shall be construed to supersede or impair or otherwise affect the provisions of the Railway Labor Act, as amended, or any of the obligations, rights, benefits, privileges, or immunities of any carrier, employee, organization, representative, or person subject thereto; nor shall anything contained in said titles of this act be construed to confer any rights, privileges, immunities, or defenses upon employers, or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.

ENACTMENT AND ENFORCEMENT OF STATE LAWS

Section 604: Provides that nothing in this act, shall be construed to impair or diminish the authority of any State to enact and enforce general criminal laws with respect to robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or assault with intent to inflict grievous bodily injury, or conspiracy to commit any of such crimes.

SERVICE OF PROCESS

Section 605: Provides that for the purposes of this act, service of summons, subpoena, or other legal process of a court of the United States upon an officer, or agent of a labor organization in his capacity as such shall constitute service upon the labor organization.

ADMINISTRATIVE PROCEDURE ACT

Section 606: Provides that the provisions of the Administrative Procedures Act shall be applicable to the issuance, amendment, or rescission of any rules or regulations, or any procedure authorized or required pursuant to the provisions of this act.

OTHER AGENCIES AND DEPARTMENTS

Section 607: Provides that, in order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary of Labor may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this act and the functions of any such agency as he may find to be practicable and consistent with law. He may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. Each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this act. This section further provides that the Attorney General of the United States or his representative shall receive from the Secretary of Labor

for appropriate action, such evidence developed in the performance of his functions under this act, as may be found to warrant consideration for criminal prosecution under the provisions of this act or other Federal law.

In adopting section 607, the committee eliminated the language which appeared in section 605 of S. 1555, "and the Secretary may refer to any governmental agency any evidence obtained by him which may tend to show violation of a statute administered by that agency" only because the committee thought it was unnecessary inasmuch as the Secretary already has that authority.

CRIMINAL CONTEMPT

Section 608: Provides that no person shall be punished for any criminal contempt allegedly committed outside the immediate presence of the court in connection with any civil action prosecuted by the Secretary of Labor or any other person in any district court of the United States under the provisions of this act unless the facts constituting such criminal contempt are established by the verdict of a jury in a proceeding in the district court of the United States. It is further provided that such jury shall be chosen and empaneled in the manner prescribed by the law governing trial juries in criminal prosecutions in the district courts of the United States.

SEPARABILITY PROVISIONS

Section 609: Provides that if any provision of this act, or the applicability of such provision to any person or circumstances, shall be held invalid, the remainder of this act or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

TITLE VII. AMENDMENTS TO THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

Section 701(a): Specifies that the National Labor Relations Board shall assert jurisdiction over all labor disputes arising under the National Labor Relations Act, as amended.

Section 701(b): Repeals the proviso in section 10(a) of the National Labor Relations Act, as amended, which proviso empowers the Board to cede certain cases to State agencies under agreements entered into between the Board and the respective State agencies.

Section 701(c): Specifies that the membership of the National Labor Relations Board shall be increased from five to seven members.

Section 701(d): Authorizes the Board to delegate to regional directors its powers under section 9 to determine the unit appropriate for the purposes of collective bargaining, to investigate and provide for hearings, and to determine whether a question of representation exists, and to direct an election or take a secret ballot under sections 9(c) or (e) and certify the results. Upon the filing of a request, however, the Board may review any action delegated to a regional director. This subsection specifies that the Board shall delegate to the General Counsel of the Board all of its functions, except (1) its function of appointing or supervising the executive secretary of the

from preempting the field, certainly additional language would be required either in the bill or in the amendment of the Senator from Arkansas.

Mr. HOLLAND. But that language could be restricted to fields other than the field of criminal law.

Mr. KENNEDY. That is correct.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield to the Senator from Pennsylvania.

Mr. CLARK. In reference to the question which the Senator from California has raised, and with which I find myself in agreement, if we are going to meet the question of preemption entirely, not merely in the criminal law, the pending amendment should be amended, and we should not leave the remedy to some other amendment which may be offered at a later date. I must say the Senator from Massachusetts has made a good point.

Mr. KENNEDY. I thank the Senator from Pennsylvania.

I have several other reasons why I think the Senate should consider the amendment carefully before it adopts it. The description of the amendment as a bill of rights makes it extremely attractive. I think we should make sure that we shall be better off after the amendment is adopted than we are today. I call attention to page 4 of the amendment of the Senator from Arkansas, under the heading, "Safeguards Against Improper Disciplinary Action," which, beginning on line 8, reads:

No member of any such labor organization may be fined, suspended, expelled, or otherwise disciplined by such organization or any officer thereof except for breach of a published written rule of such organization which is not inconsistent with any of the provisions of this title.

It seems to me it would be possible for a labor union to pass, by majority vote, a provision or a rule which would provide that any member who testified in a State legislature against a law could be subject to discipline by the union, or any member who worked in a political campaign against the position which the majority of the union had taken in a vote could also be subject to discipline.

Unless there were some changes in the doctrine of preemption, the present very adequate provisions of State law which protect members would be preempted.

The fact is that freedom of speech is restricted in lines 4, 5, and 6, of page 2 of the amendment to the following:

Every member of any such labor organization shall have the right to express any views, arguments, or opinions regarding any matter respecting such organization or its officers, agents, or representatives.

It seems to me the provision of State law in regard to protecting, for example, the rights of a member of a union—to testify in the State of Pennsylvania, for example, will say to the Senator from Pennsylvania—are far more satisfactory and inclusive than is any right which is guaranteed to a union member in the bill.

I shall read from the case of Spayd against Ringing Rock Lodge, in the State of Pennsylvania, which concerns the

Ringing Rock Lodge No. 665 of the Brotherhood of Railroad Trainmen, who expelled a member of their lodge for testifying in the State legislature against legislation which the union favored. The court had this to say, and this is law, and the precedent which governs:

The rights above noted cannot lawfully be infringed, even momentarily, by individuals, any more than by the State itself (*United States v. Cruikshank*, 92 U.S. 542, 23 L.Ed. 588); and least of all can they be breached by corporations and unincorporated associations, which function solely by grace of the State, and the supervision and control of which are specifically vested in courts of equity by the act of June 16, 1836 (Public Law 784, sec. 13, par. 5; Pa. St. 1920, sec. 4562). We have often said that the by-laws, rules, and regulations of these artificial bodies will be enforced only when they are reasonable (*Lynn v. Freemansburg Bldg., etc., Assoc.*, 117 Pa. 1, 11, 11A.537, and 2 Am. St. Rep. 639; *Hibernia Fire Engine Co. v. Com.*, 93 Pa. 264, 269; *Evans v. Philadelphia Club*, 50 Pa. 107, 115; *Com. v. Detweiler*, 131 Pa. 614, 634, 18A.990, 992, 7 L.R.A. 357, 360; *Arbour v. Pittsburgh Produce Trade Association*, 44 Pa. Super. 240, 250); and they never can be adjudged reasonable when, as here, they would compel the citizen to lose his property rights in accumulated assets, or forgo the exercise of other rights which are constitutionally inviolable. Defendant lodge is part of a beneficial organization, and there is a finding that plaintiff has a substantial property interest therein. Under these circumstances, it will not do to say that he can freely regain full liberty of action, at any time, by disassociating himself from the order; but, even if he could, the rule, as construed by defendants, would still be discountenanced and void in law.

The point of the matter is, if the Members of the Senate will examine the laws, the States have provided broad protections for members of voluntary organizations. I consider those protections to be broader than the provisions of the amendment offered by the Senator from Arkansas.

Mr. CLARK and Mr. CURTIS addressed the Chair.

Mr. KENNEDY. I yield first to the Senator from Pennsylvania, and then I will yield to the Senator from Nebraska.

Mr. CLARK. Mr. President, I thank the Senator for yielding to me.

The argument of the Senator from Massachusetts is persuasive, but I wonder if the Senator can tell us what was the relief sought in the Pennsylvania case and what was the relief granted? My own fear is that the law of my State, not being everything one could wish, in some instances, tends to protect property rights substantially more fully than it tends to protect human rights.

Mr. KENNEDY. I will say to the Senator that in this case the expulsion of the member from the union was set aside, and those in control of the union were compelled to accept him back into the union.

Mr. President, I now yield to the Senator from Nebraska.

Mr. CURTIS. Mr. President, I should like to point out to the Senator that the McClellan committee took testimony in reference to a case in Pennsylvania, wherein a union member went to a union meeting and spoke in opposition to the crowd in control. When that member

left the meeting, he was unmercifully beaten on an elevator. Some "goons" took possession of the elevator and made the man go up and down on it. He almost lost his eyesight. He was suffering from cancer when he testified, which might have been related to that incident. After being released by the doctor, he took his complaint to a magistrate in the State of Pennsylvania, and the magistrate dismissed the case, saying, "That is just a union brawl, and we do not get into them."

I for one am going to vote to give these men a right to go into the U.S. courts.

Mr. KENNEDY. I will say, Mr. President, that in my opinion, the argument made is really not a valid one. The Senator is not pretending to say, I hope, that it is not against the law in the State of Pennsylvania or in the State of Nebraska or in any other State to beat up a man. That is against the law today. If "goons" can beat a man up for exercising his rights under State law, so they could under the Federal law. The point of the matter is that there is protection by law, even if the local officials will not meet their responsibility.

The Senator would not be filling a vacuum in this case by suggesting that these men are not protected. I cannot help it and the Senator cannot help it—and it is not the responsibility of the Senate—if the responsible law officials of a given area are so "gutless" that they will not give the man protection.

Mr. HOLLAND and Mr. CURTIS addressed the Chair.

Mr. KENNEDY. I yield first to the Senator from Florida.

Mr. HOLLAND. I thank the Senator from Massachusetts.

I agree with the Senator from Massachusetts on the first part of the premise, for I am sure no Senator would want to take away from any labor-union member, or from labor-union members as a group, as defined in the bill, residing in any State, any rights or protections they have under the laws of the State.

Is it not true that a plenary provision guarding against preemption, such as suggested by the Senator from Arkansas, would completely guard against any such surrender of rights? Would it not make clear that all rights—and the rights may vary in the different States—would be preserved, but, at the same time, a field would be created, without fear of preemption, under which by Federal law, passed by the Congress, there would be protections provided more sweeping than those provided in at least several of the States?

I am sure the Members of the Senate want to protect the members of labor unions.

Mr. KENNEDY. Which would govern, the Federal or the State law? In a case where a member's rights were in question in regard to freedom of assembly, or in regard to an election, which law would govern?

Mr. HOLLAND. I would say that both rights would prevail, that both courts would be available, and both remedies would be available. Any plenary provision against preemption would certainly

preserve States' rights as they are, and it would, at the same time, create a new body of effective Federal law.

Mr. KENNEDY. In that case, there would be three protections.

Mr. HOLLAND. If I may conclude the statement—and I apologize for taking so long—there is nothing new in the idea of concurrent legislation or concurrent protection of rights, whether it be on the basis of private rights or on the basis of criminal law. It seems to me that the Senate, confronted with the great body of evidence, taken so ably by the distinguished Senator from Arkansas and by his distinguished associates, including the Senator from Massachusetts, and confronted by a clear showing of all the abuses which have taken place, notwithstanding undoubtedly good provisions in State laws in various States, and perhaps in all States, should realize there are rights which need to be protected. We should want—and I believe the Senate will show it wants—to protect more fully rights which frequently have been abused and violated under the conditions which now prevail.

Mr. KENNEDY. It seems to me the question before us involves a burden of evidence upon the Members of the Senate who support the bill to show that there are adequate remedies today available in all these areas.

In my opinion, the proposed legislation is somewhat confining. In the case I mentioned there would be three remedies. One would be provided under the bill, when the Secretary of Labor could set the election aside because there was not freedom for the members to participate fairly in the election.

There would also be a Federal remedy and a local remedy in some cases conflicting.

I will say to the Senator that I am not sure he would accept the general thesis that all rights of all citizens of the United States which may be denied should be carried to the courts by a Federal official, either the Attorney General or the Secretary of Labor. Does the Senator agree to that?

Mr. HOLLAND. I certainly would agree with the distinguished Senator from Massachusetts but I do not think the distinguished Senator would disagree with me when I say that the actions and the findings of the McClellan committee have shown beyond any peradventure of doubt that there are a tremendous number of abuses of private rights now being perpetrated and that there is a need for giving greater protection against violations of those rights. Does not the Senator feel that way about it?

Mr. KENNEDY. I will say to the Senator that I am not convinced he accepts the general thesis that the Federal Government should protect private rights and be the party to initiate proceedings in courts in all cases when private rights may be denied and when there may be ample evidence that such private rights are denied.

We had a long debate on this whole question with regard to title III of the civil rights bill and whether the Attorney General would be the proper person

to initiate suits on behalf of individuals throughout the country. It seems to me that serves as a quite comparable example and precedent.

Mr. HOLLAND. Mr. President, will the Senator yield for one more observation?

Mr. KENNEDY. I yield.

Mr. HOLLAND. It seems to me that the bill so ably supported by the distinguished Senator from Massachusetts demonstrates that he recognizes the need for the protection of the rights now being violated. The Senator provides for that in section 506 (a) and (b) of his bill, and, insofar as it goes, I approve of it.

The question which the distinguished Senator from Arkansas has raised—and I think he has raised it soundly—is that the findings of his committee and the evidence which has been brought out by that committee, and which has shocked the Nation, have shown abuses of private rights and abuses of individuals in many other fields than those now mentioned in the bill. The Senator from Florida feels that in order to do a full job we have to go a great deal farther than is provided in the bill. I should like to know how the Senator from Massachusetts feels about that.

Mr. KENNEDY. Does the Senator from Florida accept the general thesis that on occasions when evidence can be obtained that private citizens find it difficult to obtain justice by themselves in the State courts, the Federal Government, the Attorney General, or the Secretary of Labor should prosecute such cases?

Mr. HOLLAND. I do not wish to be other than responsive but my feeling is that there is a field which certainly calls for enactment of some Federal law.

My feeling also is that there is a showing that State law is inadequate. The State of New York, by the enactment a few days ago of an act in this very field, has shown that its legislature has all the facts. I am sure that is largely the result of the findings and activities of the McClellan committee. There is something that appeals to it as requiring State action to protect further private rights than those which are protected under present law.

I cannot feel that the distinguished Senator can argue very strongly against the proposition that additional Federal protection is provided, when he has written into his bill, under sections 506 (a) and (b) strong criminal provisions, culminating in subsection (c), which applies a fine of \$10,000 or imprisonment for not more than 2 years, or both, for the abuse and violation of rights recognized by the bill, but which have not been recognized heretofore by Federal law.

The whole question between the distinguished Senator and myself is whether his bill goes far enough. It is my distinct feeling—and it was my feeling last year when this question was debated on the floor of the Senate—that the bill does not go far enough. If necessary, I could relate several things which happened in the course of a campaign which I conducted last year, in which I was approached by many labor union mem-

bers who felt that they were extremely ill-treated, and I agree with them. They made it clear that they were not being protected by State law in my State, or by existing Federal law.

We want to go further than the distinguished Senator has suggested. I pay tribute to him for going as far as he has gone. I am sure he feels that that is as far as he should go. I am also sure that there is a field for disagreement on this subject.

I believe the Senator from Arkansas is exactly correct when he says that we should go further in declaring the existence of rights in this field which may not be abused or violated without the offenders getting into difficulty.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. McCLELLAN. The Senator from Massachusetts has provided, in section 506, for penalties for violation of the rights mentioned in the bill.

Mr. KENNEDY. The Senator is correct.

Mr. McCLELLAN. Has the Senator preempted the State courts in the protection of those rights, which he seeks to protect by criminal penalty?

Mr. KENNEDY. We have not, but there is a great deal of difference between the rights we have sought to guarantee and the rights which the Senator mentions, in the entire field of the Bill of Rights.

Mr. McCLELLAN. If the Senator's bill does not cover such rights, I am glad to have that information. They are basic.

Mr. KENNEDY. The point is that I think they are adequately covered by State law, by the Taft-Hartley Act, or by the bill.

Mr. McCLELLAN. I suggest at this point that the Senator read subparagraph 5 on page 3, under the heading "Protection of the Right To Sue." Does not that cover what the Senator has been discussing? Does not the amendment I have offered cover the situation in Pennsylvania which has been mentioned?

Mr. KENNEDY. I will give the Senator an answer after I have dealt with subparagraph 4. I wish to go through the various paragraphs one by one. Subparagraph 4 is headed "Freedom From Arbitrary Financial Exactions." Every Member of the Senate feels that such freedom should be guaranteed. As a matter of fact, it is guaranteed by the Taft-Hartley Act. I read from section 8(b)5 of the Taft-Hartley law:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(5) To require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances.

If Members of the Senate will go through the so-called Bill of Rights section by section, they will find that such rights are dealt with more effectively under State law, under the Taft-Hartley Act, or under the pending bill. It is not that we seek to deny freedom of speech