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ABSTRACT

Hearings on proposed legislation to amend the National Labor Relations Act are presented. H.R. 3291 would protect the right of faculty at private educational institutions to engage in collective bargaining, while H.R. 5107 is intended to make meaningful the right of performing artists to engage in collective bargaining. H.R. 3291 stipulates that faculty members in educational institutions will not be deemed managerial or supervisory employees solely because they participate in decisions concerning courses, curriculum personnel, budget, or other educational policy matters. Testimony from a number of college and university representatives in support of H.R. 3291 has in common the view that the Supreme Court was wrong in the National Labor Relations Board v. Yeshiva University decision. It is suggested that the condition of higher education in 1984 has resulted in minimal and declining faculty participation in governance and control over hiring, promotion, and tenure in most institutions. Supplementary materials include a report on the declining economic position of Boston University faculty, letters from musicians and artists, and sample entertainment agreements. (SW)

HEARING ON COLLECTIVE BARGAINING AT PRIVATE EDUCATIONAL INSTITUTIONS AND IN THE PERFORMING ARTS

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 3291

TO AMEND SECTION 2(11) OF THE NATIONAL LABOR RELATIONS ACT

H.R. 5107

TO AMEND THE NATIONAL LABOR RELATIONS ACT TO GIVE EMPLOYEES AND PERFORMERS IN THE PERFORMING ARTS RIGHTS GIVEN BY SECTION 8(E) OF SUCH ACT TO EMPLOYERS AND EMPLOYEES IN SIMILARLY SITUATED INDUSTRIES, AND TO GIVE TO EMPLOYERS AND PERFORMERS IN THE PERFORMING ARTS THE SAME RIGHTS GIVEN BY SECTION 8(F) OF SUCH ACT TO EMPLOYERS AND EMPLOYEES IN THE CONSTRUCTION INDUSTRY, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC, ON SEPTEMBER 18, 1984

Printed for the use of the Committee on Education and Labor

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HEARING ON COLLECTIVE BARGAINING AT PRIVATE EDUCATIONAL INSTITUTIONS AND IN THE PERFORMING ARTS

TUESDAY, SEPTEMBER 18, 1984

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS,
Washington, DC.

The subcommittee met, pursuant to call, in room 2257, Rayburn House Office Building, at 10 a.m., Hon. William Clay (chairman of the subcommittee) presiding.

Mr. CLAY. Are we ready? The subcommittee will come to order. Today the subcommittee will hear testimony concerning two bills, H.R. 3291, a bill intended to protect the right of faculty at private educational institutions to engage in collective bargaining; and H.R. 5107, a bill identical to H.R. 1758 and intended to make meaningful the right of performing artists to engage in collective bargaining.

While there are considerable differences between the occupations of college professor and performing artist, the problems H.R. 3291 and H.R. 5107 seek to address are very similar. To quote from section 1 of the National Labor Relations Act—

> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury . . . and promotes the flow of commerce . . . by encouraging practices fundamental to the friendly adjustment of industrial disputes . . . and by restoring equality of bargaining power between employers and employees.

It is for this purpose that the National Labor Relations Act was enacted.

Current interpretations of the law, however, have failed to account for the unique circumstances of specific industries. As a result, today we are in the ironic situation of seeing a law intended to promote collective bargaining being used to prohibit faculty and performing artists from engaging in that activity. The purpose of H.R. 3291 and H.R. 5107, therefore, is to conform the National Labor Relations Act to the realities of two specific industries in order that the fundamental purpose of the act may be fulfilled.

[Texts of H.R. 3291 and H.R. 5107 follow:]

98TH CONGRESS
1ST SESSION

H.R. 3291

To amend section 2(11) of the National Labor Relations Act.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1983

Mr. CLAY introduced the following bill; which was referred to the Committee on Education and Labor

---

A BILL

To amend section 2(11) of the National Labor Relations Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(11) of the National Labor Relations Act is amended by inserting immediately before the period at the end thereof the following: ", except that no faculty member or group of faculty members in any educational institution shall be deemed to be managerial or supervisory employees solely because the faculty member or group of faculty members participate in decisions with respect to courses, curriculum, personnel, budget, or other matters of educational policy".

98TH CONGRESS
2D SESSION

H. R. 5107

To amend the National Labor Relations Act to give employees and performers in the performing arts rights given by section 8(e) of such Act to employers and employees in similarly situated industries, and to give to employers and performers in the performing arts the same rights given by section 8(f) of such Act to employers and employees in the construction industry, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1984

Mrs. BURTON of California (for herself and Mr. CLAY) introduced the following bill, which was referred to the Committee on Education and Labor

---

A BILL

To amend the National Labor Relations Act to give employees and performers in the performing arts rights given by section 8(e) of such Act to employers and employees in similarly situated industries, and to give to employers and performers in the performing arts the same rights given by section 8(f) of such Act to employers and employees in the construction industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Performing Arts Labor Relations Amendments".

SEC. 2. Section 8(e) of the National Labor Relations Act is amended by striking out the second and third provisos and inserting in lieu thereof the following: "*Provided further*, That for the purposes of this subsection and subsection (b)(4)(A) and (B), the terms 'any employer', 'any person engaged in commerce or in industry affecting commerce', and 'any person', when used in relation to the terms 'any other producer, processor, or manufacturer', 'any other employer', or 'any other person', and the term 'any employee or self-employed person' shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry or persons in the relation of a leader, contractor, recording artist, purchaser of entertainment or music, booking agent or talent agency, promoter, producer, or persons similarly engaged or involved in an integrated production or performance of any kind in the entertainment industry: *Provided further*, That nothing in this Act shall prohibit the enforcement of any contract or agreement, express or implied, which is within the foregoing exception."

SEC. 3. (a) Section 8(f) of the National Labor Relations Act is amended by inserting "(1)" after "(f)", and by adding the following subparagraph (2) at the end of subsection (f):

"(2) It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer (other than an employer in the broadcasting or motion picture industries) engaged primarily in the performing arts to make an agreement, covering employees engaged (or who, upon their employment, will be engaged) in the performing arts, with a labor organization of which performing artists are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (A) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (B) such agreement requires, as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later: *Provided*, That nothing in this subsection shall set aside the final proviso of subsection (a)(3) of this section: *Provided further*, That any agreement which would be invalid, but for clause (A) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or (e).".

(b) Section 2(2) of the National Labor Relations Act is amended by inserting immediately after "directly or indirectly" the following: "and includes any person who is the purchaser of musical performance services regardless of whether

the performer of such services is, himself, an independent contractor, employer, or employee of another employer,".

(c) Section 2(3) of the National Labor Relations Act is amended by inserting immediately after "independent contractor" the following: "except that any individual having the status of an independent contractor who is engaged to perform musical services shall be included in the term 'employee'.".

Mr. CLAY. We have a large number of witnesses today and a limited time in which to hear from them. As I wish to hear from everyone who is scheduled to testify, I have kept my remarks brief. I urge those who follow to do likewise.

Mr. Biaggi, do you have any comments?

Mr. BIAGGI. No comments at this time, Mr. Chairman.

Mr. CLAY. The first witnesses today consist of a panel, Prof. Joseph Speisman, Prof. Robert Janusko, Prof. Julius Getman, Prof. Irwin Polishook, and David Poisson. Would you come to the witness table?

Your entire statements will be included in the record at this point. You may proceed to summarize your testimony, if you wish. Please proceed in any manner you prefer.

Will each witness identify himself and what organization you represent when you make your remarks?

[Prepared statement of Irwin Polishook follows:]

PREPARED STATEMENT OF IRWIN POLISHOOK, IN BEHALF OF THE AMERICAN FEDERATION OF TEACHERS

My name is Irwin Polishook. I am a Vice President of the American Federation of Teachers, AFL-CIO, and a professor of history at the City University of New York. Nearly 80,000 college professors are represented through collective bargaining agreements negotiated by AFT locals. I am also the President of the Professional Staff Congress, the AFT affiliate which represents the 10,000 faculty and academic professionals employed in the CUNY system. I am here to testify in support of H.R. 3291.

H.R. 3291 is designed to overturn the Supreme Court's decision in *NLRB* v. *Yeshiva University* by making it clear that faculty members are protected by the National Labor Relations Act notwithstanding their traditional participation in education decisions.

The *Yeshiva* decision has had a devastating effect upon collective bargaining in higher education. It has brought faculty organizing in the private sector to a halt and disrupted bargaining relationships where faculty have already organized. Well-established faculty representatives at such private sector institutions as Boston University, College of Osteopathic Medicine and Surgery, Wagner College, the University of Albuquerque, Polytechnic Institute of New York and Stevens Institute of Technology have had their bargaining rights stripped from them. The *Yeshiva* decision may have a ripple effect in public higher education, in states whose labor laws have followed the federal model, and in other professions generally. Indeed, there is growing concern that the *Yeshiva* decision threatens programs of employee participation and decision-making generally.

The National Labor Relations Board first took jurisdiction over higher education in 1970. For 10 years thereafter the Labor Board consistently rejected the contention that faculty members were not protected by the National Labor Relations Act, and a substantial number of faculties sought and won bargaining rights under that Act.

The Labor Board assertion of jurisdiction over private sector higher education coincided with a heightened interest in collective bargaining in state-supported colleges and universities. By early 1979 about 80 private and 302 public institutions of higher education were engaged in formal collective bargaining relationships with their faculties, and more than 130,000 personnel were unionized.

This interest in collective bargaining on the part of the faculty members is not hard to understand. Faculty members, like other employees, are concerned about their salaries and job security. Both have been threatened by the shrinking of economic sources available in higher education over the past 15 years. Faculty salaries have fallen behind the rate of inflation to a greater extent than is the case for American workers generally. Individual faculty members have found themselves losing their individual bargaining power in a difficult job market at a time when university management has been preoccupied with cutting budgets. Junior faculty members have found their prospects for tenure bleak or non-existent. These developments have understandably exacerbated the natural tensions in faculty-administra-

tion relationships, and faculty influence in the educational enterprise has declined in the process.

The Supreme Court in *Yeshiva* seemed oblivious to this reality. Its decision is predicated on an idealized view of the university in which the faculty is truly in control. While for this reason it might be argued that the *Yeshiva* decision applies only to that narrow group of institutions whose faculties presumably function as a replica of the medieval collegium, as a practical matter *Yeshiva* applies far more broadly.

The *Yeshiva* decision requires a factual inquiry into the extent of faculty influence in each case. The legal standard is so hopelessly vague that it is almost impossible to predict the outcome. In any event, no faculty will find it possible to muster the resources necessary to participate effectively in the required hearing process. Hearings in recently-concluded cases at Boston University and Polytechnic Institute of New York each generated more than 20,000 pages of testimony and literally thousands of pages of exhibits and legal memoranda. The resources required to participate in litigation of this character are simply not available to private sector faculty, and for this reason, they are deterred from even seeking bargaining rights.

Even if the availability of resources were not an issue, the *Yeshiva* rationale—at least as it is now construed by the Labor Board—narrows the scope of collective bargaining to the point where it is of little value to professional employees. Faculty members will pursue collective bargaining for reasons similar to those which motivate other employees. They will not do so, however, at the expense of their professional responsibilities. Indeed, many private sector faculties have entered into collective bargaining precisely to preserve or to enhance their professional influence within the academic enterprise. But the *Yeshiva* rationale requires faculty members to choose between collective bargaining over bread and butter issues affecting their employment and maintaining their influence in educational matters. For example, in one case, where a faculty lacking significant influence in this latter regard had increased its role through the collective bargaining process, the Labor Board held that the Act's protections would no longer be available to that faculty because they had become "managers." In effect, their very success cost them the protections of the NLRA and returned them to their original status.

This brings me to my concluding point. By permitting employee influence to result in the loss of bargaining rights, the *Yeshiva* decision stands as a direct and general threat to the development of responsible employee participation programs and other efforts at democratizing the workplace. As Justice Brennan put it in his dissenting opinion, the *Yeshiva* majority "permit[s] an employer to deny its employees the benefits of collective bargaining . . . merely by consulting with them . . . and accepting their advice when it is consistent with management's own objectives."

Justice Brennan's concerns are by no means confined to faculty members employed in higher education. In private industry, *Yeshiva* may discourage employees and unions generally from seeking unconventional ways of improving labor-management relationships and general productivity.

The AFT is, of course, vitally concerned with the lot of elementary and secondary teachers at a time when the Nation's schools are under considerable attack. Were the *Yeshiva* rationale applicable in the public school systems, it could thus well work against responsible educational reform by encouraging teachers and their unions to confine their efforts to the protection of salary levels and job security. Many of us believe that important educational improvements can come only if teachers seek to play a more active role in educational policies. And yet we can hardly expect this to occur if it will result in wholesale loss of bargaining rights.

For the foregoing reasons we urge the passage of H.R. 3291. Passage will stabilize labor-management relations in higher education and signal Congress' intent that employee assertion of influence on management will not jeopardize bargaining under the National Labor Relations Act.

STATEMENT OF PROF. IRWIN POLISHOOK, DEPARTMENT OF HISTORY, CITY UNIVERSITY OF NEW YORK, AMERICAN FEDERATION OF TEACHERS

Professor POLISHOOK. My name is Irwin Polishook. I am a vice president of the American Federation of Teachers, AFL-CIO, and a professor of history at the City University of New York. Nearly 80,000 college professors and other nonclassroom professionals are

represented under collective-bargaining agreements negotiated by AFT locals throughout the country.

I am also the president of the Professional Staff Congress, the AFT affiliate, which represents 12,000 faculty and academic professionals employed in the City University of New York system.

I am here to testify in support of H.R. 3291. H.R. 3291 is designed to overturn the Supreme Court's decision in *NLRB* v. *Yeshiva University*, by making it clear that faculty are protected by the National Labor Relations Act, notwithstanding their traditional participation in educational decisions.

The *Yeshiva* decision has had a devastating effect upon collective bargaining in higher education. It has brought faculty organizing in the private sector to a halt and disrupted collective-bargaining relationships where the faculty already were organized. Well-established faculty representatives at such private institutions as Boston University, Wagner College, the University of Albuquerque, the Polytechnic Institute of New York and Stevens Institute of Technology, among others, have had their bargaining rights stripped from them.

Indeed, there is growing concern that the *Yeshiva* decision threatens programs of employee participation and decisionmaking generally.

The Labor Board asserted, in 1970, jurisdiction over the private sector of higher education. And it coincided with a heightened interest in collective bargaining in State-supported colleges and universities. By early 1979 about 90 private and 302 public institutions of higher education were engaged in formal collective-bargaining relationships with their faculty, and more than 130,000 personnel were unionized.

This interest in collective bargaining on the part of faculty members is not hard to understand. Faculty members, like other employees, are concerned about their salaries and job security. Both have been threatened with the shrinkage of economic resources available in higher education over the past 15 years. Faculty salaries have fallen behind the rate of inflation to a greater extent than is the case for American workers generally.

Individual faculty members have found themselves losing their individual bargaining power in a difficult job market at a time when university management has been preoccupied with cutting budgets. Junior faculty members have found their prospects for tenure bleak or nonexistent.

These developments have, understandably, exacerbated the natural tensions in faculty, administration relationships and faculty influence in the educational enterprise has declined in that process.

The Supreme Court, in *Yeshiva*, seemed oblivious to this reality. Its decision is predicated on an idealized, ideological view of the university, in which the faculty is truly in control. While for this reason it might be argued that the *Yeshiva* decision applies only to that narrow group of institutions whose faculty presumably function as a replica of the medieval collegiums, as a practical matter, *Yeshiva* applies far more broadly.

The *Yeshiva* decision requires a factual inquiry into the extent of faculty influence in each case. The legal standard is so hopelessly vague, that it is almost impossible to predict the outcome. In any

event, no faculty will find itself—find it possible to muster the resources necessary to participate effectively in the required hearing process. Hearings in the recently-concluded cases at Boston University and Polytechnic Institute of New York each generated more than 20,000 pages of testimony and literally thousands of pages of exhibits and legal memorandums. The resources required to participate in litigation of this character are simply not available to private sector faculty. And for this reason they are deterred from even seeking bargaining rights.

Even if the availability of resources were not an issue, the *Yeshiva* rationale, at least as it is now construed by the Labor Board, narrows the scope of collective bargaining to the point where it is of little value to professional employees. Faculty members will pursue collective bargaining for reasons similar to those which motivate other employees. They will not do so, however, at the expense of their professional responsibility. Indeed, many private sector faculties have entered into collective bargaining precisely to preserve or to enhance their professional influence within the academic enterprise. But the *Yeshiva* rationale requires faculty members to choose between collective bargaining over bread and butter issues affecting their employment, and maintaining their influence in educational matters.

For example, in one case where a faculty lacking significant influence in this latter regard, had increased its role, through the collective-bargaining process. The Labor Board held that the act's protections would no longer be available to that faculty because they had become, quote, "'managers", unquote.

In effect, their very success cost them the protections of the NLRA and returned them to their original status.

This brings me to my concluding point. By permitting employee influence to result in the loss of bargaining rights, the *Yeshiva* decision stands as a direct and general threat to the development of responsible employee participation programs and other efforts at democratizing the workplace.

As Justice Brennan put it in his dissenting opinion, "The *Yeshiva* majority permits an employer to deny his employees the benefits of collective bargaining, merely by consulting with them, and accepting their advice when it is consistent with management's own objectives," unquote. Justice Brennan's concerns are by no means confined to faculty members employed in higher education. In private industry *Yeshiva* may discourage unions and employees generally from seeking unconventional ways of improving labor-management relationships and general productivity. The AFT is, of course, vitally concerned with the lot of elementary and secondary school teachers at a time when the Nation's schools are under considerable attack. Were the *Yeshiva* rationale applied in the public school systems, it could thus well work against responsible educational reform by encouraging teachers and their unions to confine their efforts to the protection of salary levels and job security. Many of us believe that important educational improvements can come only if teachers seek to play a more active role in educational policy. And yet we can hardly expect this to occur if it will result in a wholesale loss of bargaining rights.

For the foregoing reasons we urge the passage of H.R. 3291. Passage will stabilize labor-management relations in higher education and signal Congress' concern and intent that employee assertions of influence on management will not jeopardize bargaining under the National Labor Relations Act.

Thank you very much.

Mr. CLAY. Thank you. The next witness is Professor Getman.

[Prepared statement of Julius G. Getman follows:]

PREPARED STATEMENT OF JULIUS G. GETMAN, PROFESSOR OF LAW, YALE UNIVERSITY, ON BEHALF OF AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

I am Julius G. Getman, the William E. Townsend Professor at Yale Law School specializing in labor law. I am testifying at the request of the American Association of University Professors, the oldest and most significant faculty organization in America. I was the general counsel of AAUP from 1980 to 1982. I support the purpose of H.R. 3291, which will undo much of the mischief caused by the Supreme Court's decision in *NLRB* v. *Yeshiva University*. I consider this to be the single worst labor law opinion issued by the Court during the quarter century in which I have been closely following the field.

The *Yeshiva* opinion is bad law, bad labor relations, jurisprudentially dangerous, discriminatory, and unjust. It is bad law because it distorts the concept of managerial employees beyond any conceivable warrant either in the statute or in the previous decisions by the Board and the Court. In other opinion are the functions of an entire group of employees aggregated to prove that all of them are managers. The Court's constant description of the power of "the faculty" attributes to all the decisional influence of some. It means that professors who do nothing but teach classes, serve on academic committees and do research are managers because other professors are involved in budget or program planning committees.

The opinion is bad labor relations because it deprives an entire profession of the right to free choice based on an unexplained assumption that the dangers of divided loyalty would be somehow especially harmful if professors could unionize. The Court does not explain why that danger is worse for unionized professors than it is for unionized auto workers. In fact, the professional standards which guide academic organizations provide a special safeguard against the possibility of destructive union activity. Faculty members recognize a special professional obligation to consider the well-being of their institutions, which is inseparable from their needs. This sense of institutional obligation would be apparent to anyone who actually studied the collective bargaining agreements of colleges and universities, but awareness of this reality is notably absent from the *Yeshiva* opinion.

The opinion is jurisprudentially remarkable because it projects from a weak and deceptive record a confident description of the working of a complex, significant, and varied set of institutions. The opinion is replete with descriptions of 'mature universities' which those of us who have spent our lives in college teaching do not recognize. At a time when the central reality of academic life is the shift of power away from professors to a new, specially trained breed of academic administrators and managers, the Court, misunderstanding the material it cites, draws an idyllic generalized picture of universities in which all significant power is wielded by the faculty or on its behalf. If this picture were in fact accurate the danger of unionization at such institutions would be almost nonexistent, as my earlier studies of representation elections make clear.

The opinion is also a jurisprudential time bomb because if the Court were to apply the approach it took in this case in other situations, the NLRA could be rendered obsolete. The deindustrialization of America means that the future of collective bargaining is likely to be at institutions in which, applying the standards of *Yeshiva*, much of the work force will be declared managers. An approach permitting the aggregation of employee functions could lead to the reemergence of the company union outside the Act's purview.

The *Yeshiva* opinion is discriminatory because it analyzes the rights of faculty members differently from those of other employees, and it is unjust because it denigrates the legitimate desires of many faculties to utilize collective bargaining to achieve the degree of faculty participation in governance which the Court recognizes as appropriate. The ill-conceived and ill-founded Supreme Court opinion in *Yeshiva* has spawned the problems typically resulting from bad case law. Enforcement is uneven, time-consuming, and subject to the vagaries of the NLRB, which periodical-

ly adds new criteria to the factors used to determine the managerial status of faculty.

While I strongly support H.R. 3291, it would be improved if it were amended to clearly remove traditional forms of faculty participation from the reach of sec. 8(a)(2).

STATEMENT OF PROF. JULIUS GETMAN, SCHOOL OF LAW, YALE UNIVERSITY, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AAUP

Professor GETMAN. Thank you, Mr. Chairman. I am Julius D. Getman. I am the William K. Townsend professor at Yale Law School, specializing in labor law. I am testifying at the request of the American Association of University Professors, which is the oldest and most significant faculty organization in America. I was the general counsel of the AAUP from 1980 to 1982.

I strongly support the purposes of H.R. 3291, which will undo the mischief caused by the Supreme Court decision in *NLRB* v. *Yeshiva*, which I consider to be the single worst labor law opinion issued by the Court during a quarter of a century in which I have been studying labor law opinions, and I would add parenthetically that that's not an easy title to achieve.

The *Yeshiva* opinion, in my view, is bad law, bad labor relations, jurisprudentially dangerous, discriminatory, and unjust. It is bad law because it distorts the concept of managerial employees beyond any conceivable warrant, either in the statute or in the previous decisions by the Board and the Court. In no other opinion are the functions of an entire group of employees aggregated to prove that all of them are managers. What the Court's constant description of the power of "the faculty," treating all faculty members together, attributes to all the decisional influence of some. It means that professors who do nothing but teach classes or serve on academic committees and do research, are managers, simply because other professors may be involved in an advisory way in program or budget planning committees.

The opinion is bad labor relations, as Professor Polishook has pointed out, because it deprives an entire profession of the right to free choice, based on an unexplained assumption that somehow the dangers of divided loyalty would be particularly harmful if professors could organize. The Court does not explain, at all, why that danger is, in fact, particularly acute for unionized professors.

In fact, the professional standards which guide academic unions provide a special safeguard against the possibility of destructive union activity. Faculty members recognize a special professional obligation to consider the well-being of the institution, because we believe, in fact, that the well-being of the institutions are inseparable from our own professional achievement. And this sense of institutional obligation would be apparent to anyone who actually studied collective-bargaining agreements of any of the three organizations represented here. But awareness of this reality is notably absent from the *Yeshiva* opinion.

Indeed, I think that the one theme which connects all of the statements is the absence of any connection between the *Yeshiva* opinion and the realities of academic institutions. The opinion is jurisprudentially remarkable because it projects from a very weak

and deceptively created record a confident description not just of the workings of *Yeshiva*, but of a complex, significant, and varied set of institutions which are American colleges and universities.

It is a picture which those of us who have spent our lives in college teaching do not recognize. At a time when the central reality of academic life is the shift of powers away from professors to a new and specially-trained breed of academic administrators and managers. The Court misunderstanding the material it cites draws an idyllic generalized picture of universities, in which all significant power is wielded by the faculty or on its behalf.

If this picture were, in fact, accurate, the danger of unionization at such institutions would be almost nonexistent. A good part of my professional life was devoted to studying union organizing campaigns and were it the case that faculty possessed the power that the Supreme Court attributes to them, then, in fact, professors would simply not vote for unions.

The opinion is also a jurisprudential timebomb, as Professor Polishook has suggested, because if the Court were to apply the approach it took in *Yeshiva* in other situations, the entire NLRA could be rendered obsolete. The fact of the deindustrialization of America, which has been so much commented upon, means that the future of collective bargaining, to a significant extent, is likely to be at institutions in which applying of standards of *Yeshiva*, most of the work force could be declared managers. An approach permitting the aggregation of employee functions could lead to the reemergence of company unions, outside of the act's purview.

The *Yeshiva* opinion is discriminatory because it analyzes the rights of faculty members differently from those of other employees and because it creates a distinction with no warrant in either law or policy between public and private institutions. And it is unjust because it denegrates the legitimate desires of faculty to utilize collective bargaining to achieve the degree of faculty participation and governance which the Court, in *Yeshiva*, recognizes as appropriate.

Now, the ill-conceived and ill-founded Supreme Court decision in *Yeshiva* has necessarily spawned the problems typically resulting from bad case law. Enforcement is uneven, time consuming, and subject to the vagaries of the NLRB, which periodically adds new criteria to the factors used to determine the managerial status of faculty. It is a particularly difficult situation because the institutions—which might be expected to correct some of the worst aspects of *Yeshiva*, such as the NLRB or the Court's right now are not functioning, in any positive way, with regard to the rights of labor organizations. And rather than ameliorating the problems inherent in *Yeshiva*, we see a whole line of opinions actually making them worse and expanding on the problems created in *Yeshiva*

Finally, while I strongly support H.R. 3291, it seems to me it could be improved if it were amended to clearly remove traditional forms of faculty participation from the reach of section 8(a)(2). It had occurred to me that the only reason that someone could support *Yeshiva* would be, something totally unstated in the opinion, the concern with the status of traditional faculty organizations like faculty senates. And I believe that this bill would be improved to make it clear that those could coexist with collective bargaining.

Thank you.

Mr. CLAY. Thank you, Professor Getman.

The next witness.

[Prepared statement of Joseph C. Speisman follows:]

PREPARED STATEMENT OF PROF. JOSEPH C. SPEISMAN, DEPARTMENT OF PSYCHOLOGY, BOSTON UNIVERSITY, PAST PRESIDENT, BOSTON UNIVERSITY CHAPTER, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AAUP

The ownership and ultimate managerial authority of private universities typically lies in the hands of a Board of Trustees whose position is anchored in a Charter, the terms of which are broad and correspondingly indefinite.

The real distribution of power among trustees, the administration (president and officers dependent on him), and the faculty is sometimes, not always, spelled out in the constitution and bylaws that govern the decision-making process within the Board of Trustees, particularly in relation to the president and his administration. These crucial documents, the constitution and by-laws, too are sometimes broad and vague in their terms, and of course they can typically be altered by the trustees with or without the concurrence of the president.

Boards of Trustees are essentially self-perpetuating bodies; that is, new members are selected by the current members. In some institutions, some or all of the trustees are elected by active alumni associations. Where alumni elections are not important features of trustee selection, and where the charter and by-laws are vague enough, as at Boston University, a president or a chairman of the Board of Trustees or both in combination can attain virtually absolute power over an institution and its finances. This power is obtained partly by controlling trustee selection, partly by controlling key committees and by control of the entire flow of information to the Board as a whole, who are then put in the position of merely confirming the decisions of a strong president. Trustees who opposed the president at Boston University were operantly excluded from further meetings and they tended to consider themselves "fired" by President Silber.

We are not claiming that all or most of the trustee governance systems are defective in this way but that there is this potential in a private university at any time.

The further distribution of decision-making power between the administration (president) and the faculty is sometimes governed by faculty manuals, constitutions of faculty senates, and the like. As in the case of charters and trustee constitutions, these documents are also, at times, vague or otherwise imperfect, and of course they too can be changed by trustees or presidents.

In addition, in most institutions, there are traditional ways of doing things that are rarely spelled out, but that are basic to the everyday course of decision-making within the institution. These customs are most likely to be inviolable in ancient and stable institutions and during periods of prosperity and calm. These de facto arrangements are also often influenced by the more or less precisely articulated standards of academic freedom and governance elaborated and published by the American Association of University Professors (AAUP). The procedural norms of the AAUP, along with the customs of the institution (where well-established), add up to what is often called the "collegial model" of academic governance.

A model is precisely that, and it may be substantially modified or even disregarded in practice. This is especially true where manuals and constitutions are inexact or easily altered, where customary patterns are defective or poorly entrenched, and during times of crisis and change.

In short, everyone agrees that the collegial model of academic governance should apply to all institutions of higher education; we agree on some detail on the sort of practices this model implies; and we further agree that the traditions of academic freedom that should be protected by this model are crucial to the moral integrity and intellectual vitality of American higher education.

Those of us who engage in academic collective bargaining do so not to oppose the collegial model but rather to protect and shore up the norms of that model. This is especially true in the face of threats by administrations that have become managements and have attained virtually complete power in their relationships with Boards of Trustees and have essentially discarded the system of checks and balances that is the essence of the collegial model.

One has to recall that public institutions of higher education are typically subject to some supervision and indirect control through elected political bodies, and that they are certainly—and properly—subject to public scrutiny in a way that private institutions are not.

In the hands of determined individuals seeking power, and where the supervisory mission of the trustees has been blunted, private universities can become caricatures of "a community of scholars." Where such irresponsible enclaves arise in private higher education, collective bargaining by faculties may well be the only means available to shore up or reinstate the norms of the collegial model and thus insure against the de facto violations of public trust implied by the tax advantages conferred on these institutions.

No competent observer would claim that American university teachers and scholars are likely to seek collective bargaining as a recourse, or are likely to undertake voluntarily the roles and obligations of union members unless they feel painfully and deeply threatened in their professional roles, and unless the collegial model has been seriously eroded in practice.

It is therefore almost a contradiction in terms to cite the rights of faculty under the collegial model while denying faculty the means to protect that model against patent abuses.

The fact that faculty collectively have some sort of indirect effect on the curriculum of their institutions does not indicate that the collegial model is intact. One needs to ask how the crucial academic decisions are made: how new programs are introduced or old ones terminated; how new faculty are selected and current faculty are promoted or not promoted. Especially one must ask how recommendations made by faculty on academic grounds and in academically relevant areas are considered or ignored or overturned, often on non-academic grounds, by powerful presidents or by administrators totally dependent on them. In this way, faculty are consistently denied the relative autonomy assigned them under the collegial model.

I should like to be more specific about how the two negotiated contracts at Boston University (1978-84) have served to enable the collegial model to function and to protect the faculty from capricious and arbitrary action by the administration. The first and perhaps most important gain under the contract was the regularization of procedures in the award or denial of such crucial matters as appointment, promotion and tenure, and in the termination of faculty.

Under the collective bargaining contracts the faculty achieved explicit procedural guarantees that had been expressed before only vaguely and largely as pious hopes: how, when, and where reviews were to be conducted; the manner in which faculty colleagues would evaluate materials presented by a candidate for promotion or tenure; the standards by which judgments would be made; and the schedule by which faculty and administrative recommendations would be completed and sent on to the next level of review.

It is worth noting that even President Silber and the Board of Trustees of Boston University, who spent enormous sums to oppose collective bargaining in the courts, plan to retain most of these procedures after the expiration of the contract in October (Letter to the faculty dated July 11, 1984).

At least as important as regularizing procedures by which to make judgments was the establishment of procedures to grieve and appeal those judgments when necessary. Prior to the negotiated contracts the entire grievance procedure consisted of three faculty members who were empowered to do nothing more than report to the administration. This grievance committee was supposed to review evidence but there were times when documents were withheld, and of course there was no recourse to external disinterested appeal procedures.

Not only was a just appeals procedure established for the first time under the contracts but also individuals who sought redress were entitled and were given access to information and evidence. Prior to the contracts' reports and file materials (e.g., personnel files) relevant to the appeal were not made available or if some portions of the files were provided it was done at the whim of an administrator who was also rendering a judgment in the case.

The contracts enabled individuals even in the face of institutional power and authority to open the closed file drawers and provided some "sunshine" in an otherwise darkened judgment process. All of the issues of recommending actions, making judgments, and instituting legitimate appeals were addressed in our contracts—not always satisfactorily addressed but addressed. All relevant information had to be provided, there was some separation of the roles of accuser and prosecutor, judge and jury, and the participation of faculty in the collegial process was spelled out.

I refer the committee to attached documents A and B for specific, individualized, and sometimes moving accounts (cf. Judy Hallett's statement) of the operation of the grievance procedures under the contract.

We are not only interested in procedures—there is also bread and butter. Prior to negotiating our first contract in 1978-79 there was no established salary policy at

Boston University. Faculty salary increments were often comprised of that part of the budget that was left over after accounting for all other budget items.

During the years of the current administration prior to the first contract (1972-78) the salary position of Boston University faculty measured against comparable institutions was very poor indeed. Compared with private independent category I (comparable degrees granted) institutions, Boston University fell below the national average for each rank and for the total of all ranks; when compared with all such institutions in the New England region the gap was even greater; and Boston University fell furthest behind in the state of Massachusetts. It is also true that there was an increasing gap between the average salary for all ranks at Boston University and that of the national average. During the first years of our current administration faculty salaries receded from a minus $2,700 in 1971 to a minus $3,200 in 1974 (See Document C for all of the proceding statistics).

During six precontract years immediately prior to bargaining, the average annual salary increment for full professors was only 4.2 percent while for the same period the cost of living rose on a yearly average of 8.2 percent (see Documents D, E, F, and G). During this period tuition increased by more than 150 percent and today the tuition at Boston University is $8,996, an increase of 360 percent since 1972.

During the six years under contract, the average annual increment in the salary of full professors was 9 percent, which, in contrast to the precontract period, at least kept pace with the cost-of-living increases during this period.

Other practices of a willful administration were stopped or modified by contract enforcement. There was a spring (1979) when every non-tenured faculty member—the youngest and most vulnerable group—who was not on a multiple-year appointment was sent a term nation letter because of fears of lagging enrollments which turned out to be totally unfounded. These termination letters were negated through arbitration (see Document G, page 2). Similary, over the course of the current three-year contract, five untenured faculty terminated for no substantive reason gained reappointment through the grievance process. Another newly hired instructor terminated shortly after her arrival received a significant monetary settlement (see Document B, page 2).

Faculties of colleges and universities are engaged in long-term affairs of teaching, intellectual and artistic development, of scientific research and invention, and in scholarly publication and public performance of their creations. This work is inevitably subjected to critical review by their peers. These are the functions for which faculty are hired. The so-called managerial responsibilities such as reviewing colleagues for appointment, promotion, and tenure arise because the various faculties are the only competent judges of work in their special areas. These responsibilities remain only incidental to the faculty's main tasks and even under our contracts the trustees retained ultimate decision-making authority. The professional pursuits of the faculty require uninterrupted time and collegial support. Where the collegial system breaks down, the only meaningful protection afforded faculty to engage in their long-term development is by means of a mutually agreed upon contractual arrangement.

All faculty in higher education in the Massachusetts state system are protected by collective bargaining contracts. Faculty in public higher education in a majority of states similarly enjoy the right to organize and bargain collectively.

The faculty of Boston University and other private institutions seek from the Congress this same right to negotiate with administrations under the law. This right should be restored.

Thank you.

DOCUMENT A

BUC-AAUP HELPS PEOPLE...

* JUDY HALLETT (CLA): "By supporting the BUC-AAUP, people such as yourselves make professional and emotional survival possible for vulnerable people such as myself. Without the union, and the collegial and professional validation afforded me by the contract and arbitration procedures, I do not know how I could have withstood the ordeal of my tenure review and denial. Access to the voting records and detailed reports of college, university, and ad hoc committees during the review itself sustained me in my struggle to remain an active and productive teacher and scholar. These documents—provided to me by the 1978 contract under which my review took place—reassured me that my work was valued by informed and objective senior colleagues both at B.U. and in my field. Only after my case had gone to arbitration was I able to see the reports of my chairman and dean, documents now routinely available to tenure candidates under the current contract. Like the arbitrator's reprimanding for the record the mishandling of procedures and other inappropriate conduct by those who opposed my receiving tenure, these documents furnished me with further, and satisfying, professional vindication.

"The union is there for you as it was for me. Please remember us both and join."

...JUST LIKE YOU

* The assistant professor who was awarded an additional year and a new tenure review in 1983-84 when the provost acceded to her grievance that procedural errors had occurred in her first review.

* The twelve senior faculty whose grievances on 1981-82 merit/equity raises are now in arbitration, along with a class grievance on behalf of the faculty at CAS.

* The entire bargaining unit faculty at SSW, as well as fifteen individuals at last count, now grieving 1982-83 merit/equity raises.

* The 179 people at all ranks who together received over $20,000 in back pay on 1981-82 overloads, thanks to a chapter grievance.

* MARGARET EDMUNDS (SON): When her chair and dean asked her not to stand for tenure because she hadn't finished her dissertation, Professor Edmunds agreed and was given notice that 1981-82 would be her terminal year. Unable to secure a part-time position at B.U. last fall, Professor Edmunds—now a Ph.D.—filed for unemployment while she looked for work. In a test case, the B.U. administration challenged her claim on the grounds that she had left voluntarily. The union assisted Dr. Edmunds from the first. When B.U. sent an attorney to the appeals hearing, the union sent its lawyer as well. Today Margaret Edmunds is job-hunting and collecting unemployment—and because of the BUC-AAUP, every untenured faculty member who finds himself or herself in a similar position is safe from moves by central administration to take away the legally mandated safety net of unemployment compensation.

* BARBARA SCHAPIRO (CAS): Last fall Professor Schapiro received notice that she would not be rehired after 1982-83. Recognized as an outstanding teacher, and with a book newly accepted at Johns Hopkins, she was terminated solely for a "projected precipitous drop in enrollment" which never occurred. She grieved and won her reappointment. Professor Schapiro recently gave notice that she is resigning after this term. Her career—her choice, and the union made it possible.

HOW MUCH IS THE UNION WORTH TO YOU ?

You enjoy the benefits of BUC-AAUP representation every day. As a member of the bargaining unit, you have been enjoying the privilege of union representation and protection at no expense to yourself.

But the BUC-AAUP has overwhelming expenses—even on a bare-bones budget:

- All office operating costs—rent, telephones, xeroxing, everything
- UPDATE —bringing the latest information on faculty issues
- The "Yeshiva" hearings—two years, two lawyers, a third of our budget
- Arbitrations on tenure, terminations, salaries, and more
- Experienced staff providing immediate service and legal assistance
- Contract negotiations (and still more legal expenses)

You have prospered with the BUC-AAUP. You work daily under its protection. Now will you support it by becoming a member?

WHEN YOU JOIN THE BUC-AAUP, YOU ARE THE UNION

Your financial support is vital to the union's success. And your voice is vital to your own future at Boston University. The BUC-AAUP consults all faculty on contract preparations but only union members can vote policy.

The bottom line is this: are you better off with the union? A majority of faculty said yes to that question in 1975 and voted the BUC-AAUP as their bargaining agent.

Your membership is your YES vote now. Imagine your future at B.U. without the AAUP. Imagine the present.

Please return the enclosed membership form and your dues payment today—before you get caught up in grading papers and exams. You will be hearing from us again soon with UPDATE, surveys, and special events—but only because people like yourself have made our continuing work possible.

A STRONG UNION REPRESENTING A STRONG FACULTY BUILDS A STRONG UNIVERSITY !

Sincerely yours,

Judith A. Gustafson
Judith A. Gustafson
Executive Director

Freda Rebelsky
Freda Rebelsky
Membership Chair

CONFIDENTIALITY GUARANTEED

Please be assured that union members on payroll deduction do get merit raises, tenure, and promotions. So do union officers. However, if you are still concerned about confidentiality, you can pay your dues directly to us by check; the B.U. administration will have no record whatsoever of your membership. If you mark at the top of your application form CONFIDENTIAL, all personal union correspondence will be sent to your home address only. Send us any further instructions you wish.

DOCUMENT B

BUC·AA UP·DATE...

Volume V, no. 7 Monday, January 30, 1984

BOSTON UNIVERSITY CHAPTER, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS (AAUP) COMMONWEALTH AVENUE
P.O. Box 509 Kenmore Station Boston, Massachusetts 02215 Telephone (617) 267-6983

GRIEVANCE VICTORIES BRING HAPPY NEW YEAR

The strength of our contract lies in our ability to enforce it, and Article XXVI—Grievance and Arbitration—is our muscle. Although preparing for a new contract publicly engrosses our attention, helping individual faculty to secure their rights through the grievance process continues to be the major day-to-day activity of the Chapter. The long-awaited arrival of the arbitrator's decisions on 1981-82 merit and equity cases, as well as the settlement over winter break of two termination cases, gave significant victories to the faculty and the Chapter.

The big victory in the 1981-82 salary decisions was that the arbitrator agreed in principle with the union position on the scope of his review and the arbitrability of our equity cases. The administration's arguments to the contrary, he ruled that he was not restricted to determining whether the provost's allocations were arbitrary and capricious but could himself apply the School Salary Guidelines to an individual case and, where necessary, himself make academic judgments. Further, he ruled that equity claims based on conditions existing prior to the current contract—as every case was—are not time-barred, as the administration had asserted. Not every dollar sought was awarded, but the arbitrator confirmed the union demand for a substantive review of the provost's decisions.

On the Chapter's class grievance at CAS the arbitrator ruled that the dean had improperly predetermined the minimum merit share at $500, thereby limiting the number of possible merit awards. He remanded the case to the dean to be reconsidered in accordance with the School Salary Guidelines, which require that the merit pot be distributed according to proportional shares. The following chart indicates the arbitrator's disposition of individual 1981-82 salary grievances:

	School	MERIT				EQUITY			
		Dept'l Rec'n	Provost	Add'l Sought	Add'l Award	Dept'l Rec'n	Provost	Add'l Sought	Add'l Award
1.	SMG	900	700	200	0	4th Q'tile	0	10,243	4,000
2.	SMG	700	500	200	200	NA		NA	
3.	SPC	527	0	527	0	Ø NA		NA	
4.	STH	1,000	0	1,000	0*	0	0	3,755	0
5.	CLA/Hum	2,000	500	1,500	500	NA		NA	
6.	CLA/Hum	NA		NA		Rank Med'n	0	5,000	0
7.	CLA/SoS	NA		NA		1,000	0	1,000	0
8.	CLA/Sci**	500	0	500	500	2,000	500	3,500	1,500
9.	CLA/Sci	500	0	500	0	1,000	0	3,000	0

The administration also settled a number of salary grievances prior to arbitration:

	School	MERIT				EQUITY			
		Dept'l Rec'n	Provost	Add'l Sought	Add'l S'ment	Dep't Rec'n	Provost	Add'l Sought	Add'l S'ment
1.	CLA/Sci**	NA		NA		1,500	0	1,500	1,500
2.	CLA/SoS	1,000	0	1,000	1,000	NA		NA	
3.	CLA/SoS	1,000	500	NA		1,000	0	1,000	500
4.	CLA/SoS	1,000	500	NA		2,500	0	2,500	500

* Arbitrator declined to review merit claim because of late filing.
** Indicates female faculty member.

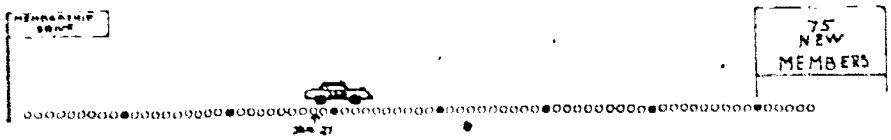
The resolution of two grievances concerning termination represents particularly significant gains for untenured faculty. Both were settled after Step II meetings at the provost's level, sparing lengthy and costly arbitration. An offer of reappointment and a tenure review ended the grievance of a fifth-year assistant professor at SMG who had been terminated by central administration despite the unanimous recommendation by her department, chair, and dean for a two-year renewal. The grievance claimed violations in three contract areas. Errors in the reappointment review procedures included late notification of nonrenewal and the forwarding of out-of-date documents to the provost's level. The Chapter asserted too that the termination amounted to a foreclosure of tenure consideration prior to the mandatory tenure review year. The possibility of sex discrimination was also raised because, of the seven faculty at SMG who were approaching their tenure review year, all five men were renewed while the grievant and another female colleague were not despite having records at least as strong as those of the men.

The other termination case has resulted in a large financial settlement for a first-year instructor at SON who received a termination notice a month after she had begun teaching at BU. At the end of August the instructor had received the offer of a one-year appointment, along with assurances that approval by the Trustees was a mere formality. On this basis, she removed herself from consideration for another job and sold her household goods in a distant state to finance the move to Boston. Two weeks after classes began, the terms of the appointment were changed to one semester only, as she was informed two weeks later. The Chapter argued, first, that the terms and conditions stated at the time of hiring had been violated and, second, that full-time appointments of one semester could be made only to replace faculty on leave, which was not the case here. The Chapter's willingness to pursue the case to arbitration was among the reasons for the administration's settlement.

• SAVE FEBRUARY 15 FOR ANNUAL LEGISLATIVE DINNER. The State Conference of the AAUP will hold its annual legislative dinner at Suffolk University on Wednesday, February 15. James G. Collins, House Chairman of the Joint Committee on Education, will talk about the impact on higher education in Massachusetts of the Joint Committee's recommended reforms in public school education. (One recommendation is to abolish tenure.) Other state legislators will also attend. A cocktail hour begins at six o'clock, followed by dinner at seven. Members of the new AAUP chapter at the Berklee College of Music will perform. The cost of the event is $8; you will be receiving a reservation form in your mail boxes next week. For further information, call the Chapter office.

• ON THE COMING OF KEVIN WHITE TO BU. The Chapter is seeking information on the procedures followed in the appointment of Kevin White to the faculty, in particular, which faculty committees, if any, were consulted and concurred on the action. As a member of the bargaining unit Professor White will receive an invitation to become a member of the Chapter.

• CHAPTER MEMBERSHIP DRIVE CONTINUES. The Chapter gained 26 new members in last semester's membership drive. Our goal is 75. Our goal is also to negotiate the best contract possible and to provide you with the best possible services. Please send in that membership application you received last week and help us meet all our goals!



BOSTON UNIVERSITY CHAPTER
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
P.O. Box 509 / Kenmore Station / Boston, Massachusetts
OFFICE AT: 510 Commonwealth Ave., HOURS 9 'til 1 p.m.
PHONE: 267-6983

DOCUMENT C

March 17, 1975

STATEMENT ON ECONOMIC SITUATION OF FACULTY

Dear Colleague;

This Report brings you critically important information concerning (a) the poor, and declining, economic position of the Boston University faculty in recent years; (b) the relation between expenditures on faculty compensation and the total university budget; and (c) what BUCAAUP proposes to do to enhance the economic status of the faculty.

Highlights from our Report include the following:

1) BU faculty average salaries compared to faculty average salaries at AAUP category I institutions for 1973/74:

---compare badly with average salaries nationally;

---run further behind average salaries in New England;

---run furthest behind --or do worst of all-- compared to average salaries in Massachusetts.

---Alarmingly, during 1970/71 through 1973/74, the dollar gap widened between BU faculty average salaries and average salaries in Massachussetts.

(For details, see SECTION 1.)

2) BU faculty average salaries for 1974/75 have fallen even further behind average salaries at AAUP Category I Institutions in Massachusetts.
(For details, see SECTION 2.)

3) Expenditures on faculty compensation from 1970/71 through 1973/74 remained a constantly small --17 percent-- portion of the total university budget while tuition and income skyrocketed. Preliminary data for 1974/75 and projected data for 1975/76 indicate no significant improvement in this pattern.
(For details, see SECTION 3.)

4) In recent years there has been a dramatic increase in Administrative and "Other" expenditures.
(For details, see SECTION 4.)

5) BUCAAUP proposes some major positions both to preserve and to advance the economic status of the faculty.
(For details, see SECTION 5.)

***

SECTION 1. The Disparity Between BU Average Salaries and Those At Comparable Institutions in Recent Years*

The AAUP's annual reports on the economic status of faculties classifys institutions into several categories. Category I institutions, to which BU belongs, are those which have granted an average of at least 15 doctorates a year in the preceding three years in at least three unrelated disciplines.

BU compared with national, New England, and Massachusetts averages for 1973/74. Our average salaries, by rank, and the average for all ranks:

--- compare badly with average salaries at Category I institutions nationwide;

--- run further behind the averages for Category I institutions in New England; and

--- run furthest behind --or do worst of all-- when compared with the averages for the other Category I institutions in Massachusetts.

The other Category I institutions in Massachusetts are Boston College, Brandeis, Clark, Harvard, M.I.T., the U. Mass. at Amherst, and Tufts. The following table shows the progressive disparity between our average salaries and those nationally, in New England, and for the other Category I institutions in Massachusetts.

TABLE 1. BU Average Salaries for 1973/74 Compared to Averages at AAUP Category I Institutions.

Rank	BU Average	National Average	New England Average	Average for Other Mass. Cat. I Insts.
Professor	21,200	21,900	23,900	24,800
Assoc. Prof.	15,900	16,100	16,900	17,700
Assist. Prof.	12,700	13,200	13,300	13,900
Instructor	10,200	10,200	10,800	11,400
all ranks	16,000	16,700	17,900	19,200

BU compared with individual institutions in the state in 1973/74. Our average salaries are not merely below the averages for the combined

* All averages are given to the nearest $100. Source of the data is the AAUP Bulletin (Summer issue) for the year, which contains the annual report on the economic status of faculties. These reports cover full-time faculty, exclusive of medical school faculty; and the compensation and other economic data are on a nine-months basis. BU average salaries calculated from this source agree with the averages given in the administration's report to the Faculty Senate of December 12, 1974.

group of all other Category I institutions in Massachusetts. In addition, when average salaries by rank at individual schools are compared, BU fares badly.

In every comparison, the BU average is either next to the lowest, or the lowest of all. Details are given in the following table.

TABLE 2. BU Average Salaries for 1973/74 Compared to Average Salaries at Individual Category I Institutions in Massachusetts.

Rank	Lowest Average Salary	BU Average	BU Average Compared to the Lowest Average Salary
Professor	20,800	21,200	next to lowest
Assoc. Prof.	15,600	15,900	next to lowest
Assist. Prof.	12,500	12,700	next to lowest
Instructor	10,200	10,200	lowest
All ranks	15,800	16,000	next to lowest

BU's worsening position from 1970/71 to 1973/74. Over this four-year period, the dollar gap between BU average salaries and the average for the other Category I institutions in Massachusetts has widened at every rank except for professors, where it has remained the same. The junior ranks were the hardest hit. The following table shows this worsening in BU's position.

TABLE 3. The Differential Between BU Average Salaries and the Averages for the Other Category I Institutions in Massachusetts.

1970/71

Rank	BU Average	Average for Other Mass. Cat. I Institutions	BU Differential
Professor	18,600	22,200	minus 3,600
Assoc. Prof.	13,900	15,300	minus 1,400
Assist. Prof.	11,900	12,100	minus 200
Instructor	9,200	9,600	minus 400
all ranks	14,100	16,800	minus 2,700

1973/74

Rank	BU Average	Average for Other Mass. Cat. I Institutions	BU Differential
Professor	21,200	24,800	minus 3,600
Assoc. Prof.	15,900	17,700	minus 1,800
Assist. Prof.	12,700	13,900	minus 1,200
Instructor	10,200	11,400	minus 1,200
all ranks	16,000	19,200	minus 3,200

SECTION 2. BU's Position Further Declines in the Current Year, 1974/75.

The administration has refused to file the usual economic data on faculty compensation with the AAUP this year, allowing the January 31,1975 deadline to pass despite several requests from the national office.

All other Category I institutions in the state have filed, however. Average salaries by rank for 1974/75 at these other institutions can be compared with the "preliminary" average salaries for 1974/75 which the administration included in its report to the Faculty Senate of December 12, 1974.

This comparison reveals a further decline, from 1973/74 to 1974/75, in BU's position relative to the average salaries for the other Category I institutions combined. The dollar gap has widened at two out of the four ranks and remains unchanged at one. No comparison for "all ranks" can be made, as the number at each rank for BU is unknown.

The BU differential for professors is now $3,800 instead of $3,600. Associate professors are now $2,000 behind, instead of $1,800. Instructors remain $1,200 behind. Assistant professors are the exception; instead of being $1,200 behind the average for the other institutions, their average is $1,000 behind.

The following table contains the 1974/75 figures. The 1973/74 figures were given in TABLE 3, above.

TABLE 4. The 1974/75 Differential between "Preliminary" BU Average Salaries and the Averages for the Other Category I Institutions in Mass.

Rank	BU "Preliminary" Average	Average for Other Mass. Cat. I Schools	BU Differential
Professor	22,500	26,300	minus 3,800
Assoc. Prof.	16,700	18,700	minus 2,000
Assist. Prof.	13,600	14,600	minus 1,000
Instructor	10,900	12,100	minus 1,200

This worsening of already inferior average salaries is occurring at a time of extraordinary inflation. Further, it affects faculty living in an area which has a very high cost of living relative to the rest of the nation.

SECTION 3. Faculty Compensation, the Budget, and Tuition.

Average faculty salaries present a dismal picture, as detailed in the preceding sections of this Statement. Of course there are exceptions; for example, some recent faculty appointments receive salaries which are quite high. But the majority of faculty are not in this favored category.

All faculty members are aware of the financial pressures on all universities, including this one. All are aware of the pressures on students and their families which are generated by rising tuition rates. And, as faculty, we are concerned with the general well-being of the educational enterprise.

Therefore, it is important that faculty salaries be considered not only as they affect us as individuals, but from other perspectives as well.

One of these perspectives is the relation of total faculty compensation to total expenses. Another is the relation of faculty compensation to tuition. In this section we present information on these important concerns. In the next section we discuss where the rest of the money goes.

Faculty compensation and total expenses. "Faculty compensation" is salary plus fringe benefits such as Social Security, TIAA/CREF, and the like. The AAUP Bulletin gives the administration's report of average compensation by rank for full-time faculty, exclusive of Medical School faculty; the number at the rank; and fringe benefits as percent of average salary for the rank (in 1973/74, this percentage ranged from 12.9 to 22.7). Total compensation was calculated from this source. Total expense, and income, come from the administration's report to the Faculty Senate of December 12, 1974, and pertain to the entire university.

When figures for 1970/71 and 1973/74 are examined, the evidence is clear that this full-time faculty compensation is not a very large share of the budget. The administration reported total expenses of $77.7 million in 1970/71, and $100.2 million in 1973/74. Over this period:

---total faculty compensation as a percent of total expense remained constant, at 17 percent in each of the two years;

---the dollar increase in total compensation over this four-year period came to a modest $4.2 million: the total advanced from $13.0 million in 1970/71 to $17.2 million in 1973/74;

---and this was a period in which the number of full-time faculty increased from 821 to 899, or by 10 percent.

Faculty compensation and tuition. How much does the faculty benefit when the tuition goes up? The evidence is clear that tuition has risen much faster than faculty compensation.

Over the four-year period from 1970/71 to 1973/74:

---average faculty compensation increased by 21 percent, from $15,800 to $19,100;

---but the tuition increased by 54 percent, from $1,750 to $2,690.

Thus, average individual faculty compensation rose less than half as fast as the tuition paid by an individual student.

Looking at total faculty compensation, and total tuition income, again we see that the tuition increase greatly exceeds the compensation increase over this four-year period:

---total faculty compensation (for a 10 percent larger faculty) rose from $13.0 million to $17.2 million. This is an increase of $4.2 million, or 32 percent;

---but income from "tuition and fees" rose from $38.1 million to $56.4 million. This is an increase of $18.3 million dollars, or 48 percent.

From 1973/74 to the current year, 1974/75:

---tuition went up another $200, to a total of $2,890;

---and an increase of 6 percent in average faculty compensation was budgeted for the current year (according to the Senate Council's Budget Committee Report of May 9, 1974);

---but the budgeted compensation increase came not out of the tuition increase but out of money saved from the previous year by the freeze on faculty salaries plus deferral of plant maintenance. *

The administration has raised 1975/76 tuition another $390, to a total of $3280. And, as is so often the case, publicity about this tuition increase prominently features the need to raise salaries. For example, the story in Currents of January 25, 1975, on the tuition increase is headlined "Inflationary Pressures Force Tuition Raise." The list of "infaltionary pressures" begins with "salaries and fringe benefits for all University employees - faculty and staff" and then goes on to speak of rising fuel and utility costs.

Repeating the pattern of the past, the estimated increase in income from higher tuition greatly exceeds the estimated increase in faculty compensation:

---the administration estimates that the tuition increase will raise an additional $6.5 million;

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* From the Senate Budget Committee's report, page 2: "Without detracting from the achievement [of an operating surplus], it should be noted that it rests, primarily, on two factors which cannot be repeated: (a) deferral of maintenance of physical plant...(b) absence of faculty salary increases in a period in which the cost of living increased at an annual rate of approximately 10%." "...both the Committee and the Executive Office are concerned that the 6% compensation increase for 1974/75 is not being funded entirely out of 1974-75 income, but is being provided in significant part, if not completely, by Reserves created out of 1973-74 income."

---a reasonable estimate of the increase in total faculty compensation from this year to the next is only an additional $1.1 million.*

SECTION 4. Where Is the Money Going?

Over the past four years, the university's total income has increased considerably, from $75.2 million in 1970/71 to $100.4 million in 1973/74 (these figures, and all new figures in this section, are taken, except where otherwise noted, from the administration's report to the Faculty Senate of December 12, 1974.) .

Much of this increased income has come from increased tuition and fees. Sponsored research income, which is generated by activities of the faculty, has increased too. The following figures give the details:

Income Source	1970/71	1973/74
Tuition and Fees	$38.1 million	$56.4 million
Sponsored Research	$17.7 million	$23.6 million
All Other.	$19.4 million	$20.4 million
Total	75.2 million	100.4 million

As we have seen, increase in faculty compensation has amounted during this period to only $4.2 million. Perhaps a substantial part of the additional income has been consumed by rising costs for electricity, fuel, telephone services and security, of which we have heard so much? Perhaps expenditures on Student Academic Support Services (Health Services, the Registrar, Admissions, and so on) have increased? On the contrary:

---over this period, the costs of utilities and security increased from $2.17 million to $3.64 million, or only $1.47 million;

---Student Academic Support Services cost $2.3 million in 1970/71, and $2.2 million in 1973/74.

If we examine the very broad and inclusive category labeled "Instruction, Research, Student Support," which doubtless includes faculty compensation, even this has increased by only $9.2 million, from $35.3 million in 1970/71 to $44.5 million in 1973/74.

Then, where is the additional income going? Clearly, much of it is unaccounted for by the expenditures listed above.

There are many places, and many ways, for any administration to spend any university's money. Some may be wise, some not; some may be speculative,

* If total faculty compensation of $17.2 million for 1973/74 were increased by 6 percent, it would amount to $18.2 million. If compensation increases for next year amount to 6 percent (a commonly heard figure), this would amount to $1.1 million (6 percent of $18.2 million).

others conservative. At present, the faculty does not have access to information which allows it much opportunity to evaluate the soundness of financial policy in relation to educational policy.

However, two disturbing features of the university's expenditures are evident from the available information. One has to do with the proliferation of the bureaucracy. The other is the growth in an expense category which is uninformatively labeled "other."

There has been a dramatic increase in the number of vice presidents and of other administrative personnel and their supporting staff. In this connection, we quote from the Senate Council's Budget Committee Report, p. 3: "The Committee is not satisfied that the non-academic budgets of the university were subjected to the same program of critical reviews which were imposed on the academic budgets in order to achieve a balanced budget for 1974-75."

With respect to expenditures by this proliferating bureaucracy, some revealing information can be gleaned from scrutiny of the university's fiscal year budgets for 1973/74 and for 1974/75, which are on file at Mugar Library (Special Collections), even though the income and expense categories are so broad that they disclose very little about the purpose of expenditures.

Here, for example, are 1972/73 actual expenditures, and 1974/75 budgeted expenditures, for four administrative offices, as detailed in the 1974/75 fiscal year budget:

	1972/73	1974/75
V.P. Public Affairs	$1 million	1.48 million
V.P. Finance	.79 million	1.13 million
V.P. Academic Affairs	.06 million	.32 million
Planning, Budgets and Information	1.13 million	1.61 million

These four administrative officers are classified in the fiscal year year budget under "Administrative and General" expenses. So are "Central Administration," "Vice President for Operations," "General University," and a new Vice President for Personnel, who appears with a budget of $.42 million in 1974/75.

The total for these various expense categories under "Administrative and General" was $5.01 million in 1972/73, and had risen to $7.06 million in 1974/75. This was an increase of over $2 million, and it took place during a period when the faculty salaries were frozen.

We now turn to the history of "other expenses." In the administration's report to the Faculty Senate of December 12, 1974, there is the sudden appearance, and notable growth, of an expense category which is labeled "other." The categories of the fiscal year budgets on file at Mugar are different from those in the report to the Faculty Senate. Study of the former therefore fails to throw light on this expense item in the latter.

So we can only describe to you the history of "other:"

	1970/71	1971/72	1972/73	1973/74
"Other Expense"	0.0 mil.	$ .6 million	$ 4.2 million	$4.1 million

Whatever "other" may be, in 1973/74 it was:

---equal to 24 percent --nearly one quarter-- of the $17.2 million total faculty compensation for that year;

---nearly twice as large as the $2.2 million of expenses for Student Academic Support Service for that year.

SECTION 5. Some BUCAAUP Economic Objectives.

Here are some of the major economic objectives of BUCAAUP:

1) Established minimum salary scales for each rank, which will include substantial increases over prevailing minimum salaries.

2) During the first year of the contract a substantial cost-of-living increase for all faculty, and provision for additional cost-of-living increases in succeeding years.

3) Substantial merit increases over and above the cost-of-living increases, with collegial processes at the Department and/or College level for determining their award.

4) A specified process, including an appeals procedure, for individual faculty negotiations or grievances over merit increases.

5) An inequities fund to deal with inequities affecting women, minorities, and other persons.

6) Specification of pay scale for summer term and overload teaching.

7) Definition of sabbatical leaves as a right, not a privilege.

8) No increase in faculty workload, which shall be reasonable, fair, consistent with current practices, and reflect research and creative activity, and service to Boston University at the Department, College, and University level.

9) Access to information about the University budget in sufficient and meaningful detail to allow the faculty to make informed judgments about expenditures as they relate to the academic objectives of the University.

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DOCUMENT D

BOSTON UNIVERSITY CHAPTER
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
P.O. Box 509 / Kenmore Station / Boston, Massachusetts 02215

BUC-AAUP Pays to Bearer
Fourteen-thousand Nine and 00-Dollars

$14,009

That's how much the average salary for full professors has grown since collective bargaining came to Boston University—$14,009.

That $14,009 represents these gains in the last five years:

- A 56.5% total average increase over 1977-78 salaries
- A current average salary of $38,792 as compared with $24,783 in 1977-78
- An average yearly increase of 11.3% over 1977-78 salaries

And, good news, last year the average salary for full professors actually broke the cost-of-living barrier. From September 1978 to September 1982 the Consumer Price Index for Boston increased 44.5% while salaries at your rank rose an average of 44.9%.

THE BUC-AAUP SPEAKS FOR YOU AND THE NUMBERS SPEAK FOR THE BUC-AAUP

FIVE YEARS PRIOR TO BUC-AAUP

	Average Salaries[1]	%	% CPI Increase[2]
1972-73	$20,461	8.14	7.6
1973-74	20,653	.94	10.3
1974-75	21,689	5.02	7.7
1975-76	22,737	4.83	6.9
1976-77	23,763	4.51	5.5
1977-78	24,783	4.29	5.4

FIVE YEARS WITH BUC-AAUP

	Average Salaries	%	% CPI Increase[2]
1978-79	$26,794	8.11	11.4
1979-80	29,700	10.85	12.0
1980-81	33,422	12.53	11.6
1981-82	35,899	7.41	3.7
1982-83	38,792	8.06	—

For the five years preceding union negotiated raises

- the total average increase was only $4,322 or 21.1%
- the average yearly increase was only 4.2% over 1972-73 salaries
- the cost of living rose 41.2%, a yearly average of 8.23%

Although raises kept pace with the cost of living in 1971 and 1972, no rank even began to recover from the 1973-74 salary freeze and the lean raises that followed—until the first BUC-AAUP contract in 1978.

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[1] Based on data from B.U. Analytical Services; figures represent average salaries for all permanent full professors, including those newly promoted or newly hired.

[2] Cost of living increases based on Consumer Price Index for greater Boston area for October through 1977 and for September through 1982, following U.S.D.L. records.

DOCUMENT E

BOSTON UNIVERSITY CHAPTER
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
P.O. Box 509 / Kenmore Station / Boston, Massachusetts 02215

BUC-AAUP Pays to Bearer

[illegible] Dollars

$10,216

That's how much the average salary for associate professors has grown since collective bargaining came to Boston University—$10,216.

That $10,216 represents these gains in the last five years:

- A 53% total average increase over 1977-78 salaries
- A current average salary of $29,505 as compared with $19,289 in 1977-78
- An average yearly increase of 10.6% over 1977-78 salaries

And, good news, last year the average salary for associates increased 7.6% while the Boston area CPI rose only 3.7%. From September 1978 to September 1982 the average yearly increase for associates (10.0%) ran only a percentage point behind the average yearly increase in the CPI (11.1%) for the same period.

THE BUC-AAUP SPEAKS FOR YOU AND THE NUMBERS SPEAK FOR THE BUC-AAUP

FIVE YEARS PRIOR TO BUC-AAUP

	Average Salaries[1]	%	% CPI Increase[2]
1972-73	$15,310	5.42	7.6
1973-74	15,516	1.35	10.3
1976-75	16,467	6.13	7.7
1975-76	17,434	5.87	6.9
1976-77	18,144	4.07	5.5
1977-78	19,289	6.31	5.4

FIVE YEARS WITH BUC-AAUP

	Average Salaries	%	% CPI Increase
1978-79	$20,705	7.34	11.4
1979-80	22,888	10.54	12.0
1980-81	25,116	9.73	11.6
1981-82	27,026	7.6	3.7
1982-83	29,505	9.17	——

For five years preceding union negotiated raises

- the total average increase was only $3,979 or 26%
- the average yearly increase was only 5.2% over 1972-73 salaries
- the cost of living rose 41.2%, a yearly average of 8.23%

Although raises kept pace with the cost of living in 1971 and 1972, no rank even began to recover from the 1973-74 salary freeze and the lean raises that followed—until the first BUC-AAUP contract in 1978.

[1] Based on data from B.U. Analytical Services; figures represent average salaries for all permanent associate professors, including those newly promoted or newly hired.

[2] Cost of living increases based on Consumer Price Index for greater Boston area for October through 1977 and for September through 1982, following U.S.D.L. records.

DOCUMENT F

BOSTON UNIVERSITY CHAPTER
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
P.O. Box 509 / Kenmore Station / Boston, Massachusetts 02215

BUC-AAUP Pays to Bearer
Eight-thousand One-hundred-twelve 56 Dollars

$8,112

That's how much the average salary for assistant professors has grown since collective bargaining came to Boston University—$8,112.

That $8,112 represents these gains in the last five years:

- A 51.2% total average increase over 1977-78 salaries
- A current average salary of $23,968 as compared with $15,856 in 1977-78
- An average yearly increase of 10.2% over 1977-78 salaries

Equity for assistant professors was a union priority in last year's negotiations resulting in a $450 permanent adjustment to base salaries for assistant professors before an across-the-board raise of $1,341 was added to 1981-82 salaries. Total increase for your rank averaged 12.2% with nearly $1,800 in guaranteed increases.

THE BUC-AAUP SPEAKS FOR YOU AND THE NUMBERS SPEAK FOR THE BUC-AAUP

FIVE YEARS PRIOR TO BUC-AAUP

	Average Salaries[1]	%	% CPI Increase[2]
1972-73	$12,618	3.66	7.6
1973-74	12,852	1.85	10.3
1974-75	13,684	6.47	7.7
1975-76	14,369	5.01	6.9
1976-77	15,063	4.83	5.5
1977-78	15,856	5.26	5.4

FIVE YEARS WITH BUC-AAUP

	Average Salaries	%	% CPI Increase
1978-79	$16,487	3.98	11.4
1979-80	17,692	7.31	12.0
1980-81	19,586	10.71	11.6
1981-82	21,972	12.18	3.7
1982-83	23,968	9.08	——

For the five years preceding union negotiated raises

- the total average increase was only $3,238 or 25.7%
- the average yearly increase was only 5.1% over 1972-73 salaries
- the cost of living rose 41.2%, a yearly average of 8.23%

Although raises kept pace with the cost of living in 1971 and 1972, no rank even began to recover from the 1973-74 salary freeze and the lean raises that followed—until the first BUC-AAUP contract in 1978.

[1] Based on data from B.U. Analytical Services; figures represent average salaries for all permanent assistant professors, including those newly promoted or newly hired.

[2] Cost of living increases based on Consumer Price Index for greater Boston area for October through 1977 and for September through 1982, following U.S.D.L. records.

DOCUMENT G

BOSTON UNIVERSITY CHAPTER
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
P.O. Box 509 / Kenmore Station / Boston, Massachusetts 02215

BUC-AAUP Pays to Ensure

[illegible]

$7,067

That's how much the average salary for instructors has grown since collective bargaining came to Boston University--$7,067.

That $7,067 represents these gains in the last five years:

- A 54.9% average increase over 1977-78 salaries
- A current average salary of $19,936 as compared with $12,869 in 1977-78
- A average yearly increase of 11% over 1977-78 salaries

And, good news; last year's average increase for instructors was well over the 3.7% cost-of-living increase for the same period. And even better news--salary averages for your rank this year are higher than last year's by 15.6%!

THE BUC-AAUP SPEAKS FOR YOU AND THE NUMBERS SPEAK FOR THE BUC-AAUP

FIVE YEARS PRIOR TO BUC-AAUP

	Average Salaries[1]	%	% CPI Increase[2]
1972-73	$10,096	4.31	7.6
1973-74	10,167	.70	10.3
1974-75	11,113	9.30	7.7
1975-76	11,845	6.59	6.9
1976-77	12,156	2.63	5.5
1977-78	12,869	5.87	5.4

FIVE YEARS WITH BUC-AAUP

	Average Salaries	%	% CPI Increase
1978-79	$13,420	4.28	11.4
1979-80	14,327	6.76	12.0
1980-81	15,882	10.85	11.6
1981-82	17,253	8.63	3.7
1982-83	19,936	15.55	----

For the five years preceding union negotiated raises

- the total average increase was only $2,773 or 27.5%
- the average year increase was only 5.5% over 1972-73 salaries
- the cost of living rose 41.2%, a yearly average of 8.23%

Although raises kept pace with the cost of living in 1971 and 1972, no rank even began to recover from the 1973-74 salary freeze and the lean raises that followed--until the first BUC-AAUP contract in 1978.

[1] Based on data from B.U. Analytical Services; figures represent average salaries for all permanent instructors, including those newly hired.

[2] Cost of living increases based on Consumer Price Index for greater Boston area for October through 1977 and for September through 1982, following U.S.D.L. records.

HAVE YOU PROSPERED WITH THE UNION ?

Clearly the answer is YES. If you have been at rank over five years, your salary is finally beginning to pull even with national averages for comparable institutions. If you have just been promoted or newly hired, you are receiving a competitive salary because negotiated increases for continuing faculty raise salary "floors" for everyone.

You have also prospered because the greater part of each year's raise has been a GUARANTEED ACROSS-THE-BOARD increase. Before the union, all raises were merit increases subject to arbitrary distribution. If you don't get the merit raise you think you deserve this year, what kind of raise would you have received without the BUC-AAUP?

And if the union contract didn't guarantee an overall 8.5% raise next year, what would stop President Silber from freezing your salary in the name of the budget "shortfall"?

THE UNION IS WORTH MORE THAN ITS WEIGHT IN RAISES

The union has given you more than just money. It has given you a place to turn to when your rights have been violated or your interests jeopardized. When the administration paid 1981-82 overload salaries according to 1980-81 rates, the BUC-AAUP grieved—and won over $20,000 in back pay adjustments. Were you among the 179 people who collected one of these "bonus" checks in December? If so, you can thank the union.

Maybe you have never had direct cause to file a grievance, but your rights remain protected because the union vigorously defends the principles that affect your every working day. Perhaps at one time your were even a member of the National AAUP because of the AAUP's ongoing defense of academic freedom and tenure, faculty governance and due process. The AAUP continues to be the premier voice in defense of those principles--and works for your interests in many other ways too, as the enclosed brochure documents. When you join the union, you also become a member of the National AAUP.

UNTENURED BUT NOT UNPROTECTED

Nobody needs to tell you that untenured faculty are the most vulnerable segment of the academic community, particularly in this economy. The due process guaranteed you by the union contract is your one protection against an administration whose arbitrary decisions can place you in jeopardy at any moment.

Protecting you has been a top union priority from the start. The first contract was barely off the press when the administration pink-slipped almost all the untenured faculty in the Spring of 1979. This mass termination was overturned in arbitration, thanks to the union's immediate action.

This year the BUC-AAUP has gone to arbitration to stop the administration's abuse of one-year appointments. Under the contract you are entitled to the security of two- and three-year appointments, and the BUC-AAUP has launched a wide-scale investigation and a series of grievances to prevent the erosion of that security.

At a time when administrators all over the country are threatening untenured faculty under the guise of "financial exigency," can you really afford not to support the activities of the BUC-AAUP on your behalf?

STATEMENT OF PROF. JOSEPH SPEISMAN, DEPARTMENT OF PSYCHOLOGY, BOSTON UNIVERSITY, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AAUP

Professor SPEISMAN. Thank you. My name is Joseph Speisman. I'm a professor of psychology at Boston University, where I have been employed since 1968.

The ultimate managerial authority of private universities typically lies in the hands of boards of trustees or governors, whose position is anchored in a charter of bylaws, which if vague enough, as at Boston University, enable a president or a chairman of the board, or both, to attain virtually absolute power over an institution.

Please recall that public institutions of higher education are typically and appropriately subject to public scrutiny, supervision, and indirect control at least, through elected political bodies in a way that private institutions simply are not.

Faculty participation in the governance of an institution may be bolstered by traditions and customs that can be decisive at times. However, these customs prevail without further support only in ancient and stable institutions. These customs, together with the more precisely articulated standards of academic freedom and governance, published by the American Association of University Professors, add up to what is often called the collegial model. This model may be and often is disregarded in practice, especially where governing documents are imprecise, and where customary patterns are poorly entrenched.

Where irresponsible control arises in private higher education, collective bargaining by faculties may, indeed, be the only means available to reinstate this collegial model.

The two negotiated contracts at Boston University have served to enable this collegial model to function and to protect the faculty from capricious and arbitrary actions by the administration. Our first achievement was the regularization of procedures in the award or denial of award of such crucial matters as appointments, promotion, tenure, and in the termination of faculty.

Under the contracts the faculty achieved explicit procedural guarantees that had been expressed before only vaguely and largely as pious hopes. How, when, and where reviews were to be conducted, the manner in which faculty colleagues would evaluate materials presented by a candidate for promotion or tenure, the standards by which such judgments would be made, and an orderly schedule for these events. These came only under the contract.

It is worth noting that even the president and the board of trustees of Boston University, who have spent enormous sums to oppose collective bargaining in the courts, planned to retain most of these procedures even after the expiration of our contract, in October.

The contracts also established procedures to grieve and appeal these judgments, when necessary. They not only established a just appeals procedure, but also individuals who sought redress were entitled to and were given access to information and evidence. Prior to the contracts, reports, and file materials such as personnel files relevant to the appeal, were not made available, or if some

portions of the files were provided, it was done at the whim of an administrator who was also rendering a judgment in the case.

Also, there are the issues of bread and butter. Prior to negotiating our first contract in 1978–79, there was no established salary policy at Boston University and the salary of Boston University faculty measured against comparable institutions was very poor, indeed. In the six precontract years of the present administration, the average annual salary increment for full professors was only 4.2 percent, while at the same time, the cost of living rose on a yearly average of 8.2 percent.

During the 6 years under contract, the average annual increment to professor's salaries was 9 percent, which in contrast to the precontract period at least kept pace with the cost-of-living increases.

Other practices of a willful administration were stopped or modified by contract enforcement. There was the year, 1979, when every nontenured faculty member, the youngest and most vulnerable group, who was not on a multiple-year appointment, was sent a letter of termination, not because of any wrongdoing on their part or lack of effort on their part, but because of fears of lagging enrollments, which turned out to be quite unfounded. These termination letters were negated, through actions under the contract.

There are many additional incidents of this kind, some of which are noted in the documents deposited with the committee.

The faculty seeks from the Congress the right to negotiate with administrations, under the law. This right should be restored. Thank you.

Mr. CLAY. Thank you. Go ahead.

[Prepared statement of Robert Janusko follows:]

PREPARED STATEMENT OF ROBERT JANUSKO, PROFESSOR OF ENGLISH, ASHLAND COLLEGE, ASHLAND, OH, ON BEHALF OF AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

My name is Robert Janusko and I am a Professor of English at Ashland College in Ashland, Ohio. I was the first president of the faculty union at Ashland College and chair of its last negotiating committee. I am here today at the request of the American Association of University Professors.

Ashland College is a private, church-related institution with approximately 1,300 full-time students on its main campus and an additional 1,800 students, mostly part-time, in satellite programs.

During the 1950's and 1960's Ashland College, like many other schools, experienced rapid expansion, growing from 500 full-time students in the 1940's to over 2,800 full-time students in 1968, when an optimistic Board of Trustees predicted an enrollment of 4,800 within ten years. To meet this demand, and to anticipate the future, the college added to its faculty and undertook an extensive building program.

When the inevitable reversal in enrollment occurred, the administration and board reacted by withholding payment on 17 part-time contracts in the fall of 1971, terminating 43 of the 200 faculty members, and announcing in March, 1972, that faculty contracts for the following year would contain a clause permitting salary reductions (amount unstated) should projected enrollment fail to materialize. Already disturbed by the board's rejection the previous year of a revised handbook, which would have provided greater protection in just such a situation, and by the revelation that operating deficits for the three years prior, of which the faculty was unaware, had been made up from now exhausted debt reserves, the faculty responded by voting with an 80% margin to enter into collective bargaining under the National Labor Relations Act. Thus, in May, 1972, Ashland College became one of the first private colleges in the country to permit collective bargaining under the NLRA, as well as the first institution of higher education in Ohio to have a unionized faculty.

The initial negotiated agreement, ratified in August, 1972, remained virtually unchanged in its essentials during the 10-year lifetime of the union, and, somewhat modified, continues as the current faculty rules and regulations. However, without the collective bargaining context, the document has lost much of its force.

The decision to unionize gained the faculty a greater role in the governance of the college, established guarantees of academic freedom and tenure rights, increased access to information regarding the college's finances, and, of course, enabled the negotiation of wages, hours, and other conditions of employment usually associated with unionization.

After the initial period of sparring and confusion while new roles were being clarified, a relationship developed between faculty and administration that, at its best, might be characterized as collegial. Frequent, often weekly, meetings were held between faculty and administration leadership to head off conflicts, ensure contract compliance, and discuss problems of mutual concern. In 1976, when the college again faced a major financial crisis, this new relationship made possible the negotiation of an expanded provision on financial exigency which provided for full faculty participation in determining the nature and extent of reductions in budget and personnel and also for the formation of a committee comprised of faculty and board members to monitor the implementation of the provision and to oversee the operation of the school during the 1976–77 academic year. The committee, which elected the president of the union as its chair, managed to trim $500,000 from a $10 million budget, enough to satisfy the bondholders that the crisis had been weathered successfully. It is also noteworthy that, unlike the debacle of 1971–72, this retrenchment spawned no grievances or litigation.

I am not suggesting that conflicts did not arise during this period. With each change in top level administration (two new presidents; two new academic vice-presidents, who were followed by two successive academic councils; and one new financial vice-president), new tensions arose, but in a climate of cooperative debate which allowed the governance system to continue relatively undisturbed.

During the contract negotiations of 1979, however, the union was forced, for the first time, to file unfair labor practice charges with the National Labor Relations Board on behalf of two faculty members. Although the negotiations reached a successful conclusion in 1980, we were unable to resolve the two complaints and continued to press charges. In 1980 the administration cited the *Yeshiva* decision as part of its defense, maintaining that the faculty was managerial and that it was under no obligation to recognize the union or to submit to NLRB action on the complaints. Financially ill-equipped to pursue a series of appeals, and on advice of counsel, the union decided in April, 1982, to file for decertification in return for settlement of the complaints and a contractual agreement maintaining the rules and regulations as negotiated and ensuring faculty participation in their modification.

Since that time, the faculty has experienced a gradual erosion of its share in the decision-making process. Increasingly, actions which in the past would have involved faculty participation (in the spirit, if not always in the letter, of the agreement) are being taken unilaterally by the administration. These include adopting a new insurance plan without the knowledge of the appropriate faculty committee or the approval of the faculty forum.

A center to house the papers and memorabilia of the late Representative John Ashbrook and to promote the study of the political philosophy he espoused was established without consulting the political science faculty or seeking the approval of the faculty as a whole, although prior consultation is a common practice in academic institutions. The acknowledged success of the center in bringing such speakers as President Reagan and Vice President Bush to the Ashland campus and in supplementing the operating budget of the college has not obscured, for many concerned faculty, the manner of its founding.

The most recent revision of the faculty salary scale, prepared, as usual, by the Faculty Welfare Committee, was summarily dismissed by the administration last year and was replaced with an across the board raise. The faculty, accustomed to debating and voting on salary increases, was once again presented with a fait accompli. Ironically, this scale, developed by faculty statisticians and adopted several years ago, in part, to remedy inequities in pay and to close the gaps between academic ranks, was rejected on the grounds that it perpetuated inequities.

These observations on the changing relationships between faculty and administration before, during, and after the collective bargaining period are not intended to malign the current college administration or to question its integrity. Were I a member of top level administration, I suspect that I, too, would grow impatient with the slow crystallization of academic opinion and be moved to engage more frequently in unilateral action. Nevertheless, I am struck by the similarities emerging be-

tween the post-1982 style of governance at my institution and that which existed prior to 1972. I would suggest that it is only a matter of time until the Ashland College faculty fits the definition of employee as currently interpreted in the Act and will once again be eligible to negotiate its way back to collegiality, or as the Supreme Court has been pleased to call it, management. We prefer to avoid this confrontation and believe this could be accomplished by approval of H.R. 3291.

STATEMENT OF PROF. ROBERT JANUSKO, ENGLISH DEPARTMENT, ASHLAND COLLEGE, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AAUP

Professor JANUSKO. My name is Robert Janusko. I am a professor of English at Ashland College in Ashland, OH.

I was the first president of the faculty union at Ashland College and the chair of its last negotiating committee. I am here today at the request of the American Association of University Professors.

Ashland College is a private, church-related institution with approximately 1,300 full-time students on its main campus and an additional 1,800 students, mostly part-time, in satellite programs.

During the 1950's and 1960's, Ashland College, like many other schools, experienced rapid expansion. When the inevitable reversal in enrollment occurred, the administration and board reacted by withholding payment on 17 part-time contracts, in the fall of 1971, terminating 43 of the 200 faculty members, and announcing in March 1972 that faculty contracts for the following year would contain a clause permitting salary reductions, amount unstated, should projected enrollment fail to materialize.

Already disturbed by the board's rejection of the previous year's revised handbook, which would have provided greater protection in just such a situation, and by the revelation that operating deficits for the 3 years prior, of which the faculty was unaware, had been made up from now-exhausted debt reserves, the faculty responded by voting with an 80-percent margin to enter into collective bargaining under the National Labor Relations Act.

Thus, in May 1972, Ashland College became one of the first private colleges in the country to permit collective bargaining under the NLRA, as well as the first institution of higher education in Ohio to have a unionized faculty.

The initial negotiated agreement, ratified in August 1972, remained virtually unchanged in its essentials during the tenure and lifetime of the union, and somewhat modified, continues as the current faculty rules and regulations. However, without the collective-bargaining context, the document has lost much of its force.

After the initial period of sparring and confusion while new rules were being clarified, a relationship developed between faculty and administration that at its best might be characterized as collegial. Frequent, often weekly, meetings were held between faculty and administration leadership to head off conflicts, ensure contract compliance, and discuss problems of mutual concern. In 1976, when the college again faced a major financial crisis, this new relationship made possible the negotiation of an expanded provision on financial exigency which provided for full faculty participation in determining the nature and extent of reductions in budget and personnel, and also for the formation of a committee comprised of faculty and board members to monitor the implementation of the pro-

vision and to oversee the operation of the school during the 1976–77 academic year.

It is noteworthy that, unlike the debacle of 1971–72, this retrenchment spawned no grievances or litigation.

I am not suggesting that conflicts did not arise during this period. With each change in top level administration over the 10 years, (two new presidents; two new academic vice presidents, who were followed by two successive academic councils; and one new financial vice president), new tensions arose, but in a climate of cooperative debate which allowed the governance system to continue relatively undisturbed.

During the contract negotiations of 1979, however, the union was forced, for the first time, to file unfair labor practice charges with the National Labor Relations Board, on behalf of two faculty members. Although the negotiations reached a successful conclusion in February 1980, we were unable to resolve the two complaints and continued to press charges.

In March 1980, the administration cited the *Yeshiva* decision as part of its defense, maintaining that the faculty was managerial and that it was under no obligation to recognize the union or to submit to NLRB action on the complaints. Financially ill equipped to pursue a series of appeals, and on advice of counsel, the union decided in April 1982, to file for decertification in return for settlement of the complaints and a contractual agreement maintaining the rules and regulations in the most recent negotiated form, and ensuring faculty participation in their modification.

Since that time, the faculty has experienced a gradual erosion of its share in the decisionmaking process. Increasingly, actions which in the past would have involved faculty participation, are being taken unilaterally by the administration. These include adopting a new insurance plan without the knowledge of the appropriate faculty committee or approval of the faculty forum.

A center to house the papers and memorabilia of the late Representative John Ashbrook and to promote the study of the political philosophy he espoused was established without consulting the political science faculty or seeking the approval of the faculty as a whole, although prior consultation is a common practice in academic institutions. The acknowledged success of the center in bringing such speakers as President Reagan and Vice President Bush to the Ashland campus and in supplementing the operating budget of the college has not obscured, for many concerned faculty, the manner of its founding.

The most recent revision of the faculty salary scale, prepared, as usual, by the faculty welfare committee, was summarily dismissed by the administration last year and was replaced with an across the board raise. The faculty, accustomed to debating and voting on salary increases, in other words accustomed to collective bargaining, was once again presented with a fait accompli.

These observations on the changing relationships between faculty and administration before, during, and after the collective bargaining period, are not intended to malign the current college administration or to question its integrity. Were I a member of top level administration, I suspect that I, too, would grow impatient

with the slow crystallization of academic opinion and be moved to engage more frequently in unilateral action.

Nevertheless, I am struck by the similarities emerging between the post-1982 style of governance at my institution and that which existed prior to 1972. I would suggest that it is only a matter of time until the Ashland College faculty fits the definition of employee as currently interpreted in the act, and will once again be eligible to negotiate its way back to collegiality, or as the Supreme Court has been pleased to call it, management.

We prefer to avoid this confrontation and believe this could be accomplished through approval of H.R. 3291.

Mr. CLAY. Thank you.

[Prepared statement of David Poisson follows:]

PREPARED STATEMENT OF DAVID POISSON, COORDINATOR OF HIGHER EDUCATION, NATIONAL EDUCATION ASSOCIATION

Mr. Chairman and Members of the Subcommittee, my name is David Poisson and I am Coordinator for Higher Education for the 1.7 million member National Education Association. The NEA appreciates this opportunity to present our views on H.R. 3291 not only because we are the largest representative of postsecondary faculty in the United States, but because of our deep and continuing commitment to safeguarding collective bargaining rights for all Americans. We believe that the attainment and exercise of such rights are essential both to the well being of employees and the benefit of our society.

In our view, the Supreme Court decision in *National Labor Relations Board* v. *Yeshiva University* was misguided and inappropriate ruling. It has jeopardized the rights of faculty members in private colleges and universities to bargain collectively. It has had a chilling effect on other postsecondary employees including those in the public sector. And, it has had an adverse impact on the quest of employees to gain some fair share of self determination in their employment setting. These unfortunate effects are not just the outcome of the language of the Court's decision. They are an outgrowth of confused and erroneous interpretations of it as well. Indeed, this ruling has been a mask behind which certain employers have sought to erode the rights of their employees. This situation simply cannot be allowed to continue.

The National Education Association believes that it is essential for the Congress to make it absolutely clear that faculty members in educational institutions should have full collective bargaining rights regardless of whether they participate in decisions with respect ot courses, curriculum, personnel, budget, or other matters of educational policy. To this end, we urge passage of H.R. 3291 which would amend the National Labor Relations Act in order to protect such faculty in private colleges and universities. At the same time, we must again go on record in support of a federal guarantee of collective bargaining rights for public education employees in public school systems and postsecondary education institutions. And we trust that this Subcommittee will begin deliberations on such a measure early in the 99th Congress.

NATIONAL LABOR RELATIONS BOARD V. YESHIVA UNIVERSITY

It is worth noting for the Record, Mr. Chairman, how we have gotten to the point at which we are today. When the National Labor Relations Board initially asserted jurisdiction over private colleges and universities in 1970, several institutions took the position that all of their faculty members were managerial or supervisory and hence not "employees" within the meaning of the National Labor Relations Act. They based this contention on the fact that the faculty participated in the formulation of various academic and personnel policies. The NLRB rejected this contention from the outset, and consistently held that college and university faculties are not by virtue of such participation to be denied the NLRA's protection.

In 1975, Yeshiva University, which is a private university in New York City, refused to bargain with the Yeshiva University Faculty Association. The NLRB issued a bargaining order, and when the University refused to comply, it sought court enforcement. The United States Court of Appeals for the Second Circuit refused to enforce the NLRB's order. Finding that the Yeshiva faculty was "in effect, substantially and pervasively operating the enterprise," the court concluded that the faculty was endowed with "managerial status" sufficient to remove it from the coverage of

the NLRA. The United States Supreme Court granted certiorari and on February 20, 1980, in a five-to-four decision, affirmed the Court of Appeals.

The managerial exclusion on which the Supreme Court relied is not expressly written into the NLRA. It is, rather, a judicially implied exclusion which applies to those employees who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." As with the statutory exclusion for "supervisors," this exclusion grows out of the belief that an employer is entitled to the undivided loyalty of its representatives.

In holding that the managerial exclusion did not apply to the Yeshiva faculty, the NLRB relied on three factors: faculty authority is exercised collectively, final authority rests with the board of trustees, and most importantly, faculty authority is exercised in the faculty's own interest rather than in the interest of the university. With regard to the latter factor, the NLRB declared that the faculty was not "aligned with management" because it was expected to exercise "independent judgment" while participating in university governance and was neither "expected to conform to management policies (nor) judged according to their effectiveness in carrying out those policies." Accordingly, the NLRB concluded that there was no danger of divided loyalty and no need to apply the managerial exclusion. The Supreme Court disagreed, observing that "the controlling consideration in this case is that the faculty of Yeshiva University exercise authority which in any other context unquestionably would be managerial."

EFFECT ON THE PUBLIC SECTOR

Although the Supreme Court's decision is unfortunate and in need of remedy when properly construed, an even greater concern is that it has been and will continue to be misapplied—a vehicle by means of which recalcitrant colleges and universities will seek to avoid their obligation to bargain in contexts to which the decision has absolutely no application. This is true not only within the context of private education but within the public sector as well.

Indeed, this lack of clarity has resulted in certain states such as Ohio and California passing statutes clarifying the collective bargaining rights of faculty members in public and postsecondary educational institutions. Such laws cover those who participate in decisions with respect to courses, curriculum, personnel, or other matters of academic policy.

THE LORETTO HEIGHTS DECISION

Earlier this month, the Tenth Circuit of the United States Court of Appeals rendered an important decision in *Loretto Heights College* v. *The National Labor Relations Board and Loretto Heights College Faculty Education Association.* The Court of Appeals upheld the decision of the National Labor Relations Board that the college violated the National Labor Relations Act when it withdrew recognition and refused to bargain with the Loretto Heights College/Faculty Association on the basis that faculty members were managerial employees within the meaning of the Yeshiva decision and therefore excluded from the Act's coverage. The decision of the Court has been made available to the Chair of this Committee.

Loretto Heights College is a four-year liberal arts college located in Denver, Colorado. At the time of the proceedings the College had a student body of approximately 850, a full-time faculty of 60–65, a part-time faculty of 30–35, and an administrative staff of 26–27. The faculty originally organized in 1971 and a series of collective bargaining agreements were negotiated between the College and the Association with the last agreement terminating in May 1980. A few months before the end of the final contract the College gave notice of intent to terminate the agreement and subsequently to withdraw recognition on the basis that it had questions about its obligation to bargain based upon the Yeshiva decision.

The Association filed an unfair labor practice charge with the NLRB and the Board issued a complaint against the College. In March 1981 the case was tried before an Administration Law Judge who found the College in violation of the Act. In so ruling, the Administrative Law Judge rejected the College's argument that the faculty members were managerial employees and therefore excluded from the Act's coverage under Yeshiva. The National Labor Relations Board upheld the decision of the ALJ. The decision of the Board was appealed and now the United States Court of Appeals Tenth Circuit has reviewed the decision and granted enforcement of the Board's order noting: "After careful review of the record in this case, we perceive no reason to disturb the Board's conclusion that the faculty members at Loretto Heights College are not managerial employees within the meaning of Yeshiva. We

are persuaded that the Board has properly interpreted and applied the Yeshiva decision, and that its findings are adequately supported by the record."

Loretto Heights College is structurally and administratively different from Yeshiva University. Some of the critical elements in determining that the faculty members were not managerial employees included the mixed membership of many of the committees, the filtering of faculty input through layers of administrative decision making, the limited nature and duration of faculty participation in key areas, and the size and pervasiveness of the College administration including the important role of the program directors and Academic Dean who are managerial employees. In summary, the Board and the Court concluded that the faculty do not effectively control or implement employer policy and their rights to bargain collectively are protected under the statute.

It is, however, a long time from May 1980 to September 1984 and during that time the faculty of Loretto Heights have been uncertain of their rights under the law. The situation of the faculty in Loretto Heights is no doubt not unique. Faculty members in institutions throughout the country were chilled by the Yeshiva decision into believing that their involvement as faculty members in such institutions as the Faculty Senate would preclude their organizing to bargain collectively. Their rights must be protected. Indeed, no faculty member or group of faculty members in any educational institution should be automatically deemed to be managerial or supervisory employees solely because of participation in decisions with respect to courses, curriculum, personnel, budget, or other matters of educational policy.

CONCLUSION

The National Education Association urges the Subcommittee on Labor-Management Relations and the United States Congress to adopt HR 3291 to protect the rights of faculty at private colleges and universities to engage in collective bargaining. Further, we urge this committee to begin hearings in the 99th Congress to address the rights of public sector higher education faculty, who, like all their public sector counterparts, are left unprotected by federal collective bargaining legislation. We look forward to working with this committee and commend the members of the Committee for exploring this issue today.

Thank you.

STATEMENT OF DAVID POISSON, COORDINATOR FOR HIGHER EDUCATION, NATIONAL EDUCATION ASSOCIATION

Mr. POISSON. Mr. Chairman and members of the subcommittee, my name is David Poisson and I am the coordinator of higher education for the 1.7 million member National Education Association. NEA appreciates this opportunity to present its views on H.R. 3291 not only because its interests as the largest representative of postsecondary faculty in the United States are so greatly affected, but also because of our deep and unswerving commitment to safeguarding collective-bargaining rights for all Americans.

We believe that the attainment and exercise of such rights are essential both to the well-being of employees and that of our society. In our view, the decision reached by the Supreme Court in the *National Labor Relations Board* v. *Yeshiva University* was wrong. It has jeopardized the rights of faculty members in private colleges and universities to bargain collectively. It has had a chilling effect on other postsecondary employees, including those in the public sector, and it has had an adverse impact on the quest of employees to gain some fair share of self-determination in their employment setting.

These unfortunate effects have not been the byproduct of the language of the Court's decision alone. They are an outgrowth of the confused and erroneous interpretations that have flowed from it as well. Indeed, this ruling has been a mask behind which certain employers have sought to erode the rights of their employees, and the means by which present circumstances in higher education

have been allowed to be defined for all faculty by factors which obtained on only a few campuses, if at all.

This situation simply cannot be allowed to continue. The Court's decision ought not to be allowed to be used as a shield against faculty organizing on our Nation's campuses and as a sword with which management may unilaterally reach decisions without faculty advice and consent.

The idealized faculty in America, presumably like those at Yeshiva, and as described by my colleagues before you here this morning, live lives devoted to scholarship and the pursuit of knowledge in institutions fully committed to supporting such endeavors. The faculty is thought, by and large, to govern itself, making necessary policy decisions about who will be admitted to the institution, who will be hired and how they will be evaluated, and what will be taught.

Indeed, autonomy, collegiality, and the opportunity to participate in the governance of the institutions in which they teach are often thought by outsiders to be those things, even more than money, which faculty cherish most about the work they do.

There was a study done by the Institute of Higher Education at Columbia University's Teachers College, which examined the relationship between college finances and faculty members' assessments of their institutions in 1970 and 1980, confirming the importance of these rewards, but finding that a majority of faculty members no longer receive them. The percentage of respondents who believed that "a concept of shared authority, by which faculty and administrators arrive at decisions jointly, describes fairly well the college's system of governance," declined from 64 percent in 1970 to 44 percent in 1980.

Faculty at public 2-year colleges, in particular, perceived a loss of control over crucial work decisions and a general decline in morale. Furthermore, a perceived drop of morale across institutions was attributed by faculty more to the decline in their governance role than to the concomitant drop in the purchasing power of their salaries.

Faculty control over academic decisionmaking has declined substantially in part because of the shift in types of higher education institutions. Private liberal arts colleges, public colleges, and community colleges have always been typified by a pattern of administrative dominance, and given the fact that the latter two types are now the dominant institutional forms in higher education, it should really come to us as very little surprise that more faculty feel their authority is slipping away.

During the late 1960's and early 1970's faculty senates increased in number and in prominence as a mechanism for reasserting a faculty role in administrative decisionmaking and for recreating a shared collegial decisionmaking structure. Several major studies of faculty senates have shown, however, that in most cases the faculty role in governance through faculty senates is superficial, insignificant, and in any case advisory only.

Even where faculty senates exercise considerable authority, they concentrate principally on issues relating to curriculum, degree requirements, and admission rather than on hiring, promotion, and tenure.

The belief that there does, indeed, exist a system of collegial decisionmaking and shared governance between faculty and administrators has, however, had profound consequences on the success faculty have had organizing. In the private sector, for example, the National Labor Relations Board ruled in the *C.W. Post* case that the faculty were professional employees with only quasi-supervisory authority and, therefore, were entitled to the benefits of collective bargaining.

However, in *Yeshiva* the Supreme Court overruled *Post*, holding that full-time faculty were managerial employees. According to the Court:

> The central consideration in this case is that the faculty of Yeshiva University exercise authority which in any other context would be managerial. To the extent that the industrial analogy applies, the faculty determines within each school the product to be produced, the terms upon which it will be offered, and the customers who will be served. It is difficult to imagine decisions more managerial than these.

The question, of course, is whether the industrial analogy is appropriate for faculty. Justice Brennan, in his dissenting opinion, argued that the changing conditions of higher education in the past decade have made the traditional ideal of the system of shared governance and common goals obsolete. He said:

> Education has become "big business" and the task of operating the university enterprise has been transferred from the faculty to an autonomous administration, which faces the same pressures to cut costs and increase efficiencies that confront any large, industrial, organization. The past decade of budgetary cutbacks, declining enrollments, reductions in further appointments, curtailment of academic programs, and increasing calls for accountability to alumni and other special interest groups, has only added to the erosion of the faculty's role in the institution's decisionmaking process.

If we look at the condition of higher education in 1984 we can't help but conclude that faculty participation in governance and control over hiring, promotion, and tenure, is minimal and declining in most institutions. Further, control over these areas is more frequently being asserted through bureaucratic structures being controlled by administrators.

Consider the recent decision of the 10th Circuit Court of Appeals in *Loretto Heights College* v. *the National Labor Relations Board and Loretto Heights College Faculty Association*, which upheld the decision of the National Labor Relations Board that the college violated the National Labor Relations Act when it withdrew recognition and refused to bargain with the Loretto Heights College Faculty Association, an affiliate of the National Education Association, on the basis that faculty members were managerial employees within the meaning of the *Yeshiva* decision and, therefore, excluded from the act's coverage.

The decision of the court has been made available to the Chair of this committee.

Loretto Heights College is a 4-year liberal arts college located in Denver, CO. At the time of the proceedings the college had a student body of approximately 850, with a full-time faculty of 60 to 65, a part-time faculty of 80 to 85, and an administrative staff of 26 to 27. The faculty originally organized in 1971, a series of collective-bargaining agreements were negotiated between the college and the association, with the last agreement terminating in May 1980.

A few months before the end of the final contract, the college gave notice of its intent to terminate the agreement and subsequently to withdraw recognition on the basis that there were questions about its obligation to bargain, based on the *Yeshiva* decision.

The NEA filed an unfair labor practice charge with the National Labor Relations Board, and the Board issued a complaint against the college. In March 1981, the case was tried before an administrative law judge, who found the college in violation of the act. In so ruling, the administrative law judge rejected the college's argument that the faculty members were managerial employees and therefore excluded from the act's coverage under *Yeshiva*. The National Labor Relation's Board upheld the decision of the administrative law judge.

The decision of the Board was appealed and now the U.S. Court of Appeals Tenth Circuit has reviewed the decision and granted enforcement of the Board's decision, noting:

> After careful review of the record in this case, we perceive no reason to disturb the Board's conclusion that the faculty at Loretto Heights College are not managerial employees within the meaning of *Yeshiva*. We are persuaded that the Board has properly interpreted and applied the *Yeshiva* decision and that its findings are adequately supported by the record.

Loretto Heights College is structurally and administratively different from Yeshiva University. Some of the critical elements in determining that the faculty members were not managerial employees included the mixed membership of many of the committees, the filtering of faculty input through layers of administrative decisionmaking, the limited nature and duration of faculty participation in key areas, and the size and pervasiveness of the college administration, including the important role of program directors and an academic dean who are managerial employees.

In summary, the Board and the court concluded that the faculty do not effectively control or implement employer policy and their rights to bargain collectively are protected under the statute. It is and has been, however, a very long time since May 1980 to September 1984, and during that time the faculty of Loretto Heights have been uncertain of their rights under the law. The situation for the faculty at Loretto Heights is, no doubt, not unique. Faculty members in institutions throughout the country were chilled by the *Yeshiva* decision into believing that their involvement as faculty members in such institutions as the faculty senate would preclude their organizing to bargain collectively.

Their rights must be protected. Indeed, no faculty member or group of faculty members in any educational institution should automatically be deemed to be managerial or supervisory employees solely because of their participation in decisions with respect to courses, curriculum, personnel, budget, or other matters of educational policy.

The National Education Association urges the subcommittee and the U.S. Congress to adopt H.R. 3291 to protect the rights of faculty at private colleges and universities to engage in collective bargaining. Further, we urge this committee to begin hearings in the 99th Congress to address the rights of public sector higher education faculty, who like all their public sector counterparts, are left unprotected by Federal collective-bargaining legislation.

We look forward to working with this committee and commend the members of this committee for exploring this issue today.

Mr. CLAY. Thank you. And what happened to this case?

Professor JANUSKO. It was just dismissed.

Mr. CLAY. And you mentioned something about some kind of change now after 1982 as opposed to before 1972. Was that a 10-year period, a transitional period, where it changed?

Professor JANUSKO. Well, prior to 1972 there was no union. From 1972 to 1982 was the period we did have the union. I can see the change from 1982 until today, 1984. These are things that happened in the past 2 years. Although we have the rules and regulations available, as I said earlier, we no longer have the collective-bargaining context. So, if the administration decides to take some action, there is no longer any union to sit down with them and say, "Hey, we have an agreement here in the book." It is up to the individual to begin litigation on his or her own.

Mr. CLAY. Were you still the chairman of the negotiating committee and were you able to negotiate wages and working conditions? Would you primarily represent the interests of faculty within the context of the realities faced by the institution or would you be representing the interests of the institution?

Professor JANUSKO. I believe it's fair to say that we have always kept in mind the interests of the institution. If you look at the negotiations of 1976, the committee that I mentioned, formed between the Board and the faculty, elected the president of the union as its chair, ironically, and managed to trim $500,000 from a $10 million budget, enough to satisfy the bondholders that the crisis had been weathered successfully. Now, that meant that we were releasing 23 equivalent full-time faculty, including some people who were tenured. Only, the faculty themselves made the decision this time. And this was in order to make sure that the school would have the money to satisfy the bondholders.

There were several years that we voted to take a freeze in pay, because we were concerned about the financial situation of the college. So, I suppose, yes, you could say that we are interested in the institution and not just in the welfare of the faculty.

Mr. CLAY. Thank you. Mr. Kildee.

Mr. KILDEE. As to the bargaining authority, your prime concern as president of the bargaining unit, your prime concern while president of that bargaining unit would have to be the well-being of the faculty, would it not?

Professor JANUSKO. That's correct.

Mr. KILDEE. I'm sure in the same instance as the General Motors employees right now, you don't want to kill the goose that laid the golden egg. At General Motors, at the same time, Mr. Bieber's concern is that his workers get justice.

Professor JANUSKO. That's correct.

Mr. KILDEE. So, your prime concern would have to be justice for the faculty, bearing in mind, of course, that that would keep healthy the institution.

Professor JANUSKO. Correct. If there is no college available, then there are no jobs.

Mr. KILDEE. That's all, Mr. Chairman.

Mr. CLAY. Thank you. Mr. Martinez.

Mr. MARTINEZ. Let me see if I understand this right. There was a decision made by the National Labor Relations Board that certain people are managerial because they help make decisions. Now, those decisions that are made by the faculty members, were they advisory or were they automatic or did they have to be accepted by the governing bodies?

Professor POLISHOOK. They're advisory. And they have to be accepted by the governing body, in each instance.

Mr. MARTINEZ. Well, in the Supreme Court's deliberations, didn't they determine that the faculty role was simply advisory?

Professor POLISHOOK. Well, I think Professor Getman made the point that the court decision was not a correct decision in the sense of the realities that the faculty live with and the answer is the Supreme Court made the wrong decision, without knowing what the facts were.

Mr. MARTINEZ. I can see that.

Professor GETMAN. In part, if I may supplement that, there was, I think, a very misleading record in the *Yeshiva* case, where there wasn't an adequate explanation of the role of the faculty. In fact, in making decisions, this very important point that you make which is under traditional governance faculty decisionmaking is advisory only, did not come out. Unfortunately, the Supreme Court assumed that the process of most universities is similar to what they thought the record suggested in *Yeshiva*. It wasn't, in fact, true about *Yeshiva* and it's certainly not true about most universities in America.

Mr. MARTINEZ. Thank you, Mr. Chairman. That's all for now.

Mr. CLAY. Mr. Biaggi.

Mr. BIAGGI. How do you distinguish the *Yeshiva* case from the other ones they have considered, which have had the administrative law judges deciding for the faculty?

Professor GETMAN. Well, as Mr. Poisson was talking, the thought occurred to me very strongly that that case would not be decided the same way today. There was a time, during which the Labor Board was attempting to force the courts to articulate a rationale for *Yeshiva*, and all of the organizations representing faculty were hopeful that through the process of adjudication there might develop a more rationale approach to *Yeshiva*, that its more harmful aspects could be ameliorated.

But, in fact, what has happened, under the current Labor Board is, the process has been escalating, is the dangers inherent in the *Yeshiva* opinion have all come about. With all due respect to the excellent statement made by Mr. Poisson, the implication there that the process might work well because you might have a rational decision by the Labor Board followed by an intelligent opinion by the court has not been our experience under *Yeshiva*, and with the current Labor Board I see absolutely no prospect for that happening.

Mr. BIAGGI. Mr. Getman, you said Mr. Poisson's case was settled?

Mr. POISSON. It isn't. It was just decided a week ago. So I don't know where it stands now in the courts.

Mr. BIAGGI. Will they appeal?

Mr. POISSON. I am not certain that they will.

Mr. BIAGGI. Mr. Getman, is it your contention that if that matter is appealed it could be settled?

Professor GETMAN. Well, no. It would be very hard to tell and I've had, I must say, a poor record of predicting what the Supreme Court would do in labor relations cases.

Mr. BIAGGI. We all feel the same thing.

Professor GETMAN. Yes; I thought *Yeshiva* was an impossible decision in the first instance. I told my classes there was virtually no chance of it occurring. Since then I have been less willing to predict.

I do feel that in the current judicial climate that there is very little prospect for an improvement, because in general both the Labor Board and the courts of appeal are moving away from the traditional commitment to collective bargaining as the desired way of accomplishing industrial justice. I think that's a terrible mistake but it's a reality that exists not only for the *Yeshiva* opinion, I think, but in a variety of other cases as well.

Yeshiva seems to be, to me, the crown of a whole series of opinions, all of which reflect a retreat, hasty and ill-considered, from collective bargaining.

Mr. CLAY. Mr. Hayes.

Mr. HAYES. Mr. Chairman, I want to thank you for having given me the privilege of saying that I've concluded from the testimony we have heard that there is agreement that the *Yeshiva* Supreme Court decision is another way of busting unions. I am just putting this comment in. I'm sure you'll understand it.

I am opposed to that too, I want you to understand. But I find it a little difficult to understand, Mr. Poisson. Maybe you can clarify for me a little more. When you said, in your statement, that the *National Labor Relations Board* v. *Yeshiva University* decision was a misguided and inappropriate ruling. Maybe I'm unclear. I don't want to say, yet later on in your statement in your description of the Loretto Heights situation you said it's structurally and administratively different from Yeshiva University.

Mr. POISSON. That's correct.

Mr. HAYES. Are you saying, in effect, that there is some difference between the situation that existed in Loretto Heights College and *Yeshiva's* decision? Are you saying that the Supreme Court might have had some justification for having acted like it did in regards to *Yeshiva?*

Mr. POISSON. Oh, no, not at all.

Mr. HAYES. Because there's a structural difference or something like that?

Mr. POISSON. No, sir. The argument is that *Yeshiva* never really set out very good labor policy. In fact, it set out very bad labor policy—that is, if it set out any policy at all. What it did was to leave to the devices of the National Labor Relations Board and individual institutions the right to determine what it was that was going to determine whether a faculty would be permitted to organize.

What we're trying to argue, I think, this morning, about the *Loretto Heights* case, is that it points up that there was really not very much direction given in *Yeshiva* and that it permits institutions like Loretto Heights to go their own way, separate and apart from

whatever little direction was given by the court in *Yeshiva*. Loretto Heights is, in fact, much more representative of the situation in American colleges and universities today than is *Yeshiva*. For that reason it sets no valuable precedent in American labor law.

Mr. HAYES. It's an age-old procedure in all walks of collective-bargaining annals to try to set aside certain employees as managerial employees in order to prevent them from having collective-bargaining rights. I think it might be more sophisticated and high-faluting in this situation but the end result is the same.

Professor GETMAN. You know, Mr. Hayes, this is done by employers regularly in the union organizing context, but the amazing thing about *Yeshiva* is, as you suggest, that this is the first time an entire profession has been wiped out in a single fell swoop. We'd be prepared to live with the normal manipulation that goes on by creating managers out of artifice. But we've never seen an entire profession suddenly elevated to the status of management without a single increase in the actual managerial function.

Mr. HAYES. No further questions.

Mr. CLAY. Professor Speisman, did some unusual event or events occur that prompted the faculty at Boston University to enter into collective bargaining?

Professor SPEISMAN. Yes. [Laughter.]

The events, I think, you might surmise. For the most part, they were, in effect, a deterioration of what had been at least a minimal participation of faculty in the issues of the way in which faculty are selected and judged as to their scholarly activities.

The budgetary process at Boston University, after the current administration had been in place for a few years, were such that it tended to deny to faculty the capacity to make judgments. Let me illustrate very briefly. In 1975, 10 out of 15 deans that had been appointed by this administration requested the resignation of the president to the board of trustees. They did so because they couldn't do their work. They were not getting information, they were not getting what they needed in order to conduct the affairs of the colleges that they represent, or represented.

The point that I would make, though, is that that effectively denies the faculty the capacity to make a judgment, and to present that judgment. For example, and I'll make it only one example, to hire a young, new Ph.D. faculty member onto the faculty of the university, usually requires some seafch, some look, so that one can select the most suitable individual to join the faculty and continue with their career. That takes time.

In the absence of the budgetary decision that there is a faculty position open, one cannot conduct a search, one cannot represent the faculty's views on what is crucial to academic affairs. It's that kind of thing.

Mr. CLAY. The contracts that resulted from collective bargaining, did they tend to improve the faculty's educational ability at the university?

Professor SPEISMAN. I think they did. As a matter of fact, I think several of the comments that have been made by my colleagues are to the point. For example, we provided, under the contract, procedures for support of nontenured faculty in such a way that they

could at least take a reasonable time to develop their career patterns.

Prior to the contracts, the typical contract awarded to a nontenured professor was 1 year. That meant that the judgment could be made during that year that this individual would have to go, and he or she, then, would have to start looking for a job almost at the time that he or she joined the institution. It's an impossibility, then, to have the genuine scholarship begin and to have teaching go on in a regular way.

The collective-bargaining contracts enabled at least 2- and 3-year individual contracts to be awarded to these people so that appropriate judgments could be made. That such judgments wouldn't be made and that denial of appointments wouldn't be made, but that appropriate time was allocated to faculty. That's one way that education was enhanced.

Mr. CLAY. Do you still have the same president that you referred to earlier?

Professor SPEISMAN. I have. Yes; we have the same president.

Mr. CLAY. So then, you still feel it's essential that you have collective bargaining?

Professor SPEISMAN. I think it is, yes, sir.

Mr. CLAY. Thank you. Any further questions?

If not, we want to thank you for your testimony.

Professor SPEISMAN. Thank you.

Mr. CLAY. Any further statements that you would like to submit for the record, we'd love to have them. Thank you.

The next witness will be Hon. Robert E. Wise, Jr., a Member of Congress. Congressman, welcome to the committee. Your entire statement will be included in the record as you submit it. You may proceed as you desire.

[Prepared statement of Robert E. Wise, Jr. follows:]

PREPARED STATEMENT OF HON. BOB WISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Thank you, Mr. Chairman. I appreciate the opportunity to appear before you this morning to express my strong support for H.R. 5107, the Performing Arts Labor Relations Amendments. I want to commend you for organizing these hearings on a bill that is important to thousands of musicians all over the country.

Since H.R. 5107 was introduced, I have been contacted by some 200 musicians in my state alone who are anxious to see this bill approved by Congress. As a cosponsor of the bill, I feel strongly that its provisions are essential to ensuring that members of the performing arts industry are afforded the same rights and safeguards as workers in other industries.

When Congress originally passed the National Labor Relations Act, it recognized the unique nature of the construction and apparel industries. The Act included certain exemptions for these industries, in which employees face special problems resulting from short-term assignments, working for many different employers, little job security, and frequent travelling in order to find employment. Unfortunately, at the time that the National Labor Relations Act was approved, the entertainment industry was not covered by federal labor laws, so employees of this industry—who suffer the same types of hardship as construction and apparel industry employees—were not included in these special exemptions.

The entertainment industry has been covered by our labor laws for 16 years now, yet these laws in their current form actually penalize performers, rather than protect them. The aim of H.R. 5107 is quite simple—through certain amendments to the National Labor Relations Act, it attempts to recognize the special nature of the entertainment industry, and to ensure that employees of that industry are offered the same protections as employees in other fields.

First, H.R. 5107 would, for labor law purposes only, define a purchaser of musical performance services as an employer, and a person providing musical performance services as an employee. This is especially important in light of the recent Second Circuit Court decision which ruled that musicians are independent contractors, and as such are not eligible for standard labor protections and benefits.

H.R. 5107 would also permit the use of secondary boycotts, a practice that has been prohibited since 1968, but which is often necessary in order for musicians, unions to effectively reach the source of a dispute. Under current law, if a club breaks a contract with a bandleader who, in turn, breaks his contract with a band, the band members have no legal means to engage in action against the club. Clearly, picketing the bandleader would be meaningless, and musicians should have some other means of action available to them.

Next, H.R. 5107 would authorize pre-hire agreements for the entertainment industry similar to those practiced in the construction industry. Pre-hire agreements allow unions to act as bargaining agents for employees prior to a determination of majority status. Given the long period of time required to carry out a certification election, the process actually serves to deny workers the opportunity to organize in an industry where work is short-term and periodic. Pre-hire agreements would offer employees in the entertainment industry safeguards that are provided to organized labor in other industries.

Finally, H.R. 5107 would allow a performers union to collect dues after 7 days of employment, as a recognition of the brief nature of employment experiences. The current law, which requires a union to wait 30 days before collecting dues, often renders union shop agreements in the entertainment industry meaningless. The 7-day rule currently applies to the construction industry, and it should be extended to the entertainment industry as well.

In summary, Mr. Chairman, none of the bill's provisions are an attempt to alter the nature of our country's labor laws in any way. The bill is merely designed to recognize the special needs of a long-overlooked industry, and to extend to members of that industry the same safeguards that have been provided to workers in similarly structured industries.

Again, I appreciate this opportunity to express my views on this bill, and I urge the Subcommittee to act on H.R. 5107 in the near future. Thank you.

STATEMENT OF HON. ROBERT E. WISE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. WISE. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you, and am aware of your busy schedule, so I will just submit a written statement to insert into the record.

I simply wanted to come before you and state that through one of my constituents, who I suspect is really one of yours and whom you all have come to know, Ned Guthrie with the Musician's Union. I am very fortunate to have Ned as my constituent in my district. I have come to know how necessary H.R. 5107 is in order to provide thousands of our Nation's musicians the same rights and protections as workers in other professions.

I was at a function the other night. The band was packing up. I went over just to say hello and, of course, every one of them said, "What's moving on H.R. 5107? We really need that protection."

So, I will submit my written testimony for the record, as well as the fact that 200 of the musicians in my district and my State alone are anxious to see this bill approved, and many others who can talk about it much more knowledgeably than I. But I come before you today as much as anything to pay tribute to Ned Guthrie and his efforts and hope that out of this hearing will come the necessary reforms to give our musicians the same protections that so many other workers have.

Thank you very much, Mr. Chairman.

Mr. CLAY. Thank you.

Mr. Martinez, any questions?

Mr. MARTINEZ. Yes. One is that someone told me that musicians are usually contract employees. Usually they are employees of the bandleader and they work for that bandleader. And the bandleader makes the contract with the employer. Now, that is the actual situation in most cases. And I understand, too, the difficult position it puts the employees in when the employer, in the case of this statement here, the bill wanting to make them definitely purchasers and employers. When they have negotiated with one person who, in turn, is negotiating with a lot of other people, in that instance it's frustrating and the employees have the situation of negotiating with the bandleader, and he's trying to get the best price for their services. There is a frustration there. How do we get around the fact, as we analyze it, the employer of those employees is the bandleader, and he has contracts. What is your argument on that? I'd like to hear the argument because I think the employees need some help on that.

Mr. WISE. I think that, though, if you look at the reality of how the industry works, you have to recognize that, at least for a short time, the actual employer is not the bandleader but the club owner, whomever, which is similar, to me, to a construction job. You have a contractor there. It doesn't do you any good to go out and picket the construction contractor himself. You picket the jobsite. So, you would take that and extrapolate and attach that to this situation.

Mr. CLAY. Will the gentleman yield?

Mr. MARTINEZ. Yes.

Mr. CLAY. I think the gentleman is precisely right. We have exemptions for construction and garment industry as well, for short-term employment. So, I think you hit it right on the head.

Any further questions?

If not, thank you for coming.

Mr. WISE. Thank you, Mr. Chairman.

Mr. CLAY. The next witnesses will consist of a panel, Mr. Victor Fuentealba, Jack Golodner, and Mr. Raymond M. Hair, Jr.

Gentlemen, welcome to the committee. Your statements, without objection, will be included in the record at this point. You may proceed as you desire.

But just before we do, let me say that without objection, the statement from Representative Sala Burton of California will be entered into the record at this point.

[Prepared statement of Sala Burton follows:]

PREPARED STATEMENT OF HON. SALA BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr Chairman, I want to thank you for holding these hearings today. This legislation, the Performing Arts Labor Relations Amendments, was first introducted in 1977. I introduced H.R. 5107 on March 13, 1984. This bill currently has 28 co-sponsors.

The purpose of this bill is to extend to performer's unions exemptions similar to those provided the construction and garment industries in Sections 8(e) and 8(f) of the National Labor Relations Act. Sections 8(e) and 8(f) were included in the National Labor Relations Act in recognition of certain special characteristics of the construction and apparel industries. In these industries, employment is usually short-term, often with many different employers and involving frequent travel. The entertainment industry, which shares these same characteristics, was not included in these exemptions because the industry was not covered by federal labor laws when

sections 8(e) and 8(f) were enacted. Coverage of the entertainment industry under the National Labor Relations Act without the adjustments contained in H.R. 5107, has led to unfair restrictions on employees in the entertainment industry. Including the entertainment industry within the 8(e) and 8(f) exemptions is needed to make the coverage of this industry consistent and fair.

We will be hearing expert testimony today on the problems faced by those in the entertainment industry as a result of this inequity. I believe these changes in the application of the National Labor Relations Act are long overdue. These amendments will afford musicians and others in the entertainment industry fair and equitable treatment under our nation's labor laws.

Mr. CLAY. Yes, you may proceed.

[Prepared statement of Victor Fuentealba follows:]

PREPARED STATEMENT OF VICTOR W. FUENTEALBA, PRESIDENT, AMERICAN FEDERATION OF MUSICIANS

Mr. Chairman, members of the Subcommittee, my name is Victor W. Fuentealba and I am International President of the American Federation of Musicians, the largest, entertainment union in the world.

First of all, I want to thank you and the Committee for giving me the opportunity to appear before you today to explain the importance of H.R. 5107 to the professional musicians throughout our country. Our union had represented professional musicians since 1896 and during its lengthy history, we have been faced with many challenges and threats to job opportunities and have survived. Technological developments, starting with the introduction of the sound track in motion pictures, the phonograph record which is now providing all of the music on radio and in many establishments, and devices that duplicate the sounds of musical instruments are examples of the myriad of problems that have faced the professional musician and which will continue to do so in future years. Despite those challenges, we have been successful in our continual efforts to create and preserve work for American musicians. However, one of the most serious problems threatening the music industry today can only be resolved by you and your colleagues. I am referring of course to the present labor law and its application by the National Labor Relations Board and the courts to the music industry.

Let me give you just one example. From the day that the hotels and casinos were opened in Puerto Rico, the musicians working in those establishments providing music for dancing and shows were considered employees of the hotel. Our local affiliate in Puerto Rico capably represented the interests of those musicians by negotiating and enforcing contracts for their services. I am certain that there isn't an individual who has ever visited one of those hotels who did not presume that the musicians were employees of the hotel. However, in 1979, the hotels decided that they no longer wished to be burdened with the responsibilities of an employer and took the position that they did not have to negotiate with the union on the basis that the musicians were not employees of the hotel. Despite the long history of the employer-employee relationship and the many previous contracts that had been negotiated between the hotels and the union, the Second Circuit Court of Appeals agreed with the hotels and ruled that the musicians were not employees of the hotels. The union could no longer compel the hotels to sit down at the bargaining table and negotiate an agreement and the musicians were left with no alternative but to accept whatever wage proposals were offered to them individually by the orchestra leader or look for other employment. Pension contributions that were formerly made by the hotels immediately stopped. Unemployment compensation coverage and workmen's compensation protection stopped and the musicians were left to fend for themselves.

Multiply this example by the tens of thousands of nightclubs, hotels, lounges, and other establishments using musicians throughout the United States and you can readily understand our need for relief. Musicians today, with the exception of the members of our major symphony orchestras, some theatres, and a few other areas of the industry where the employer-employee relationship is recognized, are in a "no man's land" as far as the labor laws are concerned. They constantly plea for the protection of our union and for assistance in resolving their problems with purchasers and we are unable to help them.

The amendments which we are seeking have not been arbitrarily chosen but are based on the bitter experiences of thousands of musicians since the adoption of the Taft-Hartley Act. The amendments that we are requesting could have probably been incorporated into the original legislation in 1947 or when amendments were adopted in 1959 were it not for the fact that at those times the law had not been applied to

the music industry and there were no adverse rulings or decisions. Our problems began years later and culminated in hundreds of unfair labor practice charges in the late 1970's.

The music industry is a unique business and the ambitions of every young musician to become a star are marred by unscrupulous promoters, managers, agents, nightclub owners and others seeking to exploit the musician. The American Federation of Musicians is the only organization whose sole purpose in existing is to protect musicians from exploitation and to improve their financial welfare and professional careers. The present law not only prevents our union from protecting its members, but offers no suitable alternatives. The nighclub owner determines what compensation the musicians will receive, what hours they will work, when they will take their intermissions, what songs they will play, what they will wear, and occasionally, with whom they will associate when off the bandstand. Yet, under the present law, that same nightclub owner who has such complete control over the services of the musicians and their welfare is immune from any action on the part of the union to protect the musicians because he is not recognized as the employer of the band. Our only remedy is to amend the Taft-Hartley Act as we have requested.

Music is the universal language and there is not a family, today without at least one member who plays a musical instrument. The caliber of musicianship is improving day by day and more and more youngsters are looking forward to careers in music. Our ability to protect their interests, to prevent their exploitation and to enable them to earn a decent livelihood is hampered by the current law. The relief we are seeking is not a major revision of the Taft-Hartley Act, but merely changes which will afford the professional musician the right to have a representative of his or her choosing to negotiate with those who wish to utilize their services. I do not feel that the drafters and proponents of the present law ever envisioned or intended that law to discriminate against musicians, but gentlemen, that is what is happening today.

In the past, Congress has seen fit to make changes in the law when it was proven that those changes were necessary to protect the workers in a particular industry. In 1959, after listening to the pleas of the construction and garment industries, Congress realized that certain amendments to the Taft-Hartley Act were the only solution to the unique problems of those industries, and today we are here seeking similar relief for our industry. The musicians need protection also and the musicians need the changes which we are requesting. I urge your support of H.R. 5107.

STATEMENT OF VICTOR FUENTEALBA, PRESIDENT, AMERICAN FEDERATION OF MUSICIANS [AFM], ACCOMPANIED BY NED GUTHRIE, LEGISLATIVE DIRECTOR, AFM, AND COSIMO, C. ABATO, GENERAL COUNSEL, AFM

Mr. FUENTEALBA. Yes; Mr. Chairman, members of the subcommittee, my name is Victor W. Fuentealba and I am the international president of the American Federation of Musicians, the largest entertainment union in the world.

First of all, I want to thank you and the committee for giving me the opportunity to appear before you today to explain the importance of H.R. 5107 to the professional musicians throughout our country. Our union has represented professional musicians since 1896 and during its lengthy history we have been faced with many challenges and threats to job opportunity and have survived.

Technological developments, starting with the introduction of sound track in motion pictures, the phonograph record, which is now providing all of the music on radio and in many establishments, and devices that duplicate the sounds of musical instruments, are examples of the myriad of problems that have faced the professional musician and which will continue to do so in future years.

Despite those challenges, we have been successful in our continual efforts to create and preserve work for American musicians. However, one of the most serious problems threatening the music

industry today can only be resolved by you and your colleagues. I am referring, of course, to the present labor law and its application by the National Labor Relations Board and the courts to the music industry.

Let me give you just one example. On the day that the hotels and casinos were opened in Puerto Rico, the musicians working in those establishments providing music for dancing and shows were considered employees of the hotel. Our local affiliate in Puerto Rico capably represented the interests of those musicians by negotiating and enforcing contracts for their services.

I am certain that there isn't an individual who has ever visited one of those hotels who did not presume that the musicians were employees of the hotel. However, in 1979 the hotels decided that they no longer wished to be burdened with the responsibilities of an employer and took the position that they did not have to negotiate with the union, on the basis that the musicians were not employees of the hotel.

Despite the long history of the employer-employee relationship, and the many previous contracts that had been negotiated between the hotels and the union, the second circuit court of appeals agreed with the hotels and ruled that the musicians were not employees of the hotels. The union could no longer compel the hotels to sit down at the bargaining table and negotiate an agreement. And the musicians were left with no alternative but to accept whatever wage proposals were offered to them individually by the orchestra leader, or look for other employment. Pension contributions that were formerly made by the hotels immediately stopped. Unemployment compensation coverage and workmen's compensation coverage stopped and the musicians were left to fend for themselves

Multiply this example by the tens of thousands of nightclubs, hotels, lounges, and other establishments using musicians throughout the United States and you can readily understand our need for relief. Musicians today, with the exception of the members of our major symphony orchestras, some threatres, and a few other areas of the industry where the employer-employee relationship is recognized, are in a no-man's land as far as the labor laws are concerned. They constantly plead for the protection of our union and for assistance in resolving their problems with purchasers, and we are unable to help them.

The amendments which we are seeking have not been arbitrarily chosen, but are based on the bitter experience of thousands of musicians since the adoption of the Taft-Hartley Act. The amendments that we are requesting could have probably been incorporated into the original legislation in 1947, or when amendments were adopted in 1959, were it not for the fact that at those times the law had not been applied to the music industry and there were no adverse rulings or decisions. Our problems began years later and culminated in hundreds of unfair labor practice charges in the late 1970s.

The music industry is a unique business and the ambitions of every young musician to become a star are marred by unscrupulous promoters, managers, agents, nightclub owners, and others seeking to exploit the musician. The American Federation of Musicians is the only organization whose sole purpose in existing is to

protect musicians from exploitation and to improve their financial welfare and professional careers.

The present law not only prevents our union from protecting our members, but offers no suitable alternatives. The nightclub owner determines what compensation the musicians will receive, what hours they will work, when they will take their intermissions, what songs they will play, what they will wear, and occasionally with whom they will associate when off the bandstand. Yet, under the present law, that same nightclub owner who has such complete control over the services of the musicians and their welfare, is immune from any action on the part of the union to protect the musicians, because he is not recognized as the employer of the band.

Our only remedy is to amend the Taft-Hartley Act as we have requested.

Music is the universal language. And there is not a family today without at least one member who plays a musical instrument. The caliber of musicianship is improving day by day and more and more youngsters are looking forward to careers in music. Our ability to protect their interest, to prevent their exploitation, and to enable them to earn a decent livelihood, is hampered by the current law.

The relief we are seeking is not a major revision of the Taft-Hartley Act but merely changes which will afford the professional musician the right to have a representative of his or her choosing to negotiate with those who wish to utilize their services. I do not feel that the drafters and proponents of the present law ever envisioned or intended that law to discriminate against musicians. Gentlemen, that is what is happening today.

There seems to be a great deal of misunderstanding also, Mr. Chairman, about what we are seeking. We are not seeking an amendment to the tax laws. We are not seeking a change in the law which would require the owner of the establishment to be the employer, for tax purposes, of the musicians. We are seeking changes in the labor laws only, so that the musicians would have the right, through their representatives, to bargain and negotiate agreements with the owners of the establishments that employ musicians.

We are not trying to affect those orchestra leaders today who are acting as employers of musicians. In some of our major cities there are orchestra leaders that are true employers of those musicians that work for them, particularly in the casual field. We are not trying to change that practice law and what we are seeking will not change the law respecting them. It would merely create the position of joint employers, where the purchaser of the music would be a joint employer, together with the orchestra leader, in those cases where the orchestra leader is currently the employer of the musicians.

And I might add that in the nightclub field of our business there are few orchestra leaders that are employers of musicians. The orchestra leaders that are bargaining with our local unions, who represent musicians, are in the casual field, the orchestras that do the weddings and the bar mitzvahs and things of that nature.

Our biggest problem is in the steady engagement field, the night-club field, and the hotel industry where musicians are used on a steady basis and there is no employer. In those cases it's very rare that an orchestra leader is willing to assume the responsibility of being an employer. Because, as you well know, the fiscal responsibilities that go along with being an employer for tax purposes, can be quite high.

We are not seeking this legislation for the purpose of organizing musicians into the union. We are merely seeking this legislation to protect the rights of those who choose to join our union. No one can force anyone to join any union today, as you well know. We are trying to protect the rights of the members of our union, who today do not have the protection which is afforded to members of other unions. And in the past Congress has seen fit to make changes in the law when it was proven that those changes were necessary to protect the workers in a particular industry.

In 1959, after listening to the pleas of the construction and garment industries, Congress realized that certain amendments to the Taft-Hartley Act were the only solution to the unique problem of those industries. And today we are here seeking similar relief for our industry. The musicians need protection also. The present law has created a climate in the United States of being a right to work country as far as musicians are concerned. We cannot take advantage of the present law today. We need these changes and we sincerely urge your support of H.R. 5107.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

The next witness, Jack Golodner.

[Prepared statement of Jack Golodner follows:]

PREPARED STATEMENT OF JACK GOLODNER, DIRECTOR, DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO

I am Jack Golodner, Director of the Department for Professional Employees (DPE), AFL-CIO. I am here to convey to this committee to support of the AFL-CIO and the Department for H.R. 1758 and H.R. 5107 as well as H.R. 3291—all of which are subjects for your consideration today.

The AFL-CIO, of course, needs no introduction to this subcommittee. But it may be useful for me to point that the Department brings together 26 national and international unions (list attached) which represent in their membership 3 million professional, technical and highly trained white collar workers. These people are teachers, librarians, nurses, performing artists, engineers and scientists. Indeed, every major position and every major technical occupation in the United States is represented in the ranks of our affiliated organizations.

We are told in this highly technical, highly complex, very competitive world, these very creative, highly trained and educated people hold the key to the future well-being of our nation. Yet, though some are adequately rewarded by our society for their dedication, their years of training and their contributions—most are not. Though some are able to fully participate in the decisions that affect their professions, and their careers, many cannot. Though these Americans have for many decades built respectable organizations that have contributed mightily to the vitality of our country, and their professions they now find these associations under attack and their rights to participate through them being denied.

The so-called Yeshiva doctrine which is addressed in H.R. 3291 deprives those who are responsible for training and educating our professional work force of the right to engage in free collective bargaining with their employers—a right enjoyed by other workers here and in other democratic societies. This is hardly a formula for according respect and encouragement to a group of employees which many regard as key to our future prosperity.

You (will hear) (have heard) from representatives of the American Federation of Teachers concerning this matter. The AFL-CIO and its Department for Professional Employees urges your sympathetic attention to what they have to say. The issue they raise has serious implications for our democracy.

Similarly, we ask that you note the pleas of those who pursue careers in the performing arts and their representatives. They, too, are being denied access to the collective bargaining process simply because the way in which they must work and the way in which their employment relationships are structured were not considered in laws which, originally, were not contemplated as applying to them. Those laws, because of court and NLRB decisions, now have been made to apply to them and, like clothing cut for someone, they just do not fit the reality of their situation. The result is confusion, mischief making, and the frustration of the legitimate rights of people who deserve better treatment from a domestic government.

The 1959 Congress recognized the special situation of employers and employees in the construction trades with regard to short-term and casual employment and made provisions for them in the NLRA. I cannot believe that the Congress wants our laws to discriminate against the employers and employees of the arts and entertainment industry who face an identical situation. Only those who wish to roll back the clock and repeal the Nation's commitment to free collective bargaining could fight to retain such a basic inconsistency.

Congress also acknowledged that special situations in the garment industry made it impossible for workers to achieve representation or engage in collective bargaining unless special consideration was given the nature of the industry. Such consideration was given. But many years after the NLRB asserted jurisdiction in the arts and entertainment field where similar unique situations prevail, Congress has not acknowledged them. Why the dissimilar treatment? Why do our laws refuse to consider the special needs of our nation's artists and the bulk of their employers who adhere to the principle of furthering collective bargaining as expounded in the NLRA? I think the situation speaks more to the failings of the Congress than any shortcomings in the proposed legislation.

Since 1966 bills containing provisions similar to H.R. 1758 and H.R. 5107 have been before every session of the House. Hearings were conducted twice by this committee—in 1966 and 1977. In the first hearings, the only opposition arose from those who pressed for "perfecting" amendments which were, indeed, incorporated in all subsequent versions of the legislation. At that time, and in 1977 the National Association of Legitimate Theatres (League of N.Y. Theatres)— representing the major employers of live talent in the legitimate theatre endorsed the amendments to section 8(f) as proposed. In 1977, no witnesses appeared in opposition to this change or to the changes in section 8(e) being suggested in the bills now before you.

Responsible employers know that the structure of their industry and the short term nature of projects within it cannot tolerate the uncertainties created by Board and court decisions applying the current statute.

They know the value of the stability which is obtained through pre-hire agreements and a union shop provision that conforms with the reality of their industry. Both are now enjoyed by the construction industry. Why is it denied to the arts and entertainment industry?

Reasonable fairminded employers in the arts and entertainment area do not duck their obligations to bargain and treat with their employees fairly. They know that the special nature of their industry, like that of the garment industry, requires special consideration in the law if collective bargaining is to work.

Frankly, I think the time is overdue for this committee and the Congress to make sure that this nation's laudible commitment to protecting the right to free collective bargaining as expressed in the NLRA is at least as meaningful for artists, teachers and professional employees as it is for other employed people.

Certainly, improvement is needed throughout the NLRA, in the procedures of the NLRB and vis-a-vis all workers if the purposes of the original Act are to be fulfilled. At the very least—I suggest an ending to the dissimilar treatment of similarly situated workers under the law—a result which could be achieved by passage of the legislation before you.

AFFILIATES OF THE DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO

Actors' Equity Association;
American Federation of Government Employees;
American Federation of Musicians;
American Federation of State, County and Municipal Employees;
American Federation of Teachers;

American Federation of Television and Radio Artists;
American Guild of Musical Artists;
Association of Theatrical Press Agents and Managers;
Brotherhood of Railway and Airline Clerks;
Communications Workers of America;
Federation of Professional Athletes;
International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators;
International Association of Machinists;
International Brotherhood of Electrical Workers;
International Federation of Professional and Technical Engineers;
International Union of Electronic, Electrical, Technical, Salaried and Machine Workers;
International Union of Operating Engineers;
International Union, United Automobile, Aerospace & Implement Workers of America;
National Association of Broadcast Employees and Technicians;
Office and Professional Employees International Union;
Retail, Wholesale and Department Store Union;
Screen Actors Guild;
Seafarers International Union;
Service Employees International Union;
United Association of Journeymen Plumbers;
United Food and Commercial Workers.

STATEMENT OF JACK GOLODNER, DIRECTOR, DEPARTMENT OF PROFESSIONAL MUSICIANS, AFL–CIO

Mr. GOLODNER. Yes, Mr. Chairman; I guess I'm next.

My name is Jack Golodner. I am director of the department for professional employees of the AFL–CIO. I am here to convey to this committee the support of the AFL–CIO and the department for H.R. 1758, H.R. 5107, as well as H.R. 3291, all of which are subjects for your consideration this morning.

The AFL–CIO, of course, needs no introduction to this subcommittee. But it may be useful for me to point out that the department I represent brings together 26 national and international unions. Appended to my statement is a list of those affiliated unions. These organizations represent in their membership 3 million professional, technical, and highly trained white-collar workers. These people are teachers, librarians, nurses, performing artists, engineers and scientists. Indeed, every major profession and every major technical occupation in the United States is represented in the ranks of our affiliated organizations, making this department probably the largest interdisciplinary body of professionals in the country.

We are told that in this highly technical, highly complex, very competitive world, these very creative, highly trained, and educated people hold the key to the future well-being of our Nation. Yet, though some are adequately rewarded by our society for their dedication, for their years of training and their contributions, most are not. Though some are able to fully participate in the decisions that affect their professions and their careers, many cannot.

Though these Americans have, for many decades, built respectable organizations that have contributed mightily to the vitality of their country and their professions, they now find these associations under attack and their rights to participate, through them, being denied.

The so-called *Yeshiva* doctrine, which is addressed in H.R. 3291, deprives those who are responsible for training and educating our future professional work force of the right to engage in free collective bargaining with their employers, a right enjoyed by other workers here and in other democratic societies.

This, I submit, is hardly a formula for affording respect and encouragement to a group of employees which many regard as the key to our future prosperity. You have heard from representatives of the American Federation of Teachers concerning this matter. The AFL-CIO and its department for professional employees urges your sympathetic attention to what they have said.

The issues they raise have serious implications for the future of our democracy.

Similarly, we ask that you note the pleas of those who pursue careers in the performing arts, and their representatives. They too are being denied access to the collective-bargaining process simply because of the way in which they must work and because the way in which their employment relationships are structured were not considered in laws which originally were not contemplated as applying to them. Those laws, because of court and NLRB decisions, now have been made to apply to them, and like clothing cut for someone else, they just do not fit the reality of their situation. The result is confusion, mischief making, and the frustration of the legitimate rights of people who deserve better treatment from a democratic government.

In 1959, Congress recognized the special situation of employers and employees in the construction trades with regard to short-term and casual employment. And the Congress made provision for them in the NLRA. I cannot believe that the Congress wants our laws to discriminate against the employers and employees of the arts and entertainment industry, who face identical situations.

Only those who wish to roll back the clock and repeal this Nation's commitment to collective bargaining could fight to retain such a basic inconsistency in our laws.

Congress also acknowledged that special situations in the garment industry made it impossible for workers to achieve representation or engage in collective bargaining unless special consideration was given the nature of the industry. And such consideration was given. But many years after the NLRB asserted jurisdiction in the arts and entertainment field, where similar unique situations prevail, the Congress has not acknowledged them.

Why, they ask, is there dissimilar treatment? Why do our laws refuse to consider the special needs of our Nation's artists and the bulk of their employers who do adhere to the principle of furthering collective bargaining, as expounded in the NLRA?

I think the situation speaks more to the failings of Congress than any shortcomings in the proposed legislation.

Since 1966 bills containing provisions similar to H.R. 1578 and H.R. 5107 have been introduced before every session of the House. Hearings were conducted twice by this committee in 1966 and in 1977. In the first hearings, the only opposition arose from those who pressed for perfecting amendments, which were, indeed, incorporated in all subsequent versions of the legislation. At that time, and again in 1977, the National Association of Legitimate Theaters,

League of New York Theaters, representing the major employers of live talent in the legitimate theater, endorsed the amendments to section 8(f), now being proposed.

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Certainly, improvement is needed throughout the NLRA, and vis-a-vis all workers if the purposes of the original act are to be fulfilled. At the very least I suggest an end to the dissimilar treatment of similarly situated workers under the law, a result which could be achieved by passage of the legislation before you.

Thank you very much for the time and attention this committee has given this matter.

Mr. CLAY. Thank you. Mr. Hair.

[Prepared statement of Raymond M. Hair, Jr. follows:]

PREPARED STATEMENT OF RAYMOND MARSHALL HAIR, JR., MUSICIAN, DENTON, TX

My name is Ray Hair. I am thirty-three years old and reside in Denton, Texas. I have been a musician for twenty-four years. I performed my first professional engagement in Meridian, Mississippi in 1964. I hold degrees in music from the University of Southern Mississippi and North Texas State University.

PROFESSIONAL BACKGROUND

In 1977, while a graduate student at NTSU, I organized the musical entertainment group YAZOO, which for a number of years provided its services in performances in many states of the United States and was listed with many national booking agents under the name "YAZOO". As the proprietor and a performing member of YAZOO, I have personally solicited musical engagements in every state of the United States. From 1979 until 1983 I taught applied percussion at North Texas State University. In June, 1983, I chose to relinquish my teaching duties and full-time performing career to become President and Secretary of the Fort Worth Professional Musicians Association, Local 72 of the American Federation of Musicians, which has jurisdiction throughout thirty-four Texas counties and represents more than 1,000 musicians who reside mainly within the D/FW metropolitan area.

EXPERIENCES AS TRAVELING MUSICIAN

As leader of YAZOO I began soliciting musical engagements through booking agents. We voluntarily chose to conduct our business in accordance with American

Federation of Musicians procedures and requested all purchasers to execute A. F. of M. engagement contract forms. In 1978 I signed an A. F. of M. exclusive agent-musician contract with Bob Vincent, president of the Mus-Art Corporation in Los Angeles, and C. W. Kendall, proprietor of Ken-Ran Enterprises, Dallas, Texas, which provided for their exclusive representation of YAZOO. Vincent is founder and President-Emiritus of the International Theatrical Agencies Association, and Kendall is its immediate past president. Vincent and Kendall put us "on the road" booking generally five or six nights per week engagements of one to four weeks duration, performed mostly in hotel dance lounges and free-standing night clubs for a gross salary of eighteen hundred to twenty-five hundred dollars per week, commissionable at the rate of 15 percent. We were never permitted to bargain over salary. We were left to either accept or reject all engagements, and we rarely knew in advance where our next job would be. We paid our own traveling expenses, the purchaser occasionally providing hotel rooms. The purchaser, termed an "account" by the agent, was invariably represented exclusively by a certain booking agent. I was told by Kendall that all relations with the "account" must be handled through him, and to never conduct any business with the "account". Some "accounts" had been "serviced" by the same agent exclusively for lengthy periods of time. With Vincent and Kendall we began to encounter resistance to the AFM engagement contract form.

ONSET OF INDEPENDENT CONTRACTOR

In April, 1978, for an engagement booked for YAZOO in Los Angeles, Vincent sent the AFM contract form along with a rider establishing our group as independent contractors. Vincent told me we would be employed only upon condition that we sign the rider. When a dispute arose later with the purchaser, it took two years of costly litigation to become separated from the contract rider and obtain a judgment and award pursuant to our AFM engagement contract. This signaled the beginning of a trend by both agents and purchasers of refusing musicians A. F. of M. Contract forms and instead requiring the execution of engagement contracts establishing performers as independent contractors. Agents, in conspiracy with the purchasers informed entertainers that their "accounts" no longer wished to execute AFM contract forms, and then went on to develop their own self-serving contracts invariably including the independent contractor designation. It became obvious that the agent's primary interest was his "account", the purchaser, whose intent is to undercut musicians bargaining strength and leave them without recourse in the event of a dispute, while simultaneously maintaining stringent employer control.

PURCHASER MAINTENANCE OF EMPLOYER CONTROL

It must be clearly understood, even though C. W. Kendall's contract and the other agent-purchaser oriented contracts specifically establish musicians as independent contractor, the reality of the relationship between the purchaser and the musicians is that the purchaser exercises full authority and control over how musicians perform volume levels, stage settings, attire on stage and off, rehearsal times, intermissions, substitute musicians, conduct while engaged, repertoire, other work performed elsewhere, and future employment prospects. Thus, it is customary for purchasers and their agents to exercise strict employer control while simultaneously requiring musicians to acknowledge the status of independent contractor as a condition of employment. In most cases, musicians have no opportunity to bargain; we must either accept or reject the terms of the music purchaser, who is and always has been our true employer.

ACTIVITIES AS LABOR ORGANIZER

As President-Secretary of AFM Local 72 in Forth Worth, I am conscious of my duty to operate according to law. I have spent many hours studying procedural texts and surveys of labor law so that I may engage in employee organizing, representation elections, collective bargaining, the filing of unfair labor practice charges against employers, and other activities prescribed under the National Labor Relations Act.

MUSICIANS WITHOUT REMEDY

The purchasers' insistence upon the independent contractor designation coupled with stringent employer control has left musicians without adequate remedy under labor law for unfair labor practices committed by the purchaser. In June, 1984, I filed unfair labor practice charges against Metro Hotels, Inc., who refused to meet and bargain with musicians who had played there since 1979. No complaint was

issued. Upon filing a petition for certification and election with 100 percent showing of employee interest, the hotel fired the band. When I filed again due to the obviously discriminatory discharge, the Board again refused to issue a complaint. All along, the employer asserted that the musicians were not subject to the Act. Likewise, Six Flags Over Texas refused to bargain citing the independent contractor issue.

RELIEF NEEDED

The practice of employers and booking agents to require the establishment of musicians' independent contractor status, while retaining scrupulous employer control has created confusion among musicians, their representatives, as well as potential employers. This conspiracy, perpetrated by national associations of employers, booking agents, and others who are directed and dominated by our true employers, if not terminated will continue to cause irreparable damage and injury to thousands of working musicians in this country.

The issue here is not one of whether the Musicians Union is lazy or is asking for special privileges. The issue is whether or not this Congress is going to end the misrepresentation of employer/employee relationships in this country and provide relief for those of us who are now subject to employer reprisal because we want to organize and bargain. The issue is whether or not Congress is going to continue to allow our true employers and their agents to perpetuate a virtual state of involuntary servitude, where musicians every nuance is directed by the purchaser. In the face of employer unfair labor practices, 95 percent of the working musicians in this country are without remedy at law. In the interest of my fellow musicians I respectfully urge the Labor Subcommittee to report S. 281 and H.R. 5107 favorably to the House of Representatives and work for its immediate enactment into law. The lives of thousands of musicians deserve nothing less than your full and complete support.

STATEMENT OF RAYMOND M. HAIR, JR., PRESIDENT, LOCAL 72, AMERICAN FEDERATION OF MUSICIANS

Mr. HAIR. Mr. Chairman, members of the subcommittee, fellow musicians, my name is Ray Hair, 33 years old and I reside in Denton, TX. I've been a musician for 24 years, performing my first professional engagement in Meridian, MS in 1964. I hold degrees in music from the University of Southern Mississippi and North Texas State University.

In 1977, while a graduate student at North Texas, I organized the musical entertainment group Yazoo, which for a number of years provided services and performances in many States of the United States and was listed with many national booking agents around the United States under the name "Yazoo."

As a proprietor and performing member of Yazoo, I personally solicited musical engagements in every State of the United States. From 1979 until 1983 I taught applied percussion at North Texas State University. In June 1983, I chose to relinquish my teaching duties and my full-time performing career to become the president and secretary of the Ft. Worth Professional Musician's Association, Local 72 of the American Federation of Musicians, which has jurisdiction throughout 34 Texas counties and represents more than 1,000 musicians who reside mainly in the Dallas-Ft. Worth metropolitan area.

As leader of Yazoo I began soliciting musical engagements through booking agents. We voluntarily chose to conduct our business in accordance with American Federation of Musicians procedures and requested all purchasers to executive A.F. of M. contract forms. In 1978 I signed an A.F. of M. exclusive agent-musician contract with Bob Vincent, president of the Mus-Art Corp. in Los Angeles, and C.W. Kendall, proprietor of Ken-Rann Enterprises,

Dallas, TX, which provided for their exclusive representation of Yazoo.

Vincent is the founder and president-emeritus of the International Theatrical Agencies Association and Kendall is its immediate past president. Vincent and Kendall put us on the road, booking generally 5 or 6 nights per week engagements of 1 to 4 weeks duration, performed mostly in hotel dance lounges and freestanding nightclubs for a gross salary of $1,800 to $2,500 per week, commissionable at the rate of 15 percent.

We were never permitted to bargain over our salary. We were left to either accept or reject all engagements, and we rarely knew in advance where our next job would be. We paid our own traveling expenses. The purchaser occasionally provided hotel rooms.

The purchaser, termed an "account" by the agent, was invariably represented exclusively by a certain booking agent. I was told by Kendall that all relations with the account must be handled through him, to never conduct any business with the account. Some accounts had been serviced by the same agent exclusively for lengthy periods of time.

With Vincent and Kendall we began to experience resistance to the A.F. of M. contract form. In April 1978 for an engagement booked for Yazoo in Los Angeles, Vincent sent the AFM contract form along with a rider establishing our group as independent contractors. Vincent told me we would be employed only on the condition that we signed the rider. When a dispute arose later with the purchaser, it took 2 years of costly litigation to become separated from the contract rider, and obtain a judgment and award pursuant to our A.F. of M. engagement contract.

This signaled the beginning of a trend by both agencies and purchasers of refusing AFM contract forms and, instead, requiring the execution of engagement contracts establishing performers as independent contractors. Agents, in conspiracy with the purchasers, informed entertainers that their accounts no longer wished to execute AFM contract forms and then went on to develop their own self-serving contracts, invariably including the independent contractor designation. It became obvious that the agent's primary interest was his account, the purchaser, whose intent was to undercut musicians' bargaining strength and leave them without recourse in the event of a dispute, while simultaneously maintaining stringent employer control.

It must be clearly understood that even though Kendall's contract and the other agent-purchaser oriented contracts specifically established musicians as independent contractors, the reality of the relationship between purchasers and musicians is that the purchaser exercises full authority and control over how musicians perform, volume levels, stage settings, attire on stage and off, rehearsal times, intermissions, substitute musicians, conduct while engaged, repertoire, other work performed elsewhere, and future employment prospects.

Thus, it is customary for purchasers and their agents to exercise strict employer control while simultaneously requiring musicians to acknowledge the status of independent contractor, as a condition of employment.

In most cases musicians have no opportunity to bargain. We must either accept or reject the terms of the music purchaser, who is and always has been our true employer.

As president and secretary of local 72 in Fort Worth I am conscious of my duty to operate according to the law. I have spent many hours studying procedural texts and surveys of labor laws so that I may engage in employee organizing, representation elections, collective bargaining, filing of unfair labor practice charges against employers, and other activities prescribed in the National Labor Relations Act.

The purchasers' insistence upon the independent contractor designation, coupled with the stringent employer control, has left musicians without adequate remedy under the labor laws for unfair labor practices committed by the purchaser. In June 1984, I filed unfair labor practice charges against Metro Hotels, Inc., who refused to meet and bargain with musicians who had played there since 1979. Upon filing of a petition for certification and election with a 100-percent showing of employee interest, the hotel fired the band. When I filed again, due to the obviously discriminatory discharge, the Board again refused to issue a complaint.

All along the employer asserted that the musicians were not subject to the act. Likewise, Six Flags over Texas refused to bargain, citing the same independent contractor issue.

The practice of employers and booking agents to require the establishment of musicians' independent contractor status, while retaining scrupulous employer control, has created confusion among musicians, their representatives, as well as potential employers. This conspiracy, perpetrated by national associations of employers, booking agents, and others who are directed and dominated by our true employers, if not terminated, will continue to cause irreparable damage and injury to thousands of working musicians in this country.

The issue here is not one of whether the musicians union is lazy or is asking for special privileges. The issue is whether or not the Congress is going to end the misrepresentation of employer/employee relationships in this country and provide relief for those of us who are now subject to employer reprisal because we want to organize and bargain.

The issue is whether or not Congress is going to continue to allow our true employers and their agents to perpetuate a virtual state of involuntary servitude where musicians' every nuances are directed by the purchaser. In the face of employer unfair labor practices, 95 percent of the working musicians in this country are without remedy at law. In the interest of my fellow musicians I respectfully urge the Labor Subcommittee to report S. 281 and H.R. 5107 favorably to the House of Representatives and work for its immediate enactment into law. The lives of thousands of musicians deserve nothing less than your full and complete support.

Mr. CLAY. Thank you.

This bill, H.R. 5107, amends the National Labor Relations Act. This committee has no jurisdiction on the tax matters. And each committee jealously guards its jurisdiction. If this bill had any tax implications or policies, the Ways and Means Committee would ask for a concurrent jurisdiction over it. In view of the fact that it's

strictly a labor issue, why do you think that the tax issue is consistently and constantly raised with regard to H.R. 5107?

Mr. FUENTEALBA. Mr. Chairman, I think there is a misunderstanding on the part of some of the opponents to this legislation, who mistakenly believe that passage of these amendments would affect the responsibilities of orchestra leaders, as employers under—for tax purposes. And that's why I, in my statement, tried to make it clear that we are not seeking changes in the tax laws and that we are merely seeking changes in the labor laws. I think it's a misunderstanding on the part of some of the opponents to the legislation.

Mr. CLAY. Do you anticipate difficulty in providing that the band leader may be an employer for tax purposes, but also an employee for labor law purposes?

Mr. FUENTEALBA. No, sir. That condition existed before the Taft-Hartley law was adopted. It's always existed. In fact, many, many years ago when the Social Security laws were first adopted, our union attempted to get Social Security protection for its members by incorporating into its contract form a reference calling the purchaser the employer, and that was eventually litigated and the Supreme Court ruled that language in a contract cannot make an individual an employer; it's the facts that speak for themselves.

And we, other than for that one instance in connection with Social Security, have not been involved with the issue of who is the employer for tax purposes. That is something that has to be determined by the facts that exist. We are merely concerned with our right to represent musicians under the labor laws. So, it's the impact of this legislation that would not change a situation that has existed since time immemorial as far as musicians are concerned.

In some cases the orchestra leader may be the employer for tax purposes; in some instance he hasn't. And we have never been able to get the Internal Revenue Service to issue any sort of definition of an independent contractor, particularly in the case of musicians, and I think that there has been legislation before Congress to define and determine the status of independent contractors, which has never been adopted either.

Mr. CLAY. How many members of your union are band leaders?

Mr. FUENTEALBA. I really couldn't give you those figures because we don't keep our records in that fashion. There are different types of orchestra leaders; there are different types of orchestras. We have musicians who work 1 night a week, for example, in the smaller areas, even some of the larger areas, where the orchestra leader may be one member of the group 1 week and then the next week someone calls him up and asks him to provide music for a wedding and he will, in turn, call musicians. And it varies from place to place.

In some of our major cities we do have orchestra leaders that do a very large volume of business as orchestra leaders, and in those situations some of those assume the responsibilities of employers, although, in turn, we've had difficulties with some in New York recently who were acting as employers for tax purposes for years, and now have suddenly decided they no longer wish to be employers for tax purposes and, in turn, are issuing 1099's to the musi-

cians rather than withholding taxes as they properly should, as an employer.

So, it seems they want the best of both worlds. Some of these orchestra leaders say:

> Yes, under the labor laws I'm an employer of the musicians but under the tax laws I don't want to be an employer of the musicians because I don't want to pay my responsibilities as an employer.

Mr. CLAY. What impact would failure to enact this legislation have upon the organization which you represent?

Mr. FUENTEALBA. Failure to enact the legislation would maintain the union in its present posture, which has resulted in hundreds of unfair labor practice charges through the years, constant litigation at an expense to the Government and expense to the union over these very issues which we feel should be resolved at this time by Congress. It also means that we would not be able to adequately protect the interests of our members. We can't do it now. And unless the law is changed we will never be in a position to adequately protect the rights of our members.

And they come to us and they say, "We need help," and we say, "Sorry, the law is * * *." They can't understand the ramifications of the labor laws; they can't understand why our union can't represent them with the hotel owners, for example, and negotiate agreements covering their services.

We have to explain to them the law doesn't treat the hotel owner or the lounge owner as an employer. And they say, "That's ridiculous because the hotel owner, the lounge owner, determines what money is going to be paid for music," which ultimately determines what happens to the musicians.

For example, the situation in Puerto Rico is a good example because of the fact that the hotels in Puerto Rico acted as the employers of the musicians all of the years prior to 1979. They assumed all of the responsibilities of an employer. They negotiated with the union for the wages of the musicians. Then they suddenly decided they no longer wanted that responsibility. And they were assisted in their battle, incidentally, by an organization of orchestra leaders from the mainland of the United States, in their efforts to fight the local union.

As a result of that decision, those musicians now are actually without an employer, as such. Even the orchestra leaders are not acting as employers or negotiating with the unions. They have no pension coverage. They have no other benefits that normally could be negotiated by the union for the employees. And it's created havoc in Puerto Rico at the present time. In fact, it's practically destroyed the music business in Puerto Rico, because when the other musicians found that the union could no longer force the hotel owners to sit down to bargain at the table, they said, "Well, why should we bother with the union? The union can't help us. Why belong to the union?"

And the result is that the membership in the union in Puerto Rico, since that adverse court decision, has declined from the thousands to the hundreds. And the local is on the verge of bankruptcy.

Mr. CLAY. Mr. Martinez.

Mr. MARTINEZ. Bear with me. I don't know anything about the industry. Is the singer who makes music, who doesn't play an instrument but just sings, is he or she considered a musician?

Mr. FUENTEALBA. They are considered musicians in the true sense of the word. Some of them join the American Federation of Musicians. Some of them join the other entertainment unions, depending upon the particular circumstances.

Mr. MARTINEZ. In the cases where you have been involved, they have an agent sometimes who bargains for the employees, the agent doesn't employ them; he just bargains for them. In those cases is the hotel or nightclub, whoever hires them, are they the employers of that person?

Mr. FUENTEALBA. I'm not too familiar with what happens in the case of the singers, but I would presume that they're in the same category as musicians, and that their union, if they belong to AGVA, the American Guild of Variety Artists, or one of the other entertainment unions, is not in a position to compel the purchaser to bargain with them.

Mr. MARTINEZ. That's not my question. The question is for tax purposes, let's say, Is that artist, the contractor that has to pay their own taxes? Or is that hotel or restaurant or whatever, is that—are they the employer?

Mr. FUENTEALBA. I don't think they're the employer, no. You're speaking of one individual.

Mr. MARTINEZ. I understand the situation where there is a group, an orchestra, that the leader could be considered the employer.

Mr. FUENTEALBA. Yes, yes.

Mr. MARTINEZ. But would the musician's group change their status vis-a-vis the hotel or restaurant, whoever hires them, would they then be the employer?

Mr. FUENTEALBA. Not for tax purposes. We're not talking about taxes; we're talking about the right of a union, if they belong to a union, to bargain on their behalf with a hotel. This law would not change the tax responsibilities at all.

Mr. MARTINEZ. Thank you.

Mr. CLAY. Mr. Hayes.

Mr. HAYES. Mr. Chairman, I'm pretty clear. I think the panel is seeking relief, through legislative action, for discriminatory and unfair treatment that the artist is being saddled with, and they see H.R. 5107 as a mechanism to provide that relief. I am supportive of that position. I think it's pretty clear.

I have no further questions or comments. I just had that statement.

Mr. CLAY. Thank you, and we certainly want to thank you for your testimony here today. The record will remain open for several weeks if you have any additional information you'd like to put in.

Mr. FUENTEALBA. Thank you, Mr. Chairman, and members of the subcommittee.

Mr. CLAY. Thank you.

The next witness is Mr. Jerry Davis, the area administrator, National Association of Orchestra Leaders, accompanied by Charles Peterson, treasurer, NAOL, and Mr. William Heaberlin, area administrator and ITAA representative, NAOL.

You may proceed as you see fit. We will include your entire statements in the record.

[Prepared statement of Jerry Davis follows:]

PREPARED STATEMENT OF JERRY DAVIS, NEW ENGLAND ADMINISTRATOR OF THE NATIONAL ASSOCIATION OF ORCHESTRA LEADERS, NEWTON CENTRE, MA

I am Jerry Davis, New England Administrator of the National Association of Orchestra Leaders.

We the members of the N.A.O.L. are most vehemently opposed to the proposed Bill H.R. 5107. This bill attempts to overturn more than two hundred well-settled N.L.R.B. plus state and federal court decisions that have been made over the years. H.R. 5107 represents an enormous negative impact upon those who purchase music, such as hotels, lounges, restaurants, country clubs, ballrooms and function halls. All of these purchasers of music would be compelled to become the employers of the musicians. They would then be subject to boycotts and picket lines if they didn't exclusively employ union musicians. They now have the option of employing their own choices of either union or non-union musicians.

All musicians who are orchestra leader employers, music contractors, supervisors, partnerships, conductors and single performers—all of whom are legally deemed to be independent contractors—would be compelled to relinquish such independent contractor status and would then become employees of the music purchasers.

All musicians who are not members of the union would be compelled to become and remain members of the union despite the fact that they may not wish to belong to it. They would be forced to relinquish their independent contractor status, even though numerous N.L.R.B., state and federal court decisions have confirmed and reconfirmed their independent contractor status. Our position paper lists just some of these decisions.

Since 1964 the A.F. of M. has tried, unsuccessfully, to obtain from Congress substantially the same legislation as it now seeks through S. 281 and H.R. 5107. More bluntly, the A.F. of M. stands before Congress as a loser habituated by ten previous failures as outlined in our position paper.

The A.F. of M. argues that musicians are the same kind of workers as those in the construction and garment industries, and as such, they should want the same acceptions and protections that the act provides such workers. Not true! There is absolutely no comparison between musicians and garment or construction industry workers. The garment and construction trade union memberships are not make up of contractors, supervisors, groups that are equal partners, co-operatively owned groups, and single performers, as are the musicians. The garment and construction industry workers have not been deemed to be independent contractors in over 200 N.L.R.B. and state and federal court decisions. The A.F. of M. is inundated with independent contractors and it admits that the intent of this bill is to change their member independent contractors and non-member independent contractors to that of an employees status.

We have been officially empowered by the following national associations to voice their opposition to H.R. 5107:

The American Hotel & Motel Assoc., The National Licensed Beverage Assoc., The National Restaurant Assoc., The International Theatrical Agents Assoc., The Right-to-Work committee, The Outdoor Amusement Business Assoc., The National Ballroom & Entertainment Assoc., The American Motor Inns, Inc., The National Association of Orchestra Leaders, The American Association of Clubs, The Conference of Personal Managers, and the two new independent musicians unions—The Allied Musicians Union and the American Musicians Union.

All of these associations plus a large number of state and regional associations will be submitting opposing position papers within the next three weeks.

Each of the afore-mentioned associations will attest to the fact that over ninety percent of the performing musicians in this country do not belong and do not wish to belong to the A.F. of M. It is crucial to note that the music industry has almost totally changed from the old pre Taft-Hartley days. The "House Band" employed by an establishment is almost extinct today. Over ninety percent of the music industry today is made up of contemporary young musicians who wish to be their own bosses. They constantly rehearse their own music styles. They spend between $5,000 to $30,000 for their own equipment and they wear their own choice of uniforms or costumes. They want their own agents or managers to negotiate their contracts. They want no part of the A.F. of M.'s annual dues, local and federation work dues, fines ranging from $50 to $1,000 and a myriad of rules and regulations that confuse, frighten and disturb them. It is terribly important that they be free to negotiate

their own deals with high or low budget rooms. So many low budget clubs have turned to disc jockies and recorded music. The average young musicians do not wish to be outpriced out of their work.

In this short statement we cannot cover the multitude of additional reasons why almost all of the performers, agents, managers, and all the people in related industries are so intensely opposed to H.R. 5107 with its compulsory unionism for all music performers, (whether they want it or not), with its new found awesome power to boycott and picket thousands of lounges, hotels, country clubs, ballrooms, and restaurants, and its power to call sympathetic strikes and walkouts by other unions that service the establishments—these powers could devastate this industry. By one stroke of the legislative pen, over twenty years of carefully deliberated findings by the N.L.R.B. and our state and federal courts could be junked.

We ask our legislators to hear the pleas of the vast majority of the voices in this industry.

Let this industry retain all of its protective, well-settled labor laws and the over two hundred N.L.R.B. and court decisions that have given the musicians the rights and freedom of self-determination. Please let all of the performers in this industry retain the precious right to decide for themselves whether they do or do not wish to belong to the A.F. of M.

STATEMENT OF JERRY DAVIS, AREA ADMINISTRATOR, NATIONAL ASSOCIATION OF ORCHESTRA LEADERS [NAOL], ACCOMPANIED BY CHARLES PETERSON, TREASURER, AND WILLIAM HEABERLIN, AREA ADMINISTRATOR AND ITAA REPRESENTATIVE, NAOL

Mr. DAVIS. Our official position paper has been presented by our attorney, has been sent in. So I'd like to make my own comments.

Mr. CLAY. OK. Without objection, that document will be included in the record also. Thank you.

Mr. DAVIS. I am Jerry Davis, New England administrator of the National Association of Orchestra Leaders. We, the members of the National Association of Orchestra Leaders, are most vehemently opposed to the proposed bill, H.R. 5107. This bill attempts to overturn more than 200 well-settled NLRB, plus State and Federal court decisions that have been made over the years.

H.R. 5107 represents an enormous negative impact upon those who purchase music, such as hotels, lounges, restaurants, country clubs, ballrooms, and function halls. All of these purchasers of music would be compelled to become the employers of the musicians. They would then be subject to boycotts and picket lines if they didn't exclusively employ union musicians. They now have the option of employing their own choice of either the union or nonunion musicians.

All musicians who are orchestra leader employers, music contractors, supervisors, partnerships, conductors, and single performers, all of whom are legally deemed to be independent contractors, would be compelled to relinquish such independent contractor status and would then become employees of the music purchaser.

All musicians who are not members of the union would be compelled to become and remain members of the union despite the fact that they may not wish to belong to it. They would be forced to relinquish their independent contractor status, even though numerous NLRB State and Federal court decisions have confirmed and reconfirmed their independent contractor status.

Our position paper lists just some of these decisions. Since 1964 the A.F. of M. has tried unsuccessfully to obtain from Congress substantially the same legislation as it now seeks through S. 281

and H.R. 5107. More bluntly, the A.F. of M. stands before Congress as a loser, habituated by 10 previous failures, as outlined in our position paper.

The A.F. of M. argues that musicians are the same kind of workers as those in the construction and garment industries and, as such, they should want the same exceptions and protections that the act provides such workers. Not true.

There is absolutely no comparison between musicians and garment and construction industry workers. The garment and construction trade union memberships are not made up of contractors, supervisors, groups that are equal partners, cooperatively owned groups, and single performers, as are the musicians.

The garment and construction industry workers have not been deemed to be independent contractors in over 200 NLRB and State and Federal court decisions. The A.F. of M. is inundated with independent contractors and it admits that the intent of this bill is to change their member independent contractors and non-member independent contractors to that of an employee status.

We have been officially empowered by the following national associations to voice their opposition to H.R. 5107: The American Hotel and Motel Association, the National Licensed Beverage Association, the National Restaurant Association, the International Theatrical Agents Association, the Right To Work Committee, the Outdoor Amusement Business Association, the National Ballroom and Entertainment Association, the American Motor, Incorporated, the National Association of Orchestra Leaders, the American Association of Clubs, the Conference of Personnel Managers, and the two new independent musician's unions, The Allied Musician's Union and the American Musician's Union.

All of these associations, plus a large number of State and regional associations will be submitting opposition papers within the next 3 weeks. Each of the aforementioned associations will attest to the fact that over 90 percent of the performing musicians in this country do not belong and do not wish to belong to the A.F. of M. It is crucial to note that the music industry has almost totally changed from the old, pre-Taft-Hartley days. The house band, employed by an establishment, is almost extinct today. Over 90 percent of the music industry today is made up of contemporary young musicians who wish to be their own bosses. They constantly rehearse their own music styles. They spend between $5,000 to $50,000 for their own equipment, and they wear their own choice of uniforms or costumes.

They want their own agents or managers to negotiate their contracts. They want no part of the A.F. of M.'s annual dues, local and Federal work dues, fines ranging from $50 to $1,000, and a myriad of rules and regulations that confuse, frighten, and disturb them. It is terribly important that they be free to negotiate their own deals with high or low budget rooms.

So many low budget clubs have turned to disk jockeys and recorded music, the average young musicians do not wish to be outpriced out of their work.

In this short statement we cannot cover the multitude of additional reasons why almost all of the performers, agents, managers, and all of the people in related industries are so intensely opposed

to H.R. 5107, with its compulsory unionism for all music performers, whether they want it or not.

With its new-found awesome power to boycott and picket thousands of lounges, hotels, country clubs, ballrooms and restaurants, and its power to call sympathetic strikes and walkouts by other unions that service the establishments, these powers could devastate this industry.

By one stroke of the legislative pen over 20 years of carefully deliberated findings by the NLRB and our State and Federal courts could be junked.

We ask our legislators to hear the pleas of the vast majority of the voices in this industry. Let this industry retain all of its protective, well-settled labor laws and the over 200 NLRB and court decisions that have given the musicians the rights and freedom of self determination. Please let all of the performers in this industry retain the precious right to decide for themselves whether they do or do not wish to belong to the A.F. of M.

Mr. CLAY. Thank you. Do you have a statement?

[Prepared statement of Charles Peterson follows:]

PREPARED STATEMENT OF CHARLES PETERSON, TREASURER, NATIONAL ASSOCIATION OF ORCHESTRA LEADERS, NEW YORK, NY

Mr. Chairman, I am Charles Peterson, the Treasurer of the National Association of Orchestra Leaders and I submit these comments and facts: The bills here represent very controversial issues holding major impacts of long lasting effects upon purchasers of music such as hotels, inns, lounges, other purchasers and musicians. A study of our statement in opposition will show the far-reaching negative aspects of this amendment. We feel that the Musician's Union did not provide the facts as we do here—such as the impact the amendments would have on the music industry which would be that:

(1) All musicians, i.e. orchestra leader-employers, music contractors, supervisors, partnership, conductors and singles, all of whom are independent contractors would be compelled to relinquish such independent status and become employees.

(2) All purchasers of music, hotels, lounges, restaurants and others would be compelled to become employers of all musicians and must only engage musicians who are members of the Musician's Union or suffer boycott. They now have the option of engaging whomever they wish—union musicians or musicians who are not members of the union.

(3) All musicians who are not members of the union would be compelled to become and remain members of the Musicians' Union despite the fact that many non-members are orchestra leader-employers, music contractors, supervisors, conductors, musical groups that are equal partners and singles—those that always play alone. All such categories are now independent contractors and numerous National Labor Relations Board and Court decisions have so held. Our position paper lists just some of the case numbers of these landmark decisions.

But, one more important point.—The Musician's Union argues that musicians are the same kind of workers as those employed in the construction and garment industry and as such, they want the same protection and exceptions that the Act provides such workers. This is not true because they, unlike the construction and garment trades unions, Musicians' Union members comprise for the most, orchestra leader-employers, music contractors, supervisors, groups that are equal partners and singles those musicians that always play alone. All of the above categories to repeat, are as the Courts and the National Labor Relations Board have held, independent contractors, all of which raises this question. Do other labor organizations like the construction trades unions and the garment workers union has as members, independent contractors such as employers? Contractors? Supervisors? Partnerships? And would they permit such categories to become union members? The answer is obvious.

This Association is not alone in our protests against these bills. Attached to our position paper you will find a list of other organizations who have also opposed these bills.

Mr. PETERSON. Just this, Mr. Chairman, that in a letter issued by a Mr. Guthrie, the AFM's national legislative director, he admitted in a letter dated February 25, 1983, and I quote, "All musicians, including the leader-contractor, will be employees of the business entity who purchases their services." And, further, the amendment to the H.R. 5107, proposed amendment, clearly advises that.

On page 4, page 4, they are seeking this: The bill asks, in fact, "Any individual having the status of an independent contractor, who is engaged to perform musical services, shall be included in the term 'employee'." Now, that means the American Guild of Variety Artists and also the American Federation of Television Recording Artists, and we have decisions from the boards showing, indeed, that recording artists are independent contractors, despite the fact that the American Federation of Musicians does, indeed, bargain with the recording companies, their own employer.

Mr. CLAY. What's the date of that letter, Mr. Peterson?

Mr. PETERSON. Pardon me?

Mr. CLAY. What's the date of that letter?

Mr. PETERSON. Mr. Guthrie.

Mr. CLAY. Mr. Guthrie.

Mr. PETERSON. The date of that letter, sir, is February 25, 1983.

Mr. CLAY. Do you have a copy of it?

Mr. PETERSON. No; I will submit it expeditiously, sir. I will.

Mr. CLAY. We would like to have it for the record.

Mr. PETERSON. That's correct.

Mr. CLAY. Is it true that in that letter that Mr. Guthrie wrote on February 25 that this entire quote was not stated by you, that in that letter the sentence which you just read, you dropped the phrase "for labor law purposes" off it?

Mr. PETERSON. That's correct, sir.

Mr. CLAY. Then why did you attempt to mislead this committee? That makes a very distinct difference in the quote, and you quoted the individual as saying "All musicians, including the labor contractor, will be employees* * *" and then you left out, "for the purpose—for labor law purposes only." Why would you deliberately do that?

Mr. PETERSON. For no intent to deceive or conceal anything, sir. I promise you that. And you have a copy of that letter.

Mr. CLAY. We would like a copy of the letter.

Mr. PETERSON. Yes; I will submit it.

Mr. CLAY. OK.

Mr. PETERSON. Again, the letter states "for tax purposes—except for tax purposes." Now, who will pay for taxes? The union doesn't say that. Neither does Mr. Guthrie.

Mr. CLAY. Well, the IRS knows how to get its taxes.

Mr. PETERSON. They have not made that decision, sir.

Mr. CLAY. How are they getting their taxes now?

Mr. PETERSON. I don't know. As the American Federation admits, the IRS is just mixed up about who is the employer and who to assess.

Mr. CLAY. Please provide us with a copy of that.

[The information follows:]

[Reprinted as submitted by Charles Peterson, National Association of Orchestra Leaders]

AMERICAN FEDERATION OF MUSICIANS,
Charleston WV, February 25, 1983.

DON RUSSELL,
Don Russell Orchestras,
The Boston Park Plaza Hotel, Boston, MA.

DEAR MR. RUSSELL: Thank you for yours of January 26, 1983.

I am pleased to note your interest in our proposed amendments to the Taft-Hartley Act.

My responses to your questions in that letter are as follows:

All musicians, including the leader-contractor, even in the club date business, will be employees—for labor law purposes only—of the person or business entity who purchases their services. Please note that the proposed amendments are to the Taft-Hartley Act only, and that law pertains only to Labor-Management relations. Thus, it has no bearing on rulings of the Internal Revenue Service as to who may or may not be an employer or employee for tax purposes. Historically, the Internal Revenue Service has held that the typical club date band leader is the employer of his sidemen musicians, or in some cases his sidemen are independent contractors. Our proposed amendments would in no way affect those relationships for tax purposes.

Bank leaders-contractors could still be members of the Union, as they would for Labor Law purposes, like their sidemen, be employees of the purchaser of the musical services on a club date, or any other type engagement.

On a typical casual engagement (club date) the father of the bride, or the chairman of the ball is the purchaser of the musician's services, he will be the employer –for labor law purposes only—of all the musicians, including the leader-contractor. This does not present any objectionable situation for the father of the bride, or chairman of the ball, and it is exactly the way our business was conducted for many, many years prior to the recent application of certain provisions of the Taft-Hartley Act as they relate to our business. You will recall that our old Form B Contracts for all engagements, identified the purchaser as the employer of the musicians, including the leader-contractor, and had a statement at the bottom that the contract did not determine who was responsible for IRS and State employment tax purposes.

You mention that Taft-Hartley Law specifically stating that employers cannot belong to unions. For the record: Nowhere in the Act is this stated, and the Courts have held that employers can, if they so desire, be members of labor unions which represent their employees, but the Act prohibits them from exercising certain kinds of influence over the affairs of the union. Our amendments would of course eliminate this now confusing issue, as leader-contractors would—for labor law purposes only—because employees.

We cannot conceive of any reason why a legitimate leader-contractor would not be better off were our amendments passed than he is now under the chaos that exists as to the employer-employee relationships for Labor Law purposes. If a member leader-contractor becomes an employee of the purchaser, as in the past, the AFM and its locals will again be able to protect his interests fully as well as those of his sidemen. The current position of the National Labor Relations Board that a leader-contractor is an independent contractor has severely limited our union in protecting the interests of our many members who function as leader-contractors.

I trust the above answers your questions, if not; please do not hesitate to contact me further in the matter. We sincerely solicit your support of our amendments which will bring order out of chaos in the music business, and benefit all musicians: Leader-contractors and sidemen.

Fraternally,

NED H. GUTHRIE,
National Legislative Director.

IMPORTANT EXCERPTS FROM THE AFM LETTER

"All musicians including the leader-contractor even in the club date business, will be employees of the person or business entity who purchases their services."

"Bank leaders-contractors would, for labor law purposes like their sidemen, be employees of the purchaser of music services on a club date or any other type engagement."

"On a typical casual engagement (club date) the father of the bride or the chairman of the ball is the purchaser of the musicians' services, he will be the employer * * * of all the musicians including the leader-contractor * * *."

"And it is exactly the way our business was conducted for many, many years prior to the recent application of certain provisions of the Taft-Hartley Act as it relates to our business. You will recall that our old Form B contract for all engagements, identified the purchaser as the employer of the musicians including the leader-contractor and had a statement at the bottom, that the contract did not determine who was responsible for IRS and State Employment Taxes."

"You mention that the Taft-Hartley law * * * prohibits leaders from exercising certain kinds of influence over the affairs of the union. Our amendments would of course eliminate this now confusing issue as leader-contractors would, for labor law purposes only, become employees."

Mr. CLAY. Mr. Davis, do you think the majority of working musicians support or oppose this legislation?

Mr. DAVIS. They oppose it.

Mr. CLAY. Would it be somewhere in the area of 90 percent that you cited as not favoring it?

Mr. DAVIS. Yes, sir.

Mr. CLAY. If a majority oppose the legislation, there must be a large pool of skilled, nonunion musicians available to employers. If this is so, why would any employer enter into a prehire agreement?

Mr. DAVIS. They wouldn't. Why would they if the musicians don't wish to be represented by the union?

Mr. CLAY. You seem to express grave concern that this was an attempt by the labor union to take full control over this industry. If there are so many people out there who are skilled and are not union musicians, why would any employer be frightened into a signing a prehire contract when he knows that there are lots of others available?

Mr. DAVIS. Bill, would you like to deal with that?

Mr. HEABERLIN. Yes, if I may.

The changes that take place here would make that imperative. Would it be all right with you, Mr. Chairman——

Mr. CLAY. Secondary agreements are illegal, aren't they?

Mr. HEABERLIN. Yes, sir, but that would be permitted under this particular proposal.

Mr. CLAY. Explain to me how it would do that.

Mr. HEABERLIN. Would it bother you, sir, if I would stand? Would that be permissible?

Mr. CLAY. What's the purpose of it?

Mr. HEABERLIN. Well, no one has but as a former college instructor, and we had a number of them, I really am not accustomed to speaking and to communicating without my hands. If it's all right with the sound man.

Mr. CLAY. I thought maybe you did not appreciate my speaking down to you.

Mr. HEABERLIN. No, sir. [Laughter.]

Perhaps I should try a line as a standup comic and ask you what Michael Jackson has in common with the Los Angeles Dodgers. The answer is, they all wear just one glove but they don't know why.

So, we've heard a lot of rhetoric——

Mr. CLAY. Are you finished with that?

Mr. HEABERLIN. Yes. [Laughter.]

With all due respect, Mr. Chairman, it's not the same without the rimshots, I assure you.

I would like to enter that and, naturally, speak in opposition to this bill. For one reason. And the reason it has not been underscored at all today, for completely different reasons, and that is that the real side effects, the real side effects of this proposal, are much more severe than the illness that purports to be treated here. This is a complex issue, gentlemen, not a simple issue. I see no similarities between college teaching, the garment workers, and the lounge entertainers that are the unique breed of individual affected here. I'm not talking about all musicians.

If you will allow me just a few minutes I will qualify that difference for you, and I will speak both as an NAOL person, as a person who for many years was a member of the A.F. of M., and proudly so at that time, as a person who belongs to AMU and who makes his living as a theatrical agent. In fact, I'm immediate past President of the International Theatrical Agencies Association, the nebulous group that has been ostracized here this morning.

The ITAA, for the record, is a group of 136 professional agencies throughout the United States and Canada, representing over 100,000—over 100,000—traveling entertainers, who work lounges and nightclubs and casinos on a full-time basis, sir, five to six nights a week.

While many of these performers may be members of various unions and guilds, the overwhelming majority are represented by the agencies alone. They are independent contractors.

Unlike the local performers in this country, and this is an important distinction I think, who perform mostly single night engagements—I did that myself—and treat their musical careers as a sideline, a hobby, or an avocation, these are enterprising people, engaged in musical entertainment as a career and a livelihood.

The offices that are represented by ITAA are vehemently opposed to this legislation because we are concerned about our livelihoods and those of the musicians that we represent.

Although misleadingly entitled the Performing Arts Labor Relations Act, we might also want to call this a blatant attempt by the AFM to force compulsory unionism on lounge performers in order for ambitious union bosses to obtain large sums of cash from these entertainers. That's strong, isn't it? Let me explain that.

By the AFM's own admission, in testimony before the U.S. Senate last week, local musicians comprise 86 percent of that organization. The overriding fact here, is that the AFM, obviously, represents less than 12 percent of the 100,000 lounge performers booked by ITAA affiliate offices. Although this group of hard-working Americans would be the ones most affected by this legislation, Mr. Chairman, it is significant to note that they are not, by choice, represented by the AFM.

Now, it is obvious that the AFM would benefit immensely by having these people in their unions so that they could pay their dues and the work taxes. This could easily be accomplished by the passage of these bills, which seek to do, through this sinister, well-disguised legislation, what could not be done at all through voluntary compliance based on services rendered.

Although many of these performers belonged to the AFM in the past, they have fled in droves and have enjoyed the proper perspec-

tives underlaid by the law, time and time again, with NLRB decisions and other judicial cases.

The bills in question could enable, in answer to your specific question of the effect of the establishment claim, if I had a hotel, for example, and I had a union staff in my hotel, then the AFM representative could come to me and could inform me that the other people there, the bartenders, the waitresses, the delivery people, could be asked to curtail services, perhaps even strike, if I did not use, quote, "union musicians."

Therefore, the people I have hired as my entertainers have a choice. If they want to play they would have to join. Or, I could throw up my hands like a lot of my colleagues and go open a disco and put in recorded music. The beneficiary, again, the AFM musicians who made the tape.

Nevertheless, video disco is not the way to go. The issue, then, becomes, does become one, sir, of compulsory unionism. Over the years this situation has not been a threat.

Mr. CLAY. Let me interrupt you. You have a prepared statement?

Mr. HEABERLIN. Yes, sir.

Mr. CLAY. It will be entered in the record at this point. You may feel free to summarize. I would like to come back to ask a couple of questions.

[The prepared statement of William A. Heaberlin follows:]

PREPARED STATEMENT OF WILLIAM A. HEABERLIN, PAST PRESIDENT, INTERNATIONAL THEATRICAL AGENCIES ASSOCIATION

Mr. Chairman, honorable members of the Subcommittee, my name is William A. Heaberlin and I am Immediate Past President of the International Theatrical Agencies Association (ITAA).

The ITAA is an organization comprised of professional booking agents serving the United States and Canada. Our 136 offices represent in excess of 100,000 traveling entertainers who are predominantly performing in hotels, lounges and nightclubs on a full-time, professional basis, five to six nights per week. While a few of these performers are members of various unions and guilds, the vast overwhelming majority are represented by the agencies of ITAA alone. They are independent contractors who are full-time entertainers.

Unlike the local musicians in this country who perform mostly single night engagements, treating their musical careers as a sideline, hobby, or avocation, these are enterprising people engaged in musical entertainment as a career and livelihood.

The 136 offices of the ITAA and the 100,000 entertainers we collectively represent are vehemently opposed to the absurd proposals looming in the Senate and House of Representatives designated as S. 281 and H.R. 5107 (1758).

Although misleadingly entitled the "Performing Arts Labor Relations Act," a more accurate nomenclature would be "A Blatant Attempt of the American Federation of Musicians (AFM) to Force Compulsory Unionism on Lounge Performers in Order for Ambitious Union Bosses to Obtain Large Sums of Cash from these Entertainers."

By the AFM's own admission in testimony before the United States Senate, local musicians comprise 86% of that organization. The overriding fact here is that the AFM obviously represents less than 12% of the 100,000 lounge performers booked by ITAA affiliate offices. Although this group of hard-working American citizens is the group that would be most affected by the proposed legislation, it is significant to note that these people are not affiliated with the AFM. It is obvious that the AFM would benefit immensely by having all of these 100,000 performers paying union dues and exorbitant "work taxes" to the union hierarchy. This would be easily accomplished with the passage of these bills which seek to do through sinister, well-disguised legislation what could not be done at all through voluntary compliance based upon services rendered. Although many of these performers belonged to the AFM during the days when they exerted monopolistic controls based upon intimidation, coercion, and threats, they have fled the AFM in droves and have enjoyed the

proper perspectives underlined time and time again by the NLRB and numerous judicial decisions.

The bills in question would permit Secondary Boycotts. Hence, the AFM could go to any hotel, club, or lounge and request, encourage, coerce, or perhaps even force all union bartenders, waiters, or delivery personnel to limit services or even strike if the house did not employ all "union" bands. In this case, the band would be forced to pay into the union in order to work the engagement. Since this would be in direct conflict with the will of those involved, the result would underscore the real intent of these bills-compulsory unionism.

Another option for the house would be to dispense with live entertainment altogether and utilize sound systems, sophisticated video-jukeboxes, and state-of-the-art disco equipment like many of their competitors—thus avoiding a sensitive labor problem. Naturally, the AFM players working in recording studios would receive royalties. Hence, a union that ostensibly works for the good of musicians would serve as the principal catalyst to put 100,000 co-workers out of work.

Over the years, this situation has not been a threat to the entertainers who provide quality productions in the lounges of this great country because they have been well-served by the Taft-Hartley Act and the National Labor Relations Act. To seek to make all of these performers "employees" for labor law purposes ignores the basic structures of this specialized industry. To lump these accomplished professionals with part-timers, weekend players, and any amateur who can afford union dues is a grave injustice.

For the record, gentlemen, the AFM represents "musicians" who read printed notes on a sheet of music and transcribe the sound to any auditary pleasantry, usually. The ITAA represents a far greater number of "entertainers." While these people all play instruments and provide their own musical accompaniment they do not go on stage with their noses in sheet music. Rather, they memorize their numbers so that they can sing, dance, deliver comedy lines, establish audience rapport, eye contact, pantomime, etc. In orther words, they need to be free to practice their real craft—entertaining.

The overt and covert movements, choreography, facial expressions and other tools of the trade serve the public well. If you just want to hear music, you can play the radio; if you want to be entertained, hire a lounge act. It is amazing how adept these performers become when they dedicate themselves to becoming polished, professional attractions. They can't do this and hold down day jobs at the same time. They must be free to pursue their careers whole-heartedly without being harassed by those who would seek to control them and tax them for that nebulous privilege.

As an example of the "musician/entertainer" differentiation, please consider the example of Wayne Newton. Not even Wayne's mother ever accused him of being a great musician, but he is undisputably a colossal entertainer, using a real assortment of instruments with varying degrees of expertise in his shows. On the other hand, many of today's finest concert pianists do credible jobs of playing Chopin, Mozart, and even Liszt but cannot sit down at the piano and play "Melancholy Baby" in key of "C". This does not mean the musician is not a musical genius who excels at his art. It simply means that he is out of his realm. The differences are real and significant.

Moreover, the very idea of jeopardizing the livelihoods of 100,000 plus entertainers for the alleged benefit of those who "moonlight" by dabbling in music is preposterous to say the least.

Passage of these bills would be a classic case of throwing out the proverbial baby with the bathwater. The result is totally unjustifiable. It is the considered opinion of the members of ITAA and the 100,00 entertainers who perform in the lounges of America that the laws of the land serve us well and do not need to be changed for self-serving reasons.

To quote Lyndon Johnson's admonition, "If it ain't broke, don't fix it," There is nothing wrong with section 8(e) of the Taft-Hartley Act. We are not so sure about the AFM.

In conclusion, we appeal to you, our duly elected public representatives, to realize this legislation for what it really is and to squelch this sinister attempt by the "inmates" to take over the "asylum."

Thank you Mr. Chairman and distinguished members of the Committee, for the opportunity to present the views of those who would be victimized by S. 281 and H.R. 5107 & 7758. May God grant you wisdom and courage in making this important decision which will mean so much to so many.

Mr. CLAY. I will pose the question again to Mr. Davis, if a majority of the musicians oppose this legislation, then there must be a

large pool of skilled, nonunion musicians available to employers. If this is so, why would any employer enter into a pre-hire agreement with the union? You answer it.

Will you answer the question, if you can?

Mr. DAVIS. If I understand the question, why would an employer, if he has a large supply of nonunion musicians, want to enter into an agreement with the union?

Mr. CLAY. Right.

Mr. DAVIS. They would not want to enter into an agreement. But if this legislation were passed, they would have no choice because this legislation gives the union the power of boycott and picket.

Mr. CLAY. Does this legislation require anyone to join a union?

Mr. DAVIS. If an establishment doesn't employ union musicians and they are boycotted and picketed, and sympathetic strikes with their bartenders and waiters and delivery people were enforced or created, then, in effect, you're forcing anybody who wants to work in that lounge or that club to join the union.

Mr. CLAY. I don't follow the argument. There are only about 15 to 20 million people in unions in this country at this time. These other unions have a right to strike. Why aren't they forcing people into union ranks—to use your argument? You are saying that would happen in this instance, but it hasn't happened in any other instance, has it?

Mr. DAVIS. Well, if I owned a lounge and I were going to be picketed and all of my workers and the people who come to my lounge for their nightly beverages and so forth found a picket line saying, "This establishment is unfair to organized labor," I would be put out of business.

Mr. CLAY. You don't think people have a right to picket, workers who have a disagreement with employers have a right to picket?

Mr. DAVIS. Sure. They do, yes.

Mr. CLAY. Where do you want them to picket? The band leader's home? If they can't picket the jobsite, where would they picket?

Mr. DAVIS. They would picket the lounges, the restaurants, the country clubs.

Mr. CLAY. And you don't think that American workers ought to have a right to express their first amendment constitutional guarantees?

Mr. DAVIS. Certainly they do. Certainly they do. But not to the point where every American lounge and country club and catering establishment will be picketed and lose their patronage, unless they use, totally used, union musicians.

Mr. CLAY. I have no further questions.

If you have any additional information you can submit it, yes.

Mr. DAVIS. Yes, Mr. Peterson would like to comment.

Mr. PETERSON. I have before me, and I'll submit it, two later agreements between local 47, that's one of the country's largest locals, and local 802. They bargained collectively with the leaders, with the orchestra leaders themselves, wages, working conditions, and fringe benefits. What do we do with these agreements that are in force and effect now? If these leaders are declared——

Mr. CLAY. I'm asking you. What would happen to those agreements? Nothing would happen to them if this became law.

Mr. PETERSON. Those leaders would become employees of the purchasers. These labor agreements would be null and void.

Mr. CLAY. I think you misunderstand the legislation.

Mr. PETERSON. May I leave these with you?

Mr. CLAY. Yes.

Mr. PETERSON. They are labor agreements. And then with respect to a boycott, when a club in Minneapolis engaged the services or contracted the services of a nonunion group that were equal partners, the club was picketed. Now, that's the same situation that every club would face. However, we filed an NLRB charge and as a result the union was prohibited from engaging in secondary boycotting, which will be permissible if the act is amended.

Mr. CLAY. Thank you.

Yes? No more speeches.

Mr. HEABERLIN. No more speeches, I promise. [Laughter.]

I would just like to mention that the—if nothing else, sir, the sheer numbers that we represent should say something. We're working with, as one gentleman spoke earlier of the AFM representing, in 26 counties of Texas, 1,000 people. We're talking about 100,000 who are all opposed to this, sir, and I think we would be throwing out the baby with the bathwater to accept this.

No doubt we cannot try to take these professional entertainers and then league them together here with the arguments that are perpetrated regarding the part-timers, the amateurs, and those who have enough money to buy a card in the union. We're talking about people whose livelihoods are at stake. It's a completely different realm, who are traveling, full-time lounge performers, who are entertainers as a primary craft.

They are not musicians, whose primary job is to transcribe the musical notes on the page. They're entertainers, sir. And if I may quote Lyndon Johnson's famous admonition, "If it ain't broke, don't fix it." In our opinion there is nothing wrong with the Taft-Hartley Act the way it is.

Thank you.

Mr. CLAY. Thank you for your testimony. That concludes the hearing.

[Whereupon, at 12:10 p.m., September 18, the hearing was concluded.]

APPENDIX

Prepared Statement of Ned H. Guthrie, President Emeritus, Local 136 and National Legislative Director, American Federation of Musicians

Mr. Chairman, members of the Subcommittee, I truly thank you for this hearing. My name is Ned H. Guthrie, President Emeritus of Appalachian Regional Musicians Union, Local 136 A.F. of M. in Charleston, West Virginia. Local 136 represents professional musicians in 13 counties in West Virginia and 6 counties in Virginia. I began my music career in 1926 with a three year enlistment in the 150th Infantry National Guard Band. I voluntarily applied for membership in Local 136 A.F. of M., because of its professional status. That was May 19, 1930. Five years of traveling with semi-name big bands followed. In 1936 I changed from a traveling musician to the status of local or territory performer, to provide musical services for the general public in the run of the mill-variety programs such as are produced locally in your hometowns, and performed by local and traveling professional musicians. I have spent a lifetime as a professional musician in this area. Although I passed the United States Civil Service Test for teacher of band and orchestra, I chose to teach private lessons individually for 38 years, with 7 years as band instructor at Prenter School in Boone County, West Virginia. Additionally, I was co-owner and operator of the Guthrie & Beane Music Company, a general music merchandising and music school operation for 22 years. I led a band from 1935 until 1975. After being elected President of the Charleston Musicians Union I gave up leadership of the orchestra to serve as full-time President and Business Representative of your Local.

I give this background as an example of how the American Federation of Musicians is mainly constituted in its membership throughout the Nation. We are an average citizen, taxpayer, and neighbor. Due to electronic and mechanical reproductions and with the substitution of recorded music we so-called local musicians are mainly weekenders, but we comprise 86 percent of the members in our Federation who are directly concerned and affected by recent rulings of the National Labor Relations Board, and who need to be included in the full benefits of the National Labor Relations Act as amended in 1947 and 1959. We have been excluded and it is not the American way to be excluded. It is the Polish way.

In our area of entertainment, consisting of services for public dances, conventions, nightclubs, back up musicians for local promoters of national attractions, the likes of Sonny & Cher, Liberace, Glen Campbell, Hello Dolly, Shrine Circus, Ringling Brothers Barnum & Bailey Circus, and Holiday on Ice, we local musicians are now being deprived the right to be an employee. However, the majority of opportunities are usually engagements of miscellaneous natures in a variety of establishments on weekends for Fraternal Clubs, High School or College Proms, and in Nightclubs. With the coming to West Virginia of liquor by the drink being permitted in private clubs, many lounges and nightclubs were opened up and have prospered. This change took place in West Virginia in 1967. State Law requires a membership card to be issued to patrons. These membership cards are obtainable at the door, usually at no cost. There was a great number of inexperienced opportunists who rushed to obtain a liquor license and opened up for business. Included were a number of questionable operators, some with a record of violence and crime that banded together to control the entertainers in the Charleston, West Virginia area. In 1972 the Prosecuting Attorney of Kanawha County, West Virginia called me and our Business Agent into his office to warn us of the dangerous nature of the club owners that we were dealing with. He again met with our then International President, Hal C. Davis, who came to Charleston to personally receive the same information.

When a purchaser shirks his employer responsibilities, he escapes costs. (See Exhibit A by Mark Tully Massagli, President of the Musicians Union of Las Vegas, Nevada)

Interference, racial discrimination, stopping payments on checks, cancellations of contracts, and early termination of contracted engagements became commonplace. Musicians, both local and traveling, came directly to the Local 136 officers, sometimes in fear, sometimes in desperation, asking and demanding help and representation from the Union Executive Board. Local 136's policy was to stand like a stone wall against these operators in their utter disregard of Civil Rights of musicians and contractual responsibilities. The policy of representing A.F. of M. members in labor disputes continued effectively during my administration for about 8 years, after NLRB began to assert jurisdiction over the club date engagement.

In 1976, with the filing at NLRB of a secondary boycott charge against our neighboring local, Huntington, West Virginia Local 362 A.F. of M. and the entering of an accompanying suit for 29½ million in dollars Federal Court, I realized that NLRB rulings were changing our way of life and our musicians have discovered they can no longer expect union representation of their own choosing to intercede in their behalf. (See Exhibit B by Ray Hair, Jr.)

Small locals such as in West Virginia cannot finance defense of the likes of a 29½ million dollar lawsuit. By classifying orchestra leaders as not being employees of the owner management in clubs, the NLRB is taking away employee rights from musicians and performers in Labor law, in case after case, by the:

1. Denial of representation in time of need by their Union -similar to the Polish Worker and their Solidarity being ruled unlawful.

2. No protection or recovery when payment is stopped on checks for services rendered. (See Exhibit C from the Attorney General of West Virginia)

3. Deprivation of Civil Rights by discrimination because of race. (See Exhibit D by Lynne Sandy, Booking Agent)

4. Preventing ongoing collections of default wages for local and traveling groups. (See Exhibit E and E-1 by John Jackson and Gary Cottrill) There was also a $2,100 default collected in payments by me personally in a default by a club owner to a leader of a traveling group, member Phil Gonzalez of the then Ogden, Utah A.F. of M. Local 356. Now not possible.

To conclude I want to point out that I was involved in the above actions, a 54-year member in a small town union of part-time musicians who love music and the happiness it brings to the community, so much so that we change our lifestyle to fit the weekends and causal pattern of employment. This also changes the lifestyles of our families. We all adjust to the regularity that if the phone rings husband, wife, sister, or brother might have to go play for an occasion. The vast majority of American Federation of Musicians are small timers, like myself, but we serve the Nation. We are eighty-six percent of the American Federation of Musicians. Our main area of employment is in the lounge, club date, and casual engagements. As much as any other portion of American workers, we need and deserve for Labor Law purposes, the right to classify as employees of those who use our services. H.R. 5107 would assure us of Right. I respectfully request the Committee to approve H.R. 5107.

Exhibit A

MUSICIANS UNION OF LAS VEGAS
LOCAL No 369 AFM, AFL-CIO
155 EAST TROPICANA AVENUE • 702/739 9369
P O BOX 7467 • LAS VEGAS, NEVADA 89101

August 14, 1984

Ned Guthrie
National Legislative Director
American Federation of Musicians
1562 Kanawha Boulevard, East
Charleston, WV 25311

Dear Ned:

As a follow up to our telephone conversation today my concern over the passage of S. 281 is in part as follows:

Musicians continuing in many cases being treated as "independent contractors" denies them the right to a traditional relationship of employee to employer, i.e., they do not usually get covered by workers compensation, are not covered by unemployment compensation and may not be qualified for social security disability or coverage. Certainly the relationship does not provide for negotiated health and welfare coverage and pension provisions for the worker.

I have found that many times, at the basis of "independent contractor" status there are dollars to be earned or retained by the one promulgating such a charade.

In addition those deemed to be self-employed have a greater FICA tax burden than an employee in the traditional sense if, in fact, such taxes, if any, are paid. When an employer states he is not an employer but a purchaser or contracts with individuals that "purchaser" relieves himself of tax responsibilities, the worker loses, the respective government agencies lose appropriate tax income and the purchaser escapes costs.

I think S. 281 would go far in correcting these inequities that now exist.

Please feel free to contact me if I may be of any assistance in the matter.

Fraternally,
Mark Tully Massagli
Mark Tully Massagli, President
Musicians Union of Las Vegas
Local 369, A. F. of M., AFL-CIO

MTM:gr

cc: Victor Fuentealba, President, A. F. of M.

FORT WORTH PROFESSIONAL MUSICIANS ASSOCIATION
3458 BLUEBONNET CIRCLE • FORT WORTH, TEXAS 76109

August 10, 1984

Exhibit B

RAYMOND M. HAIR, JR.
President-Secretary
817 927 8478

Ned Guthrie
National Legislative Director
American Federation of Musicians
1562 Kanawha Blvd., E.
Charleston, WV 25311

Dear Ned:

As President-Secretary of Local 72 I am responsible for maintaining the welfare and interests of the membership of this Local.

Since 1979, various leaders holding membership in the A. F. of M. have contracted for musical services with METRO HOTELS, INC., which owns and operates the Fort Worth Hilton. One such leader is Johnny Carroll, who is the proprietor of the JUDY-JOHNNY BAND.

During 1982, Metro began refusing to execute AFM contracts and instead required artists to sign their own, self-serving engagement contract (exhibit "A" attatched). The artists continued to request the AFM contract be used, but Metro declined and insisted on their own contract.

On or about April 30, 1984, Metro Hotels, Inc. created Metro Hotels Entertainment Services, Inc. All artists who perform musical services for Metro Hotels must now execute a much more stringent engagement contract, bearing the letterhead METRO ENTERTAINMENT SERVICES (exhibit "B" attatched). Artists are continuing to request a union contract; however, Metro Entertainment insists their own contract be signed as a condition of employment.

On June 15, 1984, I telephoned Mr. John Manderfeld of Metro Hotels and informed him that I represented the musicians who perform at the Fort Worth Hilton. I asked him who or what was METRO ENTERTAINMENT, and who did they represent. Manderfeld said that Metro Entertainment represented all the artists that come onto their properties. I told him it looked as if Metro Entertainment really represented the employer, since the contract provisions favored the employer. Manderfeld said that Metro Entertainment also represented the employer and that Metro Hotels and Metro Entertainment were the "same thing". The final provision of the Metro Entertainment contract provides for Metro Hotels to deduct a "fee" of 15% of the artist's gross salary for forwarding to Metro Entertainment. I ask you now, IS THIS EXTORTION? RACKETEERING?

We are now before Region 16 of the NLRB in action against Metro Hotels and Metro Entertainment, but the employers are able to raise the "independent contractor" issue and interfere with the musician's right to organize and bargain under the laws of the National Labor Relations Act.

As this case continues to develop, I will keep you fully informed of all proceedings.

Kindest regards.

Sincerely and fraternally,

Raymond M. Hair, Jr.
President-Secretary
Local 72, A. F. of M.

RMH/hd

enclosures

FORT WORTH HILTON

June 17, 1984

The Judy and Johnny Band
1700 Park Ridge Terr.
Arlington, Texas 76012

Dear Judy and Johnny:

The purpose of this letter is to inform you that the Fort Worth Hilton will be forced to cancel your entertainment contract for the remainder of the year.

You will not need to return to the Fort Worth Hilton on September 3, 1984. This is pursuant to Section II of your contract which deals with terms of cancellation.

Cordially yours,

David H. Sanders
Vice President and
General Manager of
Fort Worth Hilton

John J. McDonald
General Manager of
South Padre Hilton
(Former General Manager
of Fort Worth Hilton)

/ocw

1701 Commerce Street Fort Worth Texas 76102 817-335-7000

REGION 16

Room 8A24, Federal Office Building, 819 Taylor Street

Fort Worth, Texas 76102 July 11, 1984

Mr. Ray Hair, President-Secretary
Fort Worth Professional Musicians
Association, Local 72AFM
3458 Blue Bonnet Circle
Fort Worth, Texas 76109

Re: Metro Hotels, Inc.
Case No. 16-CA-11694

Dear Mr. Hair:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted at this time. For the reasons set forth in attachment "A" hereto, I am refusing to issue complaint in this matter.

The procedures for filing an appeal to this dismissal are set forth in the enclosed Form NLRB-4938 and such appeal must be received by close of business on July 24, 1984.

Sincerely,

Michael Dunn
Regional Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Enclosures: Forms NLRB-4938, NLRB-4767

cc: General Counsel, National Labor Relations Board, 1717 Pennsylvania Avenue, N. W., Washington, D. C. 20570
Mr. John Manderfeld, Metro Hotels, Inc., 6060 N. Central Expressway, Suite 560, Dallas, Texas 75260
Robert E. Luxen, Attorney; Gardere & Wynne, 1500 Diamond Shamrock Tower, Dallas, Texas 75201

Exhibit C

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHAUNCEY H. BROWNING, JR.
ATTORNEY GENERAL

January 19, 1984

Mr. Ned H. Guthrie
1562 Kanawha Boulevard
Charleston, West Virginia 25311

Dear Mr. Guthrie:

You have presented the following facts regarding musicians, singers, etc., inquiring as to whether such would fall within the purview of the bad check statutes, W. Va. Code § 61-3-39 and Code 61-3-39A.

> "Promoter contracts with the performer--musicians, singers, etc.--and said performance is concluded as per contract. The promoter issues check in payment which is accepted by the performer. After the performer leaves, the promoter issues a stop payment on the check. * * *" (Emphasis supplied.)

Code 61-3-39 provides in part:

> "It shall be unlawful for any person, firm or corporation to obtain any money, services, goods or other property or thing of value by means of a check, draft or order for the payment of money or its equivalent upon any bank or other depository, knowing at the time of the making, drawing, issuing, uttering or delivering of such check, draft or order that there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation. * * *" (Emphasis supplied.)

Code 61-3-39a provides in part:

> "It shall be unlawful for any person, firm or corporation to make, draw, issue, utter or deliver any check, draft or order for the payment of money or its equivalent upon any bank or other depository, knowing or having reasbn to know there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation."

As noted the statutes specifically state that the person issuing the check knows or has reason to know that there is not sufficient funds on deposit to cover the check.

The fact that one stops payment on a check does not necessarily mean that there is not sufficient funds on deposit to cover said check. The statutes make no reference to the situation in which one stops payment on a check.

Based upon the facts that you have submitted, it is my opinion that such would not fall within the purview of the bad check statute of West Virginia.

Very truly yours,

Joseph Prudich

JOSEPH PRUDICH
ASSISTANT ATTORNEY GENERAL

JP/tmm

JOHN D. ROCKEFELLER IV
GOVERNOR
PUBLIC EMPLOYEES INSURANCE BOARD

Embleton Building, Second Floor
922 Quarrier Street
Charleston, West Virginia 25301
Telephone (304) 348-7850

January 17, 1984

Mr. Charles T. Carroll, Jr.
Co-Counsel, Majority Staff
Senate Committee on Labor-Management
Senate Hart Office Building
Washington, DC 20510

Dear Mr. Carroll:

Mr. Ned Guthrie asked that I write to you to let you know of my concern over a problem that many traveling musical bands have in West Virginia.

I served as a member of the West Virginia State Senate during the period of 1970-82. During the last year of my term it came to my attention that a number of traveling bands were being cheated out of their compensation - after doing a performance and receiving a check for their work, the promoter or individual who hired the band would then stop payment on the check.

This is not covered under our bad check law, and it is almost impossible for the bands to collect their money. I attempted to correct this situation while I was in the Senate, but because my term ended in 1982 and I did not seek reelection, time ran out before I was successful.

This is a serious problem in West Virginia, and I would appreciate any help you can give to Mr. Guthrie in resolving this situation.

Sincerely,

Si Galperin, Jr.
Executive Secretary

SGJr/bac

cc: Mr. Ned Guthrie
1562 Kanawha Boulevard E.
Charleston, WV 25311

Exhibit D

LYNNE SANDY, BOOKING AGENT, A. F. of M. No. 10004
2419 Washington Street, E., Charleston, West Virginia 25311
(304)346-8861

RE: S.281 and H.R.5107

Since the age of nineteen, for thirteen years, I have been performing live music, and since 1978 I have been a licensed booking agent for the American Federation of Musicians. In reference to the Performing Arts Labor Relations Act (S.281) introduced by the Honorable Jennings Randolph of West Virginia, I am compelled to state my feelings as both an observer and a participant in labor-related matters where musicians are concerned.

A young black musician named Henry Graves, on behalf of his all-black group, took one local city and one county Parks and Recreation Agency to the Human Rights Commission on a discrimination complaint. As an active and interested member of the Musicians Union Local 136, I was invited by then-President of Local 136 to attend a "fact-finding conference" held by the Commission.

Without recounting the details of the case, I can say three things about why I thought this hearing was an inadequate forum for resolving the dispute:

1. It seemed obvious from their nervousness of manner that the respondents were guilty of discrimination. There is no way a public agency will admit to discriminatory words or actions, because of political ramifications. Henry Graves was so embarrassed and humiliated -- the town of Marmet is generally known to be racially tense.
2. Terry Nearhoof, the woman who conducted the Commission proceeding, was very abrupt and impatient, especially when addressing Union representative Guthrie. She created a very unbalanced and tense mood in the room.
3. Most disturbing was the fact that a Musicians Performance Trust Fund contract defined Henry Graves, the musician, as a "leader" and not an EMPLOYEE. This put Graves in the same category as his adversaries, the two Parks and Recreation

agencies. Because the Union was not "primary" in the Trust Fund contract, Graves was not afforded the right of representation as an EMPLOYEE in this situation. The usual rules for arbitration procedures did not apply. How absurd! Guthrie was forced to go to the Human Rights Commission who, I felt were distinctly indifferent toward Henry Graves' grievance.

This incident is indicative of the second-class treatment thousand of performers have endured for decades. We cope, without remedy, with endless indignities and infringements of our rights. We simply want the same assurances, rights, and securities guaranteed other hard-working citizens.

"How can the Union help me?" Henry Graves asked Ned Guthrie with tears in his eyes. "I have two children to raise. How can I make it in an America like this?" Graves' band broke up, he gave up music and joined the service. This is only one sad ending to one of many sad stories.

There is no question that passage of Senate Bill 281 will improve the quality of life for performers everywhere.

Sincerely,

Lynne Sandy

Lynne Sandy

Exhibit E

October 13, 1983

Honorable Bob Wise
Member of the House of Representatives
Room 1508-Longworth House Office Building
Independence Avenue
Washington, D. C. 20515

Dear Congressman Wise:

Re: Taft-Hartley Amendment (H.R. 1758)

As a self-employed musician, the Union has been the only means we have had to protect ourselves from club owners (or employers) and booking agents.

Booking agents are self-employed salesmen of other peoples services. They receive from 10% to 20% of the total amount contracted by the band. In many cases, they receive more than any individual band member. The Union regulations are the only safeguard to prevent the commission rate from going even higher for American Federation of Musicians Members.

As part of this commission, it is an agents job to help enforce the standard union-approved contract, which protects musicians from unecessary expenses on promises alone.

The Union helped my group collect money due for a job which was booked and contracted for in advance. After we drove four hours to this job, we found another group prepared to play, instead. In spite of our signed contract, we were unable to collect from the club owner. Our agent was also unable to collect, but still continued to book this club. The Union helped us collect our money after we informed them of our problem. It was the Union, not the agent, who helped us. In fact, the agent insisted on his commission.

In January 1978, I as leader of my band, signed an exclusive contract with Bill Heberlin, Media Promotions, Huntington, West Virginia, Jim Taylor was our personal manager. This agreement stated in general, that the agency would furnish us with three clothing outfits each, and would provide us with steady employment. In return, we would not book with any other agency.

Media wanted us to become a road band. A road band is a traveling group which is booked through a local agent booking by my agent. They stated that we would be routed from town to town, playing in each one, so we would not have to travel very far at any given time. Our first road job was in Naples, Florida, which is 1300 miles away.

40-234 O - 85 - 4

My band played in Naples for three weeks. We were unable to play a fourth week because the club owner was unaware that we were available and had booked another band. We were left in Naples for a week with no place to work. Finally, after much conversation, Media found a job for us in Savannah, Georgia. From Savannah we went to Atlanta, then to Selma, Alabama. Then again we were left stranded--again with no job.

At this point disgusted, we came home seeking answers from the agency as to why we were unable to work. The only answer we received was "Sorry."

They then shipped us out to Burlington, Iowa (1000 miles away) then to Rockford, Illinois. We were then told we had no job, so again we came home, assuming that the agency was not able to fulfill its committment to us. I booked our band locally, but our members were very disgusted with our experiences and we all went to other careers.

After we had returned home for the second time, Mr. Heaberlin called me and told me that my group owed him over $2,000. for clothing outfits and for commission on the jobs that I had booked. As I was preparing to leave the area, I informed him that the clothing was located at my parents home, and that he could come and get them at his convenience. Neither I nor my parents have had any further communication from him.

In view of my experiences with booking agents, it is my opinion that there must be some protection for the independent musician. The independent musician works and has family committments just like other workers.

Unlike other workers there is no protection for the independent musician. Unfortunately, the union's powers are so limited that, by present laws and conditions, the musician is truly a second class citizen.

I understand our Union is trying to have the Taft-Hartley Act amended (H.R. 1758), so that the A. F. of M. may provide an independent musician as myself with the same services allowable in any other short-term employment. Employment crafts such as the Clothing Industry, Construction/Buildings and Trades. Under the Bill of Rights musicians are entitled to due-process.

Sincerely,

Johnny Jackson
Route 1, Box 385
Buffalo, West Virginia 25033

JJ:eh

cc: Mr. Ned Guthrie, Local 136, A. F. of M.

Exhibit E-1

Francis Marion Inn
HIGHWAY 301 NORTH
FLORENCE, S. C. 29501

January 16, 1973
Tuesday

I, Gary B Cottrell leader of the Band, Betty and the Boys, wish to file a claim against Don James Agency, 1408 N. Fruit Cove, Fayetteville, N.C.

Referring to: booking of Betty and the Boys, into Francis Marion Inn, Florence, S.C. Jan 8th through 21st 1973. First night (8th) Lonnie Edens guitar player was unable to get here because of weather conditions. Tues, Wed and thurs (9th, 10th, 11th) the band played. On the 12th Jan. Linda Hutchenson (bookkeeper here, left in charge) told us not to play Fri + sat (13th + 13th) No reason was given. We did not hear from Don James advising us as to what was going on.

We were now informed by Linda Hutch that we were to remove our equipment from the stage that a new band, under Don James Agency, was coming in to start Jan 15th 1973 (called Artic Hat Bucket).

I called the Sheriff's Dept and had a man sent out to witness that I

was told to remove my equipment. I have this in writing signed by with picture

In the beginning Don James sent my band here & told me it was a 2 week contract. Don James brought another one of his bands in to play in the 2nd week, where he had us booked.

Come pay night Sat, Jan 13, 1993. I was told by Linda Hutchinson that the owner of Francis Marion Inn, Mr. Piffer told her to forget about paying us that Don James would take care of us.

The job was booked for $600.00 per wk. plus rooms for the trio "Betty & the Boys".

Business here was poor due to weather conditions. Stores, schools & airports were closed. It wasn't just snow it was four inches of freezing sleet. People here are scared to death of something like this because they aren't use to snow at all. But, the lounge here, at Francis Marion Inn was kept open.

Come the end of our 1st week we were broke

Francis Marion Inn
HIGHWAY 301 NORTH
FLORENCE, S. C. 29501

-2-

I contacted my local 136, pres. ex Chas. H. Tr., Mgr Ted Guthrie. He was the only one in anyway who understood our problem. which at the present time was financial. I know this is no concern of yours but I was here with my three children and Connie Edwins was here with wife & 2 children.

Ted Guthrie, sent us $50.00 out of his own pocket just for my family to live and eat on. We are all members of local 136 whom Ted Guthrie is pres. of, and a darn good one, who stands behind his members.

I was informed by Mgr. Hilliard Bolding, Sec of S.C. Local that no contracts were been filled on this job, nor was there a contract on Artie Fat Bucket playing our 2nd week here.

No contracts can be found on this job, although Ron James told us the contracts were sent to the Francis

Marion Dan.

We did finally reach Ron James, Sunday Jan 14, 1973. I informed him of the situation, and his words were, "I don't know what to do." Even though he called us The Artie Fat Pickel Band (and they were suppose to be on vacation) to play our second week. He knew he had to get paid for our 1st week, and no other job to go to.

We wish to file Claim for only five nights of our first week and six nights the second week.

Under Article 17, Section 6, a booker does not engage a band of musicians on a job without a contract. I believe this pertains to our situation. When I quoted this to Ron James on the phone he laughed and said "that's just a bunch of crap", and, "he (Ron James) knew all those people in New York, they were friends of his and nothing would be done."

When I told Ron James that I wasn't paid he said he would contact some people.

Francis Marion Inn
HIGHWAY 301 NORTH
FLORENCE, S. C. 29501

Nothing was done. He did get the people for $100.00 to leave on but they took $48.00 out the phone calls, which I had to make all over the place trying to get help.

I do not believe what Tom Jones said about the union just closing in after whatever the out come. I am a union man all the way and so my whole family!!

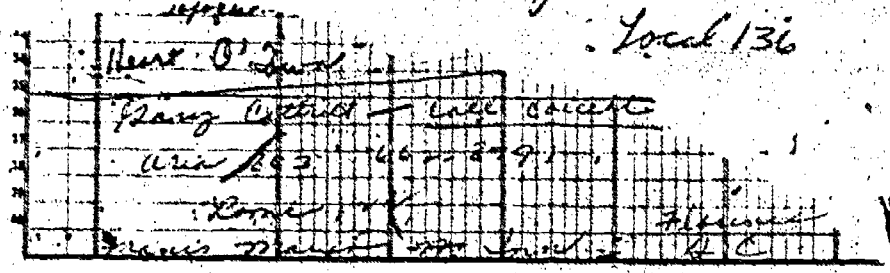
I am filing for $10,000.00 also for $300.00 traveling expense. Lily goes to Fid Guthrie, and $48.00 is for phone calls we had to make trying to get help.

I feel that this is only fair for not only have we lost two weeks pay but being stuck with no food for your Faithfully

I do hope that something can be done for my situation.

Thank you
I remain

Gary B Cottrell
Local 136



VERY IMPORTANT!

STATE OF TEXAS)(
COUNTY OF TARRANT)(

DECLARATION OF RAYMOND MARSHALL HAIR, JR.

My name is Ray Hair. I am thirty-three years old and I reside in Denton, Texas which is situated within the Dallas-Fort Worth metropolitan complex. I have been a musician for twenty-four years. I performed my first professional engagement in 1964 in Meridan, Mississippi at the age of thirteen, and have since performed throughout many states of the United States as a traveling musician. I hold the degree of Bachelor of Music Education from the University of Southern Mississippi and the degree of Master of Music Education from North Texas State University.

I.

PROFESSIONAL BACKGROUND

I voluntarily acquired membership in the American Federation of Musicians through AFM Local 568, Hattiesburg, Mississippi in 1973. In 1975, while a graduate student of the NTSU School of Music, I began organizing and leading various musical entertainment groups. I was the proprietor and a performing member of the musical entertainment group YAZOO which, for a number of years, provided its services in performances in many states of the United States and was listed with many national booking agents throughout the United States under the name "YAZOO".[1] I have personally solicited musical engagements for YAZOO in every state of the United States. In addition to my work as a full-time performing musician, from 1979 until 1983, I taught applied percussion at North Texas State University. In June of 1983, I chose to relinquish my teaching duties and full-time performing career to become President and Secretary of the Fort Worth Professional Musicians Association, affiliated Local 72 of the American Federation of musicians, which has jurisdiction throughout thirty-four Texas counties, and represents more than 1,000 musicians who reside mainly within the D/FW metropolitan area.

[1] Exhibit 106, attatched and made a part hereof

II.

EXPERIENCES AS TRAVELING MUSICIAN

During early 1977, I entered into an effort to organize and promote the talents of a group of NTSU music students with female vocalist, under the name "YAZOO". As leader of the group, I began soliciting engagements through booking agents and their buyers of music by distributing pictures and promotional materials.[2] We voluntarily chose to conduct our business in accordance with American Federation of Musicians procedures and we requested all purchasers to execute A. F. of M. engagement contracts.[3] YAZOO, because of its reputation for excellent performances, came to the attention of a booking agent located in Los Angeles, California. In March, 1978, I executed an exclusive agent-musician contract with Mr. Bob Vincent, President of the Mus-Art Corporation located in Los Angeles.[4] He is the founder and President Emeritus of a national consortium of booking agents called the International Theatrical Agencies Association (ITAA). Our agreement with Vincent provided for a maximum of 15% commission on gross monies earned on all steady (i. e., three nights or more per week) engagements. After our signing with Mus-Art, Vincent entered into an exclusive arrangement with Booking Agent C. W. Kendall, proprietor of Kan-Ran Enterprises of Dallas, for the exclusive representation of YAZOO throughout the Southwestern United States. In consideration of this arrangement, Vincent promised Kendall a 5% commission on all YAZOO engagements for the duration of Vincent's agreement with YAZOO. This 5% was to be paid out of Vincent's 15% commission. C. W. Kendall is the immediate past president of the ITAA. Vincent and Kendall put us "on the road", and were responsible for booking us in eight states during a period beginning in January of 1978 and concluding in July, 1979. The jobs were generally five or six night per week engagements of one to four weeks duration, performed mostly in hotel dance lounges and free-standing night clubs for a gross salary of eighteen hundred to twenty-five hundred dollars per week. We were never allowed

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[2] Exhibits 101, 102, 103, attatched and made a part hereof
[3] Exhibits 104, attatched and made a part hereof
[4] Exhibit 105, attatched and made a part hereof

to bargain over salary. We were left to either accept or reject all engagements, and we rarely knew in advance where our next job would be. Agent commissions were based on these weekly gross salaries. All traveling expenses were borne by ourselves. Occassionally, the purchaser would provide complimentary hotel rooms. During our tenure with Vincent and Kendall, I began to understand how the performance location, termed an "account" by the agent, was invariably represented exclusively by a certain booking agent or agency. I was told never to conduct any business with the purchaser. I was told by Kendall that all relations with any purchaser must be handled through him. Of course, this was a practical impossibility because the purchaser in every instance directly supervised and controlled the manner and means of performances; however, all contractual details, such as salaries and return bookings were the domain of the agent. Some engagements proved to have been "serviced" by the same agent exclusively for lengthly periods of time. While with Vincent and Kendall, we began encountering resistance to the AFM engagement contract form.

III.

ONSET OF INDEPENDENT CONTRACTOR

In April, 1978, Vincent booked us to perform in Los Angeles in July of 1978, at the "Red Onion" on Wilshire Blvd. and in August of 1978 at the "Red Onion" in Woodland Hills. The contracts[5] were sent to me for signature along with a document entitled "Amendment and Supplement to Entertainment Contract".[6] Vincent told me that the "Red Onion" would employ us only upon condition that I execute the supplement and register myself as an employer. When we performed at the Wilshire Red Onion, a dispute with our employer led to the Club's unilateral termination of the Red Onion Woodland Hills' engagement. The amendment, through its independent contractor designations, was designed to relieve the purchaser of all employer responsibilities and inhibit the musicians ability to seek remedy against the purchaser for breech of contract or for unfair labor practices. In Los Angeles Superior Court Action No. C 270 650, the Red Onion engaged in protracted litigation in an effort

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[5] Exhibits 107, 108, attatched and made a part hereof
[6] Exhibit 109, attatched and made a part hereof

to have the amendment assert control over our engagement contract. Ultimately, after more than two years of litigation, we were able to separate ourselves from the amendment, obtain judgement, and were awarded our claim. The Red Onion experience signaled the beginning of a trend by both purchasers and agents of refusing musicians' American Federation of Musicians contract forms, and instead requiring musicians to execute engagement contracts which declare all performers independent contractors. The agents, many of whom began terminating their American Federation of Musicians booking agreements, informed entertainers that their "accounts" no longer wished to execute AFM contract forms. These agents then developed their own, self-serving contract forms[7] which invariably included the "independent contractor" designation for the performer. These contract forms were acceptable to the purchaser and were reluctantly executed by musicians who could either accept the terms and become employed or reject them and remain unemployed. We began to realize that even though the agent accepted commissions and other consideration from the musician, his primary concern was protecting the interests of his "account", the music purchaser, whose position and intent in contracting musicians is to undercut the musicians' ability to collectively bargain, and leave the musician with as little recourse as possible in the event of a dispute with the purchaser. Throughout the development of these agent-purchaser oriented contracts, the proliferation of the independent contractor requirement was also accompanied by a simultaneous abandonment of the purchaser's specific authority to control the manner, means, and details of the artists' performance. Note in Exhibit 104, paragraph 6, "The employer shall at all times have complete supervision, direction, and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means, and details of the performance of services by the musicians including the leader as well as the ends to be accomplished". With the introduction of "independent contractor", Kendall relinquished employer control of the musicians' services to the artist.[8]

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[7]Exhibit 110, 111, 112, 113, 114, 115, 116, attatched and made a part hereof
[8]Exhibit 110, paragraph 7, attatched and made a part hereof

IV.

PURCHASER MAINTENANCE OF EMPLOYER CONTROL

It must be clearly understood, however, that even though the Ken-Ran contract and the other agent-purchaser oriented contracts specifically establish the musicians as independent contractor, the reality of the relationship between the purchaser and musicians is that the purchaser exercises full authority and control over how the musicians perform. Typically, the purchaser controls what music the musician performs, the volume levels, the location of the instruments on the stage, the attire of the musicians on stage and during off-working hours at the performance site, rehearsal times, intermissions, substitute musicians, conduct of the musicians while engaged, repertoire being performed, other work performed for other purchasers during term of purchasers' contract, and future employment prospects. Thus, purchasers and agents require the musicians to acknowledge their status as independent-contractors as a condition of their employment; yet continue to practice stringent employer control. The musicians never have an opportunity to bargain; they must either accept or reject the terms of the music purchaser, who is and always has been the true employer.

V.

ACTIVITIES AS LABOR ORGANIZER

Throughout my performing career, I gained admiration and respect for the policy and procedure of the American Federation of Musicians. The Musicians Local in Los Angeles funded the litigation against the Red Onion which resulted in a favorable judgement and award. In 1981, Club Papagayo in Dallas refused to honor my American Federation of Musicians engagement contract. My claim was submitted for Federation arbitration and the resulting award on my behalf was paid in full by the purchaser. I therefore considered it an honor to become President-Secretary of Local 72, Fort Worth, Texas, where I am responsible for promoting the welfare and interests of our member musicians. Conscious of my duty to operate according to the United States laws respecting Labor-Relations, I

have spent many hours studying procedural texts and surveys of labor law so that I may engage in employee organizing, representation elections, collective bargaining, the filing of unfair labor practices against employers, and other activities which are prescribed under the National Labor Relations Act.

VI.

MUSICIANS WITHOUT REMEDY

The continued insistence of music purchasers in requiring musicians to acknowledge themselves as independent contractors has left musicians without adequate remedy under Labor Law for unfair labor practices committed by these music purchasers, who nevertheless exercise strict employer control. In June, 1984, I filed unfair labor practice charges against Metro Hotels, Inc.,[9] who recently began rejecting American Federation of Musicians' contract forms and instead requiring the musicians to execute contracts which exercise employer control, yet establishes the musicians as independent contractors.[10] The NLRB Regional Director refused to issue a complaint.[11] I filed a petition for representation and certification election on behalf of Local 72 member musicians who had been performing for Metro Hotels on a regular basis.[12] The Hotel responded by canceling the engagement of the musicians who organized and attempted to collectively bargain within the bounds of the Act.[13] I then withdrew the petition and filed another unfair labor practice charge, this one alleging the obviously discriminatory discharge of the musicians.[14] The NLRB Regional Board found no merit to the charge. All along, Metro Hotels asserted that the musicians were not employees but were independent contractors and not subject to protection of the Act. In another case, the musicians performing at Six Flags Over Texas were required to sign a contract which included the independent contractor designation[15] and set their pay

9 Exhibit 117, attatched and made a part hereof
10 Exhibit 116, attatched and made a part hereof
11 Exhibit 118, attatched and made a part hereof
12 Exhibit 119, attatched and made a part hereof
13 Exhibits 120, 121, 122, 123, attatched and made a part hereof
14 Exhibit 124, attatched and made a part hereof
15 Exhibit 125, attatched and made a part hereof

at six dollars per hour, which is far below the hourly market rate of eleven to twenty dollars per hour for a steadily employed musician. All of the musicians authorized Local 72 to bargain with Six-Flags concerning their employment; therefore, a bargaining demand was issued.[16] Six Flags refused to bargain and alluded to the musicians' status as independent contractors.[17]

VII.

RELIEF NEEDED

The inclination of the employer to unilaterally establish musicians' independent contractor status while retaining strict employer control has served to create confusion and a likelihood of confusion among musicians and their representatives, purchasers, and booking agents, as well as potential employers. These acts by employers and the attendant confusion have caused, and if not terminated, will continue to cause irreparable damage and injury to the lives of thousands of performing musicians and their families. The enactment of Senate Bill 281 and House Resolution 5107 would end misrepresentation of employer/employee relationships in the entertainment industry and provide relief under the National Labor Relations Act for musicians who choose to organize and bargain with their employer without fear of reprisal. In the interests of those musicians who are left without recourse against employers who take unfair advantage and openly refuse to bargain with authorized representatives of the performers own choosing, I respectfully urge the Labor Subcommittee to report this legislation favorably to the United States House of Representatives and work for immediate enactment into law. The lives and families of thousands of musicians deserve nothing less than your full and complete support on these issues.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, and if called as a witness, I can competently testify thereto.

Executed in Fort Worth, Texas on September 6, 1984.

Raymond Marshall Hair, Jr.

[16] Exhibit 126, attatched and made a part hereof
[17] Exhibit 127, attatched and made a part hereof

THE STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, in and for Tarrant County, Texas, on this day personally appeared Raymond Marshall Harris Jr., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for purposes and consideration therein expressed, and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of September, 1984.

My Commission Expires:

4-88

Notary Public in and for
Tarrant County, Texas.

4400

Representation: RAYMOND M. HAIR, JR. P.O. Box 2535 Denton, Texas 76201 817/383-2780

YAZOO

The basic ideas and concepts for the group we have today sprang from the heads of a group of students of the School of Music at NTSU. We were busy expressing ourselves freely in the jazz idiom here in Denton, but we found ourselves becoming dissatisfied with the bow-tie, country club type of commercial gig which each of us had been accustomed to in other bands as sidemen for other bandleaders in the area.

We therefore decided to pool our talent, energy and scholarship to create the sort of commercial gig that we all enjoy doing, that we are proud of and at the same time is close to our hearts, souls, and roots. Good ole funky rhythm and blues. We know we have something here which is very special and unique. We really dig what we are doing and we hope we can share some of the excitement and intensity of our music with you.

YAZOO IS:

LARRY STEELMAN - keyboards, vocals. His compositions have been performed and recorded by the internationally famous lpm lab band. Larry has played and recorded with Willis Allen Ramsey.

STEVE GIOVENCO - guitar, vocals. From New Jersey, Steve has appeared with Bruce Springsteen and the Four Seasons.

GILDA MEDINA - Lead vocalist. She was the heart & soul of Sweet Roll and brings to us the warmth and flair that she is known for throughout the southwest.

RAY HAIR - drums, vocals. Currently part-time faculty, NTSU. Ray has recorded for Buddah and Capitol Records.

JAY FORT - Woodwinds. Jay recently returned from a State Department tour of the Soviet Union as a member of the lpm lab band - NTSU.

BOB PARR - Bass, vocals. From Sarasota, Fla. Bob has performed with Dave Mason and J.D. Loudermilk.

LEE KORNEGAY - Trumpet, flugelhorn, vocals. You've heard Lee on the gold and platinum records of Paul Simon, King Floyd & Jean Knight.

EXHIBIT #102

YAZOO

Current Playlist--Winter, 1983

The tunes below constitute a partial listing of POPULAR DANCE MATERIAL now being played by YAZOO. This index is under constant revision, and does not include the vast amount of tunes that we are able to play upon request.

Jump to It----------Aretha Franklin
Do You Love Me----------Patti Austin
Hard to Say I'm Sorry----------Chicago
Waiting for You to Decide----------Chicago
I. G. Y.----------Donald Fagin
Precious Love----------Al Jarreau
We're In This Love Together----------Al Jarreau
Big Fun----------Kool & the Gang
Get Down On It----------Kool & the Gang
Celebration----------Kool & the Gang
I Can't Go for That----------Hall and Oates
The Trouble With Hello----------Dave Grusin
You Can See How She Talks About You----------Melissa Manchester
Take It Away----------Paul McCartney
Abracadabra----------Steve Miller
Heart Attack----------Olivia Newton-John
Physical----------Olivia Newton-John
Let It Be Me----------Willie Nelson
Always On My Mind----------Willie Nelson
I Keep Forgetin'----------Michael McDonald
American Music----------Pointer Sisters
Breakaway----------Patrice Rushen
All We Need----------Patrice Rushen
Forget Me Nots----------Patrice Rushen
I Found Love----------Patrice Rushen
Truly----------Lionel Richie
Jigsaw----------Rufus
Bitch----------Rolling Stones
Start Me Up----------Rolling Stones
Love Is in Control----------Donna Summer
Love will Turn You Around----------Kenny Rogers
Workin' For A Livin'----------Huey Lewis
Whatcha Doin----------Seawind
Nasty Girls----------Vanity 6
That Girl----------Stevie Wonder
Do I Do----------Stevie Wonder

EXHIBIT #103

(HEREIN CALLED "FEDERATION")

CONTRACT

Local Number 147

THIS CONTRACT for the personal services of musicians on the engagement described below, made this 26 day of July 1977, between the undersigned Purchaser of Music (herein called "Employer") and 6+1 musicians, (including leader) herein called "musicians."

The musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians already designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, shall be bound by said terms and conditions. Each musician may enforce this agreement. The musicians severally agree to render services under the undersigned leader.

1 Name and Address of Place of Engagement AUstin College; Sid Richardson Center

Print Name of Band or Group YAZOO

2 Date(s), starting and finishing time of engagement 29 October, (9:00-1:00)

3 Type of Engagement (specify whether dance, stage show, banquet, etc.) Homecoming Dance

4 WAGE AGREED UPON $ $750.00 Seven Hundred Fifty Dollars
(Terms and Amount)

This wage includes expenses agreed to be reimbursed by the employer in accordance with the attached schedule, or a schedule to be furnished the Employer on or before the date of engagement.

5 Employer will make payments as follows Check Payable to YAZOO delivered to leader
(Specify when payments are to be made)

during intermission

On request by the Federation or the local in whose jurisdiction the musicians shall perform hereunder, Employer either shall so advance payment hereunder or shall post an appropriate bond.

The engagement is subject to contribution to the A.F.M. & E.F.W. Pension Welfare Fund, the leader will collect same from the Employer and pay it to the Fund, and the Employer and leader agree to be bound by the Trust Indenture dated October 3, 1959 as amended, relating to services rendered hereunder in the U.S. and by the Agreement and Declaration of Trust dated April 9, 1962, as amended, relating to services rendered hereunder in Canada.

6 The Employer shall at all times have complete supervision, direction and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means and details of the performance of services by the musicians including the leader as well as the ends to be accomplished. If any musicians have not been chosen upon the signing of this contract, the leader shall, as agent for the Employer and under his instructions, hire such persons and any replacements as are required.

7 In accordance with the Constitution, By-laws, Rules and Regulations of the Federation, the parties will submit every claim, dispute, controversy or difference involving the musical services arising out of or connected with this contract and the engagement covered thereby for determination by the International Executive Board of the Federation or a similar board of an appropriate local thereof and such determination shall be conclusive, final and binding upon the parties.

Additional Terms and Conditions

The leader shall, as agent of the Employer, enforce disciplinary measures for just cause and carry out instructions as to selections and manner of performance. The agreement of the musicians to perform is subject to proven detention by sickness, accidents, riots, strikes, epidemics, acts of God, or any other legitimate cause beyond their control. The leader of the Employer the leader will distribute the amount received from the Employer to the musicians, including himself as indicated on the applicable rate of this contract or in place thereof on separate memorandum supplied to the Employer on or before the commencement of the engagement hereunder and take and have over to the Employer receipts therefor from each musician, including himself. The amount paid to the leader includes the cost of transportation which will be reported by the leader to the Employer.

All employees covered by this agreement must be members in good standing of the Federation. However, if the employment provided for hereunder is subject to the Labor Management Orientation Act, 1947, all employees who are members of the Federation when their employment commences hereunder shall be continued as such employment only so long as they maintain such membership in good standing. All other employees covered by this agreement, on or before the thirtieth day following the commencement of their employment, or the effective date of this agreement, whichever is later, shall become and continue to be members in good standing of the Federation. The provisions of this paragraph shall not become effective unless and until permitted by applicable law.

If and to the extent permitted by applicable law, nothing in this contract shall ever be construed so as to be interfere with any duty owing by any musician performing hereunder to the Federation pursuant to the Constitution, By-laws, Rules, Regulations and Orders.

(Continued on reverse side)

Austin College--Sandy Pittman
Print Employer's Name

X [redacted]
Signature of Employer

PURCHASING OFFICER
Title

Box H
Print Street Address

Sherman TX 75090
City State Zip Code

214-892-9101
Telephone

Raymond M. Hair, Jr.
Print Leader's Name

72
Local No.

X Raymond M. Hair, Jr.
Signature of Leader

1511 S. McCormick
Leader's Home Address

Denton TX 76201 817-383-2790
City State Zip Code

(Booking Agent)

Agreement No.

This contract does not conclusively determine the person liable to report and pay employment taxes and similar employer levies under ratings of the U.S. Internal Revenue Service and of some State agencies.

FORM B 20 REV 3-74

Ex #57
#104

A.F.M. EXCLUSIVE AGENT-MUSICIAN AGREEMENT

(Three Years or Less)

NOT FOR USE IN STATE OF CALIFORNIA

Name of Agent

Address of Agent

A.F.M. Booking Agent Number

Legal Name of Musician

Professional Name of Musician

Name of Musician's Orchestra or Group

Musician's A.F.M. Locals

This Agreement Begins on _____, 19____, and Ends on _____, 19____.

1. **Scope of Agreement**

Musician hereby employs Agent and Agent hereby accepts employment as Musician's exclusive booking agent, manager and representative throughout the world with respect to musician's services, appearances and endeavors as a musician. As used in this agreement "Musician" refers to the undersigned musician and to musicians performing with any orchestra or group which Musician leads or conducts and whom Musician shall make subject to the terms of this agreement; "A.F.M." refers to the American Federation of Musicians of the United States and Canada.

2. **Duties of Agent**

(a) Agent agrees to use reasonable efforts in the performance of the following duties: assist Musician in obtaining, obtain offers of, and negotiate, engagements for Musician; advise, aid, counsel and guide Musician with respect to Musician's professional career; promote and publicize Musician's name and talents; carry on business correspondence in Musician's behalf relating to Musician's professional career; cooperate with duly constituted and authorized representatives of Musician in the performance of such duties.

(b) Agent will maintain office, staff and facilities reasonably adequate for the rendition of such services.

(c) Agent will not accept any engagements for Musician without Musician's prior approval which shall not be unreasonably withheld.

(d) Agent shall fully comply with all applicable laws, rules and regulations of governmental authorities and secure such licenses as may be required for the rendition of services hereunder.

3. **Rights of Agent**

(a) Agent may render similar services to others and may engage in other businesses and ventures, subject, however, to the limitations imposed by 8 below.

(b) Musician will promptly refer to Agent all communications, written or oral, received by or on behalf of Musician relating to the services and appearances by Musician.

(c) Without Agent's written consent, Musician will not engage any other person, firm or corporation to perform the services to be performed by Agent hereunder (except that Musician may employ a personal manager) nor will Musician perform or appear professionally or offer so to do except through Agent.

(d) Agent may publicize the fact that Agent is the exclusive booking agent and representative for Musician.

(e) Agent shall have the right to use or to permit others to use Musician's name and likeness in advertising or publicity relating to Musician's services and appearances but without cost or expense to Musician unless Musician shall otherwise certifically agree in writing.

1

EXHIBIT #105

(f) In the event of Musician's breach of this agreement, Agent's sole right and remedy for such breach shall be receipt from Musician of the commissions specified in this agreement, but only if, as, and when, Musician receives money or other consideration on which such commissions are payable hereunder.

4 Compensation of Agent

(a) In consideration of the services to be rendered by Agent hereunder, Musician agrees to pay to Agent commissions equal to the percentages set forth below, of the gross moneys received by Musician, directly or indirectly, for each engagement on which commissions are payable hereunder:

(i) Fifteen per cent (15%) if the duration of the engagement is two (2) or more consecutive days per week.

(ii) Twenty per cent (20%) for Single Miscellaneous Engagements of one (1) day duration – each for a different employer in a different location.

(iii) In no event, however, shall the payment of any such commissions result in the retention by Musician for any engagement of net moneys or other consideration in an amount less than the applicable minimum scale of the A.F.M. or of any local thereof having jurisdiction over such engagement.

(iv) In no event shall the payment of any such commissions result in the receipt by Agent for any engagement of commissions, fees or other consideration, directly or indirectly, from any person or persons, including the Musician, which in aggregate exceed the commissions provided for in this agreement. Any commission, fee, or other consideration received by Agent from any source other than Musician, directly or indirectly, on account of, as a result of, or in connection with supplying the services of Musician shall be reported to Musician and the amount thereof shall be deducted from the commissions payable by the Musician hereunder.

(b) Commissions shall become due and payable to Agent immediately following the receipt thereof by Musician or by anyone else in Musician's behalf.

(c) No commission shall be payable on any engagement if Musician is not paid for such engagement irrespective of the reasons for such non-payment to Musician, including but not limited to non-payment by reason of the fault of Musician. This shall not preclude the awarding of damages by the International Executive Board to a booking agent to compensate him for actual expenses incurred as the direct result of the cancellation of an engagement when such cancellation was the fault of the member.

(d) Agent's commissions shall be payable on all moneys or other considerations received by Musician pursuant to contracts for engagements negotiated or entered into during the term of this agreement; if specifically agreed to by Musician by initialing the margin hereof, to contracts for engagements in existence at the commencement of the term hereof (excluding, however, any engagements as to which Musician is under prior obligation to pay commissions to another agent), and to any modifications, extensions and renewals thereof or substitutions therefor regardless of when Musician shall receive such moneys or other considerations.

(e) As used in this paragraph and elsewhere in this agreement the term "gross earnings" shall mean the gross amounts received by Musician for each engagement less costs and expenses incurred in collecting amounts due for any engagement, including costs of arbitration, litigation and attorney's fees.

(f) If specifically agreed to by Musician by initialing the margin hereof, the following shall apply:

(i) Musician shall advance to Agent against Agent's final commissions an amount not exceeding the following percentages of the gross amounts received for each engagement: 15% on engagements of three (3) days or less, 10% on all other engagements.

(ii) If Musician shall so request and shall simultaneously furnish Agent with the data relating to deductions, the Agent, within 45 days following the end of each 12 months period during the term of this agreement and within 45 days following the termination of this Agreement, shall account to and furnish Musician with a detailed statement itemizing the gross amounts received for all engagements during the period to which such accounting relates, the moneys or other considerations upon which Agent's commissions are based, and the amount of Agent's commissions resulting from such computations. Upon request, a copy of such statement shall be furnished promptly to the Office of the President of the A.F.M.

(iii) Any balances owed by or to the parties shall be paid as follows: by the Agent at the time of rendering such statement, by the Musician within 30 days after receipt of such statements.

5 Duration and Termination of Agreement

(a) The term of this agreement shall be as stated in the opening heading hereof, subject to termination as provided in 5 (b), 6 and 10 below.

(b) In addition to termination pursuant to other provisions of this agreement, this agreement may be terminated by either party by notice as provided below, if Musician

(i) is unemployed for four (4) consecutive weeks at any time during the term hereof; or

(ii) does not obtain employment for at least twenty (20) cumulative weeks of engagements to be performed during each of the first and second six (6) months periods during the term hereof; or

(iii) does not obtain employment for at least forty (40) cumulative weeks of engagements to be performed during each subsequent year of the term hereof.

(c) Notice of such termination shall be given by certified mail addressed to the addressee at his last known address and a copy thereof shall be sent to the A.F.M. Such termination shall be effective as of the date of mailing of such notice if and when approved by the A.F.M. Such notice shall be mailed no later than two (2) weeks following the occurrence of any event described in (i) above, two (2) weeks following a period in excess of thirteen (13) of the cumulative weeks of unemployment specified in (ii) above, and two (2) weeks following a period in excess of twenty-six (26) of the cumulative weeks of unemployment specified in (iii) above. Failure to give notice as aforesaid shall constitute a waiver of the right to terminate based upon the happening of such prior events.

(d) Musician's disability resulting in failure to perform engagements and Musician's unreasonable refusal to accept and perform engagements shall not by themselves either deprive Agent of its right to or give Musician the right to terminate (as provided in (b) above).

(e) As used in this agreement, a "week" shall commence on Sunday and terminate on Saturday. A "week of engagements" shall mean any one of the following:

(i) a week during which Musician is to perform on at least four (4) days; or

(ii) a week during which Musician's gross earnings equals or exceeds the lowest such gross earnings obtained by Musician for performances rendered during any one of the immediately preceding six (6) weeks; or

(iii) a week during which Musician is to perform engagements on commercial television or radio or in concert for compensation equal at least to three (3) times the minimum scales of the A.F.M. or of any local thereof having jurisdiction applicable to such engagements.

6. Agent's Maintenance of A.F.M. Booking Agent Agreement

Agent represents that Agent is presently a party to an A.F.M. Booking Agent Agreement which is in full force and effect. If such A.F.M. Booking Agent Agreement shall terminate, the rights of the parties hereunder shall be governed by the terms and conditions of said Booking Agent Agreement relating to the effect of termination of such agreements which are incorporated herein by reference.

7. No other Agreements

This is the only and the complete agreement between the parties relating to all or any part of the subject matter covered by this agreement.* There is no other agreement, arrangement or participation between the parties, nor do the parties stand in any relationship to each other which is not created by this agreement,* whereby the terms and conditions of this agreement are avoided or evaded, directly or indirectly, such as, by way of example but not limitation, contracts, arrangements, relationships or participations relating to publicity services, business management, personal management, music publishing, or instruction.

*(A.F.M. Personal Management Agreement Excepted.)

8. Incorporation of A.F.M. Constitution, By-laws, etc.

There are incorporated into and made part of this agreement, as though fully set forth herein, the present and future provisions of the Constitution, By-laws, Rules, Regulations and Resolutions of the A.F.M. and those of its locals which do not conflict therewith. The parties acknowledge their responsibility to be fully acquainted, now and for the duration of this agreement, with the contents thereof.

9. Submission and Determination of Disputes

Every claim, dispute, controversy or difference arising out of, dealing with, relating to, or affecting the interpretation or application of this agreement, or the violation or breach, or the threatened violation or breach thereof shall be sub-

Board (regardless of the determination or purported termination of this agreement or of the Agent's A.F.M. Agreement), and such determination shall be conclusive, final and binding on the parties.

10. **No Assignment of this Agreement**

This agreement shall be personal to the parties and shall not be transferable or assignable by operation of law or otherwise without the prior consent of the Musician and of the A.F.M. The obligations imposed by this agreement shall be binding upon the parties. The Musician may terminate this agreement at any time within ninety (90) days after the transfer of a controlling interest in the Agent.

11. **Negotiation for Renewal**

Neither party shall enter into negotiations for or agree to the renewal or extension of this agreement prior to the beginning of the final year of the term hereof.

12. **Approval by A.F.M.**

This agreement shall not become effective unless, within thirty (30) days following its execution, an executed copy thereof is filed with and is thereafter approved in writing by the A.F.M.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the ____ day of _____ 19__.

_____ _____

Agent Musician

By _____ _____

Title or Capacity Residence Address

_____

City State Zip Code

Agent Representing No More Than Two Clients

If specifically agreed to by the parties by signing below:

(a) Agent warrants and represents that Agent presently serves, and Agent agrees that during the term hereof Agent will restrict its activities to serving, as booking agent, or manager, or representative, no more than one other musical soloist, orchestra, band or performing group. If such warranty and representation is untrue, this agreement is null and void. If such agreement is broken, this agreement shall automatically terminate.

(b) In consideration thereof, the parties agree that the provisions of 4(e), (r) and (u) and 4(f) above shall be inapplicable and that the compensation of Agent shall be as set forth in Schedule L attached. In no event, however, shall the payment of any commission result in the retention by Musician for any engagement of net moneys or other consideration in an amount less than the applicable minimum scale of the A.F.M. or of any local thereof.

_____ _____

Agent Musician

By _____

Title or Capacity

INTERNATIONAL PRINTING CO INC
Newark, N. J. 07102

EXHIBIT "E"

INTERROGATORY NO. 13

Denton, Texas
*Doc Holidays 7/5, 7/6, 7/13-16; 9/6-10, 1977; 9/18-22, 1977; 12/6-10, 1977
*The Porch 6/27/77
*NTSU 8/25/77
TWU 2/14/82
Denton High School 12/16/77
*Bennies Jazz Club 5/3/81; 5/4/81; 5/8/82
*Zachary's Bar 5/28/81 - 6/1/81; 6/4-5/81; 6/23-27, 1981; 10/31/81

Fort Worth, Texas
Aquarium Club 9/2-3/77; 10/28/77; 11/11/77; 12/2, 12/3, 1977;
11/4, 11/5, 1977
Savvy's 3/28 - 4/2, 1978

Big Spring, Texas
Brass Nail 10/4-9, 1977; 10/13-16, 1977

Dallas, Texas
*Player's Lounge 8/17, 8/18, 8/19, 8/20, 1977
Place 9/22, 9/23, 9/24, 9/25, 9/27, 9/28, 1977
Airport Marina 11/14-19, 1977; 11/21-26, 1977
Oak Cliff Country Club 11/12/77
Holiday Inn Downtown 12/20/77
*The Trap II 8/26 & 8/27, 1977
*Central Forest Club 12/21-23, 1977
Temple Shalom 12/31/77
Marriott Currency Club 1/16 - 2/11, 1978
Dupont Plaza Hotel 5/5/78
Registry Hotel 5/13/78
Lancer's Club 8/31/79
Southwestern Medical School 2/9/80
Prestonwood Country Club 6/6/80
Hyatt Regency 10/25/80
Las Colinas Country Club 12/12/80
Doubletree Inn 12/13/80
Changes Club 4/16-19, 1981
Hilton Inn 2/27/81
Papagayo 6/9 & 10, 1981
Up Your Alley 6/12 & 13, 1981
Hyatt Regency 6/30/81 - 10/5/81
Loews Anatole 8/24/81
Hanging Gardens 10/17/81
Doubletree Inn 11/2/81 - 1/2/82
Loews Anatole 12/8/81
Loews Anatole 12/12/81
Plaza of the Americas 12/31/81
Don Miquels 1/4/82 - 1/30/82
Plaza of the Americas 3/17/82
Dallas Hilton 3/1 - 3/13/82
Playboy Club 4/5 - 5/1/82
Don Miquels 5/3 - 5/25/82
Doubletree Inn 6/28 - 8/28/82
Mandalay Hotel 10/12/82 - indefinite close

Coffeeville Texas
Colinas, for
[illegible]

Exhibit #106

Sherman, Texas
Austin College 10/29/77
Sherman High School 5/28/78

Paris, Texas
Paris Country Club 12/31/77

Austin, Texas
Eli's 4/11-16, 1978
Air Force Base 6/6/81

Waco, Texas
Funky's 11/15 & 16, 1979
Convention Center 4/26/80

Wichita Falls, Texas
Sheppard Air Force Base 6/2 & 3, 1980

Biloxi, Mississippi
Clementines 8/1-8/27, 1977

Lawton, Oklahoma
Fort Sill 7/29-31, 1977; 3/28/81

Fayetteville, Arkansas
Washington County Fairgrounds 5/26/78

Fort Smith, Arkansas
Municipal Auditorium 5/27/78

Eureka Springs, Arkansas
Inn of The Ozarks 12/6/80

Camden, Arkansas
McKissack's Retreat 5/29 & 30, 1981

Lone Grove, Oklahoma (Ardmore)
Henry's Lady 4/19-29, 1978

Hutchinson, Kansas
Yesterdays 1/3-7, 1978

Joplin, Missouri
Red Lion 5/8-12, 1978

Evansville, Indiana
Papillons 2/13 - 3/4, 1978
Papillons 5/29 - 6/24, 1978
WNIN-TV 2/26/78
Vanderburgh Auditorium 6/25/78

Lafayette, Louisiana
Chicago Club 5/15 - 5/20, 1978

Los Angeles, California
Red Onion Wilshire 7/4 - 7/28, 1978

Agreement No. 1338

US-ART Corporation of America

320 MEDINAH ROAD
ROSELLE, ILLINOIS 60106

THIS CONTRACT for the personal services of musicians on the engagement described below, made this 14th day of April 19 78 between the undersigned Purchaser of Music (herein called "Employer") and 6 + 1 (including leader) musicians, musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, be bound by said terms and conditions. Each musician may enforce this agreement. The musicians severally agree to rendices under the undersigned leader.

me and Address of Place of Engagement RED ONION RESTAURANT, 3386 WILSHIRE BLVD., LOS ANGELES, CALIF.

e Name of Band or Group YAKOO

rted starting and finishing time of engagement 6 weeks beginning Tuesday, July 4, 1978 thru & closing nday, July 10, 1978) 5 days weekly; Sunday & Monday off; hours: 9:00 PM - 2:00 AM nitely

e of Engagement (specify whether dance, stage show, banquet, etc.) Show/Dance/Piano Policy

E AGREED UPON $ 2,500.00 (TWO THOUSAND FIVE HUNDRED DOLLARS) PER WEEK
(Terms and Amount)

e wage includes expenses agreed to be reimbursed by the employer in accordance with the attached schedule or a schedule rnished the Employer on or before the date of engagement.

ployer will make payments as follows TO ARTIST AT CONCLUSION OF EACH WORK WEEK. ARTIST WILL [illegible] PAID TO MUS-ART CORP. 10% COMMISSION ($250.00) EACH WEEK AND WILL FORWARD 5% COMMISSION ($125.00) TO JOHN-RAY PRODUCTIONS, DALLAS, TEXAS.

equest by the Federation or the local in whose jurisdiction the musicians shall perform hereunder, Employer either shall dvance payment hereunder or shall post an appropriate bond.

engagement is subject to contribution to the A.F.M. & E.P.W. Pension Welfare Fund, the leader will collect same from ployer and pay it to the Fund; and the Employer and leader agree to be bound by the Trust Indenture dated October 2, amended relating to services rendered hereunder in the U. S. and by the Agreement and Declaration of Trust dated April as amended, relating to services rendered hereunder in Canada.

Employer shall at all times have complete supervision, direction and control over the services of musicians on this engage- ed expressly reserves the right to control the manner, means and details of the performance of services by the mu- including the leader as well as the ends to be accomplished. If any musicians have not been chosen when the sig ning contract, the leader shall, as agent for the Employer and under his instructions, hire such persons and any replace- s are required.

rdance with the Constitution, By-laws, Rules and Regulations of the Federation, the parties will submit every claim, dis- rroversy or difference involving the musical services arising out of or connected with this contract and the engagement thereby for determination by the International Executive Board of the Federation or a similar board of an appropriate local and such determination shall be conclusive, final and binding upon the parties.

Additional Terms and Conditions

[illegible] shall be agent of the Employer, enforce disciplinary measures for just cause, and carry out instructions as to promptness and manner of performance, neat of the musicians to perform as subject to provide equipment by customary occupancy, rugs, stands, [illegible], and their control. On behalf of the Employer, the leader will distribute the amounts received from the Employer to the musicians, including himself or he- opposite side of this contract or in place thereof on cancelled checks endorsed by the musicians or before the commencement of the engagement and who are here given to the Employer through whatever form such withdrawal, including himself. The amount paid to the leader includes the cost of ge, which will be reported by the leader to the Employer.

policies covered by this agreement must be members in good standing of the Federation. However, if the employment provided for hereunder is subject to [illegible] Employment Relations Act 1947 all musicians who are members of the Federation when [illegible] employment commences hereunder shall be continued in such ority to work as they continue such membership in good standing. All other employees covered by this agreement, on or before the thirtieth day following ion. The provisions of this paragraph shall not become effective unless and until terminated by appropriate law. [illegible] shall terminate or affect [illegible] performed by employees who, nothing in this subparagraph shall ever be construed as [illegible] Hotels, Negotiations and Orders.

RED ONION RESTAURANTS, INC. [illegible] S.S. #567-21-9758

KINGLEIN (Continued on reverse side) RAYMOND KAIN 72

Print Leader's Name Local No.

X Raymond M. Kain

1511 E. McCommas Street

Denton, Texas

Mus-Art Corp. of America

Chicago, Illinois

Booking Agent Agreement No.

If you are consistently determine the persons liable to report and pay employment taxes and whether employer duties under railroad of the U. S. Internal ion and of state unemployment

124

Names of Musicians	A.F.M. Local and U.S. Social Security Numbers (If any)		Direct Pay and Pension Fund Contributions (Where applicable)	
Raymond Hair	72	587-48-9738	$	$
Jim Lacefield	47			
Larry Steelman	72			
Steve Giovenco	72			
Sam Pedraza	72			
Danny Higgins	47			
Gilda Medina	Vocal			

FIG. 2-1

Agreement No. 238

AUS-ART Corporation of America

320 MEDINAH ROAD

ROSELLE, ILLINOIS 60172

THIS CONTRACT for the personal services of musicians on the engagement described below, made this 14th day of April 19 78 between the undersigned Purchaser of Music (herein called "Employer") and 6 + 1 musicians* (including leader)

The musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians already designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, shall be bound by said terms and conditions. Each musician may enforce this agreement. The musicians severally agree to render services under the undersigned leader.

1. Name and Address of Place of Engagement RED ONION RESTAURANT, 6424 CANOGA AVE., WOODLAND HILLS, CALIF.

Print Name of Band or Group YASOO

2. Date(s) starting and finishing time of engagement 3 weeks beginning Monday, July 31, 1978 thru & closing Saturday, August 19, 1978; 6 nights, weekly; Sundays off; Hours: 9:00 PM to 2:00 AM nightly

3. Type of Engagement (specify whether dance, stage show, banquet, etc.) Show/Lounge/House Policy

4. WAGE AGREED UPON $ 2,750.00 (TWO THOUSAND SEVEN HUNDRED FIFTY DOLLARS) PER WEEK (Terms and Amount)

This wage includes expenses agreed to be reimbursed by the employer in accordance with the attached schedule, or a schedule to be furnished the Employer on or before the date of engagement.

TO ARTIST AT CONCLUSION OF EACH WORK WEEK. ARTIST WILL FORWARD

5. Employer will make payments as follows AUS-ART CORP. 10% COMMISSION ($275.00) EACH WEEK AND WILL FORWARD TO AUS-ART CORP. 5% COMMISSION ($137.50) EACH WEEK FOR DEDUCTION, IN DALLAS, TEXAS.

Upon request by the Federation or the local in whose jurisdiction the musicians shall perform hereunder, Employer either shall make advance payment hereunder or shall post an appropriate bond.

If the engagement is subject to contribution to the A.F.M. & E.P.W. Pension Welfare Fund, the leader will collect same from the Employer and pay it to the Fund; and the Employer and leader agree to be bound by the Trust Indentures dated October 2, 1955 as amended, relating to services rendered hereunder in the U.S., and by the Agreement and Declaration of Trust dated April 9, 1962, as amended, relating to services rendered hereunder in Canada.

6. The Employer shall at all times have complete supervision, direction and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means and details of the performance of services by the musicians including the leader as well as the ends to be accomplished. If any musicians have not been chosen upon the signing of this contract, the leader shall, as agent for the Employer and under his instructions, hire such persons and any replacements as are required.

7. In accordance with the Constitution, By-laws, Rules and Regulations of the Federation, the parties will submit every claim, dispute, controversy or difference involving the musical services arising out of or connected with this contract and the engagement covered thereby for determination by the International Executive Board of the Federation or a similar board of an appropriate local thereof and such determination shall be conclusive, final and binding upon the parties.

Additional Terms and Conditions

The leader shall be agent of the Employer, authorized exclusively to post bond, and carry out instructions as to selections and manner of performance. The agreement of the musicians to perform is subject to prevention by sickness, accidents, riots, strikes, restaurant, acts of God, or any other legitimate excuse beyond their control. The waiver of the Employer the leader will distribute the amount received from the Employer by the musicians, including himself as indicated on the opposite side of this contract or at place thereof on separate memorandum supplied to the Employer at or before the commencement of the engagement hereunder and they have power to the Employer receipts therefor from each musician, including himself. The amount paid to the leader including the cost of transportation, which will be regarded by the leader as the Employer.

All engagements covered by this agreement must be members in good standing of the Federation. However, if the engagement provided for hereunder is subject to the Labor Management Relations Act, 1947, all musicians who are members of the Federation whose employment commences hereunder shall be continued in such employment only so long as they continue such membership in good standing. All other employees covered by this agreement, on or before the thirtieth day following the (commencement of their employment, or the effective date of this agreement, whichever is later, shall become and continue to be members in good standing of the Federation. The provisions of this paragraph shall not become effective unless and until permitted by applicable law.

In the event permitted by applicable law nothing in this contract shall ever be construed so as to interfere with [illegible] Rules, Regulations and Orders.

TOM ENGLISH /(Continued on reverse) RAYMOND HAIR 72

Leader's Name Local No.

X 2179 East Dominguez, Suite H

Carson, California 90746

City State Zip Code

X 1512 E. McCormick Street

Denton, Texas

Leader's Name/Address

AUS-ART Corp. of America 138 Code

Chicago, Illinois

Telephone Musicians Agent Agreement No.

*This contract does not conclusively determine the person liable to report and pay employment taxes and similar employer taxes under federal, state or local laws and of some state agencies.

EXHIBIT # 104

Name of Musicians	Local and U.S. Social Security Numbers (if any)		Direct Pay. and Pension Fund Contributions (where applicable)	
Raymond Hair	72	587-48-9738		
Jim Lacefield Leader	47			
Larry Steelman	72			
Steve Giovanco	72			
Sam Pedraza	72			
Danny Higgins	47			
Gilda Medina	Vocal			

EIVED
1 9 1979

7/31 - 8/19/78 - 3 wks
@ $750.00 wk

ID # 75-1535728

AMENDMENT AND SUPPLEMENT
TO
ENTERTAINMENT CONTRACT

It is the purpose of this Amendment and Supplement ("Amendment") to amend and supplement that agreement dated APRIL 28, 1978 (the "Agreement") between YAZOO (Leadership of Pay Hair, Fed. I.D. # 75-1535728 ("Contractor") and Tom English, Entertainment Director, dba "The Red Onion" ("Red Onion") as follows:

1. The parties intend that Contractor, in performing the services specified in the Agreement, shall act as an independent contractor. The conduct, performance and control of the services to be performed by Contractor under the Agreement will be the sole responsibility of Contractor, and Contractor shall be the employer of the other musicians named in the Agreement (the "musicians"). Contractor will be responsible for the selection of musical numbers performed by the musicians. Contractor is not an employee of Red Onion and is not entitled to any benefits provided by Red Onion to its employees. Contractor shall perform and cause the musicians to perform the services specified in this Agreement in accordance with the standards applicable to their profession. Contractor shall be free to practice his profession for others during those periods when he is not performing services required under the Agreement.

2. Contractor shall indemnify Red Onion against all liability or loss, and against all claims or actions based upon or arising out of injury to, or death of persons, or damage to or loss of property, caused by the intentional or negligent acts of Contractor, his employees, or agents in connection with the performance of the services to be rendered under the Agreement.

3. Contractor shall, at his expense, carry adequate insurance to fully protect both Contractor and Red Onion from any and all claims of any nature for damage to property or for personal injury, including death, which may arise from the performance of the Contract.

4. Contractor shall be responsible for performing the work under the Agreement in a safe, skillful and professional manner, and shall be liable for his own negligence and the negligent acts of musicians. Excepting the hour and place of the services to be performed hereunder, Red Onion shall have no right of control over the manner in which the services specified in the Agreement are to be performed, and shall therefore not be charged with the responsibility of preventing risk to Contractor or the musicians. All services performed under this agreement shall be done at Contractor's risk.

5. Contractor shall be liable for any personal injury or property damage resulting from the use, misuse, or failure of the musical instruments and related equipment furnished by Contractor or musicians as performing the services specified in the Agreement. The musical instruments and equipment shall be maintained by the Contractor and the musicians. Contractor shall be responsible for procuring and maintaining adequate insurance to cover loss or damage to the musical instruments and related equipment furnished by Contractor and musicians under the Agreement resulting from accident, malicious mischief, burglary, theft and fire.

6. The acceptance or use by Contractor or musicians of any equipment furnished, loaned, or rented to him or his employees by Red Onion shall be construed to mean that Contractor and his employees accept full responsibility for such equipment and agree to indemnify Red Onion against any and all loss, liability and claims for any injury or damages resulting from the use, misuse or mechanical failure of such equipment. Red Onion shall not be responsible or be held liable for any injury or damage to persons or property resulting from the use, misuse or mechanical failure of any musical instruments or related equipment used by Contractor or any of the musicians, regardless of whether such injury or damage is to a musician or the property of Contractor, other contractors, Red Onion, or other persons.

Exhibit #.105

7 Red Onion shall have the right to terminate the Agreement and this Amendment in the event Contractor fails in the reasonable opinion and judgement of Red Onion, to perform the services required under the Agreement or this Amendment. In the event a majority or more of the musicians named in the Agreement as members of the Band refuse to perform under the direction of Contractor or become parties to a dispute or disagreement with Contractor which in the judgement of Red Onion interferes with Contractor's performance of his duties hereunder, Red Onion may terminate the Agreement and this Amendment.

8 Contractor acknowledges his responsibility with respect to the musicians, to provide worker's compensation insurance, to pay social security and unemployment insurance taxes and to make appropriate federal and state contributions and deductions with respect to the wages contractor pays his employees, provided, however, Red Onion shall be responsible for contributions on behalf of Contractor and the musicians in accordance with Sections 680 and 681 of the California Unemployment Insurance Code. AFM and/or CPW Pension Welfare Fund contributions, if applicable, shall be included as part of the contract price for the services to be provided under the Agreement, and shall be remitted to the appropriate local by Contractor on behalf of himself and the musicians employed by Contractor.

9 No waiver, alteration or modification of any of the provisions of this agreement shall be binding unless in writing and signed by a duly authorized representative of each party.

10 In the event of any dispute, disagreement or question of interpretation of the terms and provisions of this Agreement or the Agreement, such dispute, disagreement or question of interpretation shall be determined by arbitration in accordance with the rules of the American Arbitration Association. The decision of the arbitrator in any arbitration proceeding to resolve any dispute, disagreement or question of interpretation of this Amendment or the Agreement shall be final and binding upon the parties.

11 To the extent any provision of this Amendment conflicts with any provision of the Agreement, this Amendment shall control.

"CONTRACTOR"

By _____
RAY HAIR

Dated April 28, 1978

"RED ONION"

By _____
TOM ENGLISH

Dated April 28, 1978

ENTERTAINMENT AGREEMENT

AGREEMENT made this day of 19 between
(hereinafter called Artist)
(hereinafter called Purchaser)

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT

1 NAME AND ADDRESS OF ENGAGEMENT

2 DATE OF ENGAGEMENT

3 TYPE OF ENGAGEMENT

4 HOURS OFF

5 PRICE AGREED UPON

6 PURCHASER to make payments as follows

7 Artist shall at all times have complete supervision direction and control over the services of its personnel on this engagement and expressly reserves the right to control the manner means and details of the performance of services as well as the ends to be accomplished

8 It is understood that the Artist (individually) his agreement as an independent contractor and is not an employee of Purchaser It shall be the responsibility of Artist to withhold and pay over to government authorities any and all income taxes and social security contributions which may be required to be withheld from the musicians fees

9 It is understood and agreed that Purchaser will not be liable for any loss or damage to any equipment belonging to Artist while such equipment is on the premises of the Purchaser

10 SPECIAL PROVISIONS

11 AGENT PROVISIONS

A The undersigned Agent acknowledged to have fully performed upon the commencement of the engagement He shall not be liable for the default of a Purchaser or the non performance of the group No changes in the affecting Commission shall be made without the written approval of agent

B The participation of member(s) attached to the agency part of this engagement is Commission shall be held in trust by leader as fiduciary and forwarded to agent within 5 days of receipt of (1) the agent has the authority because of the following engagement, or any engagement agent procures purchaser is authorized to withhold from leader any commissions due Ken Ran Enterprises agency Delinquent commission shall accrue interest at 1% per month, and if litigation is necessary for collection attorneys fees shall be paid by debtor unless prohibited by applicable local law

C If leader or any person associated with group is inducted into the or any establishment represented by the purchaser (including chain hotels of motels) within 2 yrs from the termination of this agreement Purchaser and Leader shall be jointly and severally liable for payment to Ken Ran Enterprises Agency for commission on the rates set forth in this engagement

12 UNION PROVISIONS

Members of unions or guilds which may include the leader and members of this unit agree to accept sole responsibility for complying with the rules and regulations of said unions or guilds and to fully comply therewith Agent does not represent that Artist is affiliated with any musicians' union

13 ARBITRATION OF CONTROVERSIES

Any controversies over the terms or conditions of this agreement will submitted to the office of the American Arbitration Association or Canadian equivalent or any state (local) association and decision accepted is binding on all parties concerned If decision involves a monetary payment which is not paid in 30 days collection attorneys fees shall be paid by debtor

14 The recording reproduction or transmission of Artist's performance is prohibited absent written consent of Artist and his union

15 We acknowledge and confirm that we have read and approve the terms and conditions set forth in this contract

Purchaser's Name	Print Leader's Name
Signature of Purchaser	Signature of Leader
Print Street Address	Print Street Address
City State Zip	City State Zip
214 - 363 - 6340 3800 Address	Business Agent or Manager Telephone

COMMENCEMENT OF ENGAGEMENT TOGETHER WITH PHYSICAL DELIVERY OF THIS CONTRACT IS DEEMED TO BE AN ACCEPTANCE OF ALL TERMS BY THE PURCHASER
CONTRACTS MUST BE RETURNED WITHIN 10 DAYS
OR THIS ENGAGEMENT WILL BE CONSIDERED CANCELLED

EXH. 87
110

40-234 0 - 85 - 5

tainment cialists

CONTRACT

2308 Bluebonnet
Richardson, Texas 75081
(214) 238-9812

HIS CONTRACT for the personal services of musicians on the engagement described below, made this _____ day of _____, 19 _____, between the undersigned purchaser of music and _____ musicians. he musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians ready designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, all be bound by said terms and conditions. The musicians severally agree to render services under the undersigned leader.

Name and address of Place of Engagement _____

Name of band _____

Date(s) of engagement _____

Hours of engagement _____

Type of engagement (specify whether dance, show, banquet, etc.) _____

WAGE AGREED UPON $ _____ (Gross and Aggregate)

Purchaser will make payments as follows: _____

The purchaser shall at all times have complete supervision, direction and control over the services of musicians on this engagement and expressly reserves e right to control the manner, means and details of the performance of services by the musicians including the leader as well as the ends to be accomplished any musicians have not been chosen upon signing of this contract, the leader shall, as agent for Purchaser and under his instructions, hire such persons and ry replacement that are required. In the event that any member/performer for the Band or Group hereon, as of the date of the execution of this contract, ill not be such a member on or before the date of engagement hereon, the Purchaser reserves the right to approve or disapprove of any replacements for such ember. Any such disapproval shall, at the Purchaser's option, terminate this Contract. The leader, manager or representative specifically agrees to so otify the Purchaser of any such changes of members as they arise. Failure of the Purchaser within seven days after notification to approve or disapprove all constitute approval. The leader shall, as agent of the Purchaser, enforce disciplinary measures for just cause, and carry out instructions as to selections d manner of performance. On behalf of the Purchaser, the leader or agent will distribute the amount received from the Purchaser to the musicians, including mself as indicated in this Contract.

_____ severally agrees and guarantees to pay _____ % of the above

greed wage for the duration of the engagement payable in like manner to the provisions of Section 7 above (_____) for personal ervices, booking fee, contract fee, commission splits, and telephone rendered and incurred in the transaction to International Entertainment Specialists he payment of the commission is to be made and tendered to International Entertainment Specialists, 2308 Bluebonnet, Richardson, Texas 75081. The person going as leader, manager, or representative of band represents that he is under no mental disability and that he has legal capacity to contract and do business n the musicians.

Print Purchaser Name _____ Print Leader's Name _____

Signature of Purchaser _____ Signature of Leader _____

Print Street Address _____ Leader's Home Address _____

City _____ State _____ Zip Code _____ City _____ State _____ Zip Code _____

Telephone _____ Leader's Social Security Number _____

Other Members _____

Additional Terms and Conditions

9. If the performer or key personnel of this musical group is hired into this or any establishment owned or controlled by the purchaser (including Chain Buyers of entertainment) within 1 year from the finishing time of the engagement as shown above, purchaser and performer shall jointly and severally be liable for payment to the agent of a commission at the rate paid for this engagement

Performer agrees to pay all costs and attorney fees incurred by agent due to performer's breach of the obligation to pay any commissions due to agent

Purchaser, performer, and agent agree that if any claim or dispute arises from this contract to the jurisdiction of the circuit court of Collin County, Texas and further specifically agree that this contract shall be construed in accordance with the laws of the state of Texas

The Group leader agrees to plan, assemble and furnish said group as contracted and shall supply and furnish all the necessary personnel as well as supply all musical arrangements and scripts, if any, subject to the additional conditions herein provided. The Group leader shall perform and discharge all obligations imposed upon him by Workmen's Compensation, Unemployment Compensation or Insurance, Federal Insurance Contributions, with holding taxes, and other federal and state laws and regulations. He shall further file all returns and reports and make all withholding required by him as leader of aforementioned group, and he shall pay all assessments, taxes, contributions or other sums imposed thereunder upon or with respect to the salaries or wages paid by the Group leader to the persons whose services he engages or furnishes for the Purchaser

Should the Purchaser be materially hampered, interrupted or curtailed in the normal conduct of its business or operations by reason of epidemic, fire, action of the elements, strikes, without labor dispute, governmental disorder, court order or other of any other legally constituted authority, act of God or public enemy, war, riot, civil commotion, or any other cause or causes beyond the Purchaser's control, whether of the same or of any other nature, or by lockout, it is understood and agreed that the Purchaser shall be relieved of its obligations hereunder with respect to any performances scheduled for performance during the period or periods of such hampering, interruption or curtailment, and the Group leader shall have no claim of any kind or nature against the Purchaser relating to such obligations

This Contract shall be interpreted under the laws of the State of Texas, and this Contract constitutes the sole, complete and binding agreement between the musicians and the Purchaser

At all time hereunder the term Purchaser shall include any and all principals who are represented by the party signing this contract as "Purchaser", including any subsequent principals the party signing this contract may represent. The term "principal" shall refer to all owners (whether corporations, partnerships, individuals or otherwise) of all places of engagement that subsequently employ the Band or Group herein

It is agreed that failure to pay any commission that is due and payable to International Entertainment Specialists under any of the terms of this Contract by the leader, manager, representative of the musicians or the musicians themselves shall constitute a breach of this Contract with respect to I.E.S. which shall give rise to a cause of legal action for damages and expenses incurred resulting from such breach

This contract sets forth the entire Contract between the parties hereto and merges all prior discussions and agreements between them and none of the parties shall be bound by any conditions, definitions, warranties or representations with respect to any terms or conditions other than those expressly in this Contract or as included by subsequent agreements in writing, signed by a duly authorized officer or representative of the parties of this Contract

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, this shall not affect any other provision of this Contract and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein

The failure of either party to enforce any provision or condition of this Agreement at any time, shall not be construed (1) as a waiver of this provision or condition or (2) as a forfeiture of any rights to future enforcement of this provision or condition

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement

Ray Bloch PRODUCTIONS-DALLAS, INC.
6060 NORTH CENTRAL EXPWY · SUITE 441 · DALLAS, TEXAS 75206 · (214) 363-5611

October 6, 1981

Mr. Raymond Hair, Jr.
P.O. Box 2535
Denton, Texas 76201

Dear Ray:

In accordance with our conversation, you are to serve us with the following:

MUSIC:	YAZOO
DATE:	December 31, 1981
LOCATION:	Plaza of the Americas Hotel Dallas, Texas
ROOM:	Grand Ballroom
HOURS:	9:00 p.m. - 1:00 a.m.
FEE:	$1,700.00
REMARKS:	Fee includes your own sound system. All requests for services of artist emanating from this engagement including requests from the audience (i.e. referrals) shall be referred solely to Ray Bloch Productions.

Please sign the enclosed copy and return it to our office in the envelope provided for your convenience. The original is for your own records.

IT IS AGREED THAT THE FEE PAID INCLUDES ALL EMPLOYER RESPONSIBILITIES, INCLUDING, BUT NOT LIMITED TO, FEDERAL, STATE, LOCAL TAXES, UNION FEES, WORKMEN'S COMPENSATION, ETC.

Sincerely,

James Harrell

In signing this contract, I agree that I am being engaged as an independent contractor. I am aware that RAY BLOCH PRODUCTIONS, INC. issues 1099's. For that purpose, I am inserting my Social Security Number.

AGREED TO AND ACCEPTED BY: _____

DATE: _____ S.S.#: _____

Encl.

Exhibit #112

INC

RODUCTIONS

ENTERTAINMENT ACT CONTRACT

This Contract, made this 5th day of August, 19 81 between Ray Hair (hereinafter called "Entertainment Act"), and Entertainment productions

For valuable consideration, Entertainment Act hereby agrees to perform services for Entertainment Productions under the following terms and conditions

1. Name and Address of Place of Engagement: Doubletree Inn - North Central Expressway - Dallas, Texas. moved to Arrowood
2. Name of Entertainment Act: Yazoo.
3. Type of Engagement: Christmas Dance.
4. Date(s) Starting and Finishing Time of Engagement: December 12, 1981 - 8:00 PM to 12:00 Midnight.
5. Consideration Payable to Entertainment Act $ 800.00
6. Terms of Payment: Check will be given to you the night of the engagement.
7. Additional Terms and Conditions. Performing for Dallas Association of Petroleum Landmen.

8. Entertainment Act acknowledges that it will perform the services under this Contract as an independent contractor and that Entertainment Act will be responsible for withholding and paying to the Government any income, unemployment or social security taxes payable in connection herewith. Entertainment Act hereby agrees to indemnify and hold Entertainment Productions harmless against any and all liability which it may incur in connection with its failure to report and pay withholding, unemployment and social security taxes on behalf of the Entertainment Act.

9. The person signing this Contract on behalf of the Entertainment Act hereby represents that he has authority (a) to sign on behalf of Entertainment Act, and (b) to bind Entertainment Act to perform as required herein.

10. The additional terms located on the reverse side of this Contract are hereby incorporated by reference as if fully stated herein.

Ray Hair
Name of Entertainment Act

By Ray Hair

P. O. Box 2535
Address

Denton, Texas 76201
City State Zip Code

Telephone Number 817 / 383-2790

ENTERTAINMENT PRODUCTIONS, INC.

By Ray Michael Sanders
Acting As President

2046 ANDJON • DALLAS, TEXAS 75220 • 214/350-4074

#113

Additional Terms and Conditions

11 **Governing Law.** This Contract is being executed and delivered and is intended to be perfo. the State of Texas and the substantive laws of the State of Texas shall govern the validity, constru. enforcement, and interpretation of this Contract

12 **Entirety and Amendments.** This Contract embodies the entire agreement between the parties, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing, executed by the party to be charged therewith.

13 **Parties Bound.** This Contract shall be binding on and inure to the benefit of Entertainment Act and. Entertainment Productions and their respective successors, assigns, executors, administrators, heirs, and personal representatives

14 **Invalid Provisions.** If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Contract.

15. **Equipment.** Entertainment Productions shall make arrangements with the Place of Engagement for staging, extra lighting, and sound equipment, etc

16. **Inability to Perform.** The obligation of the Entertainment Act to perform is subject to failure to perform for reasons of sickness, accidents, riots, strikes, epidemics, Acts of God, or any other legitimate conditions beyond its control, provided that if Entertainment Act has more than one member and if a member is unable to perform, Entertainment Act shall use its best efforts to supply a substitute member acceptable to Entertainment Productions.

17 **Refund of Consideration.** Entertainment Act agrees to refund to Entertainment Productions a. consideration paid under this Contract if Entertainment Act is unable or fails to perform as required herein for reasons other than the breach by the Client of the Contract between the Client and Entertainment Productions or the breach by Entertainment Productions of this Contract.

18. **Deferral of Payment of Consideration.** Notwithstanding Sections 5 and 6 hereof, Entertainment Act agrees that it shall not be entitled to demand payment of the consideration due to it under the terms of this Contract from Entertainment Productions until such time as Entertainment Productions shall receive such consideration from the Client. Should Entertainment Productions find it necessary to file suit against Client for consideration for the services of the Entertainment Act, Entertainment Act shall not be entitled to payment from Entertainment Productions until final determination of such suit against the Client in favor of Entertainment Productions. In the event that Entertainment Productions shall recover only a portion of the consideration due to Entertainment Productions under the contract between Client and Entertainment Productions, the amount payable to Entertainment Act under this Contract shall bear the same ratio to the consideration specified in Section 5 of this Contract as the amount paid by the Client bears to the total amount payable by Client under the terms of the Contract between Entertainment Productions and Client.

19 **Attorney's Fees.** If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

between Raymond M. Hair Jr. d/b/a Yasoo (hereunder referred to as "ARTIST") and El Fenix Corporation (hereunder referred to as "PURCHASER").

It is mutually agreed between the parties as follows:

The PURCHASER hereby engages the ARTIST and the ARTIST hereby agrees to perform the engagement hereinafter provided, upon all of the terms and condition herein set forth:

1. PLACE OF ENGAGEMENT Don Miguels Restaurant & Bar

Exact address 5280 Beltline Road, Addison Texas

2. DATE(s) OF ENGAGEMENT Monday, May 3, 1982 through Saturday, May 29, 1982

3. HOURS OF ENGAGEMENT Monday through Saturday, 9:30 pm. to 1:30 am.

5. FULL PRICE AGREED UPON $1850.00 per week (eighteen hundred and fifty dollars a week)

All payments shall be paid by certified check, money order, bank draft, cash or corporation check as follows:

(a) $_____ shall be paid by PURCHASER to and in the name of ARTIST'S agent. _____ NOT later than _____

(b) $ 1,850.00 shall be paid by PURCHASER to ARTIST not later than Monday (the following week)

6. SPECIAL PROVISIONS:
1) The musicians shall play 45 minutes and take a 15 minute break.
2) The group is made up of 5 musicians Monday through Thursday and 7 musicians Friday and Saturday.
3) The management reserves the right to approve any musician substitutes.
4) Don Miguel Restaurant & Bar is not responsible for musicians instruments.
5) A prorated amount of money will be deducted from artists contract on any musician who does not play during scheduled time.
6) Don Miguel Restaurant & Bar has the option to have all 7 musicians on a 6 day week for $2100.00 per week if they so desire.

All copies must be returned

to _____

by _____

(ARTIST)
By: Raymond M. Hair Jr.

(PURCHASER) El Fenix Corporation
By: _____
Address: _____

Exhibit #114

Contract: April 10, 1982

ADDENDUM TO EL FENIX CORPORATION AND Raymond M. Hair Jr. d/b/a Yano

"It is agreed and understood by and between the parties hereto that this Agreement is not subject to contributions to the A. F. M. & E. P. W. Pension Welfare Fund, or any other pension fund, and Raymond M. Hair Jr. warrants that Operator is in no way obligated to make any contributions either directly to such fund, or to anyone on behalf thereof."

"It is understood and agreed by and between the parties hereto that, at all times during the term hereof, Raymond M. Hair Jr. shall be, and act as, an Independent Contractor. Nothing herein shall be construed to constitute Raymond M. Hair Jr. as agents or employees of Operator, and neither Raymond M. Hair Jr. shall have any authority whatsoever to bind Operator in any manner whatsoever.

" Raymond M. Hair Jr. shall ensure that his/her employees, or other persons within or under his/her control, comport themselves in an orderly manner at all times when on Operator's premises. Intoxication or the use of obscene or lewd language, or gesture, within the sight or hearing of patrons of Operator's premises, by Leader or agent or employee of Leader, shall be cause for immediate and summary cancellation of this Agreement at the sole and absolute discretion of Operator, without recourse by Leader or his/her agents or employees."

"Operator shall have the right to request changes in the repertoire performed by Leader, and in the manner of performance. Leader agrees that, upon such request by Operator, he shall comply forthwith with such request by the Operator. It is further understood and agreed by and between the parties hereto that the permance of this Agreement by Leader is expressly made subject to proven detention by sickness, and that neither party shall have recourse against the other for non-performance of this Agreement occasioned by accidents, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the parties hereto."

" Raymond M. Hair Jr. further agrees to comply with all applicable laws respecting employment, whether municipal, county, state or federal."

"To the extent permitted by applicable law, nothing in this Agreement shall ever be so construed as to interfere with any duty owing by any musician performing hereunder to the Federation pursuant to its Constitution, By-Laws, Regulations and Orders."

"Raymond M. Hair Jr, will take his/her normal breaks and management has the right to have Raymond M. Hair Jr. take additonal breaks whenever management feels it is neccessary."

ENGAGEMENT CONTRACT (Live Attraction)

This contract made this 28th day of June, 1983 between Metro Inns, Inc. as agent for Fort Worth Hilton (the "Owner") and Judy and Johnny Band (the "Artist").

1. NAME AND ADDRESS OF PLACE OF ENGAGEMENT: The Artist hereby agrees to perform as hereinafter specified at Fort Worth Hilton Waterworks Lounge, 1701 Commerce St., Fort Worth, Texas 76102

2. DATES AND TIMES OF PERFORMANCES. The Artist shall perform as hereinafter specified on the following dates and at the times specified on each such date: September 3, 1984 through December 1, 1984 - Monday thru Thursday 9:00 p.m. to 1:00 a.m. Friday and Saturday 9:00 p.m. to 1:30 a.m.

3. MEMBERS OF ARTIST: Each person, including the leader, comprising the Artist is as follows:

Such leader shall hire any required replacements and any required musicians that have not been hired at the date hereof.

4. TYPE OF PERFORMANCE. Artist shall provide the following personal services as entertainers (specify whether singer, band, dance, stage show, banquet, etc.): Dance Band

5. COMPENSATION. Owner shall pay Artist for services pursuant to this Agreement as follows (include time and amount of payment and room and food allowance if provided): $1,800 per week to be paid at end of performance on Saturday plus one sleeping room to be complimentary.

The leader shall distribute such cash amounts among the persons comprising the Artist as provided below and provide the Owner with receipts therefor from such persons.

Name	Amount

EXHIBIT
#115

7. PUNCTUALITY. The Artist agrees to appear punctually at the hour appointed for all rehearsals and performances.

8. NOT TO PERFORM ELSEWHERE. During the period of engagement in this Contract, the Artist shall not at any time perform at any place except as specified below without the prior written consent of Owner See Addendum

9. EQUIPMENT. Other than the existing sound system of the place specified in Paragraph 1 hereof, Owner shall not be obligated to supply anything to be utilized by the Artist in performing under this Contract. The Artist agrees that such existing sound system is adequate for performance under this Contract and any extra sound equipment or other equipment to be utilized in such performance will be obtained and paid for by the Artist.

10. CALAMITY. If it is impossible or impractical for the Artist to give a performance at any of the times specified herein because of sickness, accident, calamity, fire or any other similar cause, the Artist shall not be entitled to receive any compensation for any performance so prevented, and a proportionate part of the compensation provided for in this Contract shall be deducted.

11. CANCELLATION. If Artist fails to perform or otherwise comply as provided herein, Owner may immediately terminate this contract without notice, and the Artist shall be entitled only to such proportionate part of the salary specified herein as the Artist shall actually have earned prior to such termination. In addition, Owner may cancel this Contract at any time by giving Artist 30 days prior written notice thereof. If mailed, such notice shall be deemed to have been given when deposited in the United States mail, postage prepaid, addressed to Artist at the address specified below.

12. CONTRACT. Artist warrants that its conduct while on the premises of Owner and its performance here under (i) shall in all respects comply with its representations made as an inducement to Owner's entering this contract and (ii) shall not violate any applicable federal, state, local or other governmental law, regulation, code or ordinance.

13. TAXES. The relationship of Artist (and each member thereof) to Owner shall be that of an independent contractor. Nothing herein shall be deemed to make Artist an employee of Owner for purposes of paying FICA, FUTA and federal and state unemployment and witholding taxes, the payment of which shall be the sole responsibility of Artist.

14. BINDING EFFECT. This Contract shall be binding on each member of Artist (whether now or hereafter a member thereof). The party executing this Contract on behalf of Artist represents that each member of Artist has agreed to be bound hereby.

15. LIABILITY OF OWNER. The Owner shall have no liability with respect to the theft, damage or other loss of the instruments or equipment of the Artist notwithstanding the fact that the Owner may designate an area on Owner's premises where such instruments and equipment may be stored or deposited. The Artist shall be solely responsible for such instruments and equipment and the safety thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the date first above written.

OWNER

BY _____

JOHN J. MC DONALD, GENERAL MANAGER

1701 Commerce St.

Street Address

Fort Worth, Texas 76102

City State Zip Code

817/335-7000

Telephone Number

ARTIST

BY _____

JOHNNY CARROLL

Rt. 1, Box 47

Street Address

Godley, Texas 76044

City State Zip Code

1-389-3290

Telephone Number

Notwithstanding the provisions of this Contract to the contrary, the parties hereto mutually agree as follows:

1. The "employees" (and musicians), as the term is used in the Contract, are independent contractors and sh. .l be deemed and treated as such. Such employees shall be liable for payment of FICA, FUTA and federal and state unemp oyment, withholding and other employee taxes.

2. The Employer shall have no supervisoin and/or control over the performance of serivces by the musicians pursuant to this contract and the leader is not the agent of Employer.

3. The musicians warrant that their performance and their conduct while on the premises of Employer shall in all respects comply with the representations made as an inducement to the execution of this Contract and shall not violate any applicable federal or state law or regulation or municipal code, ordinance or regulation.

4. If the musicians fail to perform or otherwise comply as provided herein, Employer may immediately terminate this Contract without notice, and the mucisians shall be entitled only to such proportionate part of the compensation specified herein as the mucisians shall actually have earned prior to such termination. In addition, Employer may cancel this Contract at any time by giving the musicians 3 days prior written notice thereof.

5. The Employer shall have no liability with respect to the theft, damage or other loss of the instruments or equipment of musicians engaged by Employer pursuant to the Contract, notwithstanding the fact that Employer may designate an area on the premises where such instruments and equipment may be stored or deposited. The musicians shall be solely responsible for such instruments and equipment and the safety thereof.

6. The musician agrees to attend rehearsals at reasonable times mutually agreeable to musician and employer.

7. The musician hereby agrees to appear punctually at the hour appointed for all rehearsals and performances.

8. During the period of engagement specified in this Contract, the musician shall not at any time perform at any place except as specified below without the prior written consent of Owner _____

9. If it is impossible or impractical for the musician to give a performance at any of the times specified herein because of sickness, accident, calamity, fire or any other similar cause, the musician shall not be entitled to receive any compensation for any performance so prevented, and a proportionate part of the compensation provided for in this Contract shall be deducted.

10. This Contract shall be binding on each member of Artist (whether now or hereafter a member thereof). The party executing this Contract on behalf of Artist represents that each member of Artist has agreed to be bound hereby.

OWNER

By _____

ARTIST

By _____

11. The parties agree that on special occasions that the Artists (Judy & Johnny) will be requested to play special events and with a minimum (2) week notice will inform Management and, in addition, will provide acceptable replacements and arrange for payment direct.

METRO HOTELS, INC.

METRO ENTERTAINMENT SERVICES
6060 North Central Expressway, Suite 122
Dallas Texas 75206
(214) 369-9943

THIS AGREEMENT is made this ____ day of _____ 198__ between _____ hereinafter referred to as ARTIST(S) and _____ hereinafter referred to as PURCHASER, who is located at _____

IT IS MUTUALLY AGREED AS FOLLOWS:

1 ARTIST(S) will furnish and PURCHASER will accept for the period of the engagement hereinafter described, the following services _____ at the _____ Hotel commencing (Day) _____ 198__ ending (Day) _____ 198__

2 During the period of engagement ARTIST(S) group shall consist of not less than _____ members, as follows (Names)

3 PURCHASER reserves the right to cancel this engagement if there are any changes in above personnel that are not previously approved in writing

4 In consideration for the above services to be performed during the term of the Agreement PURCHASER shall pay ARTIST(S) as follows

5 There will be absolutely no advances or draws against payments

6 Remarks

7 It is understood and agreed that ARTIST(S) shall perform as an independent contractor and not as an employee or agent of the PURCHASER and, as such, ARTIST(S) shall have the sole and exclusive control over the means, method and details of fulfilling ARTIST(S) obligations hereunder, except for the performance times which, it is agreed, are within the sole discretion of the PURCHASER

8 ARTIST(S) agrees to perform and discharge all obligations hereunder as an independent contractor under any and all laws whether existing or enacted in the future, in any pertaining to the engagement under this Agreement including, but not limited to Social Security laws, Workman's Compensation insurance, income taxes, State Employment insurance taxes or contributions, and public liability insurance. It is further agreed that the ARTIST(S) will indemnify and hold PURCHASER harmless from and against any and all claims losses, cost (including attorney's fees) and losses whatsoever arising in any way out of ARTIST(S) performance under this Agreement

9 Commencement of engagement together with physical delivery of this contract to ARTIST(S) or his representative shall be deemed an acceptance of all terms listed above, by the PURCHASER of the entertainment

Exhibit #116

[illegible], INC.

This Agreement shall be governed by the laws of the State of . and any and all disputes arising hereunder shall be settled by the courts of said State. In the event that ARTIST(S) breach any of the covenants contained in this Contract and Purchaser is forced to obtain legal or injunctive relief ARTIST(S) shall be liable for all of PURCHASER'S costs, including without limitation, reasonable attorney's fees, incurred in obtaining and enforcing said relief

1 ARTIST(S) agrees to set up no later than 2:00 p.m. on opening day of performance. Any exception to this will be covered by a phone call to the general manager and/or food and beverage director only

2 ARTIST(S) must provide their own quality sound system unless otherwise instructed. Speakers must be on stage whenever possible. Leader assumes full liability for any injury to patrons due to equipment placed on dance floor or surrounding areas

3 All volume levels shall be established no later than the conclusion of the first evening's performance between the leader and the lounge manager. PURCHASER reserves the right to cancel this engagement and all future engagements at the end of any evening when established levels are infracted by ARTIST(S).

4 Group members shall be suitably attired both on stage and during off-working hours in the Hotel and shall at all times conduct themselves in a responsible, courteous and professional manner

5 Drinking or smoking on stage shall be strictly prohibited

6 ARTIST(S) who are members of unions or guilds, which may include the leader and/or member of this unit, agree to accept sole responsibility for complying with the rules and regulations of said union or guild of which they may be members

7 The ARTIST(S) are independent contractors and shall be deemed and treated as such. Such employees shall be liable for payment of FICA, FUTA and federal and state unemployment, withholding and other employee taxes

8 The ARTIST(S) warrant that their performance and their conduct while on the premises of PURCHASER shall in all respects comply with the representations made as an inducement to the execution of this Contract and shall not violate any applicable federal or state law or regulation or municipal code, ordinance or regulation

9 ARTIST(S) agrees during the term of this Contract not to accept directly or indirectly, without the prior written consent of PURCHASER any employment with, or render services to, any competitor of PURCHASER, or take any action inconsistent with the terms of this Contract

0 If the ARTIST(S) fail to perform or otherwise comply as provided herein, PURCHASER may immediately terminate this Contract without notice and the ARTIST(S) shall be entitled only to such proportionate part of the compensation specified herein as the ARTIST(S) shall actually have earned prior to such termination. In addition, PURCHASER may cancel this Contract at any time by giving the ARTIST(S) three days prior written notice thereof

1 The PURCHASER shall have no liability with respect to the theft, damage or other loss of the instruments or equipment of ARTIST(S) engaged by PURCHASER pursuant to the Contract, notwithstanding the fact that PURCHASER may designate an area on the premises where such instruments and equipment may be stored or deposited. The ARTIST(S) shall be solely responsible for such instruments and equipment and the safety thereof

2 The ARTIST(S) agrees to attend rehearsals at reasonable times mutually agreeable to ARTIST(S) and PURCHASER

3 The ARTIST(S) hereby agrees to appear punctually at the hour appointed for all rehearsals and performances

[illegible]

24 During the period of engagement specified in this Contract, the ARTIST(S) shall not at any time perform at any place except as specified below without the prior written consent of the PURCHASER

25 If it is impossible or impractical for the ARTIST(S) to give a performance at any of the times specified herein because of sickness, accident, calamity, fire or any other similar cause, the ARTIST(S) shall not be entitled to receive any compensation for any performance so prevented, and a proportionate part of the compensation provided for in this Contract shall be deducted

26 This Contract and the rights and obligations arising hereunder are personal to ARTIST(S) and PURCHASER and may not in any way be assigned by ARTIST(S)

27 This Contract contains all of the agreements and conditions made between the parties hereto with respect to the subject matter hereof and may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective legal representatives.

28 This Contract shall be binding on each member of the ARTIST(S) (whether now or hereafter a member thereof) The party executing this contract on behalf of ARTIST(S) represents that each member of ARTIST(S) has agreed to be bound hereby.

29 The ARTIST(S) must furnish a Certificate of Insurance showing proof of automobile liability insurance, public liability insurance and worker's compensation insurance. The liability insurance must have minimum limits of 100,000/300,000 bodily injury and 50,000 property damage and the worker's compensation coverage should be in limits as required by the State Statute and $100,000. Employer's liability. The Certificate of Insurance should provide the hotel with ten (10) days notice of change or cancellation. The Certificate must be received by the hotel prior to any rehearsals or performances

30 A 15% fee shall be deducted from the face of contract by PURCHASER and paid directly to Metro Entertainment Services. Said deduction is authorized by ARTIST(S) to be withheld by PURCHASER on a weekly basis to be forwarded weekly to Metro Entertainment Services.

AGREED TO AND ACCEPTED:

PURCHASER'S NAME	LEADER'S NAME (Printed)
Authorized Signature	Leader's Signature
Address	Address
City State Zip	City State Zip
Telephone	Telephone
Booking Agent Telephone	SS # or Fed ID #

CONTRACTS MUST BE SIGNED BY ARTIST(S) OR HIS AUTHORIZED REPRESENTATIVE AND RETURNED WITHIN DAYS OF POSTMARK OR THIS ENGAGEMENT COULD BE CONSIDERED NULL AND VOID

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

CASE NO.	DATE FILED
16-CA-11696	6/15/84

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. NAME OF EMPLOYER: Metro Entertainment, Inc.

b. NUMBER OF WORKERS EMPLOYED: 13000

c. ADDRESS OF ESTABLISHMENT (street and number, city, State, and ZIP code): Suite 860 75206, 6060 North Central Expressway Dallas, TX

d. EMPLOYER REPRESENTATIVE TO CONTACT: John Manderfeld

e. PHONE NO.: 214-361-9997

f. TYPE OF ESTABLISHMENT (factory, mine, wholesaler, etc.): Hotel

g. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Service

h. THE ABOVE-NAMED EMPLOYER HAS ENGAGED IN AND IS ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(a), SUBSECTIONS (1) AND (3) 8(5) (list subsections) OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about April 30, 1984, it, by its officers agents and representatives, dominated and contributed financial support to a labor organization known as Metro Entertainment Services, and at all times since said date has dominated and contributed financial support to Metro Entertainment Services.

Since On or about August 8, 1983 and at all times thereafter, it by its officers, agents, and representatives has refused to bargain collectively with Fort Worth Professional Musicians Association, Local 72 AFM, a labor organization chosen by a majority of its employees in an appropriate unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment by refusing to meet and negotiate a collective bargaining agreement.

BY THE ABOVE AND OTHER ACTS THE ABOVE-NAMED EMPLOYER HAS INTERFERED WITH, RESTRAINED, AND COERCED EMPLOYEES IN THE EXERCISE OF THE RIGHTS GUARANTEED IN SECTION 7 OF THE ACT.

3. FULL NAME OF PARTY FILING CHARGE (if labor organization, give full name, including local name and number): Ray Hair, Fort Worth Professional Musicians Association Local 72AFM

4a. ADDRESS (street and number, city, State, and ZIP code): 3458 Blue Bonnet Circle Fort Worth, Texas 76109

4b. TELEPHONE NO.: 817-927-8478

5. FULL NAME OF NATIONAL OR INTERNATIONAL LABOR ORGANIZATION OF WHICH IT IS AN AFFILIATE OR CONSTITUENT UNIT (to be filled in when charge is filed by a labor organization): American Federation of Musicians

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: (signature of representative or person filing charge) Ray Hair — President-Secretary (title, if any)

Address: 3458 Blue Bonnet Circle Ft Worth, TX 76109 817-927-8478 (telephone no.) 6/15/84 (date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT # 117

Metro Hotels, Inc.
Case No. 16-CA-11694

July 11, 1984

ATTACHMENT "A"

The investigation failed to establish that Metro Hotels, Inc., had coerced or restrained its employees in the exercise of their Section 7 rights, dominated and/or contributed financial support to a labor organization known as Metro Entertainment Services, or refused to meet and negotiate a collective bargaining agreement. Rather, the investigation established that Local 72AFM is not the recognized or certified bargaining agent for any employees of Metro Hotels and is not a party to any collective bargaining agreement with that corporation. Further, no demand to bargain was made until the day this charge was filed. There was no evidence presented or adduced to support the allegations that any Metro Hotel employee has been coerced or restrained within the meaning of the Act. Further, the evidence does not support the contention that Metro Entertainment Services exists in whole, or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, or rates of pay. Rather, the evidence reflects that Metro Entertainment Services was created for the express purpose of securing entertainment services for Metro Hotels, Inc. Since Metro Entertainment Services is not a labor organization within the meaning of Section 2(5) of the Act, there can be no violation of Section 8(a)(2). Therefore, I am refusing to issue complaint in this matter.

EXHIBIT # 114

NATIONAL LABOR RELATIONS BOARD

PETITION

Case No. 16-RC-8705

Date Filed 7/28/84

The Petitioner alleges: that the following circumstances exist and request that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition: (If box RC, RM, or RD is checked and a charge under the National Labor Relations Act has been filed involving the employer named herein, the statement following the description of the type of petition shall not be deemed made.)

- [X] RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] RD-DECERTIFICATION - A substantial number of employees wish that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] CLARIFICATION - A labor organization is currently recognized by employer, but Petitioner seeks clarification of placement of certain employees. (Check one)
  - [ ] Is not presently certified
  - [ ] Is not presently recorded in Case No. _____.
- [ ] AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

2. Name of Employer	Employer Representative to Contact	Telephone No.
Metro Motels, Inc.	John Manderfeld	(214) 361-9397

3. Address(es) of Establishment(s) involved (Street and number, city, State, and ZIP Code)
6060 N. central Expressway, Suite 860 Dallas, TX 75206

4a. Type of Establishment (Factory, mine, wholesaler, etc.)	4b. Principal Product or Service
Motel	Service

5. Unit Involved (In RC petitions, describe PRESENT bargaining unit and attach description of proposed clarification.)

Included: All Musicians employed by the employer at its 1701 Commerce Fort Worth, Texas hotel.

Excluded: All other employees including supervisors as defined in the Act.

5a. Number of employees in unit:
Present: 4
Proposed (per RC/AC):

5b. Is this petition supported by 30% or more of the employees in the unit?
[X] Yes [ ] No
(Not applicable to RM, RC, and AC)

6a. [ ] Request for recognition as Bargaining Representative was made on July 3, 1984 (Month, day, year) and Employer declined recognition on or about NO RESPONSE RECEIVED (If no reply received, so state)

6b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

7. Recognized or Certified Bargaining Agent (If none, so state)

Name	Affiliation
None	
Address	Date of Recognition or Certification

8. Date of expiration of current contract, if any (Month, day, and year):

9. If you have checked box 6a or 6b above, show also the date of execution of agreement covering unit (Month, day, and year):
4

10a. Is there now a strike or picketing at the employer's establishment(s) involved? Yes ___ No X

10b. If so, approximately how many employees are participating?

10c. The employer has been picketed by or on behalf of _____ (Labor organization) a labor organization, since _____ (Month, day, year)

11. Organizations or individuals other than petitioner and other than those named in items 7 and 10c, known to claim recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in Item 5 above. (If none, so state.)

Name	Affiliation	Address	Basis of Claim (Supported only if Petition is filed by Employer)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Fort Worth Professional Musicians Association Local 72 AFM
By Raymond M. Hair (Signature of representative or person filing petition) President-Secretary (Title or post)
Ray Hair
Address 3485 Blue Bonnet Circle Fort Worth, TX 76109 (817) 927-8478

EXHIBIT # 119

WILLFULLY MAKING A FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

AMERICAN FEDERATION OF MUSICIANS, LOCAL 72

I, Johnny Carroll, Rt. 1-Box 47, Godley, Texas 76044, employee of METRO INNS, INC., Fort Worth, Texas, employed as a musician, hereby authorize the American Federation of Musicians and the Fort Worth Musicians Union, AFM Local #72, to represent me for the purpose of collective bargaining, respecting rates of pay wages, hours of employment, or other conditions of employment, in accordance with applicable law.

4/ 15/84
date

Johnny Carroll
signature

Exhibit #120

AM AN FEDERATION OF MUSICIANS, L 72

I, Judy Lindsey, 1700 Parkridge Terrace, Arlington, Texas 76012, emlpoyee of METRO INNS, INC., Fort Worth, Texas, employed as a musician, hereby authorize the American Federation of Musicians and the Fort Worth Musicians Union, AFM Local #72 to represent me for the purpose of collective bargaining, respecting rates of pay wages, hours of employment, or other conditions of employment, in accordance with applicable law.

6/1/84
date

Judy Lindsey
signature

EXHIBIT
#121

AMERICAN FEDERATION OF MUSICIANS, LOCAL 72

I, Mark Anthony (RIEDERER), 2303 Monte Carlo #B, Arlington, Texas 76015, employee of METRO INNS, INC., Fort Worth, Texas, employed as a musician, hereby authorize the American Federation of Musicians and the Fort Worth Musicians Union, AFM Local #72, to represent me for the purpose of collective bargaining, respecting rates of pay wages, hours of employment, or other conditions of employment, in accordance with applicable law.

date _____ signature _____

Exhibit #122

AMERICAN FEDERATION OF MUSICIANS, LOCAL 72

I, John Hogan, _____,

employee of METRO INNS, INC., Fort Worth, Texas, employed as a musician, hereby authorize the American Federation of Musicians and the Fort Worth Musicians Union, AFM Local #72, to represent me for the purpose of collective bargaining, respecting rates of pay wages, hours of employment, or other conditions of employment, in accordance with applicable law.

6/15/84
date

John Hogan
signature

Exhibit
#123

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
16-CA-11778	8/3/84

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: METRO HOTELS, INC. and MetrQ Hotels Entertainment Services, Inc. (Joint Employers)

b. Number of workers employed: 4

c. Address (street, city, state, ZIP code): 6060 N. Central Expwy., Suite 860 Dallas, Texas 75206

d. Employer Representative: John Manderfeld

e. Telephone No.: (214) 363-9997

f. Type of Establishment (factory, mine, wholesaler, etc.): Hotel

g. Identify principal product or service: Hotel service

h. The above named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3 of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (list specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 2, 1984, the above named employers discriminated against their employees (members of The Judy-John Band) as a result of their activities on behalf of the below named labor organization and to discourage membership therein.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Fort Worth Professional Musicians Association, Local 72, AFM

4a. Address (street and number, city, state, and ZIP code): 3458 Bluebonnet Circle, Ft. Worth, Texas 76109

4b. Telephone No.: 927-8478

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

American Federation of Musicians

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By: HICKS, GILLESPIE, JAMES & LESSER (Signature of representative or person making charge) Attorney (Title, if any)

Address: 1141 W. Mockingbird Lane, Suite 704E, P. O. Box 47222, Dallas, Texas 75247 (214) 630-8621 (Telephone No.) 8/3/84 (Date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

EXHIBIT

LETTER OF AGREEMENT

DIXIELAND BAND and SIX FLAGS OVER TEXAS 1984

This document will serve as a Letter of Agreement between Texas Flags LTD., a limited partnership of which Six Flags Over Texas, Inc. is general Partner, herein referred to as "FLAGS", manager and operator of Six Flags Over Texas, and ALLAN MORISSEY AND THE DIXIELAND BAND, a group of musicians, herein referred to as "ALLAN MORISSEY".

1. Allan Morissey shall produce, present, and perform a roving dixieland band show at Flags during the 1984 season beginning May 6, 1984 with the last day being September 3, 1984.
2. Allan Morissey shall provide necessary equipment to perform the roving dixieland band show.
3. Allan Morissey shall perform from 9:30 a.m. to 5:30 p.m. each day. Performances will be at times and locations specified by Flags. There will be no performance on one day per week to be designated by Flags. The duration of each performance of the show shall be between thirty (30) and forty-five (45) minutes in length.
4. Flags shall pay to Allan Morissey an hourly rate of $6.00 per member of the five (5) member band. In the event there is less than five members per show Six Flags shall pay $6.00 per hour less per band member missing. Band members will be paid for eight (8) hours daily less forty-five (45) minutes for lunch break. The first check will be made available Friday, May 11, 1984. Allan Morissey shall bear all payroll costs.

EXHIBIT #125

5. Flags shall have the option, at its sole discretion, to cancel this Letter of Agreement with (2) weeks written notice by showing good cause therefor, during the 1984 operating season.

6. Allan Morissey shall hold Flags harmless of and from any claims asserted by an employee of Allan Morissey and from any claims asserted by third parties by reason of any contract, act of omission by Allan Morissey, its agents, employees or others for whom it is responsible. Further, it is expressly understood and agreed that Allan Morissey agrees to indemnify and hold Flags harmless for the consequences of the negligent conduct of Flags and the non-negligent conduct of Allan Morissey.

7. Allan Morissey shall, at his own expense, obtain all necessary licenses, permits, certificates or other authorizations required in connection with the production of the dixieland band show, including a Certificate of Insurance of Worker's Compensation with statutory limits.

8. Allan Morissey agrees not to use the names "Six Flags" or "Six Flags over Texas" or any deriviation thereof without the prior written consent of Flags.

9. Allan Morissey shall dress in wardrobe provided by Flags at Flags' expense.

10. Allan Morissey's personnel shall be governed by the same rules of personal conduct, dress and grooming as are Flags' personnel and Allan Morissey shall, upon written request of Flags, discontinue the use of any of its employees in connection with the Show's production of performance upon showing good cause therefor.

11. Allan Morissey shall provide at Allan Morissey's expense suitable substitutes for absent band members. Substitutes shall be governed by the same rules of personal conduct, dress and grooming as are Flags personnel. Flags shall have the right to reject any substitute provided by Allan Morissey upon showing good cause therefor.

12. The show material shall be in keeping with the desired image of Flags; such material to be reviewed and approved by Flags prior to commencement of show production. Allan Morissey agrees the form, content and performance of the show shall be in good taste and shall never contain any profane, obscene, or objectionable material. Flags shall have the right to raise reasonable objection as to compatibility with the image and reputation of the park as a family-oriented amusement center, and Alan Morissey shall upon notice by Flags delete any material which Flags considered objectionable, profane or obscene.

Flags shall at all times have the right of final approval as to form and content of all shows performed by Allan Morissey.

IN WITNESS WHEREOF, the parties hereto have duly executed and affixed their hands on the day and year hereon written.

"Allan Morissey"

DIXIELAND BAND

By: _____
Allan Morissey

"Flags"

TEXAS FLAGS LTD.
BY: SIX FLAGS OVER TEXAS, INC.
General Partner

By: _____
Bob Bennett
Vice President & General Manager

FORT WORTH PROFESSIONAL MUSICIANS ASSOCIATION
3458 BLUEBONNET CIRCLE • FORT WORTH, TEXAS 76109

August 16, 1984

RAYMOND M. HAIR, JR.
President Secretary
927-8478

Six Flags Over Texas, Inc.
U. S. Corporation Company
Littlefield Building
Austin, Texas 78701

Certified Mail

Gentlemen:

This letter is to be considered formal notice and as a formal demand that you recognize the Fort Worth Professional Musicians Association as the exclusive bargaining agent for all musicians who perform musical services at Six Flags Over Texas, and that you immediately bargain with respect to all mandatory bargaining subjects in connection with such musicians' present and future employment by Six Flags Over Texas, Inc., and Texas Flags, LTD.

This is to be considered an ongoing demand.

I will be available to meet with your representatives at 1:00 P. M., August 30, 1984, at 3458 Blue Bonnet Circle, Fort Worth, Texas. If the time and location are inconvenient, please contact us before August 24, 1984.

Very truly yours,

Raymond M. Hair, Jr., President
Fort Worth Professional Musicians
Association, Local 72, A. F. of M.

RMH/hd

"Music is the Universal Language of Mankind"

EXHIBIT II/26

SIX FLAGS
OVER TEXAS

August 24, 1984

Fort Worth Professional
Musicians Association
3458 Bluebonnet Cir.
Ft. Worth, TX 76109

Dear Mr. Hair,

Please be advised that we will not be attending your requested meeting, as Six Flags Over Texas does not at this time carry any musicians on our payroll, nor do we plan on doing so in the future. Musicians are either provided by the appearing name entertainment themselves (per contract) or on a group contact basis.

Sincerely,

LARRY COX
Director of Administration

LC/bh

EXHIBIT
P-127

Exhibit # 2-3A

Actors' Equity Association

165 WEST 46th STREET • NEW YORK, N.Y. 10036 • TELEPHONE (212) 869-8530

September 25, 1984

Honorable William L. Clay, Chairman
Subcommittee on Labor-Management Relations
Committee on Education and Labor
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Clay:

On behalf of the Actors Equity Association, a union of over 30,000 professional actors, singers, dancers and stage managers who work in the "live" dramatic and musical theater, I write to state our vigorous support for the Performing Arts Labor Relations Amendments (H.R. 1758 and H.R. 5107).

However, because of the nature of the live theater business, the need for the amendment to section 8(f) of the National Labor Relations Act (NLRA), which would be made by section 3(a) of the bill, is of particular urgency. This amendment to the NLRA would extend to the live entertainment industry the same procedures now accorded to the construction industry with regard to pre-hire and union shop agreements.

I believe this is wholly justified and in accordance with national policy. The members of the Actors Equity Association and their employers face the same employment patterns which exist in the construction industry and led to the 1959 Landrum-Griffin amendment to section 8(f) of the NLRA. Employment is largely casual and usually of very short duration. The length of a professional performer's employment in the theater most often depends on the box office appeal of the production in which he or she appears. Many plays and musical productions close the day after they open or shortly thereafter. Most jobs therefore are of less than 30 days duration.

Because of the short term life of most enterprises in the theatre industry the use of the pre-hire agreement is vital if needed predictability and stability in employer-employee relations is to be achieved.

As you may know, The League of New York Theatres and Producers - National Association of Legitimate Theatres (the largest association of producers and theater owners in the United States) supported similar amendments to section 8(f) of the NLRA in hearings before your committee in 1966 and 1977. This legislation is badly needed.

Current provisions of the NLRA are clearly at odds with the realities and long standing labor relations practices in the live theater. Enactment of the amendment to section 8(f) as contemplated in H.R. 1758 and H.R. 5107 would be a major step towards improving labor-management relations in the theater.

I would appreciate it if this letter were included in the hearing record on H.R. 1758 and H.R. 5107.

Sincerely,

Alan Eisenberg
Executive Secretary

AE/jt

September 7, 1984

The Honorable William Clay, Chairman
Subcommittee on Labor
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman Clay:

Our names are Willie Nelson, Paul English, Bee Spears, Bobby Nelson, Jody Payne, Grady Martin, and Mickey Raphael. Our group has, for a number of years, provided it's services in performances throughout the United States and many foreign countries under the name "WILLIE NELSON AND FAMILY". We are members of American Federation of Musicians Locals located in Austin, Texas, Fort Worth, Texas, Nashville, Tennessee, and Los Angeles, California.

Life is very difficult for most musicians. If we are to support ourselves and our families in this profession, we need to be able to bargain collectively with those who employ us.

We support Senate Bill 281 and House Resolution 5107 which would assure that musicians have this right, and we urge the Congress to adopt this legislation.

We respectfully request this statement be included in the documents under consideration during the forthcoming Subcommittee hearing respecting this legislation.

Respectfully,

Willie Nelson
225 Main St.
Danbury, CT 06810

Bobby Nelson

Grady Martin

Paul English

Bee Spears

Jody Payne

Mickey Raphael

NATIONAL ASSOCIATION OF ORCHESTRA LEADERS,
New York, NY, September 14, 1984.

Congressman WILLIAM L. CLAY,
Chairman, Subcommittee on Labor Management Relations, Room 2451 Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN: I represent the National Association of Orchestra Leaders (NAOL) whose members since 1959 include 8000 musicians comprising:

(1) Orchestra leaders (employers of musicians);
(2) Partnerships-co-ops (self-employed musical groups);
(3) Singles (individual musicians who always perform alone);
(4) Contractors (usually a performing member of an orchestra (See Group No. 1 above who for agreed extra-pay, hires musicians for the involved orchestra leader employer); and
(5) Supervisors (of musician) within the meaning delineated in the Act.

The basic problems confronting the American Federation of Musicians and its Locals were decided in the following leading cases which among 200 were:

Bartels v. *Birmingham*, (1947) 332 U.S. 126, 67 S.Ct. 1547.
Carroll v. *American Federation of Musicians*, 295 F.2d 484, 486 (2 Cir. 1961).
Carroll et al. v. *American Federation of Musicians of the U.S. and Can. et al.*, (C.A. 2, 1967) 372 F. 2d 155.
Carroll v. *Associated Musicians of Greater New York*, 183 F. Supp. 636 (S.D. N.Y. 1960); affirmed 284 F.2d 91.
Chicago Federation of Musicians, Local 10, Etc., 153 NLRB 68.
Claim of Miller, Appeal of Amigone, (1941) 262 App. Div. 385, 29 N.Y.S. 2d 51.
Cutler v. *American Federation of Musicians of U.S. & Can.*, (C.A. 2, 1963) 316 F.2d 546 cert. den. 375 U.S. 941, 84 S.Ct. 346.
Cutler v. *United States*, (1960) 180 F. Supp. 360.
Mark Hopkins Inc. v. *Cal. Emp. Etc. Com.*, (1948) 86 C.A. 2d 15.
Orchestra Leaders v. *Musical Society*, (U.S.D.C. E.D.PA., 1962) 49 LRRM 3043.
People v. *Grier*, (1942) 53 C.A. Supp. 2d 841, 120 P.2d 207.
Williams v. *U.S.*, (C.A. 7, 1942) 126 F. 2d 129.
Don Glasser, NATL. Assn. Orch. Ldrs. v. *AFM*, (1966) 165 NLRB 110.
Hilton et al. v. *NLRB-AFM LOCAL #468*, (1982) 2d Cir. C.A.
Orchestra Leaders v. *AFM Local 802*, 225 NLRB No. 74—contempt.
Orchestra Leaders v. *AFM Local #802*, 126 NLRB 29—Court enforced.

My client, in addition, participated in some 200 NLRB cases wherein the Board in the vast majority of these cases, ruled in favor of the Association and also found that orchestra leaders, partnerships, singles were independent contractors.

Since 1964 the AFM has, by ten Bills presented to Congress, vainly sought to reverse some of the leading cases listed above as well as practically all of the 200 NLRB cases referred to above.

In other words, the AFM has, since 1964 tried unsuccessfully to obtain from Congress substantially the same new legislation as it now seeks by S. 281 and H.R. 5107. More bluntly the AFM stands before Congress as a loser habituated in that role by ten previous failures. They were: H.R. 11238, May 13, 1964; H.R. 8441, July 20, 1977; H.R. 7401, May 20, 1980; H.R. 7402, May 20, 1980; H.R. 4376, August 4, 1981; H.R. 4377, August 4, 1981; S. 2925, September 8, 1982; H.R. 4377, August 4, 1981; S. 2925, September 17, 1982; H.R. 1758, September 1983; S. 281, September 1983.

For the reasons set forth below, we argue that it should continue to fail with respect to S. 281 and H.R. 5107.

Enactment of those two bills would mean (among other things) as Ned H. Guthrie AFM's National Legislative Director admitted in a letter dated February 25, 1983: "All musicians, including the leader-contractor * * * will be employees * * * of the business entity who purchases their services."

Orchestra leaders, co-ops, singles and contractors whom State and Federal Courts recognize as independent contractors become employees.

By the mere magic of new legislation, the meaning of words (established by hundreds of cases since 1959) is radically changed to serve AFM's purposes. What is more important is that the constitutional rights of hundreds of orchestra leader employers, co-ops, singles and contractors-independent contractors are arbitrarily repudiated by the stroke of the legislative pens. Congress after much debate defined or implied the standard legal meaning of words like "employee," "employer" and "independent contractor." By the almost thoughtless device of now changing the meaning of these words, approved by Congress and the Courts (State and Federal) the AFM presumes to junk long standard meanings to minister to AFM laziness about trying to persuade musicians to join AFM or its locals.

After Representative Thompson introduced H.R. 8441, AFM solicited co-sponsorship from Senator Javits. The latter phoned NAOL asking for its views on that Bill. Mr. Peterson wrote to the Senator a 3-page letter with exhibits, explicitating his opposition to H.R. 8441 (practically identical with the Bill now under consideration). The Senator, as a result, refused to sponsor the AFM Bill.

One of the arguments used by AFM in its advocacy of S.281 is the mistakenly alleged similarity of S.281 with the exceptions written into the Act representing the construction and the garment industries. Mere reading of the relevant part of the Act (Section "(e)") dispels the alleged similarity. Further to equate the music industry with the construction and garment trades and industry is utter nonsense because construction and garment trade unions (unlike the AFM whose members comprise for the most (a) orchestra leader employers; (b) music contractors; (c) supervisors; (d) groups that are equal partners and (e) singles-all independent contractors) do not have as members, independent contractors such as that we describe above, i.e. employers, contractors, supervisors, partnerships.

Further, the AFM in an admission against its interests, admits that the intent of these Bills is to change the status of their member independent contractors and non-member independent contractors to that of employees, for Page 4 of each Bill asks that "any individual having the status of an independent contractor who is engaged to perform musical services shall be included in the term, 'employee'."

This Association is not alone in our efforts to combat this self-serving union plea for special privileges. The following National Associations also voice their opposition to S.281 and H.R. 5107 and are presenting their opposition papers to the Committee within the next two weeks. Opposing Associations include:

The American Hotel and Motel Association, the National Licensed Beverage Association, the National Restaurant Association, the International Theatrical Agents Association, the Right To Work Committee, the Outdoor Amusement Business Association, the National Ballroom and Entertainment Association, the American Motel Inns Inc., the American Association of Clubs, the Conference of Personal Managers, the Allied Musicians' Union, the American Musicians' Union.

There will be a large number of State and Regional Associations that will be submitting opposing position papers.

The proponents of the bills, the present and the past ill-fated bills, when testifying before the House Labor-Management Relations Sub-Committee in H.R. 8441, said among other things, that the industry as "been attacked by * * * confused Labor Board Investigators."

The Musicians' Union was not alone in its criticism of the National Labor Relations Board, particularly the General Counsel and his staff. The National Association of Orchestra Leaders when attempting to compel the then General Counsel, Mr. William A. Lubbers to follow the rules as they concern charges filed against the parent AFM and its many locals, his Associates advised that we should not file too many charges and "give the union a chance to straighten up its act." Despite the fact that charges have been held in abeyance in Mr. Lubbers' office, as long as three years, we argued then with Mr. Lubbers' associates, that they were providing special and unusual relief to the Musicians' Union whenever they "plea bargain."

One incident stands out and that is at the time Region #29 recommended criminal contempt and was about to proceed to enforce contempt. But Mr. Lubbers ordered the entire file to be sent to his office who then permitted the President, the Secretary and Treasurer of the AFM's largest local, that local's attorney and the parent's attorney to visit Washington and "plea bargain" which was granted. Our request to visit Washington was denied. The result? An informal Settlement. Time and time again Mr. Lubbers and his associates have laid out the "red carpet" for the Musicians' Union's officials and their attorneys. As recent as May of this year, the attorney representing a west coast local was invited to the General Counsel's office to discuss a charge that this Association filed. This Association was not so invited. The Association advises that its files showing that Mr. Lubbers and his Associates have violated the rules in many instances.

Then, the most flagrant abuse by the General Counsel and his Associates resulted in a Settlement favorable to the union despite the fact that complaints were issued in 50 cases, consolidated, hearing dates were set throughout various principal cities. Mr. Raymond Green, Attorney Region #2, New York was assigned to try these consolidated cases nationwide. However, before Mr. Green and a member of the Association were to travel to the various cities where the hearings would be held, the General Counsel ordered the complete file sent to Washington and after months of delay, refused to issue complaints but rather over our objections, issued a "Settlement Agreement" later called an "understanding," to which the Association refused to be a party.

These are merely some of the instances where the Association can show that there was something amiss in the General Counsel's office.

At the appropriate time, NAOL will be prepared to offer these files for the consideration of the Committee.

Respectfully submitted,

GODFREY P. SCHMIDT,
Counsel, NAOL.

National Association of Orchestra Leaders

34 Metropolitan Oval, New York, N.Y. 10462 • (212) 863-8697

ATTENTION!

ALL MINNEAPOLIS-ST. PAUL AND VICINITY HOTELS, INNS, LOUNGES, CLUBS AND ALL OTHER PURCHASERS OF MUSIC

NATIONAL LABOR RELATIONS BOARD CURBS MINNEAPOLIS MUSICIANS' UNION LOCAL #73

The Minneapolis Region of the National Labor Relations Board, following investigation of a National Labor Relations Board charge filed by this Association, decided that Minneapolis Musicians' Union Local #73 violated U.S. labor law and ordered the local to sign an NLRB Settlement Agreement and Notice or face a trial. Rather than face a trial, the Union President signed the NLRB Settlement Agreement and Notice stipulating that the union will not again take any action against our member orchestra leader Wayne Swanson and his group, whose trade name is XL5, or any other musical group like Swanson's XL5 because such musical groups' members are not members of the Union. Copy of the NLRB charg and NLRB Notice attached.

It all began when the union learned that Duff's a popular Minneapolis Restaurant and nite spot contracted for the services of the Wayne Swanson XL5 who are not members of the Union. The Union then began what it believed was "informational picketing" when it learned that the Wayne Swanson XL5 were not members of the Union.

Shortly after the picketing began, Swanson complained to this Association, the New York City based office of the National Association of Orchestra Leaders. We then filed an NLRB charge against the Union alleging that the picketing was unlawful because Swanson and the members of XL5 are not employees but are self employed persons (independent contractors) and as such, the picketing was unlawful and the NLRB agreed with us. Now, this NLRB decision is broad and effective because the Union was compelled to agree that it will not again picket Duff's or any buyer of music like Duff's when such buyers of music contract fo the services of non-member self-employed (independent contractors) musicians o non-member orchestra leader employers.

As a result, all buyers of music in Minneapolis and St. Paul and those located in surrounding counties can now contract for the services of non-member musicians like the Wayne Swanson XL5 and non-member orchestra leader employers without being threatened with Musicians' Union boycott or picketing. Buyers of music have always had that right.

If the Musicians' Union again indulges in such unlawful activities it will suffer severe NLRB penalties as prescribed by law.

If there are any questions concerning this broad National Labor Relations Board Ruling or encounter any problems with the Musicians' Union, let us know.

Sincerely yours,

Chas Peterson

CHARLES PETERSON, Treasurer

cp/ac

(10-70)

NOTICE TO EMPLOYEES AND MEMBERS

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT picket or threaten to picket DUFF'S located at 829 Hennepin Avenue, Minneapolis, Minnesota or any other person engaged in commerce or in an industry affecting commerce where the purpose of such picketing is to force or compel DUFF'S to cease utilizing the services of or cease doing business with the musical group known as "XL 5" or any other person engaged in commerce or in an industry affecting commerce.

WE WILL NOT picket or cause to be picketed the musical group "XL 5" or any other employer or self-employed person for the purpose of forcing or requiring members of "XL 5" or any other person engaged in commerce or in industries affecting commerce to join or become reinstated in our Union.

MINNEAPOLIS MUSICIANS ASSOCIATION, LOCAL 73, AMERICAN FEDERATION OF MUSICIANS
(Labor Organization)

Dated: 2-10-71 By: [signature] (Name)

[signature] PRES. (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, National Labor Relations Board, Region 18, 316 Federal Building, 110 S. Fourth St., Minneapolis, Minnesota 55401

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 18-CC-930

Date Filed Aug. 20, 1981

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: Musicians' Association AFM Local #73

b. Labor Representative to Contact: Robert M. Bigelow

c. Phone No.: 333-8205

d. Address (Street, city, State and ZIP code): 127 North Seventh Street, Minneapolis, Mn. 55403

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (b)(4)(i)(A)(B) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, places involved, dates, places, etc.)

Within six months past, the above-named labor organization by its officers, agents and representatives, threatened, coerced and restrained employers engaged in commerce and in an industry affecting commerce where the object thereof is to force or require orchestra leader-employers and self-employed persons to join a labor organization, with the further object thereof is to force persons to cease doing business with persons who are not members of a labor organization; and to force persons to enter into an agreement in violation of Section 8(e) of the Act.

By these and other acts the above mentioned organization violated Section 8(b)(4)(ii)(A)(B) of the Act.

3. Name of Employer: Duff's

4. Phone No.:

5. Location of Plant Involved (Street, city, State and ZIP code): 829 Hennipin, Minneapolis, Mn. 55403

6. Employer Representative to Contact: Robt. McNamara

7. Type of Establishment (Factory, mine, wholesaler, etc.): Restaurant-lounge

8. Identify Principal Product or Service: food, liquor and entertainment

9. No. of Workers Employed: unknown.

10. Full Name of Party Filing Charge: National Association of Orchestra Leaders

11. Address of Party Filing Charge (Street, city, State and ZIP code): 34 Metropolitan Oval, New York, N.Y. 10462

12. Telephone No.: 212 863-8997

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: [signature] (Signature of representative or person making charge)

Treasurer (Title or office, if any)

Address: 34 Metropolitan Oval, New York, N.Y. 10462

212-863-8997 (Telephone number)

Aug. 20, 1981 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT

PLEASE TURN

David M. Rabban
727 East 26th St.
Austin, Texas 78705

October 2, 1984

Honorable William Clay
Chairman, Subcommittee on
Labor-Management Relations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I write to support H.R. 3291 because I believe that the Yeshiva decision unfairly deprives faculty members of their right to the most fundamental protection of American labor law.

I teach courses in labor law and in law and higher education at the University of Texas School of Law, where I am an Assistant Professor. From 1976 through 1982, I was a staff attorney for the American Association of University Professors (AAUP), serving first as Associate Counsel and subsequently as Counsel. My primary responsibilities at the AAUP involved issues of academic freedom and tenure, and related constitutional questions under the First and Fourteenth Amendments. I also dealt with organizational and legal matters concerning collective bargaining by faculty members. From 1974 to 1976, I worked in a law firm whose clients included various unions of professional and public employees. I base my support of H.R. 3291 on my prior experience as a lawyer representing professional employees in labor as well as nonlabor matters, and on my current research into the history and practice of collective bargaining by professional employees.

H.R. 3291, by amending section 2(11) of the National Labor Relations Act to permit collective bargaining by faculty members, would reverse the unprecedented and ill-conceived decision by a bare majority of the United States Supreme Court in NLRB v. Yeshiva University, and restore the original intent of the Taft-Hartley Amendments. NLRB and judicial decisions between the passage of the Wagner Act and 1980 reveal that the Yeshiva decision was the first case ever to exclude a large group of professional employees from the protection of the NLRA. The legislative history of the Taft-Hartley Amendments makes clear that the definition of the term "professional employee" in section 2(12), combined with the proviso in

section 9(b)(1) governing unit determinations by professional employees, together were intended to preclude the mass exclusion of professional employees that the Supreme Court mandated in Yeshiva. Indeed, the Congress that passed the Taft-Hartley Amendments, in refusing to extend the exclusion of supervisors to cover professional employees as well, rejected arguments analogous to those accepted by the Supreme Court majority in Yeshiva.

Even more striking than the radical departure of the Yeshiva decision from legal precedents and legislative history is that virtually all academic scholarship on the nature of professional employment contradicts the designation of faculty members as managers made by the Supreme Court majority. Historians and sociologists of the professions typically distinguish between professional and managerial positions in "professional bureaucracies." Professionals function as colleagues and identify more with their occupations than with the organization that employs them. Managers, by contrast, identify primarily with the organization and work within a hierarchical structure. Some professionals, such as deans in universities and medical administrators in hospitals, may become managers, but people performing the organization's basic professional functions, such as faculty members and practicing physicians, compose a distinct group of professional employees who are not managers.

The unique functions of faculty members in universities, moreover, highlight the basic distinction between professional and managerial work. Faculty members are expected to engage in free intellectual inquiry, which requires the autonomy and collegiality professionals typically seek. A major purpose of academic freedom is to insure faculty independence from the sources of economic and bureaucratic power in a university. In fact, most faculty members attracted to unions, like their counterparts in other professions, have viewed collective bargaining as a means of insuring and protecting their responsibilities and prerogatives as professional employees. The danger of divided loyalty between an employer and a union, which has led to the exclusion of supervisors and managers from the definition of an employee in the NLRA, does not apply to faculty members because their loyalties are to the traditions of their profession.

Collective bargaining by professional employees need not and, in many instances, should not mimic the structure of collective bargaining that has arisen in the industrial

sector. Both the majority and dissenting opinions in the Yeshiva decision emphasized the difficulties in applying the industrial model of labor relations to the professional setting. Recognizing the differences between professional and nonprofessional employment, the framers of the Taft-Hartley Act created a special rule for determining the appropriate bargaining unit for professional employees. Perhaps additional considerations governing professional employment should be included in the NLRA or in rules developed by the NLRB, just as state regulation of collective bargaining in the public sector has accommodated traditional forms of collective bargaining to the special characteristics of public employment. But the differences between industrial and professional employment do not provide a legitimate rationale for excluding a large group of professional employees from the fundamental protections of the NLRA.

Congress explicitly provided in the Taft-Hartley Amendments that professional employees could bargain collectively under the NLRA. Until the Yeshiva decision, the NLRB and the courts had uniformly rejected attempts to exclude groups of professional employees from the Act's definition of an employee. The majority opinion in Yeshiva presents a threat to collective bargaining by other professional employees, who may inappropriately be designated as managers at the very time that they have become an increasingly large proportion of the American work force. It is important for Congress to reaffirm its commitment to the express policy of the NLRA: "encouraging the practice and procedure of collective bargaining and . . . protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing . . . ." Passage of H.R. 3291 would demonstrate that commitment.

Respectfully submitted,

David M. Rabban

AMERICAN COUNCIL ON EDUCATION
Division of Governmental Relations

October 2, 1984

The Honorable William L. Clay, Chairman
Subcommittee on Labor-Management Relations
Committee on Education and Labor
U.S. House of Representatives
2451 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 3291

Dear Mr. Chairman:

On behalf of the American Council on Education, an association representing over 1,700 colleges, universities, and other organizations in higher education, we appreciate this opportunity to comment on H.R. 3291, a bill which would amend section 2(11) of the National Labor Relations Act by excluding faculty members in educational institutions from the definition of managerial or supervisory employees. We hereby request that our letter be included in the hearing record for this proposed legislation.

Background and Analysis

The National Labor Relations Act ("the Act") excludes from its coverage individuals who are "supervisors." The term "supervisor" is defined in sec. 2(11) of the Act as:

> any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Act itself does not specifically define the term "managerial" or exclude from its coverage individuals who have "managerial" status. However, it has been established by decisions of the National Labor Relations Board ("the Board") and by judicial precedent that managerial employees are excluded from the Act's coverage.

H.R. 3291 would amend the Act's definition of the term "supervisor" by inserting the following language immediately before the period at the end of the existing definition: "except that no faculty member or group of faculty members in any educational institution shall be deemed to be managerial or supervisory employees solely because the faculty member or group of faculty members participate in decisions with respect to courses, curriculum, personnel, budget or other matters of educational policy."

This proposed legislation is designed to overturn the Supreme Court's February 20, 1980, decision in N.L.R.B. v. Yeshiva University, 444 U.S. 672 (1980). In Yeshiva, the Court held that by virtue of the authority they exercise in academic matters, faculty members at Yeshiva University were managerial employees excluded from the coverage of the Act. In so holding, the Court stated:

> The controlling consideration in this case is that the faculty of Yeshiva University exercise authority which in any other context unquestionably would be managerial. Their authority in academic matters is absolute. They decide what courses will be offered, when they will be scheduled, and to whom they will be taught. They debate and determine teaching methods, grading policies, and matriculation standards. They effectively decide which students will be admitted, retained, and graduated. On occasion their views have determined the size of the student body, the tuition to be charged, and the location of a school. When one considers the function of a university, it is difficult to imagine decisions more managerial than these. To the extent that the industrial analogy applies, the faculty determines within each school the product to be produced, the terms upon which it will be offered, and the customers who will be served. (444 U.S. AT 686.)

The Court noted that the record showed that the faculty members also play a predominant role in faculty hiring, tenure, sabbaticals, termination, and promotion. The Court stated that such decisions have both managerial and supervisory characteristics. However, the Court further stated that "[s]ince we do not reach the question of supervisory status, we need not rely primarily on these features of faculty authority." 444 U.S. at 686, n. 23. The Court concluded by carefully pointing out that it was not creating a blanket rule applicable to all institutions of higher learning and that "[t]here thus may be institutions of higher learning unlike Yeshiva where the faculty are entirely or predominantly nonmanagerial." 444 U.S. at 690, n. 31.

Commentary

Both the Act's specific exclusion for "supervisors" and the judicially implied exclusion for "managerial employees" stem from the same basic policy concern: that an employer is entitled to the undivided loyalty of those of its employees who formulate and effectuate management policies. To amend that policy along the lines suggested by H.R. 3291 could disrupt the system of shared authority by which most "mature" private institutions of higher education are operated.

Consistent with the Supreme Court's admonition that faculty at institutions of higher education are not automatically to be deemed managerial, both the Board and various federal courts have applied the Yeshiva decision on a case-by-case basis. Where the evidence has conclusively established that

academic policies are formulated and implemented by faculty, the faculty members have been held to be managers. Where such evidence is lacking, the managerial exclusion has been held not to apply. Thus, although there have been cases where the Board has found the faculty to be managers, in the following cases faculty members were found not to possess the authority granted to faculty at Yeshiva and, hence, were held not to be managers: Bradford College, 261 NLRB 565 (1982); Puerto Rico Junior College, 265 NLRB 72 (1982); Florida Memorial College, 263 NLRB 1248 (1982); Lewis University, 265 NLRB 1239 (1982); Loretto Heights College, 264 NLRB 1107 (1982). The Board's decision in Loretto Heights has recently been affirmed by the U.S. Court of Appeals for the Tenth Circuit. Loretto Heights College v. N.L.R.B., No. 82-2332 (September 4, 1984).

As is evident from the above cases, the Supreme Court's ruling in Yeshiva has not resulted in the uniform exclusion of faculty members from the protection of the Act. Rather, consistent with its practice in the industrial sector, the Board has carefully evaluated the evidence in each case to determine whether the managerial exclusion should apply. H.R. 3291 would have the Board abandon this reasoned evaluation of the evidence in each case in favor of a per se rule that all faculty members must be found nonmanagerial and nonsupervisory, even where such faculty members exercise determinative authority in such fundamental matters as curriculum, personnel, and budget. Since many of the top-level administrators at institutions of higher education, such as Deans and Presidents, are also faculty members, H.R. 3291 could lead to the result that an institution of higher education could be found totally devoid of any supervisors or managers.

If enacted, H.R. 3291 could undermine the system by which "mature" institutions of higher education in the United States traditionally have been governed. Under that system, institutions like Yeshiva have depended upon the professional judgment of their faculties "to formulate and apply crucial policies constrained only by necessarily general institutional goals." Yeshiva University, 444 U.S. at 689. In those cases where the Board has found faculty members to be managers and/or supervisors, the evidence in the record has revealed that the faculty plays a crucial role in establishing and implementing a broad range of educational, personnel, and financial policies. Thus, faculty members have, on their own, developed and implemented basic governance documents and systems which endow the faculties with the responsibility of running the institution.

The faculty senate and other collaborative mechanisms constitute a unique environment for facilitating governance at colleges and universities which should be fostered, not impeded, by the Act. Faculty members in a variety of cases have been found to exercise determinative control over budget, student admissions and financial aid, curriculum, faculty and clerical hiring, faculty promotion and tenure, faculty and clerical salaries, research and fundraising activities, and design and selection of physical facilities and equipment. At these institutions, the faculty are, in a very evident sense, the institution. The institution relies upon them to manage and operate the institution on both a day-to-day and long-term basis.

Conclusion

In short, an institution of higher education should have the same opportunity as other private employers to exclude supervisory and/or managerial employees from a prospective collective bargaining unit. The unique nature of college and university faculties mandates that the case-by-case process of determining whether a given faculty is comprised of supervisory and/or managerial employees should be given further opportunity to develop. If this process fails to achieve the goals of the National Labor Relations Act, we pledge our support for a broad-based study of this issue so that an equitable and workable solution can be established. However, it is our view that enactment of H.R. 3291 in its current form would be unwise and premature.

Very truly yours,

Sheldon Elliot Steinbach
General Counsel

cc: Members of the Subcommittee

SES:gfr

KENDALL SCHOOL OF DESIGN

OCT 1 1984

September 28, 1984

The Honorable William L. Clay, Chairman
Subcommittee on Labor-Management Relations
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Re: H.R. 3291

Dear Mr. Chairman:

On behalf of Kendall School of Design, I would like to thank your committee for the opportunity to comment upon H.R. 3291 and request that this letter be made part of the hearing record.

Kendall School of Design was established in 1928 as a memorial to the renowned furniture designer David Wolcott Kendall. Over the ensuing 45 years, it became a trade and technical school with an enrollment of approximately 350 students. In the mid-1970's Kendall underwent a dramatic transformation and today offers Associate and Bachelor of Fine Arts degrees with majors in furniture design, interior design, illustration, fine arts, advertising design, graphic design, broadcast/video, environmental design, and industrial design. A general academic program is also included in the curriculum to supplement the major fields of study. The School has just moved to a new campus with enrollment of almost 700.

This brief description of the transformation of Kendall is not presented to your Committee as just background information. Rather, it is significant to the discussion of H.R. 3291 because the faculty of Kendall guided the school through this transition to an accredited degree-granting institution. In the process, the faculty were instrumental in determining direction and policy of the school through a variety of means, including numerous active faculty committees.

As a result of the role performed by faculty in the long-term development of the school and because of their involvement in the ongoing administration of the school, Kendall determined that the faculty's participation in management functions was sufficient to exclude them from coverage of the National Labor Relations Act.

Consequently, the School withdrew recognition of the Kendall Faculty Association, MEA/NEA, as the faculty representative in May, 1980.

Numerous proceedings before the National Labor Relations Board were initiated by the Association resulting in 17 days of hearings. This "management issue" is still pending before the Board.

Contrary to the assertions of some, the Yeshiva decision does not deprive an entire profession of the right to collective bargaining. That fact is readily apparent from the recent Loretto Heights College decision, referenced by other witnesses, where the U.S. Court of Appeals for the Tenth Circuit upheld the Board's ruling that the faculty were not managers. Obviously, collective bargaining by faculties has not ceased to exist, but is still underway at many colleges and universities throughout the country despite the Yeshiva decision.

The Yeshiva decision in reality did no more than apply the same standards for determining faculty management status that are used "... in any other context..." (Yeshiva, 444 U.S. at 686) and conclude those standards had been met. There is no indication of discriminatory treatment or unfairness in any part of the decision.

Before the claims of rampant repudiation of college bargaining are accepted at face value, the stringent standards of the Yeshiva decision should be carefully reviewed. For faculty to qualify as managers under Yeshiva, a college must give its faculty rights of participation in management that are unknown in unionized private industries. Teachers in such collegial institutions perform managerial functions that are "beyond the wildest dreams" of trade union members and are frequently in excess of the participation of middle management corporate employees.

Given the commitment to faculty participation required from a school under Yeshiva—not just once, but as an ongoing policy—it is unrealistic to conclude that schools would take that route simply to avoid unionization. By creating the collegial model, a school actually gives more rights to its faculty than are contained in the typical bargaining agreement.

Advocates of this bill are not truly seeking equal treatment of college faculty. Rather, this amendment would create a special category for teachers that is not available to any other employee covered by the Act. In short, faculty proponents profess to want only the same collective bargaining rights as others, but in reality seek much more.

If the changes are made as proposed in H.R. 3291, it is hard to determine how or if managerial status could be established at any level in a college or university. Even in the Loretto Heights decision there were program directors who taught courses and performed administrative duties, yet their managerial status was not even questioned. Although the court in Loretto Heights concluded those people were "...'indispensable' to the formulation and implementation of academic policy...", their managerial status would be in grave doubt under the proposed amendment.

Proponents of the amendment "play down" the concern that divided loyalties will be created by an adversarial bargaining relationship, but the threat to collegiality in this country is very real. In recognition of this danger, the Yeshiva decision specifically acknowledged that the potential for problems was even greater in the college setting than in private industry:

> "The large measure of independence enjoyed by faculty members can only increase the danger that divided loyalty will lead to those harms that the Board traditionally has sought to prevent."

444 U.S. at 689, 690.

If faculty of this country desire to engage in the traditional trade union collective bargaining process, they must also be subject to the same standards for managerial status. Such trade unionism, however, has no place in the "shared management" of a mature, collegial institution and the existing managerial exclusion recognizes that necessity. Consequently, the current standard must be retained and H.R. 3291 rejected.

Respectfully yours,
KENDALL SCHOOL OF DESIGN

Phyllis I. Danielson

(Dr.) Phyllis I. Danielson
President

PID:nc