The original documents are located in Box 48, folder "1975/07/07 - President, Secretary Dunlop, and Bill Seidman" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

MEETING WITH THE PRESIDENT
SECRETARY DUNLOP, BILL SEIDMAN
MONDAY, JULY 7, 1975
Oval Office - 4:30 p.m.
re: Situs Picketing

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

July 3, 1975

NOTE FOR JIM CANNON:

A copy of Secretary Dunlop's memorandum on situs picketing is attached at his request. Mr. Seidman holds the original.

John Read
Executive Assistant

Attachment

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

July 3, 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Situs Picketing

On June 4, with Mr. Seidman and Mr. Lynn, I met with you to discuss the position on behalf of the Administration that should be taken in testimony before the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor (Congressman Thompson, Chairman) concerning H. R. 5900 relating to situs picketing. You authorized me to take the position suggested in the draft testimony (Attachment A) which supported the position which George Shultz had taken on April 22, 1969 and which further suggested that the Committee give consideration to an additional significant limitation that picketing be permitted only following a 10-day notice to interested national and local parties and subject to the authorization of the national union with which the local union is affiliated. The picketing might continue for a period no longer than 30 days after such authorization. The testimony also suggested that the Committee might wish to consider a further tripartite committee review of the authorization.

Subsequent to the hearing, at the request of the Committee, I transmitted language for amendments to the bill incorporating these two alternative suggestions (Attachment B).

Two matters now require a decision:

(1) The Subcommittee of the House Committee on Education and Labor reported out the bill precisely as it had been introduced as H. R. 5900. Congressman Esch modified the language of the tripartite proposal that I submitted, which was voted down by the Committee. The full Committee is to meet in mark-up on July 10, and Congressman Thompson and counsel of the Committee seek a decision as to the precise language which is acceptable to the Administration. Mr. Georgine, President of the Building & Construction Trades Department, AFL-CIO, has informally indicated that he would accept the 10-day notice period and the requirement of authorization by the

national union, but is unwilling to accept the 30-day limitation on duration since such limitation does not apply in industry generally (Option A). He objects to the tripartite form of the proposal. What response should be made to Mr. Georgine and to Chairman Thompson on Tuesday or Wednesday, July 8 or 9? (In my view the 30-day period, or a longer period, is a relatively minor matter in construction because of the short duration of particular operations on a construction site. The significant new constraint is the authorization by the national union.)

(2) On July 10 at 9:30 AM I am scheduled to testify before the Senate Labor Committee on the same subject on an analogous bill introduced by Senators Williams and Javitz. I would propose to present the identical testimony to the Senate Labor Committee as presented to the House Committee. Does this meet with your approval?

You will recall that when George Meany visited with you on June 23, he raised this general subject of situs picketing and advised that the Building & Construction Trade unions were prepared to consider and recommend a significant piece of labor relations legislation applicable to the building and construction industry, with such provisions as the limitation of the right to strike by local unions pending review of collective bargaining agreements by the national unions, and other related reforms in the collective bargaining arrangements in that industry. In response to your question, Mr. Meany indicated such a proposal should be raised while the situs picketing matter is in the Congress but not as a part of the same legislation. The precise details of such reforms can probably be agreed upon between national unions and national contractor organizations shortly. The contractors would welcome such legislation with genuine enthusiasm.

The testimony which I presented indicated that the general framework for collective bargaining in the construction industry was a very significant problem which deserved attention, and I expressed the hope that the House Committee could give attention to this matter at an early date.

John T. Dunlop

Attachments:
Testimony of June 4, 1975
Draft language of amendments
to H. R. 5900

Attachment "A"

STATEMENT OF JOHN T. DUNLOP
SECRETARY OF LABOR
BEFORE THE
SUBCOMMITTEE ON LABOR MANAGEMENT RELATIONS
COMMITTEE ON EDUCATION AND LABOR
OF THE
HOUSE OF REPRESENTATIVES

June 5, 1975

Mr. Chairman and Members of the Subcommittee:

I appear before you today to discuss H. R. 5900, a bill designed to remove certain restrictions upon peaceful labor picketing at construction and building sites. Accompanying me is William Kilberg, Solicitor of the Department of Labor.

The industrial relations climate in the construction industry under collective bargaining improved significantly in the period 1971-1974, it is generally agreed, following years of deterioration after the middle sixties. Only the superficial observer would confine attention to the marked retardation in the rate of wage and benefit increases under the Construction Industry Stabilization Committee. (First year increases declined from 15-17 percent in 1970 to 5.4 percent for wages and fringes in 1973.) No less significant was the marked reduction in this period in work stoppages over the terms of collective bargaining agreements; the widening of the geographical and craft structure of negotiations in many localities; the differentiation of wages and conditions in many localities

to particular branches of the industry, such as housing and heavy and highway work; the rationalization of work rules and conditions in many areas; the greater cohesiveness and devotion of the national labor and contractor leaders to the problems of the industry; and the greater understanding and organization of the owners in their concern with construction. I wish to pay my respect to the courage and responsibility exercised by the national union and contractor officials in the public interest in that period.

It was not possible to maintain this momentum in the industry with the disappearance of wage and price controls in construction on May 1, 1974, despite my repeated advance urgings. Some parts of the country have reverted to the former malaise of widespread stoppages, whipsawing negotiations, disregard for productivity, and excessive increases, and to a decline in the respect for leadership from national union and contractor groups alike. The long-term state of the industry and national interests understandably attracts local people much less than the national leaders on both sides. But the national leaders on both sides are largely without authority to deal with the problems of local bargaining, although a number are courageously seeking to use their influence constructively in a limited number of situations.

Into this somewhat volatile situation at the height of the bargaining season enters another stage in the legislative debate over situs

picketing after a lapse of six years. I want to say publicly what I have been saying in recent weeks to all segments of the industry. I implore all interested parties to conduct the discussion and the resolution of these sensitive issues factually, dispassionately, realistically, and in tolerance and good humor. Only a reasoned discussion can encompass the complex conditions that characterize the industry. Moreover, I would hope that these discussions can be carried on in a way not to exacerbate industrial relations in the industry, but rather to contribute to greater understanding and resolve to get this and other basic problems behind us. The industry is far too important to the country.

The common situs issue has a long history with which many members of this Subcommittee are very familiar, indeed, more familiar than I am with the legislative background. The Taft-Hartley amendments to the National Labor Relations Act prohibited union efforts aimed at a neutral employer to have him cease doing business with the employer against whom the union had a dispute. Although such "secondary boycotts" became unlawful, a union's right to engage in a strike or picketing against the primary employer was preserved. In interpreting the secondary boycott prohibition under circumstances where there was more than one employer at a worksite, the courts and the NLRB drew a sharp distinction between lawful primary picketing in a general industry setting and lawful primary picketing on a construction site. In general

industry, the interpreters of the law had no difficulty in determining that picketing of the entire plant site was, ordinarily, lawful primary activity. In construction, a project with many different contractors was not considered a site which could be broadly picketed. Complex restrictions were placed upon activities at construction sites.

Turning to the bill itself, H. R. 5900 would amend the secondary boycott provisions of the NLRA to make it clear that certain activities affecting secondary employers engaged as joint venturers or in the relationship of contractors and subcontractors with a primary employer on construction projects are not prohibited. The bill also contains a requirement of 10-day notice to the Federal Mediation and Conciliation Service for disputes involving defense or NASA facilities. The bill further provides that certain other kinds of activities are not permitted: (1) activities otherwise unlawful under the NLRA; (2) activities in violation of an existing collective bargaining agreement; (3) activities when the issues in the dispute involve a union which represents employees of an employer not primarily engaged in the construction industry; and (4) picketing for the purpose of excluding an employee because of race, creed, color, or national origin.

Both sides in the construction industry have long been of the general view that a construction site should have a common labor relations policy regardless of how many separate contracts or contractors, prime

or subcontractors, are involved. The mixing of labor policies is not conducive to industrial peace, productivity, or good management. Despite short-term presumptions in many quarters, it is not clear whether the adoption of this principle in this legislative form will enhance or reduce the segment of the industry that operates under collective bargaining agreements.

The basic proposal embodied in H. R. 5900 has a long history of bipartisan endorsement. Over the past 25 years, four Presidents, all Secretaries of Labor, and many Members of Congress from both parties have supported enactment of similar legislation. (See Secretary Shultz's testimony of April 22, 1969 before this Committee for a full account.) For example, in 1954 President Eisenhower's labor-management relations message recommended clarification of the NLRA, making it specific that concerted action against an employer on a construction project who, with other employers, is engaged in work at the site of the project, will not be treated as a secondary boycott.

For my own part, in the words of former Secretary of Labor George P. Shultz, "I am here today to indicate my support for legislation to legalize common situs picketing, if that legislation is carefully designed to incorporate appropriate and essential safeguards."

At that time, Secretary Shultz enunciated several guidelines or principles which he felt should be reflected in such legislation. First,

other than common situs picketing, no presently unlawful activity should be transformed into lawful activity. Second, the legislation should not apply to general contractors and subcontractors operating under State laws requiring direct and separate contracts on State or municipal projects. Third, the interest of industrial and independent unions must be protected. Fourth, the legislation should include language to permit enforceability of no-strike clauses of contracts by injunction. Fifth, the legislation should encourage the private settlement of disputes which could lead to the total shutting down of a construction project by such means as a requirement for giving notice prior to picketing and limiting the duration of picketing.

Most of the principles which concerned Secretary Shultz have been met by the present bill, or have been the subject of subsequent developments in case law, or can be dealt with by appropriate legislative history. For example, one significant potential source of unlawful activity which should not be protected is picketing which has the objective of excluding any employee on the basis of race, creed, color or national origin; the bill's antidiscriminatory provisions are clear in this respect. Additionally, the Supreme Court decision in the Boy's Market case satisfies the principle that no-strike clauses in contracts should be enforceable by injunction.

There is one principle suggested by Secretary Shultz which might well be substantially expanded, and I suggest that consideration be given in your deliberations to its incorporation. My reference is to the encouragement of private settlement procedures by notice to picket and authorization at a national level.

Requiring a notice of intent to picket would assure at least a limited cooling-off period, during which the immediate parties to the dispute could have an opportunity for considered evaluation of alternatives and the consequences of their proposed actions. Secretary Shultz proposed that such notice be served upon all employers and unions at the site. I would carry that proposal a step further, requiring ten day's notice to the standard national labor and management organizations engaged in collective bargaining in the industry whose local unions or member contractors are involved in or affected by the dispute. I would also suggest the principle that authorization of such picketing by the appropriate national union be required. The national union should be held not liable for any damages growing out of such authorized picketing initiated by local unions. Consideration might also be given to making the authorization subject to a tripartite arbitration process within the 10-day period.

The international unions and the national employer associations are the major private interested groups functioning at a national level.

Notice to such organizations, which are in a position to assist in bringing together the parties to a dispute, could materially contribute to the resolution of the dispute. The parties to the dispute would have not only the benefit of a brief cooling-off period, but also the benefit of potential guidance and mediation by national organizations of unions and contractors who may be able to encourage a settlement. They could take into account the vast variety of situations which practical people recognize and which have not been recognized by the NLRB and the courts in the past. Furthermore, such notice provisions would recognize, in some measure, the interests of the other employees and employers at the site and give appropriate warning of activities which could affect them. I can envisage the development of a joint labor-management machinery to review individual cases.

Insofar as the duration of picketing is concerned, I would suggest a limit of 30 days, a period which is analogous to that provided by section 8(b)(7) of the NLRA for recognition and organizational picketing. As with notice provisions, a limit upon the duration of picketing of the entire site strikes a reasonable balance between the right of labor organizations to take appropriate action and the need to recognize the separate identities of the employing contractors and subcontractors, as well as the potential for disruption flowing from picketing which is unlimited as to duration.

As I previously indicated, the basic principles underlying this bill have been repeatedly endorsed, on a bipartisan basis for many years. A basic and adequate legal structure recognizing the rights of the affected parties and achieving a balance among those rights is essential. But a legal framework is only one element in the overall picture. To achieve needed improvements in industrial relations in the construction industry requires a responsible exercise of those rights by all parties, and a continuing effort to work toward adjustments in many areas of dispute prevention and resolution. Mechanisms to assure resolution of problems can be developed best in an atmosphere generated by reasoned discourse.

I would like to reemphasize, therefore, that in dealing with the immediate issues of H. R. 5900, it is important to recognize that the atmosphere which develops on this bill can affect, and set the tone for, the approaches to other problems of industrial relations in the construction industry as a whole. As a practical matter, reasoned discussion calculated to promote positive solutions, or vitriolic debate enhancing bitter conflict, may well be as significant as any statute itself.

A more general comment may be appropriate. I have come to the conclusion over the past decade that the legal framework of collective bargaining in the construction industry is in need of serious review. On January 28, 1975 in a unanimous statement the leaders of labor and

management operating under collective agreements in this industry also expressed the view that "it is timely for labor and management to explore . . . a more viable and practical legal framework for collective bargaining." A vastly enhanced role for national unions and national contractor associations, working as a group, is essential in my view if the whipsawing and distortions of the past are to be avoided and if the problems of collective bargaining structure, productivity and manpower development are to be constructively approached by the industry itself, and in cooperation with governmental agencies. I would hope that this Subcommittee could give attention to this serious range of problems after the parties on each side have had the opportunity to consider the issues more thoroughly.

The Department of Labor will be available to the Committee to explore the suggestions which I have made in this testimony and to work with the Committee on the range of issues involved in the legislation.

Thank you for the opportunity to present my views on these issues. I shall seek to answer any questions you may have.

Draft
June 20, 1975

PROPOSED AMENDMENT TO H. R. 5900

OPTION A: WITHOUT TRIPARTITE REVIEW

H. R. 5900 should be amended by inserting the following before the fourth proviso (the missile sites proviso):

Provided further, That a labor organization before engaging in activity permitted by the above proviso shall make a good faith effort to transmit in writing not less than ten days prior to engaging in such activity, a notice to all unions and employers at the site and those standard national labor and management organizations engaged in collective bargaining in the construction industry whose local unions or member contractors are involved in or affected by the dispute, setting forth its intent to engage in such activities:* Provided further, That at any time after the expiration of ten days from the transmittal of such notice, the labor organization may engage in activities permitted by the above proviso for a period of time not exceeding thirty days provided the national or international labor organization of which the labor organization involved is an affiliate authorizes such action: Provided further, That authorization of such action by the national or international labor organization shall not render it subject to any criminal or civil liability

* Notice to a single organization established by the standard national labor and management organizations to receive such notices is sufficient.

arising from activities notice of which was given pursuant to the above provisos.

Draft
June 20, 1975

PROPOSED AMENDMENT TO H. R. 5900

OPTION B: WITH TRIPARTITE REVIEW

H. R. 5900 should be amended by inserting the following before the fourth proviso (the missile sites proviso):

Provided further, That a labor organization before engaging in activity permitted by the above proviso shall make a good faith effort to transmit in writing not less than ten days prior to engaging in such activity, a notice to all unions and employers at the site and those standard national labor and management organizations engaged in collective bargaining in the construction industry whose local unions or member contractors are involved in or affected by the dispute, setting forth its intent to engage in such activities: Provided further, That at any time after the expiration of ten days from the transmittal of such notice, the labor organization may engage in activities permitted by the above proviso for a period of time not exceeding 30 days unless any affected employer or union engaged at the worksite or any interested standard national labor or management organization, upon which notice [(a) was required to be] or [(b) has been] served requests, no later than 7 days after transmittal of the notice of intent, that the Secretary of Labor appoint a panel to review whether such activities should be prohibited; such panel shall be composed of five members, two of whom

shall be persons qualified by experience and affiliation to represent the viewpoint of employers in the construction industry, two of whom shall be persons similarly qualified to represent the viewpoint of labor organizations in the construction industry, and one member, selected after consultation with the members representing employer and labor organization viewpoints, who shall be qualified by reason of training or experience to represent the public interest; the panel shall be appointed and proceed expeditiously, with review and determination to be completed in any event within 10 days of the date of transmittal of the notice of intent; such panel shall be authorized to prohibit activities otherwise permitted by the above provisos only upon a determination that such activities are not justified under the circumstances of the dispute, and such activities in the particular case would be substantially adverse to the public interest; persons appointed to such panels from private life shall be compensated at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of Title 5, United States Code, including travel time, and shall be allowed, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5, United States Code, for persons in the government service employed intermittently, while so employed.