The San Francisco Waterfront:

The Extension and Defense of the Community

by

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* Published by The Socialist Workers Party - 1943

** Published by the International Longshoremen's
and Warehousemen's Union - 1955

*** Letter from Harry Bridges -- International President - ILWU
to the Officers and Executive Board - Local 10 - ILWU

^ Brown's 1st and 5th Amendment rights violated - p. 7.

^^ Brown also found to have been subjected to a bill of attainder - p. 1.

The Extension of Community

A crucially important and very telling "test" of what on this web site have been called "the forces toward community" within Local 10 began in the late spring of 1944 when the employers with the aid and consent of the local began to employ in rotation some fifteen hundred black men to supplement the regular unionized workforce of dockers when they needed additional labor. These "permit men" had migrated from the south in the hope of finding work in the Bay Area's labor-starved wartime shipbuilding industry. * And having been so employed as unskilled and nonunion "helpers" and "gofers" for a year or so, they and many other such men had been laid off in the early spring - with, it should also be added, the hearty approval of the yards AF of L craft unions. Since it might well be assumed that racism and discrimination must then have been as rampant on the waterfront of the Bay as it then was in its shipyards, this "testing" deserves close attention.

Prior to the 1934 strike, there were less than a hundred black longshoremen on the San Francisco waterfront. ** A few of these men worked through the shape-up, but the great majority of them were members of a half dozen all- black gangs which were regularly hired by two of the stevedore companies when cotton and hides were

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* See Charles Wollenberg, "MARINSHIP - The Black Struggle in the Trade Unions," The San Francisco Sunday Examiner & Chronicle, April 4, 1882, pp. 32 ff. Having touched upon the World War II migration of southern blacks to the Bay Area, Wollenberg's excellent piece may thus be cited.

> About 70 percent of the employed black newcomers worked in one industry -- the shipyards. Shipyard work was largely in skilled, unionize crafts, but most Bay Area craft unions traditionally had been "lily-white," excluding both Asians and blacks. During the war, the unions suddenly had to face the possibility of large numbers of non-white members, and no where was the resulting conflict more intense than at Marinship Company in Sausalito. There, the wartime struggle between black workers and the Boilermakers' union resulted in the case of *James vs. Marinship* and a landmark California Supreme Court decision against racial discrimination in employment . . . The Boilermakers' racial policy was shared by many AF of L craft unions, though not all. In the 1930's , the new CIO unions, particularly the Longshoremen not only had black members , but also actively supported civil rights causes.

** Since there were no records collected on the racial composition of Local 10 until the 1960's, this history of the "extension of the community" is very heavily indebted to the memories of these old-timers -- all of whom have long since passed away: Henry Schmidt - a much revered and extremely important figure throughout the union's history, Jerry Bulcke, an early, long-serving and very important international officer, Odell Franklin, a black who came to the waterfront in 1937 and eventually served Local 10 in many capacities and finally as its Secretary - Treasurer (and the author's immediate predecessor in that office), and A. C. Carter, a black who retired as a winch driver -- an extremely well informed and highly influential rank- and -filer, who - with his wife - always hosted two of the local's honorary brothers - Paul Robeson and Martin Luther King - when they came to the Bay Area.

to be worked (and were therefore said to "work steady" for those two.) The men in these gangs who served as "gang boss" were collectively known as "The Senators". Upon the collapse of the employer sponsored and run "Blue Book Union" in the fall of 1933 with the passage of Section 7a of the National Recovery Act, they and their gangs had joined the reemerging International Longshoremen's Association. (ILA). * During the early days of "the big strike" of the West Coast maritime industry, which began on May 9, 1934, the waterfront employers tried to persuade them and their gangs to join the University of California students who were ready to scab on the dockers. But having refused such employment, they - while not union members - also went on to do "union duty" in many memorable ways. And hence, of course, the following "eye - witness" account must be very highly prized. **

> In 1934, one of the low years of the Depression, blacks could only work on two piers in San Francisco -- the Panama Pacific and the Luckenbach Line. If you went to any other pier down there, you might get beaten up by the hoodlums.
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> Before this time, I clung to views that the trade union movement was just formed to continue racial discrimination. But Bridges and John L. Lewis, the head of the International Miner's Union, felt that by keeping the unions lily-white, there would be a steady reservoir of black, potential strikebreakers whenever strikes were called, which would weaken the unions when negotiations broke down.
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> Bridges went to black churches on both sides of San Francisco Bay and asked the ministers: could he say a few words during the Sunday services? He begged the congregation to join the strikers on the picket line, and promised that when the strike ended, blacks would work on every dock on the West Coast.
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> Many black and white students worked as scabs. A ship was tied up at one of the docks, where they would sleep and eat. I knew of many students who met at Alameda to wait for a launch that carried them across the bay to the dormitory ship. The students didn't care anything about unions: they wanted money to go to school. They could work for two weeks, put in a lot of overtime and maybe come home with a couple of hundred dollars. The tuition for the University of California at Berkeley was then $26 a semester.
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> I heard there was a truck picking up people who wanted to be scabs. It would arrive one night at 35th Street and San Pablo Avenue in Oakland. So I came down there with a couple of students I knew real

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* The San Francisco Riggers and Stevedore Union affiliated with the East Coast - Gulf Coast ILA in the mid -1890's. Having fared reasonably well, it collapsed with a disastrous strike in 1919. The Waterfront Employers Association then founded and ran the "Blue Book Union", which finally collapsed when under Section 7 a of the NRA the San Francisco dockers voted to join the reemerging ILA.

** This account is from Thomas C. Fleming's , Reflections on Black History, Part 65, "The Great Strike of 1934," Dec. 16, 1998, - for which see Google, Harry Bridges, p. 31. - where this is also noted: "At 90, Fleming continues to write each week for the Sun-Reporter, San Francisco's African American weekly, which he co-founded in 1944." Also see Google - Thomas C. Fleming for many biographical entries and hence this information, too: "Fleming passed away on November 21, 2006. He was 98 years old."

well. I felt a little bad about it, but I needed the money. When you've been out of work a long time, you'll take anything where you aren't breaking any laws.

The waterfront strike ended on July 31 when the International Longshoremen's Association was recognized by the ship owners. Bridges kept his word: all piers were opened to blacks. They began to get the same work as everyone else, and some later became union officers. As part of the agreement, the ILA got its own hiring hall, which it controlled, and the men got a minimum 30-hour week and a raise to $1 an hour.

Following the strike, some of these men joined what had been an all white, if, also, too, "progressive" gang, as hold men, A few white dockers also joined as hold men what to then had been black gangs. And one such docker joined such a gang to serve as its "gang boss". As might be supposed, some of the black gang members also thereafter choose to be dispatched, usually with a black partner, from the hiring hall. And a few white - black partnerships also began to come from the hall. Between 1934 and the strike of 1936 the first black who had driven winch for a black gang joined what had been an all-white gang to also drive winch for it. And after the strike, the first black was also elected to serve as a hiring hall job dispatcher. And, it should be noted, all of these developments had the full support of the international officers and most of the local ones.

Since, as was true of virtually every waterfront throughout the nation and world, the need for labor on the San Francisco front was subject to great fluctuation, large numbers of the city's unemployed, some of whom were black, sought and gained from the employers and Local 10 what had come to be called the employment status of "permit man". The parties jointly granted this status by what was called a "partial registration." The permit men would then be rotationally dispatched as needed on a day-to-day basis after all the fully registered and available workforce who wanted a job had secured one. Despite their relatively high turnover, they thereby provided an increasingly experienced supplement to the regular workforce during peak periods of shipping. While they were not a part of the permanent and "fully registered " workforce and -- by the same token -- not union members, the prospect of eventually gaining such status was considerably brighter for these men than for those "still out on the street." They paid one dollar dues for each ten days that they worked.

As of 1941, there were some forty-three hundred fully registered members of Local 10 and perhaps two thousand "permit men". At that time, the number of blacks who had been a part of the fully registered workforce and union members since 1934 or who had somehow gained such status since that time was still below two hundred. That number was also raised somewhat in 1941 when by membership vote the local absorbed those who had long been called "the bargemen". * This development was essentially intended to stabilize the conditions and the jurisdictional coverage of such work. For these reasons, certain sections ot ILWU's warehousemen local (Local 6) were also so absorbed in 1941. And for the same reasons, the "dock seamen" who were employed at certain military docks and terminals were likewise absorbed in 1942. While accurate figures cannot now be recovered, it may be that a quarter of an estimated four hundred men who thus became members of the San Francisco longshore local were black.

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* As it also would happen, the first of the union's black International officers had been a bargeman.

As already noted, some fifteen hundred blacks were granted permit status in the late spring of 1944. Such was occasioned, of course, by the constant and evermore severe shortage of labor due to the Pacific war. And, of course, too, such would again be presently occasioned by the then correctly anticipated need to invade the home islands of Japan. By the end of the war in August, 1945 such real and anticipated needs for additional labor would raise the total of fully registered and union member dockers to perhaps five thousand and that of the partially registered "permit" dockers to such a figure, too. It should also be noted that the fully registered dockers who so desired - and many others, too, perhaps - were also then working five days a week at the least.

While something of an aside, it perhaps should now be noted that "the forces toward community" which existed in the San Francisco local of dockers also surfaced in 1944 in what became a truly historic sequence of events. Those events began when in June of that year the U. S. Navy began to load munitions at two new piers on the Sacramento River at Port Chicago, some thirty miles from San Francisco Bay. In doing so, it was employing inexperienced and untrained black sailors to do the physical work required and similarly inexperienced and untrained white officers to direct and supervise that work. Having learned of this and knowing that such practices when loading munitions were extremely dangerous, the dockers of the local offered to train all the persons so employed at no cost to the Navy. That offer, however, was turned down and shortly thereafter "the Chicago explosion" occurred -- for which see, for example, the following excerpts at Google - Port of Chicago Explosion -- p. 1 / entry 1. As might be supposed, such appears here "for example" since at the web site cited it is simply the first of the many there posted.

> On the evening of 17 July 1944, the empty merchant ship SS *Quinault Victory* was prepared for loading on her maiden voyage. The SS *E. A. Bryan*, another merchant ship, had just returned from her first voyage and was loading across the platform from *Quinault Victory*. The holds were packed with high explosive and incendiary bombs, depth charges, and ammunition - 4,606 tons of ammunition in all. There were sixteen rail cars on the pier with another 429 tons. Working in the area were 320 cargo handlers, crewmen and sailors . . . All 320 men on duty that night were killed instantly . . . In addition to those killed, there were 390 wounded . . . Of the 320 men killed in the explosion, 202 were the African-American enlisted men who were assigned the dangerous duty of loading the ships . . . In 1944, the Navy did not have a clear definition of how munitions should best be loaded. The dangerous work on the piers at Port Chicago and other Navy facilities was done by the men of the ordnance battalions. These men, like their officers, had received very little training in cargo handling, let alone working with high explosives . . . Of the 320 men killed, almost 2/3 were African-American from the ordnance battalion. What had been minor grievances and problems before the explosion began to boil as apprehension of returning to the piers grew. On 9 August, less than one month after the explosion, the surviving men, who had experienced the horror, were to begin loading munitions, this time at Mare Island. They told their officers that they would obey any other order, but not that one. . . Of the 328 men of the ordnance battalion, 258 African-American sailors

refused to load ammunition. In the end, 208 faced summary courts-martial and were sentenced to bad conduct discharges and the forfeit of three month's pay for disobeying orders. The remaining 50 were singled out for general courts martial on the grounds of mutiny. The sentence could have been death, but they received between eight and fifteen years at hard labor after a trial which a 1994 review found to have had strong racial overtones. Soon after the war, in January 1946, all of the men were given clemency.

While the wartime moves to increase the number and influence of black lougshoremen had the support of the international officers and most of those of Local 10, those moves and support were quickly caught up in the politics of the day. * That began as the influence that leadership had with the rank-and file of the local was increasingly compromised by a "wartime program" it sponsored. That program, which was commonly referred to as "the Bridges Plan," was put together with the help of the government and employers. It essentially consisted of a "no strike / no job action" pledge and the suspension of certain hard won working conditions and job dispatch rules. Since the dockers were thus to be afforded the opportunity "to wage an all out effort in the war against fascism.," it was defended by the International leadership and most of the local officers as "progressive. Its quickly emerging opponents, however, branded it "un-American" and "traitorous to the working class." As might be supposed, the emerging opposition was primarily made up of those who supporters of the plan had long viewed as being "right-wingers". On the other hand, those forces and a handful of Socialist Workers Party SWP ("Trotskyite") supporters, went on to lay claim to the local's tradition of on -the- job militancy and also began to view the fully and partially registered blacks as the cutting edge of the leadership program of "all for the war" * * And that emergent split was also greatly heated up when those forces went on to conclude that the Bridges Plan's actually masked a willingness, if not, indeed, a determination to sacrifice the union itself in defense of the Soviet Union.

While the blacks were thereby caught in the middle of a tumultuous political battle and as the thinly-clad racism of emergent "militants" surely blunted "the forces toward community", they had nonetheless become a political force towards the end of the war. And that was made clear by Bridges in the following setting and manner. Since its inception, the ILWU had held its convention in the spring of each odd numbered year. And, as a rule, a "caucus" of the elected delegates from each of its longshore locals had also been convened after each convention. Those gatherings were intended to address any coastwide problems then being faced by the longshore division and such negotiations as then were coming up. And, given that, the 1945 convention and caucus was widely viewed as being "the key" to the union's future because of "the wartime program" of much of its leadership, Now, as was so throughout the division, Local 10 had always been represented at the convention and caucus by the same elected delegates. And into this fray of sentiment and politics a number of blacks had thrown their hats, but none had been elected But having reviewed all of this at a local membership meeting shortly before the convention convened, Bridges went on to argue that the local was "duty-bound" to see that its black members were represented at the convention and caucus by an elected black member. And

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* See entry # 1 of the addenda to this paper for photographs of who at the time were "Union Officers of the Day."

* * See entry #2 of the addenda for a copy of a pamphlet published by the Socialist Workers Party which was critical of the "Bridges Plan".

as a member of 10, he then made a motion to that effect, which, after discussion with little dissent, was handily voted up. And with nominations then being opened, he also offered his candidate. His nominee, who also then won, was the black who had been elected as a dispatcher in 1937 and in time would also be the first black union member elected to an international office. *

With the end of the war in August, 1945, half or more of the permit men left the San Francisco front and never returned. And, as it happened, virtually all who had worked in the shipyards, of whom - as already noted - the great majority were black, remained on the front. And, as has just been noted, the political potential of those men and the significance ot the membership having selected a black as a convention and caucus delegate were well understood by the international officers, those of the local, and by the local's conservatives . And , indeed, a motion to end the permit status of the last thousand men who had received it was made from the latter quarter at the membership meeting the following month Such a layoff was urged as "the patriotic way to make room for members returning from war." And it was argued, too, of course, that - if and when the amount of work came to warrant it, those laid off could be given permits again. And, as it turned out, the International and its local supporters - having pointed out what they took to be a clearly surfaced racism - could only reduce the number laid off to eight hundred. And, so, of course, too, in the face of this and the future it seemed to promise, permit men continued to leave the industry throughout that year and into the next. That exodus was also accelerated by an ever-growing shortage of work and an ever-growing likelihood of a strike in 1946.

Beginning in 1946 the ILWU and its leadership were also increasingly subjected to vitriolic political attacks within the labor movement and from other quarters. And when the anticipated strike strike came in the summer of that year, its length and difficulties prompted still more permit men to move to other pastures. And with that so, some thirteen hundred such men remained at the end of the strike, the great majority of which were blacks who had worked in the shipyards. And as it so happened, these men, while not, of course, members of the union, had fully supported the strike. And, indeed , and with the employers having failed to persuade them to scab on the striking dockers, they had gone on to walk the picket lines, to hand out leaflets, to work in the soup kitchens, and to do a myriad of other tasks important to the strike. And thus with the strike finally ended, they had clearly gained the deep respect, as well as the great gratitude, of every union docker. With the strike ended, however, there was little inclination to move for their full registration and to grant them union membership. One reason for that, at least, for a time, was the lingering need to welcome back members who had served in the armed forces. And, as it happened, the tonnage of the port -- the working of which was, of course, to be equally shared by all members - had steadily declined since the end of the war and promised to decline still more. And, as it also then happened, work did remain very slow into 1947. But after nine moths of agitation and then at a membership meeting, President Bridges, as a member of the local, moved that the permit men who had done strike duty and had a clean union record be given a union book and "full registration ". By all report, and despite the lengthy preparations for this motion, some of the white old timers were nearly beside themselves. But as was known by all, the men in question ..."went through our strike with us and stood as brothers on the bricks". And with such sentiments having been repeatedly voiced, the question was called and the motion easily passed.

And thus occurred, too, what never had happened to then in American labor history and to this day has never happened again: a local union largely composed of

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* As noted earlier, the nominee had been a bargeman.

whites voting by a very wide margin to integrate itself with men of color and to thereby equally share with them all of the work thereafter available -- and doing that, too, when a long decline of their work was clearly going to continue. And, as it so happened, still better evidence of the fraternal bond which underwrote that vote in 1947 was destined to surface in 1949. But to even begin to set that development out requires a suggestion, at least, of the very complex and engulfing political setting in which it occurred: the emergence of the "cold war", the anti-communist scare manufactured by Senator Joe McCarthy, the expulsion from the CIO of thirteen unions for being "communist influenced" or "dominated"-- which included the ILWU -- and the Korean war.

Before proceeding , however, to what can only then be a challenging and hazardous undertaking, this peculiar irony should perhaps be noted. For a number of reasons, the leadership at the ILWU had hoped for and envisaged a postwar period of extended international peace and cooperation and broadly based socio - economic development under the ever-expanding auspices ot the United Nations. A period of domestic economic conversion and recovery distinguished by a prolonged and continuous social progress and industrial harmony was similarly hoped for, as well as envisaged. And the union's warehouse division also and rather more specifically imagined that its prewar march towards a socio-economic well being and social justice could be and would be resumed without the need for strikes and job action.

As it happened, however, President Truman threatened in 1946 to end a nationwide rail strike by drafting the workers into the army and ordering them to run the trains. And with the West Coast longshore and maritime strike of that year, he also threatened to have the army load the ships and the navy sail them, * As a result, the ILWU had come to see him as a vicious strikebreaker and by 1947 Bridges had repeatedly said so. By that year the union had also taken very sharp issue with emerging postwar foreign policy of the Truman Administration. Thus, for example, the union's April convention viewed the aid to Turkey and Greece as high lighting a foreign policy of supporting fascistic regimes throughout the world under the guise ot "containing the spread ot communism."

As for the Marshall Plan, the International officers and Executive Board warmly endorsed the proposal which General Marshall made during his June, l9!7 commencement address at Harvard University. However, as that proposal was transformed by the Administration and Congress into an instrument for supporting governments which were trampling the rights of labor in their "anti-communist" zeal, that support turned to bitter criticism. The union's position with respect to the Point Four Program, of course, underwent a similar evolution.

The emerging cold war warriors ot the labor movement had also been increasingly heard from since 1947. The President of' the CIO, Philip Murray sought to assist the ILWU when the employers literally precipitated the 1948 longshore strike by refusing to continue negotiations with its "communist leadership". On the other hand, Murray's attitude toward the union and toward Bridges rapidly soured with the CIO's convention ot that year and the ILWU's anti-Truman stance . Having repeatedly dissociated himself from "the left wing unions of the CIO" he took his first formal step towards dissolving his relationship with the ILWU and its president when he removed Bridges as the Director of the CIO in Northern California . That he did in the spring of l949. By that time, it had also became widely understood that the CIO

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* In response, the union sought and secured an avalanche of wires addressed to Truman from waterfront unions around the world and many inland ones, as well, which informed him that any vessel so loaded and sailed would be viewed as a scab ship and therefore would not be worked.

had scheduled the expulsion of the ILWIU from its ranks for its next convention. That convention was to be held in October. The charge would be that the ILWU was "communist dominated". In a real sense, however, the expulsion had already occurred. Thus, as the Hawaiian longshore strike had increased in bitterness and the Big Five had pressured for a Taft-Hartley injunction and an investigation by the House Un-American Activities Committee, the wires and phone calls of the union were left unanswered by Murray and the Washington office of the CIO. *

By 1948, there was great animosity towards Truman. Despite his veto of the Taft -Hartley Act in 1947, he had used its "cooling off' strike injunction procedure on seven occasions. He would use that procedure again as the ILWU prepared for a strike which the employers, in their determination to destroy the hiring hall, were willing to provoke. As the men put it : "Those bustards are still trying to win the '34 strike -- and Truman's right in there with them." Congress had passed a spate of anti-labor legislation. Vital social legislation had been stalled and sidetracked. The cold war had flourished. Viewing it as a time for change in American politics, the union broke with the Democratic Party and supported the presidential candidate of the Progressive Party -- Vice President Henry Wallace,

And in l948 the Waterfront Employers Association did, indeed , precipitate a length and very bitter strike by alleging that the union was dominated by communist -- and, indeed, for that reason, refused for time to negotiate. And to bolster that view, it ran in west coast papers a full page ad on the strike which featured a photo of V. Molotov , the Soviet Foreign Minister, at a social gathering, but also altered it so as to show him smiling and having a drink with a smiling Harry Bridges. On learning of this ruse, the public outrage was so severe that the employers, having secured new management, restructured themselves and took the name they use today -- the Pacific Maritime Association (PMA). * *

Such developments and the union's continual pressure on such issues as racial equality had alienated and angered large sections of the AFL. And within Local 10, they had also led to a loose coalition of anti -International conservatives. This incipient cold war group was largely composed of Irish and Italian dockers who shared the bond of Catholicism. And in the union election that fall those who were active in the American Catholic Trade Unionists also assumed a leadership role in that increasingly well organized faction. That faction also saw the the progressive forces within the local as having opportunistically sought and captured an unassailable political base in the black permit men. And with little hope of politically wooing those men, it also began to discuss a layoff of them as a means of altering the local's balance of power.

By the spring of l949 the union had already been subjected by its employer groups to the full fury of cold war politics, This had begun in earnest during the union ' s l947 strike against the pineapple plantations of Hawaii. The employers -- and their extremely powerful "Big Five" supporters - defended what was essentially a vicious feudal structure and caste system by repeatedly shouting "Communist." In l948, the utilization of this tactic was further refined by the Waterfront Employers Association in the hope of defeating legitimate contract demands while also forcing a return to the hiring conditions which had existed prior to l934. The tactic also surfaced in the hearings of the Board of Inquiry which Truman established pursuant to

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* For an excellent and very detailed account of the ILWU's organizing efforts and strikes in the Hawaiian Islands, see the excellent biography of Jack Hall -- the union's lead organizer -- by Sanford Zalburg: A Spark Is Struck ! , (Honolulu: University Press of Hawaii , 1979), 645 pp.

** See entry #3 of the addenda .

the "cooling off" procedures of Taft Hartley. By the spring of 1948, the Hawaiian waterfront employers were also limbering up this one and only tactic they had for what in that year would be a long and bitter longshore strike.

By the spring of 1949, the government had also decided to target Bridges once again. The government's earlier efforts to deport him to his native Australia as an undesirable alien need not bo detailed here. * Suffice it to say that the deportation order which the Justice Department had secured after a relentless eight year effort was set aside by the Supreme Court on June 8, 1945. In setting that order aside, one justice had remarked: "The record in this case will stand forever as a monument of intolerance to man." Shortly thereafter, Bridges became a citizen. In March of 1949, however, the Justice Department secured an indictment against him and two other union officers for having committed perjury during the citizenship hearing and for having conspired to do so. * * The connection between this indictment and the then anticipated strike of the Hawaiian 1onghoremen was inadvertently made clear by Tom Clark, Truman's Attorney General, in June of 1949. Thus, in the first month of that strike, the head of the United States' Justice Department publicly remarked : "Hawaii is the only spot at present where our domestic Communist problem is serious. We may have to take some drastic action there. But I think that the case against Bridges has already been of some help in the Hawaii situation, If we are successful in our prosecution ot Bridges, I am certain we will be, it mav be that we can break the Hawaiian situation without any further intervention." ***

This, then, in very brief compass, was the political setting of the special week-end meeting which the San Francisco dockers held in the spring of 1949 to deal with the issue of a possible layoff. Since, however, this telling of the tale will end with with the account of it which Bridges gave at a congressional hearing in 1955, a short postscript to these remarks should be offered, too.

Bridges and his codefendants were arraigned in June, but the trial was post-poned to the fall partly because the government hoped to exploit the ILWU's antici-pated expulsion from the ClO. During that summer, the growing cold war hysteria was very greatly fueled by the Smith Act trials of the Communist Party leadership, the governments blossoming prosecution of Alger Hiss, and the Judith Coplin spy trial. Closer to home, the California Un-American Activities Committee was also on the rampage. Despite the political context provided by such events, the convention of the CIO remanded the ILWU issue to a panel of three vice -presidents for a hearing to be held after the conclusion of the citizenship trial. The panel was to make a recommendation to the CIO Executive Council. The council members were in turn authorized by the convention to expel the union if in their judgment that seemed warranted.

In April, 1950, the three defendants were found guilty. Bridges was sentenced to five years in jail, his codefendants to two years. All were freed on bail pending an appeal. The CIO panel proceeded to schedule its hearing for May 17, Six unions had already been expelled for being "Communist influenced". Another six were then being scheduled for that fate. The ILWU hearing lasted three days - and ended in its expulsion. The main target was the union's frequent criticisms of American foreign

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* For an excellent account of the many legal problems which arose for Bridges, see Charles P. Larrowe, Harry Bridges - The Rise and Fall of Radical Labor in the U. S., (Lawrence Hill and Co., New York, 1972) 404 pp. Also see addendum #4 for a copy of the 1955 International ILWU pamphlet "The Everlasting Bridges Case".

** The other officers were Bob Robertson, Intrenational V -P and Henry Schmidt, Coast Labor Relations Committeeman. See addendum #1.

*** Larrowe, ibid., p. 276.

policy and their similarity to those of Communist Party USA,. The architect of that part of the case was Paul Jacobs, then on the research staff of the ClO. He had earlier pursued such matters as a staff member of the Oil Workers Union. The president of that union, and Jacob's former boss, headed the three man panel. The "research" performed by Jacobs was not at all unlike that which the Waterfront Employers Association had submitted to Truman's Board of Inquiry during the 1948 strike, It essentially offered a comparison of the positions which the union and the Communist Party had taken on foreign policy issues. In 1948, of course, this employer tactic had eventually backfired. But in the atmosphere of the early 1950's, such "research " could be offered within the labor movement as proof of "communist influence ". As for the "fairness" of the proceeding directed against the union which had transformed the Embarcadero and would eventually break the back of the feudal, racist baronies of the islands, the Jacobs of a later day may himself be cited: "I must admit, much as I hate to provide Bridges with ammunition to prove the assertions he made at the time, that there was very little due process in the trial that took place in those days ot February 17, 18, and 19, 1950, in the board room of the old CIO quarters on Jackson Place In Washington, D .C."

During the following month, fire fights had occurred on what had become the boundary between South and North Korea. And on June 27th, Truman had ordered American air and naval forces into combat in support ot South Korea. What for the American people would be "the Korean War" had begun. And on the 28th, the longshoremen of San Francisco met in a regular membership meeting and with the officers having prepared a motion in support ot Truman 's action and a pledge that their work would not be interrupted during the fighting. Bridges, however, offered this substitute: that the United Nations order a cease fire, that the opposing armies withdraw to their respective sides, and that the UN then proceed to negotiate a lasting peace. In the ensuing uproar, a quorum was lost and the meeting adjourned. And at the next regular meeting, which was two weeks later, an uproar again ensued over the question of which resolution was before house. With the appearance of police, the meeting broke up with neither resolution having been acted upon. At that juncture, the local officers called a special meeting to be held the following week. At that meeting, the officers' resolution was voted up . And with the hue and cry for Bridges' head being nationwide, he was scheduled for a hearing at which the government would seek to revoke his bail. And with that, it was revoked and he got jailed. On July 21, however, the Federal Court of Appeals reversed the lower court and he was granted bail again. And hence Larrowe, ibid., pp. 333 - 4: "The majority opinion had found that the purpose of Bridges' resolution on Korea was to support a United Nations ns order for a cease fire, for a return to the *status quo*, and for the U. N. to settle the dispute peacefully through discussions with all parties concerned, in order to avoid a worldwide conflict." It also so continued: "There is no showing that Bridges has in the present juncture committed any recognizable crime or that he has himself counseled or advocated sabotage or sought to foment strikes or the establishment of picket lines on the waterfront or to impede by other means the prompt loading and dispatch of ships to the Far East. The whole matter appears finally to boil down to the contention that Bridges is a proven Communist . . . and that the Korean crisis renders him a menace to the public security . . . that the District Court was right in revoking bail and ordering him confined. The conclusion, if we may say so, is as startling as it is novel. Indeed, if there was any subversion in the issue being ruled upon that subversion had been introduced by the government's pressure on the lower court . . . we say now with all the emphasis that we are able to command that however hard and disagreeable may be the task at times of passion and excitement, the duty of the courts is to set their faces like flint against this corrosive subversion of the judicial process ."

During 1949, the political attacks against the union also reached a crescendo. And it was also in this particularly heated period of difficult economic and political circumstances that the question of a layoff of union members was first raised. Indeed, the men could remember the work situation as having been slow since the end of the war and then proceed to blame themselves for having taken too many men into the local. The emergent and increasingly strong sentiment of the conservative forces was thus being soon expressed this way: "We can work together, we can eat together, but we can't starve together."

And thus it was in the late spring of 1949 that the idea of a lay off, which for some length of time had increasingly been the local's "hot potato", was dealt with by the membership. This it did at the insistent urging of Bridges since as he put it the work situation had been so bad for so long that: " . . . some who'd been gang bosses and winch drivers during the war had been broke back to the hold." And, with this he called for and got a special Sunday meeting of the membership at a rented and very large public auditorium , the San Francisco Civic Center. It started at 10 AM and -- as it turned out continued into the afternoon. Bridges recounted that meeting at a hearing of the Merchant Marine and Fisheries Committee of the U. S. House of Representatives in 1955. * Having begun by saying that the possible need to layoff of a large number of men who had become "fully registered" members of the San Francisco longshore workforce and members of Local 10 had arisen in 1949 -- and therefore, too, after the long and bitter strike in 1948 -- since by that time there had been for years a severe shortage of work opportunity. He then continued with this.

> We added a lot of men to the registered list in 1947 and they shared starvation for 4 or 5 years. And the Port of San Francisco has become the outcast. It is the horrible example that is held up in every way. It is the example of where we relaxed the rules, you see. And I went down and advocated the addition to the work force after Taft-Hartley. ** Then in 1949 I went back and tried to get them to lay off a thousand people. They had been working 3 or 4 years and making around an average of 25, *26* hours a week ; my own home port. They figured I had just completely sold them out and I was lucky I to get out of that meeting alive. I was all on my own. I didn't get one single supporter in the meeting. When I marched in with the idea of laying off a thousand men. I am just telling you not one single person voted for me. They still preferred to go on and work 26, 28 hours a week. We had just been through a strike. This was the spring of 1949, and they said, "This is fine thing, for you to come around after all of us have stuck together and fought together, and propose now a thousand of us be thrown away. And to make it worse, the bulk of the thousand were Negro men and they had no chance of getting any other kind of work at that time. Things were very slack.

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* These hearings were held on Oct. 19, 20, and 21 of 1955 by the Special Subcommittee on Port Conditions in Los Angeles and Long Beach Harbors. Prior to the meeting Bridges also sent to the Local 10 officers and its executive board a letter on the functioning of the hiring hall and the need and the means of controlling the number of fully registered dockers who had the right to use it. See addendum $ 5 for this letter.

** And after, too, of course, the '46 strike in which those who thus were added to the work force and local had been fully supportive as "permit men" and also were "clean" with the union.

While, then, the events here recounted were for Bridges a source of some embarrassment, for the members of Local 10 their vote on his motion was a truly historic and profoundly important expression of their sense of community. But, with this -- three brief asides . . . So - first of all - and from its context in the committee's discussion -- it appears that Bridges recounted this event in response to thinly-veiled assertions that he ran the union in a somewhat "high-handed" manner - or worse. But be that as it may, when I asked Henry Schmidt about this meeting and vote he told me this.

> . . . Well -- with the meeting called to order, Bridges took the deck and reviewed what he said, "everyone knows " . . . that the work had been slow for years . . . And then he said that he had "his sources" in the employer ranks . . . and they wanted to lay off a thousand men. And while he hated to say it -- he thought they were right. And with that so, he made a motion to do just that: "To lay off a thousand men."
>
> . . . Well, course, with that - and all hands know that's why we were there - lots of old guys were shaking their heads and saying "*Damn* shame, for sure,-- but *Harry's* right" . . . and "Sure *hate* to say it, *too* -- but *Brother* Harry's right *again.*"

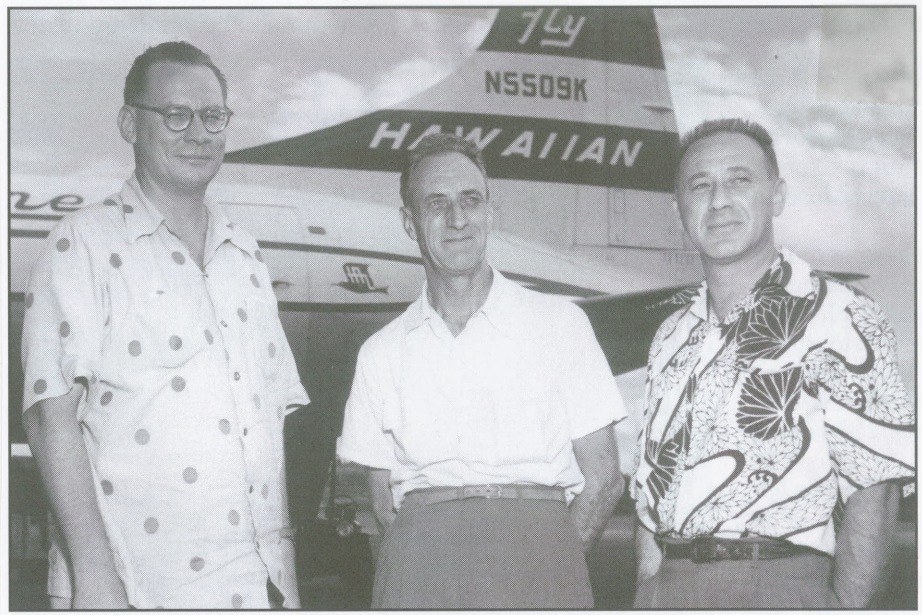
Then Henry said that he spoke. And he said he said this:

> " . . . Well . . . I *got* my sources, *too* . . . And I *got* to admit, - Harry's right about this: the employers want a thousand laid off . . . But *what* he didn't say is *this*: they want to lay off a thousand who *can't* do the work *like* they did for years . . . *So* -- I'm voting "*no*". . . . And, *damn,* but *all* the blacks . . . and , *damn,* but *all* the whites -- voted *that* way , *too.*

And, finally, too, this should perhaps be noted since it only happened once . . . When I began to write about the union and /or work of the San Francisco dockers, I always got a copy of what I just had finished to Bridges. Now, that, of course, was not to get his approval - which, course, in fact, I increasingly felt I sure wouldn't get, - but because I didn't want him to get something I wrote from somebody else. Well, any ways -- and having passed on the first part of this paper, he called in a day or so to tell me this: "Well, I'm calling to say that I read what you last delivered and I want to talk about it sometime, so I'll be giving you a call." So, course, I said sure, but he never did call.

Addendum 1.

Bridges, Coast Committeeman Henry Schmidt and International Vice President Bob Robertson, co-defendants in one of the Bridges trials, celebrate their success before the Supreme Court in 1953.



Hawaii Regional Director Jack Hall, Bridges and International Secretary-Treasurer Lou Goldblatt in 1949.

Local 10 stalwarts of the Bridges Defense Committee (left to right) Claude Sanders, Albert James, Johnnie Walker and Bill Chester. Chester later became the first African American International Officer of the ILWU.

Rank-and-file supporters posted such stamps in their union books At the bottom above the printer's union "bug" it reads: "Defend Bridges - Robertson - Schmidt."

Harry Bridges - A Centennial Retrospective, Ed. & Intro. by Harvey Schwartz. San Francisco Bay Area Longshoremen's Memorial Assoc. , 2001, Top: p. 3 & p. 4 / Bot: p. 2.

Addendum #2.

West Coast Longshoremen

AND THE

"Bridges Plan"

By C. Thomas

MAYNARD BLDG. #406
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Issue of The Magazine
"FOURTH INTERNATIONAL"

Introduction

(Note: Many of the readers of the FOURTH INTERNATIONAL, whose financial contributions have made the reprinting of this article in pamphlet form possible, have suggested that the introduction include a number of positive proposals indicating a way out of the blind alley into which the American workers are being led by the bankrupt policies of the Stalinists and other labor fakers.

The only working class program which offers a solution is that of the Socialist Workers Party (Trotskyites), the sections of which, particularly applicable to the problem under discussion, are presented in this introduction.)

For Union Independence

The article "West Coast Longshoremen and the Bridges Plan" first appeared in the December 1942 issue of the magazine *FOURTH INTERNATIONAL*. According to the report of the State Executive Board to the California State CIO Convention (Hollywood, October 1942) it is claimed that the Pacific Coast Maritime Industry Board is the "*first government-labor-management industry council.*" As such, it is of vital interest to the entire American labor movement, particularly as the advocates of the "Bridges Plan" have attempted to extend the plan to other sections of the maritime industry; namely, the east coast longshoremen and the seamen. So far the attempt to impose a tri-partite board on the whole of the maritime industry has failed—primarily thru the resistance of the seamen despite the support mobilized for the "Bridges Plan" by the Stalinist leadership of the National Maritime Union. The seamen know only too well the disastrous experience of the British maritime workers who surrendered their independence to a tri-partite board during the last war, presumably "for the duration," only to find themselves so securely enmeshed in the web of collaboration that they never succeeded in freeing themselves. The lesson for the American workers to learn from that experience is *TO MAINTAIN THE INDEPENDENCE OF THEIR TRADE UNIONS FREE FROM DOMINATION OR CONTROL BY GOVERNMENT BOARDS!*

The Stabilization Fraud

One of the great advances made by the West Coast longshoremen in the 1934 strike was the establishment of a six-hour day. That the West Coast longshoremen are dangerously close to losing the six-hour day is evidenced by the character of the negotiations now taking place for a wage review. In December 1942, the longshoremen (ILWU) petitioned for a wage increase of 15 cents per hour. This demand for a wage increase was rejected by the Waterfront Employers Association whose president, W. P. Foisie, contended that the wage increase already granted the longshoremen exceeded the "Little Steel" formula of the War Labor Board. In presenting the union's demand, Bridges argued: "We will ask an increase in the interest of national stabilization of wages for longshore work . . . at levels consistent with those prevailing for comparable occupations on the West Coast and for longshore work on the East Coast." East Coast longshoremen get $1.25 per hour for an eight hour day with overtime after eight hours. West Coast longshoremen get $1.10 per hour for a six-hour day with overtime after six hours. To argue for a wage increase on the basis of stabilizing wages for longshore work "*at levels consistent . . . for longshore work on the East Coast,*" is to place in jeopardy the six-hour day on the West Coast—for such *stabilization* involves total earned wages for the *standard day* of eight hours. Bridges further announced: "We're ready to submit our case to the War Labor Board." If past performance is any criterion, the WLB will probably "stabilize" the wages of the West Coast Longshoremen in conformance with the expressed desire of the shipowners for the elimination of the six-hour day.

Rising Scale of Wages

This whole business of "stabilization" has proven to be a patent fraud. Prices were supposed to be stabilized along with wages so that there would be no drop in *real wages*. Prices have risen by leaps and bounds while wages have remained practically frozen under the "Little Steel" formula of the War Labor Board. The new boss of the OPA, Prentiss Brown, admitted to

newspaper reporters that "prices would continue *'an inevitable, slow, well-ordered rise,'* estimated at the current rate of one-half of 1% per month." An extremely conservative estimate as any worker who buys groceries will testify. Many unions which previously had "escalator clauses" in their agreements pegging their wages to the rising cost of living were deceived into giving up these clauses on the strength of the government's promise to stabilize prices. The time is rotten ripe to cut thru all the mumbo-jumbo about "stabilization." If the powers that be are at all interested in stabilizing wages there is a simple measure that could be employed: *A RISING SCALE OF WAGES TO MEET THE RISING COST OF LIVING!* For every increase in the cost of living—a corresponding increase in wages. An end to the arbitrary freezing of wages by the War Labor Board in the face of the continually rising cost of living.

Independent Labor Party

In a speech to the last California State CIO Convention, Harry Bridges said:

"One agency in the U. S. Government today that is doing a good job is the National War Labor Board. The War Labor Board's not perfect. It does a lot of things we don't agree with. But generally by and large it is on the beam. And that is because we have 4 representatives of American labor up there keeping it that way, pounding away and fighting for us, but there is no other government agency like that."

What Bridges neglected to mention is the fact that the employers also have 4 representatives on the WLB who cancel out the 4 labor representatives leaving the 4 "public representatives" holding the decisive power. Actually the labor representatives are captives on the Board. The same is true of any tri-partite board. What Bridges was presenting in his speech was the Stalinist "solution" to the problems of the American working class; i. e., "more labor representatives on government boards." These labor representatives are nothing but window dressing designed to deceive the workers into believing that the interests

of labor are being served when labor representatives are held as hostages on these boards. Not labor representatives on boss-controlled boards but an *INDEPENDENT LABOR PARTY BASED ON THE TRADE UNIONS!* Organized labor, numbering some 11,000,000 members does not have one single authoritative voice in the nation's capitol. An end to company unionism on the political field—organize labor's own political party, elect labor's own spokesmen on labor's own program to represent the interests of labor in Washington.

Workers & Farmers Government

Many of the sacrifices that labor is called upon to make is in the name of the struggle against fascism. Fascism is the political form of capitalist class rule in the period of decay of world capitalism, and as such knows no national boundaries. Today, the capitalist ruling class of Great Britain and the United States experience no difficulty in coming to terms with the Quislings of Vichy France in Africa. Tomorrow, using the same justification of military or political expediency, fascist puppets will be enthroned in other conquered territories. The aim is everywhere the same—to maintain "capitalist order" and to prevent the people from ridding themselves of the parasitical exploiters determined to maintain their positions of power and privilege. When confronted with the first touch of reality, all the sanctimonious declarations of high sounding principles are proven not worth the paper they were written on. Only the working class, which is everywhere victimized by fascism cannot compromise with the fascists. The war against fascism cannot be fought out to the end as long as political power rests in the hands of the capitalist class. *ONLY A WORKERS AND FARMERS GOVERNMENT CAN WIPE FASCISM OFF THE FACE OF THE EARTH!*

In his article, "Trade Unions in the Epoch of Imperialist Decay," published in the *Fourth International* of February 1941, Leon Trotsky shows that "There is one common feature in the development, or more correctly the degeneration, of modern trade union organizations in the entire world: it is their drawing closely to and growing together with the state power." Trotsky further shows that unless the trade unions struggle militantly for their indendence from government interference they will suffer the fate of the unions in the fascist countries. Furthermore, if the government succeeds in strangling the unions, the responsibility for the catastrophe will rest solely upon the the labor bureaucrats who "do their level best in words and deeds to demonstrate to the 'democratic' state how reliable and indispensable they are in peace time and especially in time of war."

The maritime industries in Great Britain and the United States provide a fertile field for study of this process.

During and after the First World War, the relationship of the maritime industry to British economy made it imperative for the ruling class of Great Britain to insure a docile personnel in the British merchant marine and a servile leadership in the unions; for the transportation system which interlocked the distant possessions and which was the key to Britain's world strength likewise constituted the point most vulnerable to union pressure. In return for a check-off system through which the shipowners collected 90 per cent of the union dues, the bureaucrats heading the union demonstrated how "reliable and indispensable" they were to the state power. By accepting joint shipowner control of the hiring halls and by accepting the Continuous Discharge Book, which acts as a blacklist, they broke the militancy of the British seamen.

In the United States during the last war, contrary to England, most of the foreign trade was carried in foreign bottoms. There was no merchant marine to speak of. Wall Streeet possessed no large colonial empire as did London to give the merchant marine strategic importance. Nor did the American bourgeoisie as a whole feel it urgent to build a large merchant

marine as auxiliary to the war fleet. The "isolationist" outlook, rooted in the exploitation of a rich internal market, had not yet conceded first place to the views of the "interventionists" who for some decades had looked forward to American domination of the world through constrution of an invincible sea power. In that period, internal transportation, especially the railroads, had approximately the same relation to American economy that water-borne transportation had to British economy. Therefore it was the railroads that were taken over by the U. S. government. It was the railway unions which suffered imposition of the machinery of collaboration, making it impossible for them to exercise any degree of independence to this day.

In the Second World War, however, American imperialism has taken as its aim the domination (and policing) of the entire world. Today the maritime industry bears the same strategic relationship in maintaining and extending the economic base of American imperialism that it bore for England in the last war. Hence it has become imperative to Wall Street to end the independent role of the maritime unions either indirectly by tying the trade union bureaucracy to the state apparatus, or, failing that, openly by attempting to smash the unions in a head-on assult.

It is true, of course, that the two methods can be combined. Every inch gained through the "appeasement" policy of the trade union bureaucrats places the government in a stronger position for the open collision. So long as the present relationship continues, the Administration naturally favors the velvet glove.

The Mechanism of Strangulation

The most important device developed by the British ruling class in drawing the maritime unions into the stranglehold of the state power is the "labor-management-government" board. Prior to the outbreak of World War II, maritime unionists in this country had to rely more or less upon the experience of the British workers for their knowledge of the anti-union role played by this device. Upon entry into the war, however, the

whole process of labor-management collaboration was greatly speeded in the United States.

The trade union bureaucrats as a whole have vied with one another in demonstrating how "reliable and indispensable" they are in foisting this collaboration upon the workers. The Stalinists however, occupy a special position. During the fatal honeymoon with Hitler which paved the way for the attack upon the Soviet Union on June 22, 1941, they advanced the slogan. "The Yanks, Are Not Coming," and put up a measure of resistance to the anti-union drive for collaboration. With the attack, however, they switched over in line with Stalin's foreign policy and today are among the loudest in the chorus for more and more labor-management committees and bigger and better labor-management-government boards.

Harry Bridges, who heads the CIO longshoremen of the West Coast and who has long been known as a wheel-horse of the Stalinists, advanced a "plan" after the switch in the Stalinist line, to establish a government board to assume directon and control of the maritime industry. The Stalinist propaganda machine hailed the "plan" as the work of a cretive genius. A "labor-management-government" board was actually established under the "Bridges plan" as it has become known in the industry. Sufficient time has now elapsed to arrive at some conclusion concerning the workings of this board and its role in tightening the government vice upon the maritime unions.

In a speech to the Industrial Relations Section of the Commonwealth Club, April 8, 1942, at San Francisco, Harry Bridges declared:

> "The International Longshoremen's and Warehousemen's Union, a large part of which embraces the loading and discharging of practically all ships entering Pacific Coast ports, proposed to its employers and to the government a plan to have the entire longshore industry on the Pacific Coast operated exclusively under the control of a joint management-labor-government board. *We devised the program, and we pushed for its adoption.*
>
> "In proposing the establishment of such a board, the union agreed to set aside *any and all provisions of its entire collective bargaining contract*, if any such provisions or the contract in any way blocked an all-out war effort." (Our emphasis.)

To make clear that he fully recognized the extent of the concessions he proposed, Bridges added:

> "It should be remembered that our collective bargaining agreement covering nearly all longshore work on the Pacific Coast, was the result of maritime and general strikes of 1934, and 1936-37, and represented *all* the gains of our union as a result of those struggles and many negotiations and arbitration procedures." (Our emphasis.)

The Pacific Coast Maritime Industry Board was established in March 1942. F. P. Foisie president of the Pacific Coast Waterfront Employers Association and a member of the Board, gave the following account of the character of the Board:

> "The Board was set up by administrative order of Admiral Land, under authority of the President's Executive Order which created the War Shipping Administration. Under this authority, all American owned shipping has been taken over by the Government. Shipping labor (shore and ship) is in a fair way to follow.
>
> *"The members of the Board are appointed by and removed at the pleasure of the War Shipping Administration.*
>
> "Its authority, as well as appointment, derives from the Government. Because organized labor and organized employers are represented, it partakes of the nature of a tri-partite war board. *England leads the way for us in setting this pattern.*" (Our emphasis.)

The Stalinists may trick the workers into believing that the "Bridges plan" sprang full-blown from the brow of the Olympian 'Arry, but the bosses are entirely familiar with the origin of the idea and place the credit for "creative genius" where it belongs—with the British ruling class!

Shipowners Appoint and Remove

"The members of the Board are appointed by and removed at the pleasure of the War Shipping Administration." What is the composition of this august body into whose hands such power is given? At the time of the formation of the Maritime

Industry Board, the War Shipping Administration was composed of a majority of $1-a-year men, who prior to their appointment occupied official positions in various shipping companies. We quote from the April 24, 1942 issue of the *West Coast Sailors* which gives a partial list of the personnel of the WSA:

> Admiral Land (Chairman); Wm. Radner, General Counsel (formerly counsel for the Matson Navigation Co.); J. E. Cushing, Pacific Coast representative (formerly president, American-Hawaian S. S. Co.); A. R. Lintner, representing Seattle area (formerly manager, Amerian Mail Lines); H. Robson, Director General (formerly executive vice-president, United Fruit Co.); Ralph Keating, Director of Allocations and Assignments (formerly United Fruit Co.); M. L. Wilcox, Director of Operations (formerly United Fruit Co.); B. Jennings, Director of Operations (formerly with the Oil Tanker Co.); D. S. Brierly, Director of Maintenance (Maritime Commission "Career" man); Dan Ring, Director of Personnel (Maritime Commission "career" man); and Capt. H. L. McKay, Director of Forwarding (U. S. Navy Ketired).
>
> (Since this list was compiled a number of changes have been made in the personnel, but the changes were insignificant, as one ex-shipowner was substituted for another.)

The WSA then, an aggregation of shipowners and career men, "appoint and remove at their pleasure" the personnel of the Maritime Industry Board. However, in order to further the deception that the Board is an "impartial" body, the WSA appointed two representatives from the union, two from the Waterfront Employers and an "impartial" chairman Dean Wayne L. Morse of the University of Oregon. It was to foster the illusion of impartiality that Mr. Foisie remarked: "Because organized labor and organized employers are represented, it partakes of the nature of a tri-partite war board." Or a "labor-management-government" board.

Board Imposes Speed-Up

When the order creating the Board was made public, Dean Wayne Morse made a speech in which he said: "I want, the country wants, the armed forces have the right to expect, a longshore speedup, and more speedup, and then some more."

Echoing this sentiment, Bridges declared "in this period the unions must be converted into instruments of the speedup." Thus the function of the Board was clearly defined by the "Government" in the person of Morse, the "impartial" chairman, and by "Labor" in the person of Harry Bridges. As for the shipowners they responded with a fervent "Amen!"

Has the Board fulfilled the function assigned to it by the "labor-management-government" spokesmen?

When the War Labor Board was established, Dean Wayne Morse was promoted to that Board as a representative of the "Public." Professor Paul Eliel, who had previously functioned as assistant to Morse, took his place as chairman of the MIB. On June 10, 1942, approximately three months after the MIB was established, the *Daily Commercial News* (San Francisco) published a statement by Eliel which read in part:

> "Longshore output in Pacific Coast docks, spurred on by rulings and findings of the Pacific Coast Maritime Industry Board, has increased at least 10 per cent in the last three months, Professor Paul Eliel, chairman of the board estimated last night. He described the estimate 'as conservative' and said much better showings were made in individual cases."

In an editorial in the *Pacific Shipper* for July 6, 1942, the following comment appeared:

> "Since Pearl Harbor, the Pacific Coast longshoremen have increased loading and discharging speed and efficiency on an average of between 10 and 15 per cent, while records have been set in the handling of individual ships. Considerable responsibility for this increase has been due to the function of the Pacific Coast Maritime Labor Board under the direction of Paul Eliel, professor of economics from Stanford University."

As both the sources quoted represent the shipowners' viewpoint, the estimates must be considerd conservative. An increase in longshore output means a quicker turn around, less time in port for the ship, and a corresponding increase in profit. The shipowners were all for it!

But it is a peculiar thing about bosses, that war or no war, their appetite for profits is hard to satisfy. On July 13, 1942, just one week after the *Pacific Shipper* had announced an in-

crease in longshore output of between 10 and 15 per cent, Mr. F. P. Foisie, president of the Waterfront Employers Association, made a speech to the Industrial Relations Section of the Commonwealth Club, San Francisco, in which he discussed the Maritime Industry Board, its accomplishments and failures. After grudgingly crediting the MIB with speeding up the longhoremen by setting aside provisions of the agreement which presumably "interfered with the war effort," Mr. Foisie added:

> "The bald fact is that the notorious inefficiency of cargo handling in our Pacific Coast ports continues almost unabated. Recent betterments are slight and spotty. *Efficiency lost during the past seven years has not been restored.* That fact is common knowledge to all concerned."
>
> "No adequate comparison is possible between the handling of commercial cargoes before the war and the war cargoes since. But the restrictive rules in the labor agreement limiting production remain in effect; and proposals to remove them are steadily opposed. The Board guarantees to restore any and all restrictive rules at the end of the war if the Union will abandon them for the duration. The responsibility for this refusal rests squarely on the Union leadership. The argument advanced is that the morale of the men will suffer."
>
> "In addition to restrictive rules, restrictive practices which are fastened on the industry by job-action of the last eight years have also been continued in full vigor. These restrictive practices are evident on much if not most of the work and witnessed daily; feet still drag; loafing is widespread; leaving the job and the dock while on pay is common; early quitting and late starting is general; use of unnecessary men; the list is long. The facts are evident.
>
> "The longshore members must shoulder the responsibility for these restrictions on the outturn of work. Pay for work not done is hurtful of labor's own long-range interests. Efforts of union officials to correct these conditions thus far have been futile. The habits are set and those union officials who attempt to impose penalties on their men (except for union offenses) run the risk of being crucified. This loss of control by the union over its wayward members is the result of past teachings of job-action and contract violation. The union seems incapable of disciplining its men and must either pass discipline to the joint control of union and management, or it will become the responsibility of the Maritime Industry Board itself."

After gratuitously commenting that "A goodly share of the

longshoremen, men of character and quality, do excellent work," Foisie hastens to add,

> "but they suffer a steady browbeating on the job from ne'er do wells, a relatively small group who raise all the hell, and make wretched the lives of everybody around them, on the job, in the dispatching hall, and at union meetings. *Nothing but the restoration of discipline and discharge—wholly missing from this industry since 1934—will do the least bit of good.*" (Our emphasis.)
>
> "There can be little doubt that reasonable efficiency can be restored and increased only when a measure of discipline is returned to the industry, restrictive practices abandoned, and restrictive rules set aside for the duration. That these will come I have no doubt, but apparently they will not come until the war needs are brought home to us more vividly. *This is the major chore for the Board to undertake, and the time is right.*" (Our emphasis.)

For the spokesman of the shipowners, Paradise Lost is dated 1934 A. D.—Paradise Regained, a return to pre-1934 conditions on the Pacific Coast waterfront. Merely that, and nothing more! And that task Foisie assigns to the Maritime Industry Board when he says: "This is a major chore for the Board to undertake, and the time is right."

Foisie's speech received considerable attention in the local capitalist press which featured those sections of his address containing the gist of his complaints against the longshoremen. The response of the "impartial" chairman, Mr. Paul Eliel, was both prompt and immediate. The *San Francisco News* revealed: "Mr. Eliel called into conference the other board members—Henry Schmidt and Cole Jackman, representing the ILWU; Mr. Foisie and Frank Gregory, representing the employers—to outline steps to correct conditions and to study disciplinary action. An agreement, he said, probably would be reached within a few days."

Germain Bulcke, now president of the Longshore Local 1-10 San Francisco, was quoted in an interview with a newspaper reporter: "Mr. Bulcke said in order to give more weight to penalties, it was decided that they would be imposed by the Maritime Industry Board instead of the union." The skids were

being greased and the longshoremen were due to take another ride!

The ILWU, Local 1-10 publishes a mimeographed sheet which is called the *Longshoremen's Bulletin.* A considerable section of the *Bulletin* of July 14 is devoted to a discussion of the provocative speech made by Foisie on July 13 at the Commonwealth Club. The *Bulletin,* edited by a Stalinist hack, presents a consistent Stalinist line on all questions. We quote:

> "Monday nght's meeting opened with the reading of a communication from Paul Eliel, Chairman of the Pacific Coast Maritime Industry Board.
>
> "The communication stated in effect that a thorough discussion had been held with the Board and all Union officers and that all hands agreed:
>
> "'That the time has now arrived where the Board *can no longer rely on urging and education* as a means of assuring that its orders are carried out. During the past weeks a considerable number of instances have been called to the attention of the Board indicating that some members, at least, of Local 1-10 have neither appreciated the seriousness of the present situation and the necessity of complying with the orders of this Board, nor have they properly assumed their obligations as American citizens.
>
> "'As a result, such members of the Local—undoubtedly a small minority—have continued to ignore the Board's orders and have failed completely to carry out their part of the pledge made by the organization to let no obstacles stand in the way of increased production in ship loading.
>
> "'The Board further decided to inaugurate a system of recommending specific penalties in all instances in which the orders of the Board were being ignored or where longshoremen were failing to do their share in carrying out your organization's production program'."

In the same issue of the *Bulletin,* Henry Schmidt, a member of the Board representing the union, in commenting on the above communication, "stated that 99% of the members are behind the Maritime Board's production plan, and that the small minority provides ammunition for the shipowners to attack the ILWU as a whole."

What we have here is an American example of the technique

employed in England to destroy the independence of the union by transferring the prerogatives of the union membership to the "labor-management-government" board! First the spokesman for the employers charges that, "those union officials who attempt to impose penalties on their men (except for union offenses) run the risk of being crucified," and that "the union seems incapable of disciplining its men," and must therefore surrender this right to the "joint control of union and management, or it will become the responsibility of the Maritime Industry Board itself." (What touching concern the president of the Waterfront Employers Association displays for "those union officials" who "run the risk of being crucified" for disciplining the "wayward members" of the union!)

On the basis of Foisie's charges a meeting of the Board is hastily called by the "impartial" chairman "to outline steps to correct conditions and to study disciplinary action." After which a communication is dispatched to the union which "stated in effect that thorough discussion had been held with the Board and all Union officers and that all hands agreed," with the substance of Foisie's contentions and proposals regarding the matter of discipline. It's as simple as one, two, three!

Union Majority Against Board

The waterfront unions on the Pacific Coast that emerged out of the great strike struggles of 1934 and 1936-37 succeeded in establishing a strong tradition of internal democracy. That tradition still prevails. Never before have they experienced the slightest difficulty in disciplining a minority of their own membership in carrying out a policy that was voluntarily adopted by the majority. Now, we are asked to believe that the longshoremen have suddenly lost their ability to impose discipline upon a "small minority" which Schmidt estimates as being 1 per cent of the membership! How is that possible? The answer is—it isn't possible; the charge is nothing but a vile slander against the longshoremen.

The campaign to remove the power of the union membership to discipline its own "wayward members" is nothing but a con-

fession that the *majority* of the members of the Longshoremen's Union *do not support* the instrument of collaboration with the bosses known as the "labor-management-government" board. Therefore, they are not inclined to "discipline" those members who violate the decisions of the Board. It thus becomes necessary for the Stalinist leadership, the employers, and the "impartial" chairman to usurp the right of the union to discipline its own members, and place that power in the hands of the Board, for the "protection" of the union officials and incidentally—of the profits and privileges of the shipowners!

About a week after Foisie had made his speech to the Industrial Relations Section of the Commonwealth Club, Professor Eliel appeared as guest speaker and while he did not refer directly to Foisie's remarks, it was generally understood that his address was in the nature of a reply to Foisie. His speech was a mixture of defense and apology: "The Board cannot in four months recast the entire structure of industrial relations in Pacific Coast ports which has developed over more than 20 years of struggle and conflict." Just give the Professor time!

On the matter of "discipline" he informed his audience that already the Board "has obtained union acceptance of limitations on authority of (union) gang stewards," and added: "The restoration of authority to employers is essential." The latter statement has a familiar ring! Foisie in his speech had insisted that: "Nothing but the restoration of discipline and discharge—wholly missing from this industry since 1934—will do the least bit of good." Eliel assured his listeners that the Board had already recorded some achievements in the direction of "restoring the authority of the employers" which he, together with Foisie, regarded as 'essential!" After all, the Professor does owe his appointment to the War Shipping Administration which has the authority to "appoint or remove" members of the Maritime Industry Board. The War Shipping Administration *is* composed in its majority of $1-a-year shipowners. "Whose bread I eat, his song I sing!"

The Industrial Relations Section of the Commonwealth Club in San Francisco as a "luncheon club" provides a convenient

sounding board for employers, labor fakers, impartial arbitrators, etc. Closely following on the heels of Mr. Eliel, Roger D. Lapham, formerly head of the American-Hawaiian Steamship Co., now a representative of the employers on the War Labor Board, and Dean Wayne Morse, formerly "impartial" chairman of the Maritime Industry Board and now representing the "public" on the WLB appeared as guest speakers. Mr. Lapham inveighed against: "Labor leaders (who) must learn that their high, wide and fancy decade is over" and "Labor leaders (who) still demand privileges and favors because they have given up the right to strike." Mr. Morse flayed the unions with the following: "If union and Government agencies cannot settle jurisdiction disputes *or if their orders* are not carried out legislation *or even treason proceedings* may be instituted to insure that war production continues." (Our emphasis.) Following these two examples of government "paternalism" toward the workers the editor of the *Daily Commercial News* delivered a broadside demanding that "restrictive working rules and practices *must go!*"

The *Daily Commercial News* is the same paper which on June 10 printed a laudatory report on the increase of ten per cent in longshore output. Now, on August 3, following the line laid down by Foisie, the paper published a frontpage editorial demanding the elimination of "restrictive rules and practices" in the longshore agreement. Among the specific "restrictions" mentioned in the editorial was this one: "Pacific Coast Longshoremen, still working a straight-time *six hour day*, have placed limitations on the amount of cargo that can be handled in a sling load." An accompanying article protested that "the present six-hour day in the Pacific Coast longshore industry granted during the depression for the purpose of spreading the work, means that out of every 24 hours of work time, longshoremen are eligible for 18 hours of overtime." It must be pointed out here, that the limitations on the hours worked had been eliminated by the Board. What is involved in the six-hour day is not a restriction on production but a "restriction" on the profits of the employer, who had to pay overtime after six hours. The Board hasn't gotten around to dealing with the six-hour day yet, but as the Professor indicated—give 'em time!

Actually, what is involved in the campaign against "restrictive rules and practices" is an attack upon the whole union agreement and the union which enforces it. A union contract or agreement, by its very nature is "restrictive"! It "restricts" the right of the employer to inflict his will upon the worker without check or restraint. The union is the instrument through which the terms of the union agreement are enforced. A union agreement from which the "restrictive rules and practices" had been removed would change the union into a "company" union. And that is, as Mr. Foisie points out, a "major chore for the Board to undertake."

How are the longshoremen led against their will into the swamp of collaboration? Here deception plays an important role. Illusions are deliberately fostered by the ruling class, their lackeys and labor lieutenants, to keep the workers in subjection. One of these illusions is that the power of the Government—with a capital G—is all pervading and cannot be successfully challenged. Another is that the government (which, as Karl Marx proved, functions as the executive committee of the ruling class) stands above the contending class forces in society. For example, the Maritime Industry Board is embellished and bedizened with all the trappings of government authority. The "impartial" chairman, Professor Eliel, represents in his person the august might of the national government. The employers aren't fooled by this pretense, but unfortunately, most of the workers are. Thus there is a noticeable difference in the attitude of the lackeys and labor fakers when they address the workers and when they speak to the bosses or their representatives in government office.

The Role of Deception

In the *Longshoremen's Bulletin* of July 14, for example, Eliel is quoted as hoping "that the longshoremen will comply with orders of the Board" since he "doesn't want to see the day when the Board will have to *command* longshoremen to obey." One can scarcely imagine the Professor assuming such arrogance in addressing the shipowners! In the same issue of the *Bulletin* the "editor" who manages to display a rather perverted sense of humor under the pseudonym of "Snoose McGoose," has the following comment to make: "Snoose McGoose says: 'Get in and do your stuff for Uncle Sam and your Alma Mater or the professor will start swinging the big stick—no fooling'."

One can scarcely appreciate the irony of threatening the longshoremen with the Professor's "big stick" unless he is familiar with the history of the violent struggle that gave birth to the maritime unions on the Pacific Coast: a struggle in which the maritime workers faced the guns, knives and tear gas shells of the hired gunmen of the shipowners, the cops of every port on the coast, and finally the California State Militia; a struggle which reached such a degree of intensity that the workers of the San Francisco Bay Area, both organized and unorganized, laid down their tools and mobilized in a general strike in support of the waterfront workers against the boss terror. It is the workers with this experience and this tradition that the Stalinist hack who edits the *Bulletin* has the gall to threaten with the Professor's "big stick." It is to these workers that the sanctified Professor has the arrogance to say he "doesn't want to see the day when the Board will have to *command* longshoremen to obey."

The Professor's "big stick" is supposed to be symbolic of government authority. His is the "Voice" of Government! In the *Bulletin* of September 15, Bridges is quoted as saying: "Under the Board set-up we have as much say-so as the employers. We must trust our representatives and back them up. If they by any means fail us we have the power to have them removed. They are working for you and the Government and are Government employees." Thus is the illusion fostered!

The union has two representatives, the employers two, and one—the chairman—is "impartial." Therefore, says Bridges, "we have as much say-so as the employers." On any issue, however, which might separate the two labor representatives from the two boss representatives, the "impartial" chairman exercises a decisive voice. A glance at the record of this chairman's "impartiality" will reveal that the longshoremen are far from having "as much say-so as the employers."

During the 1934 strike, Paul Eliel was a director of the In-

dustrial Relations Section of the San Francisco Industrial Association. It was this association which organized the employers of San Francisco and set up a committee to assume full control of all strike-breaking activities. In his book, *Waterfront and General Strikes, San Francisco, 1934*, Eliel reveals that as "representative of the Industrial Association" he went to the Teamsters' Union on June 8 the day after it passed a resolution refusing to handle "hot cargo" and threatened the officials that "their refusal to handle this freight would precipitate a crisis and necessitate the hauling of the freight by other means unless a settlementof the longshore difficulty could be effected" (p.45).

The teamsters refused to concede. Their support greatly strenghtened the striking longshoremen. As Eliel explains: "Had it not been for this stand of the Teamsters' Union the strike of longshoremen would undoubtedly have collapsed within a week or ten days at most" (p. 50).

The "crisis" which Eliel had threatened in his attempt to inveigle the Teamsters into breaking the longshore strike was precipitated by the Industrial Association on July 5, 1934, when it tried to open the port of San Francisco, using scab teamsters to haul the freight. Two strikers were killed and 109 injured in the resulting police attack. This "crisis" has become known as the "battle of Rincon Hill."

Eliel's strike-breaking activities as director of the Industrial Relations Section of the Industrial Association are not generally known, since he kept under cover and other individuals signed the statements issued to the public. Having failed to smash the unions by direct attack, Eliel has assumed the mantle of an "impartial" chairman and with a new sponsor, Harry Bridges, "brilliant" producer of the "Bridges plan" and with the Stalinists cast in a supporting role, is now playing a return engagement.

The Role of Intimidation

Another method used in compelling passive acquiescence in the decisions of the Board is a mixture of intimidation and fraud. It has become a practice for bureaucrats of all varieties

in the labor movement to attempt to silence any opposition to their false policies by acusing them of "being against the war" or in case of a persistent opposition of being "agents of the Axis." Too often, they are sucessful in silencing opposition merely by the utilization of this technique of intimidation. The Stalinists in the leadership of the longshoremen's union use variations of this technique. For instance, in the September 16 issue of the *Bulletin* the editor lists three distinct types of opposition within the union against the Board:

> "First, those who are afraid they are going to lose all their conditions and are not going to get them back. These fellows start whispering campaigns through selfish motives, making such cracks as—'why have a hiring hall now? what's the use of paying dues? why, the Blue Book days are right around the corner.'
>
> "Well, to these fellows we say—the Blue Book days are a thing of the past and all who, by insidious propaganda, spread this filth are (if they don't know it) playing up the Axis alley."
>
> (The "Blue Book" referred to above was the name given to the Longshoremen's Association of San Francisco and the Bay District, a company union formed by the shipowners during the 1919 stevedore strike in San Francisco. Many of the longshoremen were forced to belong to this company union in order to get work on the docks prior to 1934.)
>
> "The second group we have to contend with is those who want to win the war providing George does it and that they don't have to make any sacrifices." The editor then comments on this group in the following manner: "If we all took this attitude it wouldn't be long until we'd be eating sauerkraut with chopsticks and our work week would be from then on with no pay whatsoever."
>
> "A third group in America is the Jap and fascist sympathizers who want this country and the United Nations to lose this war —and they will do everything to aid the Nazi cause.
>
> "These people we must smoke out—get them into the open and deal with them. They are not potential fifth columnists—they *are* saboteurs and every move they make is dangerous."

Therefore, according to the Stalinist frame-up technique, any opposition to their policy of capitulation and surrender to a boss-controlled Board falls into one of these three categories.

Categories one and three, those who are accused of being

either actual Axis agents or of objectively aiding the Axis by their opposition are given short shift. The second category, those who "want to win the war" but "don't want to make any sacrifices" are considered worthy of further "education." What, you object to making "sacrifices"? Well, just listen to this:

> "Recently in the Caribbean a tanker was torpedoed at midnight. The force of the explosion was so great that all provisions were blown out of the lifeboat. Only a half-filled water keg was salvaged and a whiskey glass of brackish water every twelve hours was all that was allowed each man for 24 days.
>
> "A couple of fish hooks were found in the boat and the men cut flesh from their bodies to bait the hooks to catch fish which they ate raw."

Nothing is too fantastic for a Stalinist hatchet man to use in trying to convince the longshoremen that in order to "win the war" it is necessary to give the shipowners their pound of flesh.

The following announcement appeared in the November 5 issue of *The Victory Hook*, official publication of the Maritime Industry Board:

> "Walking bosses were given full authority this week to fire longshoremen whose conduct on the jobs helps Hitler and the Axis.
>
> "The Coast Agreement still is in full force to protect workers from unfair discharge, but the walker can take immediate action in cases of insubordination, drunkenness on the job, early quitting, leaving the job without providing replacement, walking off the job during the middle of the night, or similar offenses. *He can also act against men who refuse to obey orders of the Pacific Coast Maritime Industry Board.*
>
> "With assent of union members, the Board instructed the walker to discharge offenders at once, or notify the gang boss to discharge the men.
>
> "The name and brass number of the man is to be given to the Board at once, and the man will not be dispatched from the hiring hall until he has appeared before the Labor Relations Committee." (Our emphasis.)

Thus "passive acquiescence" in obeying orders of the Board proved to be a transitional stage to *forced* acquiescence. The Bridges leadership is proving in action how "reliable and indispensable" it is in the drive to smash the union hiring hall.

Thus it is evident that the "labor-management-government" representatives on the Board are experiencing some difficulty in getting the longshoremen to peacefully surrender the conditions gained through bitter struggle against the shipowners and their agents. In Foisie's speech of July 13, we find an enlightening commentary on the reason for most of the difficulty:

> "Industries which have a history of long established union-management co-operation know there is nothing to fear from invasion of management by labor. Quite the contrary. The dividing line between the two tends to thin out. Where there is a background of conflict the soil is not good out of which to grow full blown the flower of union-management co-operation; but the Board's 'cultivation' is beginning to bear fruit."

Foisie here testifies to a phenomenon that Marxist students of the labor movement have long observed: that it is extremely difficult to convince those workers whose organization was forged in the fires of the class struggle that there is an identity of interest between the employer and his wage-slave. The picket line does make poor soil "out of which to grow full blown the flower of union-management co-operation." The longshoremen learned part of their lesson in 1934. They have no confidence in the shipowners whose thugs and gunmen they faced in the struggle to organize their union. They have little fear of the state government, whose militia they confronted in the same struggle, and less of the city government which flung its police force against the ranks of the striking maritime workers. All these they met and vanquished. Unfortunately they still entertain exaggerated illusions about the federal government, illusions diligently fostered by their own leadership. Whether they will permit these illusions to carry them as far as the British unions along the road of surrendering their independence and undermining and weakening their organization is yet to be determined. The last word has not yet been spoken—far from it! A sharpening of the class struggle, an upsurge in the labor movement will probably see the Pacific Coast longshoremen again occupying an advanced position—despite and against their present misleadership. No, the soil is not good and despite the "Board's cultivation," the tree is likely to bear fruit that the shipowners will not find very palatable.

Addendum #3.

An Employer Altered Photograph
of Bridges and Soviet Foreign Minister Molotov.
from Google: Molotov Bridges - p.1 /entry 1.

ILWU Local 19 Seattle Washington

One was a picture of Bridges and Molotov, the foreign minister of the Soviet Union, clicking champagne glasses, and implying this is an example of ...
www.ilwu19.com/history/1948.htm - 11k - Cached - Similar pages

Interview of Sid Roger - Editor of the ILWU International (then) bimonthly newspaper, The Dispatcher.

ROGER:
After the strike ended, the Waterfront Employers Association said they had never meant to imply that Bridges was a Communist. But they weren't being all that nice. Bridges sued the Employers Association for libel and slander. That's when they backed off. They didn't do it out of any generosity or any *mea culpa*. Nothing like that. Bridges decided before the end of the strike that he would sue them after they took a full page in the papers.

SHEARER:
This is the Employers' Association?

ROGER:
One was a picture of Bridges and Molotov, the foreign minister of the Soviet Union, clicking champagne glasses, and implying this is an example of Communists hobnobbing together. The union got hold of the original photos, which showed a group of people at a reception during the United Nations Conference when Molotov was the chief delegate for the Russians. The union's ad showed what the shipowners concealed, that shipowners as well as union people were there. Another photo at the same occasion showed Molotov shaking hands with a man named Henry Grady, a major shipowner in the West Coast. The union took the same picture and said, "This is true, it happened at a reception, and look who else was there."

SHEAER:
And ran the picture in the paper?

ROGER:
Big ad, yes. You'd wonder at times how people who should know better can be so stupid, let alone venal. You'd expect, with all the money they have, the employers could have hired people with better sense. Getting caught with their hand in the cookie jar may have broken the back of the whole situation. Eventually, the Waterfront Employers Association folded their tents and later a smarter group took over -- the Pacific Maritime Association.

Addendum #4.

THE EVERLASTING BRIDGES CASE

"...let Facts be submitted to a candid world."

—from The Declaration of Independence

This pamphlet presents the story of a law-suit that is unprecedented in the history of American jurisprudence.

If the facts recited move you to indignation or shame, as we believe they will, we hope that you will write to President Eisenhower, urging him to use the influence of his high office to end the persecution of Harry Bridges.

The many thousands of members of ILWU have already petitioned the President in a similar manner.

(Second Printing June, 1955)

PUBLISHED MAY, 1955

by the

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

150 Golden Gate Avenue
San Francisco, California

100

ON JUNE 20, 1955, the Department of Justice will be embarking upon its fifth case against Harry Bridges, president of the International Longshoremen's and Warehousemen's Union. The prosecution of Bridges, stretching back over a twenty-year span is as shameful as it is unprecedented in the history of the United States. The sequence is a long and disgraceful one. Its very length and complexity show the cumulative crime which has been committed against the law itself by those who have falsely sworn to defend and administer it.

An investigation in 1934 and 1935 of Bridges by the District Director of Immigration and Naturalization in San Francisco concluded with a report which said, in part:

> "The investigation of the alien referred to above has failed to show that he is in any manner connected with the Communist Party, or with any radical organization."

And the investigation further reported that,

> "... whenever any legal ground for the deportation of Bridges has been brought to the attention of the Department of Labor, it has been investigated, but invariably it has been found that he was in the clear, and that his status as an immigrant was entirely regular."

In February of 1936 the first investigation of Harry Bridges was held in Congressional Committee, during which the Commissioner of Immigration and Naturalization testified that, although his men had followed Bridges "unremittingly for years," there was *"no shred of evidence ... to indicate that he is in any way subject to provisions of the immigration law."*

A little more than a year later, in 1937, Bridges was the subject of still another investigation which inquired into possible grounds for his deportation. This was conducted by George D. Reilly, then Solicitor of the Department of Labor who, after an exhaustive proceeding, dropped the matter on the grounds that there was no basis for any action.

Despite this, and after Congressional threats of impeachment against Secretary of Labor Perkins for inactivity in regard to Bridges, a deportation warrant was issued against him in March of 1938. The warrant was amended in order to make it stronger; and in July of the same year eleven weeks of hearings were held during which 7,742

Harry Bridges as chairman of the joint strike committee, 1934.

pages of testimony were taken. In December of 1939, Dean James M. Landis, before whom the hearings had been held, handed down his verdict: *"The evidence therefore establishes neither that Harry Bridges is a member of nor affiliated with the Communist Party of America."*

The Landis findings were accepted by the Department of Labor, the deportation warrant was cancelled, and the proceedings were dismissed. In June of 1940, the House of Representatives passed the Allen Bill (HR-9766) which specifically commanded the deportation of Harry Bridges. The Bill ordered the Attorney General *"... notwithstanding any other provision of the law"* to take into custody and deport Harry Bridges, "whose presence in this country the Congress deems hurtful."

After strong objections by Attorney General Jackson that the bill represented the first time in American history that *"an Act of Congress has singled out a single named individual for deportation,"* the bill died in the Senate. Congress replied, however, with the Hobbs Bill which, as its author declared, *"changes the law so that the Department of Justice should now have little trouble in deporting Harry*

Bridges and all others of similar ilk." The bill was clearly ex post facto and, as such, forbidden by the Constitution.

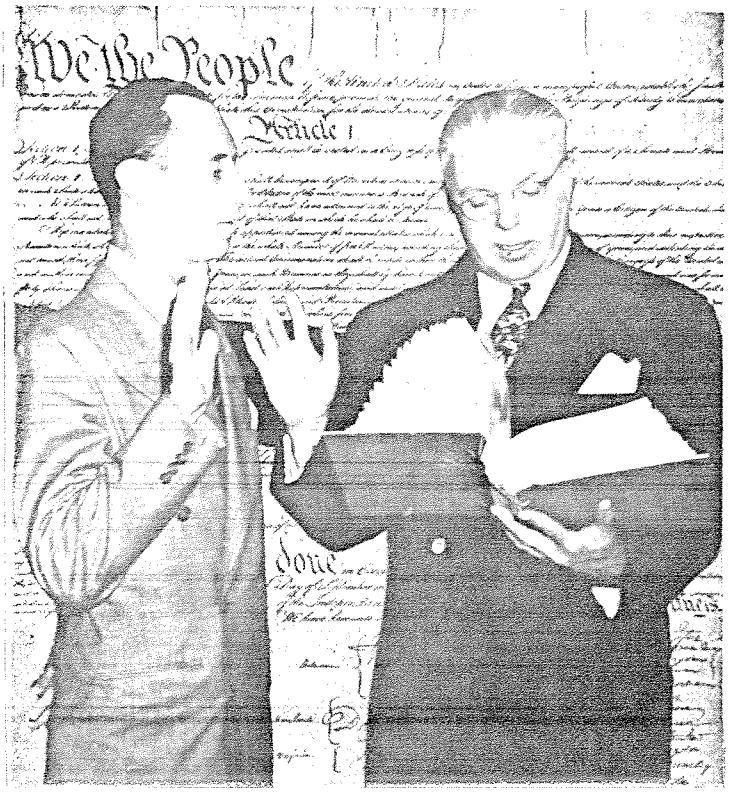
In February of 1941, basing itself on the Hobbs Bill, the government issued a new warrant of deportation. In March of the same year new hearings were held before Presiding Inspector Charles B. Sears, lasting over ten weeks and producing 7,546 additional pages of testimony. In September of 1941 Judge Sears held Bridges deportable on the basis of the testimony of only two witnesses. A four-man Board of Immigration Appeals reviewed the Sears decision, and in January of 1942 unanimously overruled it with the verdict: "*We find that the evidence in this record does not establish that Harry Renton Bridges was at any time a member of or affiliated with any organization proscribed by the statute.*"

Dean James M. Landis as he arrived in San Francisco in December, 1939, as a special trial examiner to hold the first "full dress" hearing on charges against Bridges. He concluded: "The evidence therefore establishes neither that Harry Bridges is a member of or affiliated with the Communist Party of America."

In May 1942, Attorney General Biddle, in an unprecedented action, overruled his own Board and, without prior notification, ordered Bridges deported. Bridges filed for a hearing before Biddle, which the Attorney General promptly denied. In June 1942, Bridges appealed to Judge Martin Welsh of the District Court. In February 1943, Judge Welsh upheld the Biddle order. In March of the same year, Bridges appealed to the U.S. Circuit Court of Appeals. In June of 1944, the Circuit Court upheld the Biddle order by a vote of three to two. The court said it was bound by law to so hold, if only *some* evidence was produced to support the charge.

Judge Healy observed, in the course of rendering a classic dissent in the case:

> "It is notable that the alien, in one fashion or another, has been under almost continuous investigation for a period of more than five years. Prior to and during the course of the second trial the Service has enlisted the powerful cooperation of the Federal Bureau of Investigation. The country has been



The "crime" for which the Department of Justice sought to send Harry Bridges to jail. He took the oath of a citizen in 1945. Administering the oath was Superior Judge Thomas I. Foley of San Francisco.

4

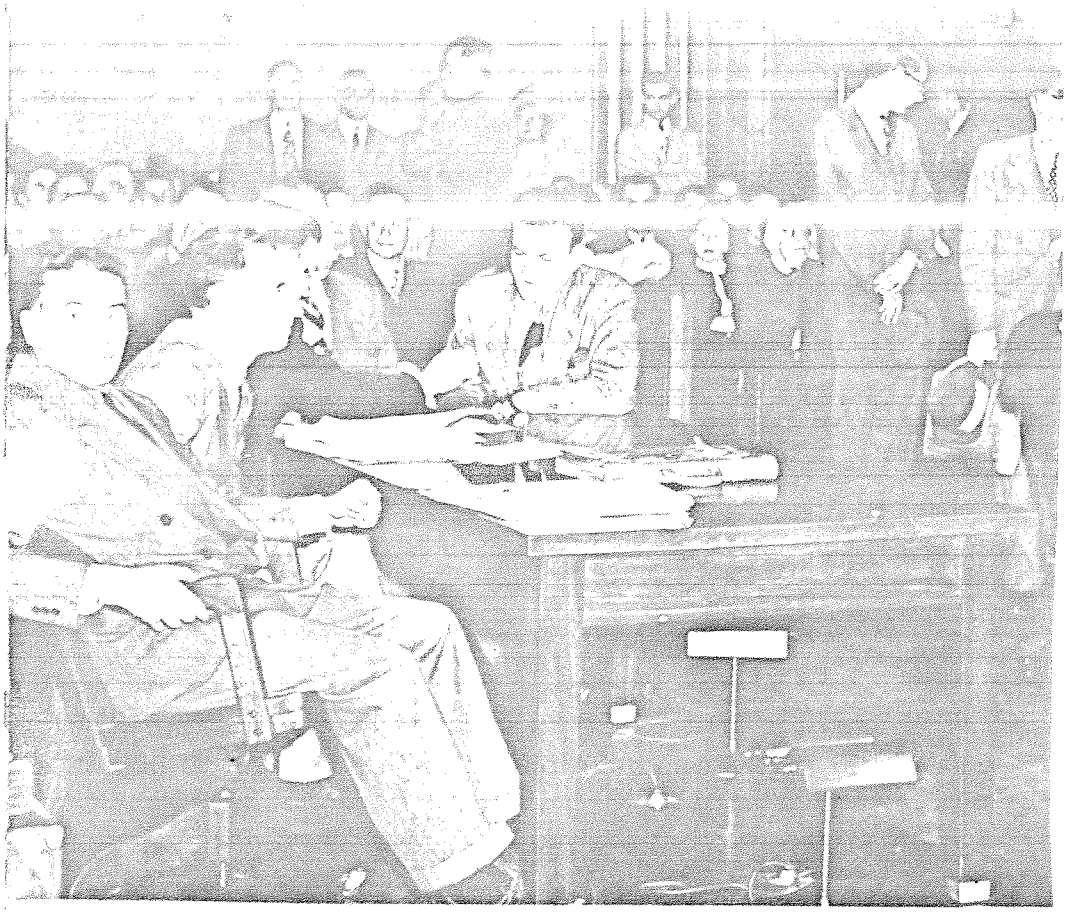
Bridges, Robertson and Schmidt are shown with their attorneys who guided them through their trial, the fourth for Bridges, in Federal Court in 1949. Left to right are: Henry Schmidt, William Cleary, of counsel, J. R. Robertson, Bridges, James Martin MacInnis and Vincent Hallinan. MacInnis and Hallinan by their vigorous defense incurred the wrath of District Judge George B. Harris and drew jail sentences for contempt of court.

scoured for witnesses, every circumstance of Bridges' active life had been subjected to scrutiny, and presumably no stone left unturned which might conceal evidence of the truth of the charges which the alien so flatly denied. *The most significant feature of the inquiry, as it seems to me, is the paucity of the evidentiary product as contrasted with the magnitude of the effort expended in producing it.*"

A petition for rehearing was filed by Bridges, and denied in September. In December of the same year, Bridges appealed to the Supreme Court.

In June of 1945 the Supreme Court overruled the District Court, the Circuit Court and the Attorney General, holding the warrant of deportation to be unlawful. Wrote Justice Frank Murphy: "*Seldom if ever in the history of this nation has there been such a concentrated and relentless crusade to deport an individual because he dared to exercise that freedom which belongs to him as a human being and is guaranteed him by the Constitution.*"

On June 23, 1945, Harry Bridges filed for citizenship — something which more than a decade of federal charges had hitherto prevented him from doing. On September 17, 1945, he appeared before a naturalization court with his witnesses, J. R. Robertson and Henry Schmidt, both of them officials of the ILWU, and was admitted to citizenship. In May of 1949 Bridges, Robertson and Schmidt were

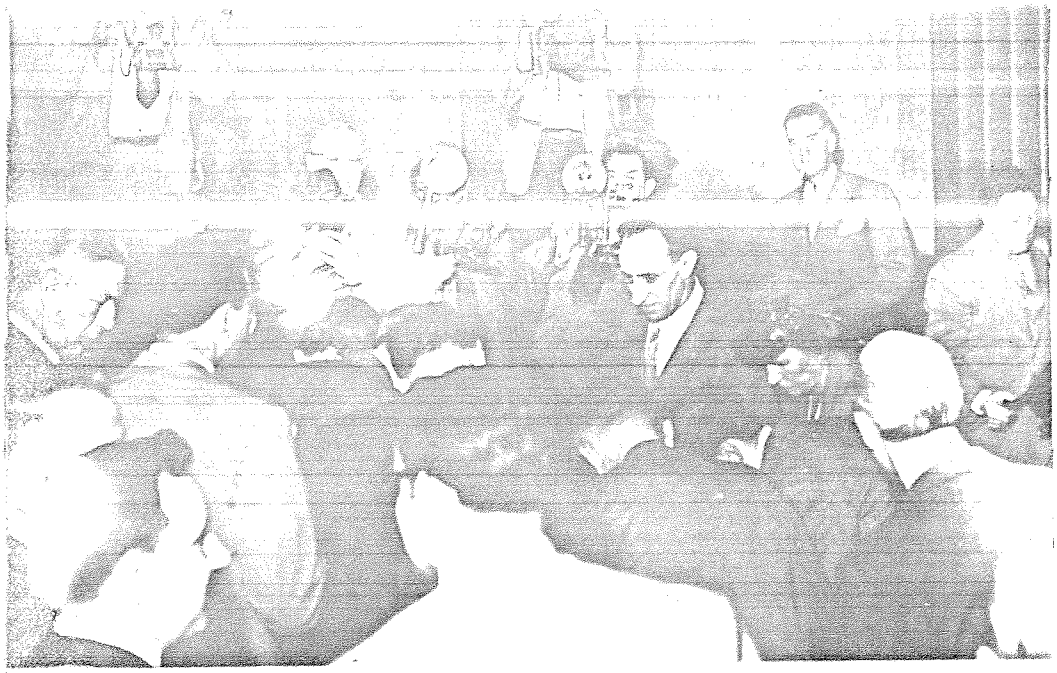


Courtroom scene at opening of the fourth trial of Bridges with co-defendants J. R. Robertson and Henry Schmidt. Seated around the defense table at left are Attorney Vincent Hallinan, Bridges, Attorney James Martin MacInnis, Schmidt and Robertson. At near corner of prosecution table is Special Prosecutor F. Joseph (Jiggs) Donohue. After conviction Donohue successfully persuaded Judge George B. Harris to revoke Bridges' bail and jail him because of his opinion that there should be a cease fire in Korea and settlement by the United Nations. "There can be no minority opinion on Korea" said Donohue. Bail was reinstituted and Bridges was released twenty-one days later on order of the Court of Appeals for the Ninth Circuit. Bridges minority opinion eventually became majority opinion and official U.S. policy.

indicted on three counts of criminal fraud and conspiracy based on the fact that Bridges, in answer to the usual query as to whether he was or had ever been a member of the Communist Party, replied, "I have not, I do not."

To the contention of the defendants that the matter had already been adjudicated by the highest court, that the indictment clearly placed Bridges within the Constitutional prohibition of double jeopardy, and that the three year statute of limitations rendered a criminal indictment void (three years and eight months having passed since commission of the alleged "fraud") the Government insisted that the case go to trial and the Court agreed. There was an ILWU longshore strike in Hawaii, and U.S. Attorney General Tom Clark clearly stated the purpose of his charges against Bridges: "*If we are successful in our present prosecution of Bridges, it may be that we can break the Hawaiian situation without any other intervention.*"

On November 14, 1949, Bridges, Robertson and Schmidt went to trial before Federal Judge George B. Harris in San Francisco. There



A few minutes after the verdict in the fourth trial in 1950 as reporters and photographers sought pictures and a statement from Bridges.

ensued a parade of paid government witnesses, ex-convicts and confessed perjurers — the terms are used literally and were established in the trial record out of the mouths of the witnesses themselves — at the conclusion of which the three defendants were found guilty on April 4, 1950. Bridges' citizenship was revoked and he was sentenced to five years in prison. Robertson and Schmidt were sentenced to two years each. Their attorneys were also sentenced to prison on "contempt" charges for their vigorous presentation of the defense case.

Bridges was released on $25,000 bail pending appeal. On July 31, 1950, the Government demanded that the bail be revoked on the grounds that the Korean crisis had rendered him a menace to public security. Bridges proposal, made at a union meeting, that the local union of San Francisco go on record for an immediate cease-fire in Korea and the settlement of all outstanding issues through U.N. negotiations was the basis for the government's demand that he be jailed forthwith.

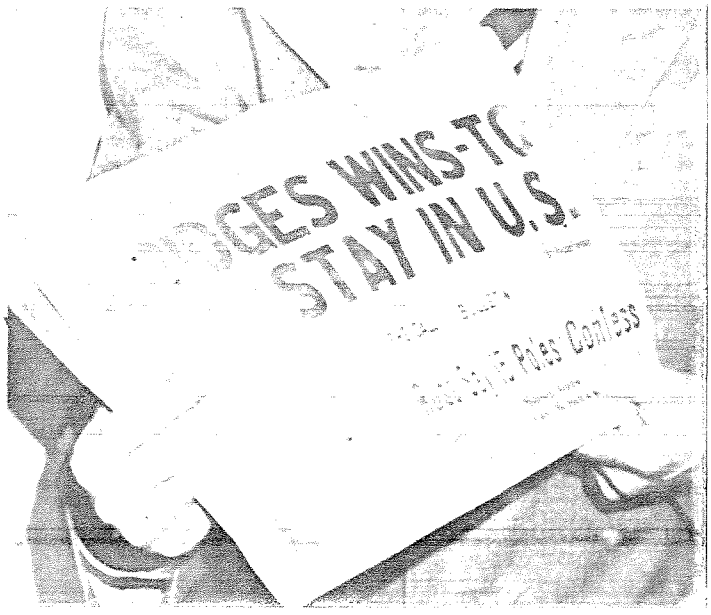
In the course of the bail revocation proceeding, U.S. Prosecutor Donahue, in insisting that Bridges be jailed, emphatically pointed out that,

"... this is the hour at which all men must declare themselves as for us or against us. In this common cause, for which not only Americans are united but in which we are united with our fellow nations in the family of nations, *there can be no minority opinion*, for we are not fighting for mere security; we are fighting for survival."

Judge Harris obediently complied, and Bridges went to jail. The revocation of bail was appealed to the Ninth Circuit Court. On August 25, 1950, the Circuit Court ruled against the government, and Bridges was released after twenty-one days of imprisonment. Wrote Judge Healy in the majority opinion: *"But it is one thing to refrain from interference (where public safety is involved) and quite another for the courts to become themselves the tools of the military; and we say now . . . it is the duty of the courts to set their faces like flint against this erosive subversion of the judicial process."*

The conviction of Bridges, Robertson and Schmidt was appealed to the Circuit Court and the Court sustained Judge Harris. Turning to the Supreme Court an appeal was argued on May 4, 1953, in Washington, and on June 15, 1953, the Supreme Court announced its verdict: *The verdict of the District Court and the Circuit Court was overthrown. The sentence was set aside and Bridges' citizenship was restored.* The contention of Bridges' attorneys that the government had no right in law to even institute the proceedings was sustained, although by this time his attorneys had already served their prison terms for having dared to make the contention.

The 1949 trial before Judge Harris in San Francisco actually constituted two actions: (1) a criminal charge of fraud and (2) a civil



The favorable Supreme Court decision of 1945 opened the way for Bridges to apply for citizenship, which led to the renewed prosecution in 1949.

These Witnesses in the Fourth Frameup Trial of Harry Bridges Have Been Proved to be Outright Liars! One of Them Has Confessed It in Open Court. Read How They Swore Bridges Was at a New York Communist Meeting When Documented Records Show Bridges Was in California.

A DEMAND FOR EQUAL JUSTICE

Front page of a leaflet circulated by the Bridges-Robertson-Schmidt Defense Committee in January 1950 to the amount of a half a million. The demand for punishment of these notorious perjurors was ignored by the Department of Justice.

10

action to revoke citizenship based upon the alleged fraud charged in the criminal action. The government chose to set aside the civil charge and to go to trial on the criminal one. Upon conviction, Judge Harris revoked Bridges' citizenship, thus accomplishing the government's purpose in instigating the civil action. When the Supreme Court reversed the criminal conviction, citizenship was automatically restored, although the civil action was still technically pending.

In December 1953, the government announced that it intended to push the civil action, and asked that the case be put on the calendar for the fall of 1954. Despite the contention of Bridges' lawyers that this civil action to denaturalize — and then deport — the ILWU leader was illegal, the government's moves were sustained by the court. On June 20, 1955, Bridges will be facing his *fifth* proceeding, on the same charge.

For eleven and a half of the past twenty years Bridges has been actively involved in one trial or another, aimed at removing him from the leadership of the ILWU and from the United States.

The government's present objective appears to be a quick trial featuring the standard parade of ex-convicts and paid professional witnesses, to be immediately followed by revocation of citizenship and swift deportation. The Bridges' trials have thrown up a particularly loathsome type of paid witness — the disgruntled ex-union official. Bitter and vengseful, these men are still trying to settle a score with the rank and file union members who found them inadequate and voted them out of their salaried union jobs.

Even the *Pacific Shipper*, house organ of the West Coast maritime industry, is fed up with the corps of professional witnesses and in sharp tones asked the Department of Justice to produce "fresh evidence" in the 1955 trial and some respectable undercover agents who aren't ex-Communists and ex-union leaders.

But after an "extended conference" with the federal prosecuting attorney in San Francisco, the employers' magazine editorialized:

> "In the preceding comment we demand that the Government rely less upon renegade Communists and more upon undercover operatives, but apparently our worst fears are being confirmed; the Department of Justice in all of its branches seemingly does not possess the kind of evidence which we have insisted it ought to possess."

At the conclusion of the Supreme Court's second favorable decision on the Bridges case, reasonable men might have assumed the case to be closed. For twenty years Harry Bridges had been a defendant before the courts. For twenty years he had been under the constant surveillance of police, the FBI and a swarm of private opera-

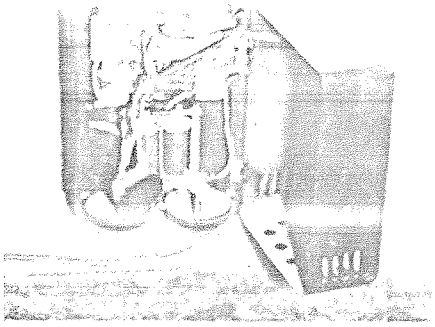
tives. For twenty years he has lived with the knowledge that every telephone call he made was illegally tapped; that the very rooms in which he lived and worked — even hotel rooms when he travelled — were unlawfully wired; that his personal correspondence did not carry the immunity accorded either by law or decency. If the life of any living American is an open book it is the life of Harry Bridges.

He has, additionally, been made the subject of a Congressional investigation and of two pieces of Federal legislation, one of which was enacted into law. He has undergone two deportation hearings and twice has been vindicated in other actions before the Supreme Court — all four actions having been based upon the same false charge, i.e., his alleged Communist affiliation. He has been wrongfully convicted, illegally imprisoned, fraudulently stripped of citizenship, and his attorneys have been sent to jail for defending him. No other person in the history of the United States has been so wantonly hounded for so long a time by a government with so little respect for its own laws. Not without reason did Supreme Court Justice Murphy declare at the time of Bridges' first vindication before the highest court that, *"The record in this case will stand forever as a monument to man's intolerance of man."*

To regard the forthcoming fifth ordeal of Harry Bridges as a *legal* action — as having anything to do with the realities of law or of morality — would be to distort the meaning of law itself. There is no legality in it, just as there is no morality. It is a flagrant violation of two Supreme Court decisions and of the Constitution of the United States. It is a nakedly fraudulent attempt on the part of the Federal Government, acting as the avowed agent of those employer groups with which it has chosen to associate itself, to destroy a militant leader of labor and the most democratic trade union in American history.

The question of why the government has chosen to degrade itself before the whole world in order to destroy Harry Bridges can be answered only by considering the man in relation to the union with which his life's work has been identified. Is it because the ILWU has achieved for longshoremen, as an example, an average yearly wage of $5200 on the West Coast? Is it because the union brought about rotary dispatching and a hiring hall for the longshoremen to replace the waterfront jungle with its shape-up, kickback, favoritism and discrimination? Is it because the union has established pension programs for its members and medical coverage for them and their families? Is it because accidents and speed-up have been eliminated from the jobs by an efficient shop-steward system for the enforcement of union agreements? Is it because the union's organization in Hawaii has brought about increased economic security, political liberty and a measure of human dignity to the workers there? Is it

August 5, 1950. Bridges' bail is revoked by Judge George B. Harris and he is taken to jail by deputy United States marshals. Judge Harris held his freedom to be dangerous because he proposed a cease-fire in Korea and peaceful settlement of the dispute through the United Nations. Twenty-one days later he was ordered released by the United States Court of Appeals for the Ninth Circuit.



How FBI planted microphone in telephone box in Bridges' room in the Edison Hotel in New York.

because the union bases itself on democratic principles which the Federal Government fears to have extended to other unions, or even to its own citizens? Is it because the ILWU banned racial dicrimination and segregation twenty years before the United States Supreme Court found the courage to do so?

All the legal technicalities and double-talk can't obscure the facts.

Millions of working people in the United States and in every other country of the world know of the ILWU and respect it for its works and its deeds. They know the kind of democratic rank and file unionism for which Bridges stands and which brought about the achievements of this union.

This fifth trial — unprecedented in the history of America — is not just one more onslaught against the ILWU as a union. Today there is a new purpose, to stifle this voice for freedom and independence in the United States; for the rank and file nature of the ILWU has become a way of union life, a method of union operation and an unfettered right of the people who belong to this organization.

To silence, restrict and confine this union because of what it is and what it stands for and to change it into a compliant and conforming body — this is the purpose behind the fifth Bridges trial.

The Eleventh Biennial Convention of the ILWU unanimously expressed its appraisal of the case:

> *"Bridges holds his office because he carries out the program of the rank and file and because under his leadership the members of this union have all advanced forward to a better life for themselves and their families.*
>
> *"The defense of Bridges is a defense of the ILWU. It is a defense of the right of union men and women to run their own lives and their own organizations, elect whom they choose and act as they think is in their own best interests.*
>
> *"And we have no doubt that more and more Americans from all walks of life who have never heard of Bridges or the ILWU will soon be fighting along with us for these same things."*

In these days of world crisis the acts and deeds of all nations, as never before, are being judged and weighed by the common people of the world. The United States, too, is being judged.

Nothing can put this country in so bad a light as to talk of freedom and fair play and yet permit such a shameful persecution as the fifth Bridges trial.

Addendum #5.

From: Harry Bridges - International President- ILWU
To: Officers and Executive Board - Local 10 - ILWU

Dear Sirs and Brothers:

With reference to the special committee established by Local 10 to investigate and make recommendations to the Local regarding a more equitable distribution of work opportunity:

The International has prepared the following proposals in the hope that any action taken by the Local shall be in conformity with: first, the basic principles of the International Union and of longshore locals regarding equitable distribution of work opportunity and earnings: second, the general and specific provision of the coastwise longshore contract. In addition to avoiding a program that might allow the shipowners to block its being put into effect, care should be exercised to avoid any hiring hall changes that will afford anyone the opportunity of attacking the union through the Taft-Hartley Act.

In further explanation of the above, and as a preface to the proposals herein suggested, it is important that no longshore local goes contrary to the basic hiring hail principles of both the union and the contract, such as: (a) A fair and equitable distribution of work opportunity and earnings without favoritism or discrimination; (b) Proper protection of the rights and privileges of any member of the union covered by the contract; (c) To avoid endangering the unity of the local union or the unity of the Coast, as a whole.

Our union, which had its origin in the establishment of the Pacific Coast lonqshore locals and the 1934 strike, originally adopted, struck for, and has many times stood solidly on the principle that the longshore work of the port must be distributed through the machinery of the hiring hall as equitably as possible. No local has authority or autonomy to violate this principle and we emphasize the point here, not in the belief that Local 10 has any such idea, but simply to restate the basic principle upon which the hiring hall must stand.

Another basic union principle involved, also supported by the language of the contract, is that in all ports a working force of longshoremen be maintained sufficient to do the work of the port, and yet afford all registered longshoremen a decent weekly income averaged over either monthly or quarterly periods, with any reduction of such working force to he by a strict and fair application of seniority.

A further principle is that in the distribution of work opportunity there shall be no favoritism or discrimination because of race, color, creed or political belief, etc.

Any program, therefore, adopted by any local union that aims to change any hiring hall practices, must first of all conform to these basic principles.

In connection with this, the problem in Local 10, as the International understands, is not necessarily one, at this time, of reducing or increasing the working force. It is more a problem of o making dispatching changes so that the present available work will be more equitably distributed among the present longshore working force, with certain allowances made for 1ongshoremen who have been hurt

or grown old in the industry, so that they too, get a fair break and make a living wage, despite such handicaps.

The problem is also one of classifying the working force so as to eliminate overloading the plug board and such classifications or categories of work as jitney drivers, dock men, etc.

A constructive and fair solution to these problems is possible in keeping with the basis union principles herein outlined. A constructive solution is likewise impossible unless such principles are followed, and unless the principles of equitable distribution, based on seniority and ability to the work, plus a proper size of working force in the port to assure all a fair living, is strictly followed, any program adopted by the local will result in division and disharmony -- first, within the working ranks of the local and, second, between the ranks and file, and the officers and dispatchers.

In addition to observing the main union principles, certain contract provisions must be taken into considerations.

The present contract, for example contains this language:

> "Section 10: Subject to the control and direction of the Coast Labor Relations Committee, the Labor Relations Committee for each port shall determine the organization of gangs and methods of dispatching. Subject to this provision and to the limitations of hours fixed in this agreement, the employers shall have the right to have dispatched to them, when available, the gangs in their opinion best qualified to do their work. Subject to foregoing provisions gangs and men not assigned to gangs shall be so dispatched as to equalize their opportunities -- nearly as practicable, having regard to their qualifications for the work they are required to do. The employers shall be free to select their men within those eligible under the policies jointly determined, and the men likewise shall be free to select their job."

We have underlined the specific language that we have reference to; or in other words, pointing out, first, that it is a contract provision that every registered longshoreman is entitled as a matter of contract, whether working in a gang, off the plugboard, or as a winch driver, jitney driver, or in any other category, to have an equal share of work opportunity. Second, it is also a part of our contract that, subject to the provisions and limitations imposed by the agreement "men likewise shall be free to select their jobs."

The reason for remembering this language is two fold: (1) the local may go ahead and adopt a program by membership action and find it difficult to make the program effective because of shipowners' opposition, either through Labor Relations Committee or in. some other way; and (2) the new Taft—Hartley Law encourages individuals within a union to file unfair labor practices charges or damage suits against the union if contractual rights are denied them for no good reasons.

Thus, any program adopted should avoid as much as possible, the dangers that we point out here with reference to the longshore contract language. The following

proposals represent an attempt to be helpful to Local 10 while avoiding legal dangers and splits within the union.

1. The longshore working force of the port shall consist of the minimum number of registered longshoremen required to do the work of the port and to allow longshoremen a work opportunity of a minimum of working hours per week, which number of working hours guarantees average weekly minimum earnings of from $ ___ _____ to $ _____per week, averaged over monthly or quarterly periods.

2. If, upon investigation, it is found that the working force is too large to allow the above earnings,, the working force should be reduced by lay-offs.

3. The number of gangs should be determined by using the same approach, namely, working hours $_____to $_____per week earnings until there are sufficient gangs to maintain this level of work and income.

4. After investigation by the special local committee in order to decide the maximum number, the work categories on the plug board should be limited to a certain number of men in each category, again based on the principles that the number of men in the work category shall be that number sufficient to do the work of the port and allow each man in the work category to make the port average of hours and earnings.

In addition to the number of men allowed on the plug board in various work categories, a list shall be made and kept of all other men who desire to plug in for particular types of work, such as jitney driving, etc. Such men shall be added o the work categories as vacancies occur.

To give an example of the above proposal, the Local 10 Committee and membership would decide that the jitney driver work category on the plugboard shall contain a maximum of say five hundred men. These five hundred are put on the plugboard on the basis of seniority. The men with the oldest registration get preference over those with later registration, provided they have ability to do the work. When the above requirements are equal certain physical handicaps and age give preference.

A list is also compiled of additional men who would wait their turn to get on the plugboard division for j jitney drivers , for example, and when vacancies occurred in the jitney driver section, their places would be filled by men from such list, again following the rules of seniority, etc.

The same approach would be made for all categories of work on the plugboard — winch drivers, hatch tenders, hold men, dock men, etc., except that each work category would be limited to the number of men who would make the average earnings by working solely in that category of work, and could not plug in another section of the board until all men in that other section had made their port hours.

If the above principles are followed, the results should be that longshoremen will make a decent living; that older and physically handicapped ones will get a preference of jobs that they can do, based on their seniority. Such seniority is a fair and honest trade union principle. There are only so many so-called easy jobs in any industry. Everybody can't have them. They must be shared. The only fair thing to do

is to first guarantee that everybody gets a living in some category or other, and, second, by promotion of upgrading on seniority basis distribute the better jobs to those that have been longest in the industry.

The union should be careful with respect to making arbitrary divisions in the work categories because such divisions will surely result in dissatisfaction, and therefore, division between the large sections of the membership. As for example, if only a certain block of workers get certain registration numbers and assigned to certain categories of work, although this represents a partial application of the seniority principle, it is. arbitrary and will be regarded as unfair by, maybe, hundreds of members of the local, who will beef plenty and feel discriminated against.

Such arbitrary divisions will likewise, in effect, create within the local a group of workers comparable to what we had when permitmen existed, which again is bound to cause division in the local.

Finally, such arbitrary divisions leave legal loop holes for attacks against the union under the phony Taft-Hartley Act.

No fair-minded, honest union member can oppose the seniority principle, or the principles upon which our union was founded, and the principles upon which these proposals are based.

We urge you to give them serious consideration in your attempts to solve the present problem of distribution of work in Local 10.

Fraternally yours,

HARRY BRIDGES,
President

HRB:be
uopwa34ci

The Defense of the Community - The Archie Brown Case

The documents which follow very clearly set out the second thing that Local 10 did for the first and only time in American labor history: it defended itself and its members from a denial of their first and fifth amendment rights and of the right to not be victimized by a bill of attainder.

So -- first of all - who was "Archie Brown". Well, all of these documents will throw some light on that, but we start with his obituary from the New York Times. -- see Document 1 - p. 50. And for the views of Local 10, see Document 2 - p. 51 - 54 and Document 3 -- pp. 55 - 56. For more on Archie Brown, see Document 4 - pp. 57 - 61 and Document 5 - pp. 62 - 73. And for the views of the Ninth Circuit Court of Appeals and those of "the Earl Warren Supreme Court", see Document 6 - pp. 74 - 88 and Document 7 - p. 89. And for a glimpse of the role played by Harry Bridges in bringing about "the Archie Brown case," see Document 8 - p. 90.

Document 1 - NY Times obit.

Goggle Archie Brown - p.1:

Archie Brown, 79, Union Leader In Landmark Case on Communists ...
Nov 25, 1990 ... Archie Brown, the West Coast longshoremen's union leader who won the 1965 Supreme Court decision upholding the right of Communists to serve ...
www.nytimes.com/1990/11/25/obituaries/archie-brown-79-union-leader-in-landmark-case-on-communists.html - 43k - Cached - Similar pages

Archie Brown, 79, Union Leader In Landmark Case on Communists

By MARVINE HOWE

Archie Brown, the West Coast longshoremen's union leader who won the 1965 Supreme Court decision upholding the right of Communists to serve as union officials, died Friday at his home in San Francisco. He was 79 years old.

His wife, Esther, said he died of lung cancer.

In 1962 Mr. Brown, a staunch Communist, was sentenced to six months in prison after being convicted of serving as a party member and a member of the executive board of the San Francisco local of the International Longshoremen's and Warehousemen's Union. His membership violated an anti-Communist provision of the Federal Landrum-Griffin Act of 1959, and it was his appeal that brought Justice Earl Warren's landmark decision striking down that provision.

Mr. Brown's defense was that the provision was an attack on the union's consitutional right to select its own officers without regard to race, religion or political affiliation.

Archie Brown was born in Sioux City, Iowa, in 1911. He completed ninth grade and then, at the age of 13, went with a friend to Oakland, Calif., where he found work hustling newspapers. In 1928, he helped organize a newsboys' strike, and it was then that he became a committed Communist. He joined the Young Communist League in 1929.

Eventually he became a longshoreman in San Francisco, and after a maritime strike in 1934, he joined the waterfront union movement. The following year, he was charged with the murder of a fellow unionist and spent 81 days in prison before being acquitted. Fought in Spain, and at Bulge

In 1938 he joined the Republican forces in the Spanish Civil War, serving eight months as a machine gunner with the Abraham Lincoln Brigade. In World War II, he served with the 76th Infantry Division and took part in the Battle of the Bulge.

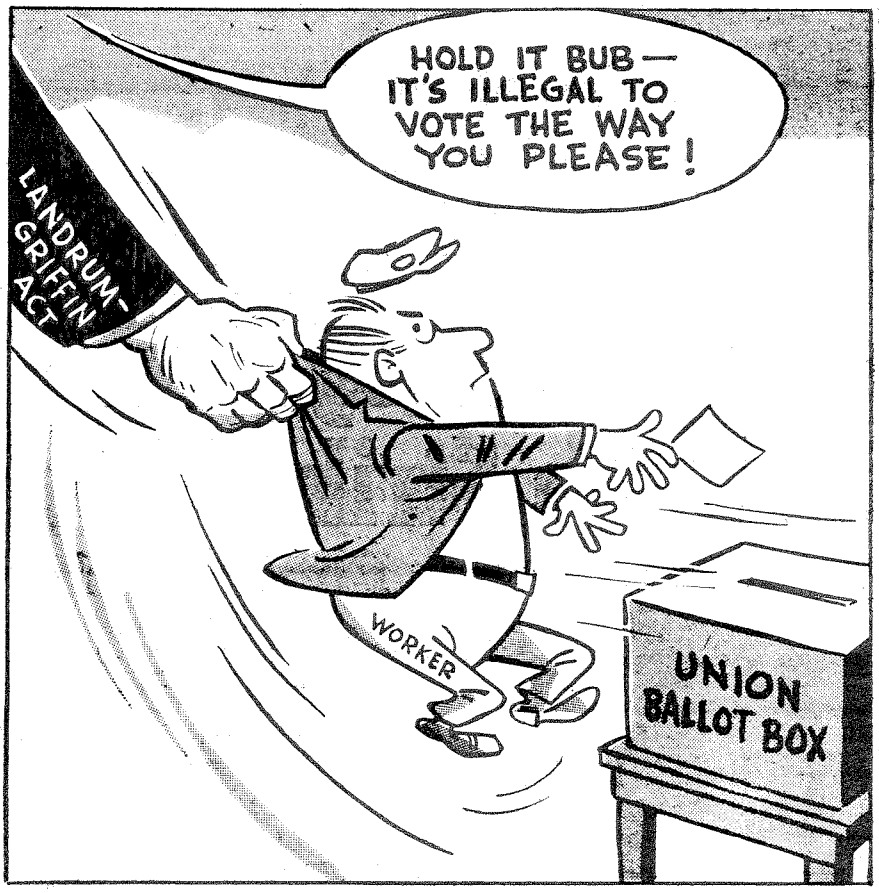
After the war in 1946, he was named the Communist Party's state trade union director in California and later became a member of the party's national committee.

Mr. Brown gained national prominence in 1960 during hearings of the House Un-American Activities Committee in San Francisco. He and other Communists were accused of organizing demonstrations against the committee and committing acts of violence against police officers trying to restore order. He was arrested in 1961 on a charge of violating the Landrum-Griffin Act.

He retired from the longshoremen's union in 1976 but remained an active supporter of causes like the Sandinista movement in Nicaragua and the opposition to Gen. Augusto Pinochet, the former Chilean President.

Document 2

IS UNION DEMOCRACY A FEDERAL CRIME?



The strange case of the Landrum-Griffin Act vs. Archie Brown

This is the cover page of a folded, 8.5 " x 11 " leaflet published by Local 10 -- the San Francisco longshore local -- of the ILWU.

THE MAN AND THE

"If you want a line on a man, ask somebody that works with him."
—Will Rogers

The men who work with Archie Brown — the longshoremen of San Francisco — gave a line on him. They elected him to the executive board of their union, Local 10, International Longshoremen's & Warehousemen's Union.

Some had worked with Brown since 1935, when he became a longshoreman and joined the union. The election was fair and honest. No dispute about that — even the severest critics of ILWU concede that for democracy and honesty it has few peers and no superiors among the country's unions.

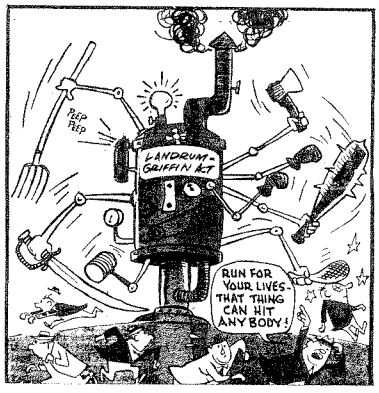
Yet, on April 5, 1962, a Federal court found that in seeking and winning the executive board post in a fair election Brown was guilty of a crime — violating Section 504 of the Landrum-Griffin Act.

Did Brown use his post for illegal purposes?

No, the Justice Department did not even claim that he intended to make any evil or criminal use of his position. Judge an prosecutor agreed on this point.

Judge Albert C. Wollenberg conceded: "I don't think the government has any evidence of any specific intent in this record."

The Justice Department, in its brief on appeal, said: "It would be contrary to the whole rationale of the legislation . . . to require proof of a specific intent or ability of the individual to cause the harm that Congress apprehended."



In short, whatever evil Congress was supposed to have feared in passing the law there was no evidence that Brown committed it, or intended to commit it, or even had the power to commit it as one of 35 Local 10 executive board members.

Did Brown violate union principles?

No, the Justice Department argued that union principles were not an issue in a case hinging on election of a union man to union office. When ILWU President Harry Bridges was on the witness stand, the following exchange took place:

> Q (by defense attorney Richard Gladstein): Does he (Archie Brown) bear, to your knowledge, a reputation among longshoremen as to whether he is or has been a good, honest union man?
>
> MR. CECIL POOLE (U. S. Attorney): Just a moment. I object to that as being incompetent, irrelevant, improper . . . Being a good union man is not an issue . . .

What is the issue?

Later on, Mr. Poole gave the Justice Department's version of the issue. "This statute," he said, "makes it a federal crime for a man who is a member of the Communist Party also to serve as a member of the executive board of a union, and whether his general reputation among his fellow trade unionists is good, bad or indifferent as being a unionist is not the question."

An unusual crime

The crime, it seems, depends not on *what* is done, but on *who* does it. Partaking in his union's democratic process is surely a good thing for a workingman to do. But, according to the Landrum-Griffin Act, union democracy is a crime — if practiced by a workingman who is a "Communist."

Worse yet, the Justice Department points its finger at every union member, whatever his politics, and decrees: regardless of your own best judgment, regardless of your union by-laws, regardless of union principles, you

. . . the first inside page.

CHALLENGE

shall not elect any "Communist" to union office.

Brown's political views and associations are not the issue — we are not concerned with defending them. The issue is the right of the union membership to elect its own officers, and the right of individual union members to submit their qualifications for office to the judgment of their peers in a democratic election under the union's constitution and by-laws.

Free unions?

The idea underlying Section 504 of the Landrum-Griffin Act is that working people are too stupid, or too immoral, or too unreliable to govern their own unions. Hence, they need government tutelage.

By the logic of this law a labor-hating Southern Congressman or a politically-appointed bureaucratic hack, who might never have carried a union card, is better fitted to judge an individual's qualifications for service on a union executive board than are his fellow workers and union brothers.

Section 504 not only forbids election to union office of Communists, or persons who had been Communists within the preceding five years. It also forbids election of persons who had been convicted of sundry crimes. Surely if a man commits a crime the government has ample resources to inflict punishment, but after punishment has been exacted, after the man has "paid his debt to society," then the judgment of whether he is qualified to hold union office ought to rest with his union brothers.

There is no law that says he cannot become president of a chamber of commerce, or deacon of a church, or exalted officer of a fraternal order. That is left to the wisdom of the members of these groups. Only unions are subjected to such crass class legislation as the Landrum-Griffin Act.

If unions accept the degrading proposition that they are unfit to choose their own officers without government supervision, they surrender their independence. They betray their democracy. They are on their way from being instruments of working people in the battle for a better life to becoming government tools for control of labor.

Such is the fundamental challenge to all labor in the Landrum-Griffin Act and in this key test of the law, the case of Archie Brown.

What his union says . . .

The following is from a resolution adopted by the International Executive Board of the International Longshoremen's & Warehousemen's Union on June 27, 1961:

". . . the International Executive Board intends to challenge the validity of Section 504 (of the Landrum-Griffin Act). . . .

"In taking this stand, the ILWU International Executive Board does not propose to defend Brown as an individual, or his political views, or the Communist Party. These are not the concern of the Board.

"The issue here is the right of the membership to adopt a union constitution in basic accordance with the guarantees of the U.S. Constitution. Local unions of the ILWU have adopted constitutions in conformance with the constitution of the international union, guaranteeing to every ILWU member in good standing the right to be nominated for and be elected to any office. The Board intends to uphold these constitutional provisions, as it is the Board's responsibility to do, until the membership decides otherwise. We are confident that the courts will uphold us on this fundamental right which runs to the heart of democratic unionism."

. . . the second inside page.

A challenge to labor

The Landrum-Griffin Act has been invoked not only against Archie Brown and the International Longshoremen's & Warehousemen's Union, although his case is a test of a most lethal section. The law has been used against unions throughout the land, most especially the Teamsters Union. It is part of a pattern. Look at the record:

- A raft of bills in Congress — for compulsory arbitration, for a ban on industry-wide bargaining, for a prohibition of all strikes in the transportation industry, and lots more.
- A relentless Justice Department drive to "get" James R. Hoffa and force his removal as Teamsters Union president.
- A vendetta against the Mine-Mill Workers Union, who despite having won every case it submitted to the Supreme Court, is once again being persecuted under the Taft-Hartley and McCarran Acts.
- Government threats, pressures, injunctions and other forms of intervention, which are becoming the rule rather than exception in major collective bargaining.

It all adds up to a vast effort to impose tight government controls over unions and render them impotent. And this at a time when unions need all their strength and freedom of action to cope with the basic problem of JOBS, which are going down the drains of automation, mechanization, plant relocation and monopoly mergers. To fatten profits the big corporations want not only push-button machines but also push-button unions.

You and your union can help turn this ominous tide by taking a stand on the Landrum-Griffin Act and the test case of Archie Brown.

- Your union can urge Congressmen and the President to work for repeal of the Landrum-Griffin Act.
- Your union may enter the appeals phase of the Brown case by filing a brief as "friend of the court."
- You and your union can communicate to Atty. Gen. Robert F. Kennedy, urging that he drop prosecution of Archie Brown.

You may also help acquaint labor and the general public with the dangers of the Landrum-Griffin Act and the issues in the Brown case by contributing funds to the Local 10 Committee To Combat the Landrum-Griffin Act. While this Committee is not paying for the legal defense — finances are needed to help arouse public sentiment for the repeal of the law and for defense of union members victimized by it.

We hope you will be guided, as we are, by that fine old principle of labor solidarity, which serves as our union's motto:

"An injury to one is an injury to all."

Local 10 Committee to Combat the Landrum-Griffin Act
400 North Point St., San Francisco 11, Calif.

100

. . . **the back page.**

Document 3.

ARCHIE BROWN RETIREMENT TESTIMONIAL COMMITTEE

Dear friend:

How far back do your memories go?

Do you remember the farm workers' organizing campaign of the 1930's? What about the great 1934 San Francisco waterfront strike—and the citywide General Strike that followed? Do you recall the wave of support for the Spanish Republic and the brave young men and women who volunteered to fight in its behalf? Or the World War against fascism, for which the Spanish Civil War was Hitler's bloody rehersal?

Perhaps your memories start later—in the Cold War years, when progressives were systematically hounded out of the labor movement—until one trade unionist successfully fought for his right to his political beliefs. Or with the early sixties, when San Francisco police clubbed and firehosed students protesting the presence here of the House Un-American Committee. Or with the Civil Rights movement, the campaign to end the Vietnam War, the burgeoning movements today to restore freedom to fascist Chile and bring down the racist regimes of Southern Africa.

Archie Brown—militant longshore unionist, veteran of the Abraham Lincoln Brigade and the Second World War, victorious appellant in the case of Brown vs. U.S. that upheld the constitutional right of union members to elect their officers regardless of political affiliation, Communist candidate who polled 25,000 votes for Supervisor in 1961, "unfriendly witness" who defied the HUAC witch-hunters, one of labor's sparkplugs for support to the peoples of Chile and Southern Africa—has been in the forefront of every trade union and progressive struggle since his first picket line arrest in 1928, when he was sixteen years old.

Many of us—young and not so young—can't remember when Archie wasn't around, giving all his tremendous energy to the cause of freedom and justice, expressing with his unique ability the thoughts and feelings of rank and file working people.

Most of us CAN remember—forty years ago or only last week—Archie's knack for getting more out of us than we thought we could achieve. Even his enemies—the ship-owners, the Cold Warriors and HUAC inquisitors, the racists and reactionaries of every description—admit what the rest of us know: there is only one Archie Brown.

But life is change and time goes on. Archie Brown retired as a longshoreman on January 1 of this year. No, he hasn't left the front line—in fact he is taking advantage of retirement to work even harder on the causes close to his heart. But his career as an active longshoreman is ended.

That's why a group of Archie's friends and fellow-workers have decided to organize a testimonial for him on March 26th. The place will be Archie's own stamping ground, the Longshoremen's Hall. The program will cover—through music, skits, graphics, and personal reminiscence—Archie's long career of struggle. The price of $5.00 and $2.50 for Seniors, students and unemployed, is set so that Archie's people—the working people—can attend. And Archie himself, a Communist Party member throughout his adult life, has asked that the proceeds go to the People's World newspaper, which he calls "the only paper in the West with an unblemished record, through good times and bad, of championing the fight for democracy, equality, and social change."

The name of Archie Brown will take its place among the many working class heroines and heroes whose lives and work have helped light the difficult path to freedom. His testimonial will be an event to remember. We hope to see you there.

ARCHIE BROWN RETIREMENT TESTIMONIAL COMMITTEE
Alan Kurtz, Chair • John Burke, Secretary
Frank "Bimbo" Brown • Albert J. Lima • Bill Proctor
Urho Tuominen • Karl Yoneda • Lloyd Vandever

ARCHIE BROWN RETIREMENT TESTIMONIAL SPONSORS

WATERFRONT:

Cleophas Williams
George Kaye
Herb Mills
Gene Dennis
Bob Edwards
Alex Bagwell
Frank "Bimbo" Brown
Bill Proctor
Urho Tuominen
Karl Yoneda
ILWU Pensioners' Club, San Francisco

WAREHOUSE:

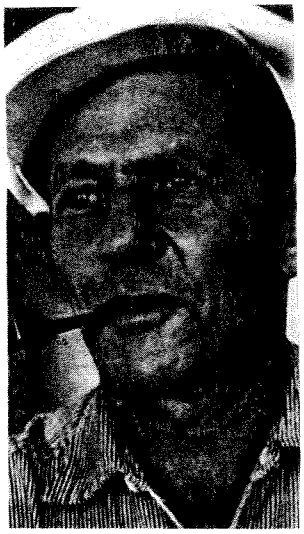
Franklin Alexander
Sylvester Daniels
Joe Figueiredo
Terry Greene
Joe Lindsay
Abba Ramos
Abby Sullivan
Tom Tsukahara
Tony Wilkinson

TRADE UNIONISTS

(Organizations for identification only)

John V. Burke, UTU Local 31
Lucille Flato, SEIU Local 400
Helen Lima, SEIU Local 250
Ole Martinsen Local 1412 U.E.
Cathy Proctor, AFSCME Local 1695
Walter Stack, Hod Carriers Local 36
Lou Torre, Machinists Lodge 68
Lloyd Vandever, Local 1412 U.E.
Jack Weintraub, IBT Local 85
Jeff Wilkinson, Molders Local 34
Margy Wilkinson, AFSCME Local 1695
Elaine Yoneda, OPEIU Local 29

AND FRIENDS:



Kendra Alexander
Mark Allen
Bettina Aptheker
Ed Bender
Alvah Bessie
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Bob Kaufman
Marshall Krause
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Norman Leonard
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Francis J. McTernan
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●

George Meyers
Giuliana Milanese
Jessica Mitford
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Peter Tamases
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Marion Merriman Wachtel
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Supplement to the People's World

C498

Guide to the Archie Brown Papers 1935-2002 ALBA # 207
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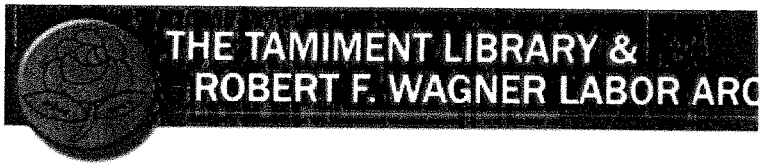

New York University Libraries, Publisher

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Descriptive Summary

Creator:
Brown, Archie, 1911-1990.
Title:
Papers
Dates:
1935-2002, (Bulk 1936-1946-1960-1997)
Abstract:
Archie Brown (1911-1990) -- San Francisco waterfront unionist, Communist Party organizer, and active member of the Bay Area Post of the Veterans of the Abraham Lincoln Brigade -- fought with the Abraham Lincoln Brigade in Spain and participated in the Battle of the Bulge during WWII. He served on the Executive Board of International Longshoremen's and Warehousemen's Union, Local 10, was prosecuted under the Landrum-Griffin Act barring Communists from serving as elected union officials, and won a Supreme Court decision in 1965 that overturned this legislation. This collection documents the full range of his career. Included is his correspondence from Spain and WWII, materials related to his union activism, legal documents pertaining to his indictment and appeal, and personal family papers. These records also provide a comprehensive account of West Coast VALB activities from the 1970s through the 1990s.
Quantity:
4.5 linear feet (5 boxes)
Call Phrase:
ALBA # 207

Arrangement

Series I is arranged alphabetically within each sub-series. Series II and III are arranged alphabetically.
The files are grouped into three series:

I, Personal Papers, 1936-1990
A: Spanish Civil War
B: World War II
C: General
II, Veterans of the Abraham Lincoln Brigade: Bay Area Post, 1940; 1967-2002
III, Oversize Material, 1945; 1960

Historical/Biographical Note

Archie Brown was born on March 5, 1911 in Sioux City, Iowa to Nathan and Sarah Brown, Russian Jews who immigrated to the United States in the early years of the 20th century. In America, the family name of Breen was changed to Brown, and Nathan, a peddler by trade in Russia, struggled to support his wife and eight children as a teamster in Sioux City, delivering bread and meat to Jewish households throughout the region. In search of greater economic opportunity, Nathan relocated to Oakland, California, and soon after, 13-year-old Archie hopped a freight train to join his father and older brother in gainful employment. There he hawked newspapers and was initiated into labor activism while participating in a newsboys' strike in 1928. Members of the Trade Union Education League (TUEL), the labor-organizing wing of the Communist Party, helped the newsboys advance their cause, and fostered Brown's political education. He joined the Young Communist League (YCL) the following year and soon was taking part in efforts to organize agricultural workers, many of them migrant Mexicans and Dust-Bowl refugees. Brown's talents as a persuasive and indefatigable organizer came to the fore early on. A frequent orator at rallies and meetings, Brown was arrested at a YCL event in San Pedro in 1934 and charged with disturbing the peace; he received a three-month sentence. Following his release, he joined the International Longshoremen's Association, a forerunner to the International Longshoremen's and Warehousemen's Union (ILWU), and became a moving force in organizing waterfront workers in the San Francisco Bay area. It was during this time that Brown met Esther ("Hon") Matlin at a YCL dance. By 1936 the couple were married. Theirs was an enduring union that produced four children and lasted over 50 years.

With the overthrow of the popularly elected government in Spain by fascist forces in 1936, the Communist Party began recruiting volunteers to join the International Brigades' defense of the beleaguered nation. Brown's younger brother Frank ("Bimbo") was among the initial recruits from ILWU, Local 10 to enter the fray early in 1937. Archie, by now an important Party leader and well-known labor radical in the San Francisco area, was denied a passport by the local passport agency (his claims of wanting to pursue studies in France were met with incredulity). Undeterred, he traveled to New York City and in May 1938, after three months of unsuccessful efforts to obtain a passport, stowed away on a ship bound for France, to make his way to Spain. He arrived

in time to serve with the Lincoln Brigade as company commissar in the Ebro Offensive and in the final bloody retreats of the war. Following the withdrawal of the International Brigades from Spain, Brown sailed from France to New York (this time as a third-class passenger) on the S.S. Ausonia in December 1938.

Back in San Francisco, Brown returned to the waterfront and the Communist Party. In 1940, Brown ran for the Congress in the 4th District on the CP ticket. Although never elected, he was for many years a perennial candidate for a variety of offices on the Party line. During World War II, Brown enlisted in the U.S. Army, trained at Fort Hood, Texas and, in February 1945, shipped out to Europe where he participated in the Battle of the Bulge with the 76th Infantry Division. He remained overseas until early 1946, serving with the occupation forces in Europe. Upon his return he was named state trade-union director for the Communist Party. Cold War politics made the labor movement and the militant left targets of mounting hostility and judicial assault. Brown was directed by the CP to go into hiding, and for four years he led a shadow existence shuttling between safe houses and permitted only rare visits with his family. He emerged again in 1955, resumed work as a longshoreman and, although he resigned from his full-time position as a Communist Party organizer, remained a staunch adherent to the movement.

During the final years of the 1950s, Brown continued his union activities and served as an Executive Board member of the ILWU, Local 10. In 1960 Brown was subpoenaed and appeared as a hostile witness before the House Un-American Activities Committee at hearings held in San Francisco's City Hall. As Brown delivered a defiant statement, protestors against the proceedings poured into the hearing room. Pandemonium erupted and the Committee had Brown forcibly ejected. Three days of demonstrations ensued, led to scores of arrests, and earned Brown national notoriety for his role in the protests. By the following year, Brown was again drawing fire. This time he was arrested and charged with violation of a provision of the 1959 Landrum-Griffin Act which barred Communists from serving as union officers. In 1963 he was convicted. Following a Federal Court of Appeals decision in Brown's favor, the U.S. Supreme Court struck down the legislation in 1965. Brown retired from Local 10 in 1977 and, with Hon, assumed the leadership of the Bay Area Post of the Veterans of the Abraham Lincoln Brigade (VALB). Along with members of VALB, Brown engaged in a range of activist efforts, including protests on behalf of the Sandinistas in Nicaragua and in opposition to the Pinochet government in Chile, and the provision of humanitarian aid and technical support to El Salvador and Cuba. In 1986 Brown, and veterans from around the world, returned to Spain to mark the 50th anniversary of the formation of the International Brigades. On November 23, 1990, Brown died after battling cancer. He was 79 years old.

Sources:

Schwartz, Stephen. "Archie Brown: He Won Key Court Ruling." San Francisco Chronicle, November 22, 1990.

Wiese, Timothy. "San Francisco Labor Activist Archie Brown." MA thesis, Sonoma State University, 1999.

Scope and Content Note

Series I: Personal Papers, 1936-1990. The materials in this series document the broad range of Brown's experiences from the months leading up to and including his time in Spain, through his WWII service, and into the 1960s and the court cases related to his union's violation of the Landrum-Griffin Act. This series also includes family papers and memorabilia.

Sub-series A: Spanish Civil War. This subseries contains Brown's letters to his wife Esther -- referred to as "Hon" -- that cover the period from his departure from California in February 1938, through his return to New York in December 1938. In these letters he recounts his cross-country journey to New York City and sojourn there, the outgoing voyage as a stowaway his duties in Spain, and his political observations. Esther was also the recipient of letters from other volunteers including Douglas Male and Archie's brother Frank (Bimbo), and these letters can also be found in this series. Additional materials include military documents, identification and membership cards; a copy of Volunteer for Liberty annotated with Spanish and American signatures; and a seven-page handwritten letter to Brown from Harry Bridges, President of the International Longshoremen's and Warehousemen's Union (ILWU), with news of the waterfront unions and the State A.F.L. convention.

Subseries B: World War II. In addition to Brown's letters to Hon documenting his military service from June 1944 through January 1946, there are several V-mail letters from fellow Abraham Lincoln Brigade veteran John (Jack) Lucid, military documents, and Brown's dog tags. Also in this series are several letters written by Brown to his young son Douglas, offering gentle instruction on class struggle, race and the evils of bigotry.

Subseries C: General. Among the materials to be found in this series are legal briefs and clippings related to Brown's indictment and appeal for violation of the Landrum-Griffin Act; documents related to his activities with the waterfront workers and the International Longshoremen's and Warehousemen's Union (ILWU); Brown's Communist Party membership card and a piece of his election campaign literature; correspondence from

supporters and detractors; and materials related to his wife Hon, their children and their extended family. Also here is a copy of Timothy Wiese's master's thesis on Archie Brown's long career as a radical labor activist.

Series II: Veterans of the Abraham Lincoln Brigade: Bay Area Post, 1940; 1967-2002.This series, consisting of records of the Veterans of the Abraham Lincoln Brigade Bay Area Post, offers a comprehensive account of the West Coast veterans' activities from the 1970s through the 1990s. Included in these records are minutes, correspondence, and materials related to annual celebrations and events; documentation of VALB's activism on behalf of El Salvador and Nicaragua; and clippings and memorabilia related to anniversary visits by Abraham Lincoln and International Brigades veterans to Spain. These records also reflect Esther Brown's ongoing work on behalf of VALB following her husband's death in 1990.

Series III: Oversize Material, 1945; 1960.This series includes two folders: a folder of clippings pertaining to the House Committee on Un-American Activities hearings and protest, and a folder of Armed Forces periodicals from WWII.

Brown (Archie) Collection

Processed by The Labor Archives & Research Center staff; machine-readable by James Ryan

Labor Archives and Research Center

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San Francisco, California 94132
Phone: (415) 564-4010
Fax: (415) 564-3606
Email: larc@sfsu.edu
URL: http://www.library.sfsu.edu/special/larc.html

Descriptive Summary

Title:
Archie Brown Collection, 1933-1978

Accession number:
92/5, 95/11, 95/67, 97/66, & 98/57

Creator:
Brown, Archie

Extent:
2 cubic feet

Repository:
San Francisco State University. Labor Archives & Research Center
San Francisco, California 94132

Shelf location:
For current information on the location of these materials, please consult the Center's online catalog.

Language:
English.

Administrative Information

Access

Collection is open for research.

Publication Rights

Preferred Citation

[Identification of item], Archie Brown Collection, 92/5, 95/11, 95/67, 97/66, & 98/57, Labor Archives & Research Center, San Francisco State University.

Introduction

The collection consists of accessions from Archie Brown's wife, Mrs. Esther "Hon" Brown. Materials include broadsides from leftist causes, pamphlets, and correspondence. The collection was received in the spring of 1995 and processed during the summers of 1995 and 1996.

Biographical Notes

Archie Brown was born in Sioux City, Iowa in 1911. In his early teens he rode the rails to the Bay

Area. At age 14, he lost his job as a newsboy for organizing a newsboys' strike. During the 1930s, he belonged to the Young Communist League, helped organize California agricultural workers, and became a longshoreman, part of San Francisco's thriving waterfront union movement.

In 1938, his convictions led him into the Abraham Lincoln Brigade to fight the Fascists in the Spanish Civil War. He also served in the U.S. Army in World War II, and fought in the Battle of the Bulge.

After his return from the war, Archie held a number of state and national Communist Party positions. He continued to work as a longshoreman, and served on the Executive Committee of International Longshoremen's and Warehousemen's Union, Local 10. He was arrested for violating the Landrum-Griffin Act, which stated that trade-union office holders could not be Communist Party members. He fought the guilty verdict up to the U.S. Supreme Court, which struck down the ban in 1965.

Archie remained an active longshoreman until 1977. After his retirement, he worked to promote numerous leftist causes. He died of cancer in November 1990. A partial record of his activities can be found in the Collection.

Scope and Content

The collection includes items from the 1930s & 1960s, but the majority of documents cover the 1970s. Archie Brown was active in the ILWU, the Communist Party, and a host of "progressive" organizations. The many pamphlets and broadsides testify to his commitment to social justice and also give an idea about the issues of importance to San Francisco leftists in the 1970s.

The activities to which Archie Brown gave time and attention are the U.S. labor union activities to support Chilean workers and the fight to free Angela Davis. The Chilean folders document a Bay Area union active in a broad range of support actions.

Other activities of which there is less documentation include economic issues, for example, the Coalition to Fight the High Cost of Living. He also supported struggles of other unions and their strikes.

Of special interest are the angry letters Archie Brown received from all over the United States after the movie "Operation Abolition" was shown nationwide. This propagandistic documentary about the fight to abolish the House Un-American Activities Committee also drew a few letters of support.

There is one folder of copies of letters Archie wrote to his wife during the Spanish Civil War. The originals are at Brandeis University in the Archie Brown Collection.

Xerox copies were made of the Waterfront Worker (1933-1936), a mimeographed newsletter.

The numerous Communist Party books and pamphlets were removed and sent to the Niebyl-Proctor Library.

Container List

[Box 1/0]
Descriptive Guide

[Box 1/1]
Biography of Archie Brown 1990 . 1990

[Box 1/2]
Biography . n.d.

[Box 1/3]
Black Panthers . 1971, n.d.

[Box 1/4]
Candidacies (of Archie Brown) . 1959, n.d.

[Box 1/5]
Chile . 1974-1976

[Box 1/6]
Correspondence, Incoming . 1959-1977, n.d.

[Box 1/7]
Correspondence, Operation Abolition . 1960

[Box 1/8]
Correspondence, Operation Abolition . 1960-1961

[Box 1/9]
Correspondence, Operation Abolition . 1960-1962

[Box 1/10]
Correspondence, Operation Abolition . 1960-1961

[Box 1/11]
Correspondence, Outgoing . 1961-1974

[Box 1/12]
Correspondence, Spanish Civil War (xerox) . 1938

[Box 2/1]
Court Transcript, State of CA vs. Brown . 1935

[Box 2/2]
Court Transcript. Jimenez, Canales, Brown & Villi . 1935

[Box 2/3]
FBI Records, Social Security Benefits . 1977

[Box 2/4]
Government Documents . 1967-1976

[Box 2/5]
Holmes Eureka Lumber Strike Commemoration . n.d.

[Box 2/6]
I.L.A. "Strike Bulletins" . 1934,1936

[Box 2/7]
I.L.A. "Women's Voice" . 1936

[Box 2/8]
I.L.A. Report . 1936

[Box 2/9]
I.L.W.U. 1971-1975

[Box 2/10]
Labor Issues, Various . 1963-1978

[Box 2/11]
Local Negotiations . 1971-1972

[Box 3/1]
Newspaper Clippings . 1934-1951, n.d.

[Box 3/2]
Pamphlets . n.d.

[Box 3/3]
Photographs . 1941,1960

[Box 3/4]
Political Leaflets, Various . 1964-1978

[Box 3/5]
Socialist Labor Party & Workers International Industrial Union . n.d.

[Box 3/6]
Spanish Civil War, Abraham Lincoln Brigade . 1962-1978

[Box 3/7]
Strike Bulletins & Flyers1934 . 1934

[Box 3/8]
Testimonial, Speech . n.d.

[Box 3/9]
Viet Nam War . 1965-1971, n.d.

[Box 3/10]
Waterfront Worker (xerox) . 1933,1934

[Box 3/11]
Waterfront Worker (xerox) . 1933,1934

[Box 3/12]
Waterfront Worker1934 . 1934

[Box 4/1]
Waterfront Worker (xerox) . 1934

[Box 4/2]
Waterfront Worker . 1935

[Box 4/3]
Waterfront Worker (xerox) . 1935

[Box 4/4]
Waterfront Worker (xerox) . 1935

[Box 4/5]
Waterfront Worker 1935-1936 . 1935-1936

[Box 4/6]
Waterfront Worker (xerox)1935-1936 . 1935-1936

[Box 4/7]
Waterfront Worker (xerox) . 1935-1936

Material Cataloged Separately

The following materials have been removed from the files and are located in the Ephemera Collection of the Labor Archives.

A Conversation--Labor Looks at Labor. Some members of the United Auto Workers undertake self-examination. 1963.

Union Printers College. San Francisco Typographical Union, No. 21. 1963

Voices for Liberty. Stop McCarranism! Collection of speeches. Ca. 1964.

How to Speak at Union Meetings. UAW Education Department. 1977?

Effective Discussion Methods. UAW Education Department. 1976?

Come Out Swinging! A 2-Fisted Rank & File Program. Labor Education Fund. 1974.

Proposition "L": 30 Hours Work, 40 Hours Pay. Workers Action Movement. 1973.

Some Facts on the New Grape Boycott. UFW Research Department. 1973.

Agenda from the First Constitutional Convention, United Farm Workers. 1973. (English and Spanish)

Boycott Lettuce and Grapes. Political Education Project and UFW. 1973?

Joe Worker and the Story of Labor. (Comic book). National Labor Service. 1945.

On the Boss's Time. Shop Poems and Other Poems By George Bratt. 1958.

Security, Civil Liberties and Unions. AFL-CIO. 1956.

Of the People, for the People. Pictorial highlights of fifty years of the Communist Party, USA, 1919-1969. 1970.

"All Strikebreakers Must Go!" San Francisco Typographical Union No. 21. 1964.

Port of San Francisco Ocean Shipping Handbook. Board of State Harbor Commissioners. n.d.

Archie BROWN, Appellant, v. UNITED STATES of America, Appellee.

United States Court of Appeals for the Ninth Circuit
November 9, 1964
334 F.2d 488

See 85 S.Ct. 187.

Richard Gladstein, Gladstein, Anderson, Leonard & Sibbett, San Francisco, Cal., for appellant.

J. Walter Yeagley, Asst. Atty. Gen., George B. Searls, Carol Mary Brennan, Dept. of Justice, Washington, D. C., Cecil F. Poole, U. S. Atty., San Francisco, Cal., for appellee.

Marshall W. Krause, American Civil Liberties Union of Northern California, San Francisco, Cal., amicus curiæ

Before CHAMBERS, BARNES, HAMLEY, JERTBERG, MERRILL, KOELSCH, BROWNING and DUNIWAY, Circuit Judges.

MERRILL, Circuit Judge.

1 This appeal challenges the constitutionality of § 504 of the Labor-Management and Reporting Act (29 U.S.C. § 504) which makes it unlawful for a member of the Communist Party to hold office in a labor union.

2 The section is set forth in the margin.[1] It will be noted that the criminality is achieved in two stages: First, the holding of such office by a member of the Communist Party is prohibited as a regulation of interstate commerce; second, the violation of this regulatory prohibition is made a crime.

3 Section 504 was enacted in 1959 as part of the Labor-Management Reporting and Disclosure Act and is the successor of § 9(h) of the Taft-Hartley Act, which was then repealed. The latter section barred the facilities of the National Labor Relations Board to any labor organization the officers of which failed to file with the Board affidavits that they were not members of or affiliated with the Communist Party.

4 There can be little doubt, in the light of the legislative history of § 504, that it was designed to achieve the same Congressional objectives as former § 9 (h) and achieve them more effectively.[2] The purpose of the former section and the evils Congress intended it to combat were fully explored by the Supreme Court in American Communications Ass'n v. Douds (1950) 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed. 925. There the court stated, at pages 388-389, 70 S.Ct. at page 678-679:

5 "One such obstruction, which it was the purpose of § 9(h) of the Act to remove, was the so-called `political strike.' Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. * * * "It is sufficient to say that Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action."

6 Section 504, then, was enacted in a continuing effort by Congress, in its regulation of interstate

commerce, effectively to prevent the interruption of a free flow of commerce by political strikes.

7 Appellant has been a member of the Communist Party since at least 1935. In elections for the years 1959, 1960 and 1961, he was, while a party member, elected a member of the Executive Board of Local 10 (San Francisco, California) of the International Longshoremen's and Warehousemen's Union. Thereafter, while a party member, he served in this official capacity. He was thereupon indicted for a violation of § 504. He was tried and convicted and this appeal is taken from judgment of conviction.

8 Before we reach the constitutional problems which the appeal presents, it is necessary to deal with a matter of statutory construction. Appellant contends that the executive board of the local to which he was elected is not a "governing body"; that it is not the sort of "executive board" to which the statute applies.

9 The court instructed the jury that the Union's executive board was an executive board within the meaning of the statute. Appellant assigns as error the action of the district court in taking this question from the jury and in refusing to instruct the jury that it had to find that the board had power to impose its policies upon the Union and thus to engage the Union in activities which might disrupt the flow of commerce.

10 Two questions are presented by these contentions. First, was a jury question presented as to whether or not the executive board of the Union was an "executive board or similar governing body" within the meaning of the statute? Second, if not — if this question was a question of law — was it correctly answered by the court? Upon both issues we agree with the district court.

11 As to the nature of the Union's board we find no factual dispute to be resolved. The constitution of Local 10, setting forth the nature and powers of the executive board, was put in evidence and was read to the jury by appellant's counsel.[3] Appellant introduced testimony to show that the executive board was primarily a recommending body whose resolutions were subject to review (and rejection) by the total membership before being translated into action.

12 We may accept as true all factual contentions asserted by appellant to have been established by this proof; specifically, that the board was without power on its own authority to bring about the evil with which Congress was concerned.

13 The true issue presented by the contentions of appellant was not as to the authority actually possessed by the Union board, but whether a board having the nature and powers specified by the local's constitution for this board, even though limited in its powers as factually contended by appellant, was an "executive board or similar governing body" within the meaning of the statute. This was a question of law.

14 Upon that question we note first that under the local's constitution the "executive board" was an integral part of the frame of government set up by that document for the local.

15 In our judgment appellant reads § 504 too narrowly in attempting to confine "executive board" or "governing body" to one which, on its own authority, could take or require action threatening an interruption of commerce. While the statute was designed to strike at such interruptions its concern was not limited to those of executive authority who might by executive order accomplish such interruption. It included as well those who might by their position or office have power to influence such a result.

16 We note further that by specifying "any executive board" as well as "director" Congress apparently intended to include boards with a scope of authority different from that ordinarily possessed by a corporation's board of directors. By including within the prohibition all employees save those performing exclusively clerical or custodial duties, it has clearly manifested its desire to bring within the purview of § 504 persons other than those who ultimately control the unions.

17 We also note that this Act and this section apply to persons convicted of certain crimes as well as to Communist Party members. Congress' wish to rid labor unions of racketeering and corruption by driving out criminal elements cannot reasonably be said to be restricted to upper-echelon positions of real power.

18 We conclude that the district court did not err in instructing the jury as it did.

19 This brings us to a consideration of the constitutional issue: whether criminal punishment of any and all Communist Party members who become union officers, regardless of lack of intent to bring about the evil the statute was designed to prevent or to further other unlawful aims of the Party, infringes the guarantees of the First and Fifth Amendments.

20 The district court, in denying motions to dismiss the indictment and for acquittal, held that no proof of specific intent of any kind was necessary under the statute and that so construed the statute was constitutional.[4]

21 We turn first to a consideration of the question whether, as so construed, this regulation constitutes an impermissible restraint upon appellant's First Amendment "freedom of association for the purpose of advancing ideas and airing grievances." Bates v. Little Rock (1960) 361 U.S. 516, 523, 80 S.Ct. 412, 416, 4 L.Ed.2d 480. In support of the district court judgment the Government relies upon American Communications Ass'n v. Douds, supra. There it was stated, at page 390 of 339 U.S. at 680 of 70 S.Ct.:

22 "There can be no doubt that Congress may, under its constitutional power to regulate commerce among the several States, attempt to prevent political strikes and other kinds of direct action designed to burden and interrupt the free flow of commerce."

23 It held that Congress could attempt to prevent Communists from serving as union officers by legislation providing that the important benefits of the National Labor Relations Act, including access to N.L.R.B. facilities, should be denied to unions having any Communist officers.

24 The Government urges that from this it follows that Congress, in order to make more effective its remedy for the conditions it could thus reasonably have found, could also impose personal criminal sanctions on this same general basis of political affiliation, by providing that mere membership in the Communist Party, when combined with union officership, is conclusive of guilt. We cannot agree.

25 At least grave doubt is cast upon such a contention by the more recent Supreme Court decisions in Scales v. United States (1961) 367 U.S. 203, 81 S.Ct. 1469, 6 L.Ed.2d 782, and Noto v. United States (1961) 367 U.S. 290, 81 S.Ct. 1517, 6 L.Ed.2d 836. The thrust of these decisions was that a criminal conviction for becoming a member of an organization advocating overthrow of the government — in these cases the Communist Party — can escape First Amendment condemnation only if in each case it is proved (1) that the organization was engaged in the type of advocacy, of action to accomplish overthrow, that is unprotected by the First Amendment, and (2) that the defendant was an "active" member of such an organization with a specific intent to further such unlawful purposes. The court's rejection of membership per se as a constitutionally sufficient ground of conviction was based upon the recognition, also voiced in Douds, 339 U.S. at 393, 70 S.Ct. at 681,[5] that the Communist Party has both legal and illegal aims and carries on both legitimate and illegitimate activities, and the further recognition that there may be members "for whom the organization is a vehicle for the advancement of legitimate aims and policies" alone. "If there were a * * * blanket prohibition of association with a group having both legal and illegal aims," the court reasoned, "there would indeed be a real danger that legitimate political expression or association would be impaired," Scales v. United States, supra, 367 U.S. at 229, 81 S.Ct. at 1486, for "one in sympathy with the legitimate aims of such an organization, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share." Noto v. United States, supra, 367 U.S. at 299-300, 81 S.Ct. at 1522.

26 In Douds the court, at page 400 of 339 U.S., at page 684 of 70 S.Ct., states the problem posed by that case as follows:

27 "In essence, the problem is one of weighing the probable effects of the statute upon the free exercise of the right of speech and assembly against the congressional determination that political strikes are evils of conduct which cause substantial harm to interstate commerce and that Communists and others identified by § 9(h) pose continuing threats to that public interest when in positions of union leadership. We must, therefore, undertake the `delicate and difficult task * * * to

weigh the circumstances and to appraise the subsbtantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.' Schneider v. State, 1939, 308 U.S. 147, 161 [60 S.Ct. 146, 84 L.Ed. 155]."

28 In discussing the extent to which the holding in Douds bears upon the present case it is essential that the dimensions of the restraint (both in that case and in ours) be examined.

29 In one respect the dimensions coincide: how far into the rights involved the restraint cuts.

30 The court in Douds, at page 402, 70 S.Ct. at page 686, notes:

31 "The statute does not prevent or punish by criminal sanctions the making of a speech, the affiliation with any organization, or the holding of any belief."

32 The restraint involved simply a loss of the right to hold union office — what the court refers to as "loss of position."

33 However, the court makes clear that lack of direct restraint upon Communist Party membership does not eliminate the First Amendment problem. At page 402, 70 S.Ct. at page 686 the court states:

34 "But as we have noted, the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. Under some circumstances, indirect `discouragements' undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes. A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature."

35 That loss of position by virtue of Communist Party membership is not to be confused with the usual conflict-of-interest situation is pointed out by the court at pages 392-393, 70 S.Ct. at page 681:

36 "If no more were involved than possible loss of position, the foregoing would dispose of the case. But the more difficult problem here arises because, in drawing lines on the basis of beliefs and political affiliations, though it may be granted that the proscriptions of the statute bear a reasonable relation to the apprehended evil, congress has undeniably discouraged the lawful exercise of political freedoms as well. * * * By exerting pressures on unions to deny office to Communists and others identified therein, § 9(h) undoubtedly lessens the threat to interstate commerce, but it has the further necessary effect of discouraging the exercise of political rights protected by the First Amendment. Men who hold union offices often have little choice but to renounce Communism or give up their offices. Unions which wish to do so are discouraged from electing Communists to office. To the grave and difficult problem thus presented we must now turn our attention."

37 In a second dimension — the quality of the restraint — the restraint confronting us is larger than that in Douds. There the court notes, at page 389, 70 S.Ct. at page 679:

38 "The unions contend that the necessary effect of § 9(h) is to make it impossible for persons who cannot sign the oath to be officers of labor unions."

39 This the court denies, stating at page 390, 70 S.Ct. at page 679:

40 "The statute does not, however, specifically forbid persons who do not sign the affidavit from holding positions of union leadership nor require their discharge from office. * * * We are, therefore, neither free to treat § 9(h) as if it merely withdraws a privilege gratuitously granted by the Government, nor able to consider it a licensing statute prohibiting those persons who do not sign the affidavit from holding union office. The practicalities of the situation place the proscriptions of § 9(h) somewhere between those two extremes."

41 The quality of the restraint in Douds was an indirect "discouragement" obtained through pressure applied to the union. In the language of the court, at page 412, 70 S.Ct. at page 691, it was "[t]o encourage unions to displace them [Communist Party members] from positions of great power * * *."

42 In our case the restraint is imposed directly upon the individual. It is not discouragement. It is one of the "extremes": flat prohibition.

43 In our judgment, yet a third dimension of the restraint must also be considered: the force with which it is applied. The court in Douds, at page 409, 70 S.Ct. at page 689, states:

44 "To hold that such an oath is permissible, on the other hand, is to admit that the circumstances under which one is asked to state his belief and the consequences which flow from his refusal to do so or his disclosure of a particular belief make a difference. The reason for the difference has been pointed out at some length above. First, the loss of a particular position is not the loss of life or liberty. We have noted that the distinction is one of degree, and it is for this reason that the effect of the statute in proscribing beliefs — like its effect in restraining speech or freedom of association — must be carefully weighed by the courts in determining whether the balance struck by Congress comports with the dictates of the Constitution."

45 Since it is the effect of a statute in restraining freedom of association with which we are concerned, we can hardly refuse to consider the consequences which are made to flow from a determined assertion of the rights in question in face of the regulation. In Douds the sanction was not a personal one; it was applied to the union, withdrawing from the union its rights to the benefits of the National Labor Relations Act. In our case, the sanction is not only personal, it is criminal. The imposing of a criminal sanction bears on the substantive quality of the restraint and poses new and different problems as to the reasonableness of the regulation. We are squarely faced with the principles enumerated in Scales and Noto.

46 This case, then, is far different from Douds. The restraint here bears directly upon the person of the one asserting First Amendment rights, and it does so with the duress of criminal sanctions.

47 It is with the personal and forceful character of the restraint in mind that we approach the question faced in Douds and which faces us here: whether, in the absence of specific intent to accomplish that which Congress seeks to prevent, there is sufficiently close relationship between the regulation and the achievement of the Congressional objective.

48 In Douds the court, at page 406, 70 S.Ct. at page 688, states:

49 "It is contended that the principle that statutes touching First Amendment freedoms must be narrowly drawn dictates that a statute aimed at political strikes should make the calling of such strikes unlawful but should not attempt to bring about the removal of union officers, with its attendant effect upon First Amendment rights."

50 This contention the court rejected, stating that "Congress should not be powerless to remove the threat, not limited to punishing the act." The court then concludes:

51 "While this statement may be subject to some qualification, it indicates the wide scope of congressional power to keep from the channels of commerce that which would hinder and obstruct such commerce."

52 In our judgment the regulation here — far broader than the threat it is designed to meet — is unreasonably broad. To relieve Congress from having to wait until it can punish the act, it is given power not simply to remove the threat but to punish it; and with no showing whatsoever that the act in fact is threatened by the person punished.

53 We conclude that this statute as construed by the district court constitutes an invalid restraint upon the freedom of association protected by the First Amendment.

54 Since § 504 involves criminal punishment, we are also faced with serious problems of due process under the Fifth Amendment, which were not before the Supreme Court in Douds. The question raised by § 504 is similar to that stated as follows in Scales v. United States, supra, 367 U.S. at 220, 81 S.Ct. at 1481: whether the section "impermissibly imputes guilt to an individual merely on the basis of his associations and sympathies, rather than because of some concrete personal involvement in criminal conduct."

55 Upon this question the court in Scales stated at pages 224-225, 81 S.Ct. at page 1484:

56 "In our jurisprudence guilt is personal, and when the imposition of punishment on a status or on conduct can only be justified by reference to the relationship of that status or conduct to other concededly criminal activity (here advocacy of violent overthrow), that relationship must be sufficiently substantial to satisfy the concept of personal guilt in order to withstand attack under the Due Process Clause of the Fifth Amendment."

And further, page 226, 81 S.Ct. page 1485:

57 "* * * the enquiry here must direct itself to an analysis of the relationship between the fact of membership and the underlying substantive illegal conduct, in order to determine whether that relationship is indeed too tenuous to permit its use as the basis of criminal liability."

And further, page 227, 81 S.Ct. page 1485:

58 "It must indeed be recognized that a person who merely becomes a member of an illegal organization, by that `act' alone need be doing nothing more than signifying his assent to its purposes and activities on one hand, and providing, on the other, only the sort of moral encouragement which comes from the knowledge that others believe in what the organization is doing."

59 In our judgment these constitutional standards of criminal imputability from association to individual are not met unless § 504 could be read as restricted to party members harboring specific intent to use union office to interrupt interstate commerce or actively and purposefully participating in furtherance of illegal party activities aimed at overthrow of the Government.

60 It is true that in Scales and Noto the court was faced with a statute which attributed to an individual member of an organization, seemingly on the basis of membership alone, criminal conduct in which the organization was found to be engaged.

61 Here, it is argued, criminality is not based solely on attribution from association; there is an individually and knowingly performed act — that of becoming a union officer — for which punishment is imposed.

62 We feel that this is not a valid point of distinction. In Scales the defendant might have been said to have knowingly and individually violated the law through his act of association. (He was indicted for being a member of the party with knowledge of its illegal purpose.) But this was not the gist of the crime — of that which society had found offensive. The gist of the offense was the advocacy in which the organization was engaged.

63 So here, the gist of the offense (and, indeed, the sole basis for federal concern) lies in the anticipated efforts of the individual to use union authority or influence to bring about union action which would interfere with commerce. This, to quote from Scales, supra, is "the underlying substantive illegal conduct." It is the relationship of Communist union officers to this potential disruptive and illegal activity which alone can justify the punishment imposed by § 504. In our judgment that relationship is not sufficiently substantial to justify, under the due process clause, imposition of criminal punishment on the basis of union officership combined with Communist Party membership per se.

64 We conclude that the relationship between the conduct or status punished and the evil intended here to be prevented is not sufficiently close or substantial to meet the requirements of either the First or Fifth Amendments unless § 504 can be construed as requiring proof either that the defendant has specific intent to use his union office to attempt to disrupt interstate commerce or that he is an active member of the Communist Party with specific intent to promote unlawful party advocacy and action directed toward overthrow of the Government.

65 We feel it clear that this statute is not susceptible of such a limiting judicial construction.

66 It is true that in Dennis v. United States (1951) 341 U.S. 494, 71 S.Ct. 857, 95 L.Ed. 1137, Yates v. United States (1957) 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed.2d 1356 and Scales v. United States, supra, criminal statutes, as applied to Communist activity or membership, were construed narrowly to include requirements of intent and unlawfulness of advocacy that were sufficient to remove doubts as to the constitutionality. But in each case ambiguous statutory language made such construction

available.[6]

67 Here we are not faced with ambiguous statutory expression but with a lack of expression. The segregation of guilty from what we have held must be innocent holding of union office is not at all suggested by the statutory language. It is wholly inappropriate to consider whether scienter should be deemed essential, for the very nature of the scienter that is constitutionally necessary is hidden. No Communist Party member could know, from a reading of the statute, whether, of the many party purposes, those which he personally embraces do or do not disqualify him from union office or employment.

68 Not only then, is the statute overbroad. It is so wholly lacking in notice of the constitutionally essential components of the crime that it cannot be judicially narrowed.

69 We conclude that § 504 of the Labor-Management and Reporting Act, in its imposition of criminal sanctions upon Communist Party members, must be held to conflict with the First and Fifth Amendments of the United States Constitution, and upon this ground to be void.

70 Reversed and remanded with instructions that judgment be set aside and the indictment dismissed.

Notes:

[1]

"§ 504. Prohibition against certain persons holding office; violations and penalties

"(a) No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of subchapter III or IV of this chapter, or conspiracy to commit any such crimes, shall serve —

"(1) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or

* * * * *

during or for five years after the termination of his membership in the Communist Party, or for five years after such conviction or after the end of such imprisonment * * *.

"(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both. * * *"

[2]

See H.R.Rep. No. 741 on H.R. 8342, 86th Cong., 1st Sess., 33-35, 79 (supplementary views), I Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 791, 837. The original bill as it passed the Senate on April 25, 1959, contained no criminal disability provision relating to Communists. See S. 1555, 86th Cong., 1st Sess., § 305 (a) (1959), and S.Rep. No. 187 on S. 1555 at 12-13. The Senate recognized the defects of the affidavit procedure then in use, but sought to make detailed changes with respect to the time for filing, the role of the N.L.R.B. in administrating the procedure, etc., while preserving the affidavit framework for control of Communists in the labor unions. S.Rep. No. 187, supra, 36-37, I Legislative History, supra, 430-432. It was the House bill, H.R. 8342, passed in July of 1959, which first contained a prohibition against Communists holding office in labor unions together with a repeal of 9(h). See §§ 201(3) and 504(a) of H.R. 8342, supra. In conference the House amendment to the Senate bill S. 1555 was agreed to with various substitutions, including an added criminal sanction against any labor organization or official thereof knowingly permitting any person to violate § 504. See Confce.Rep. 1147 on S. 1555, 86th Cong., 1st Sess., 36 (1959), I Legislative History, supra, 940

[3]

The Constitution described the executive board as "the advisory board of the Local," and provided that

its powers and functions were: "to adopt such measures as are deemed necessary from time to time for the good and welfare of the local, subject to the approval of the membership; * * * attend to all matters referred to it by the local, also suggest remedies for immediate and permanent benefit and report to the regular meeting; * * * dispose of communications not of interest to the local and cooperate in every way so that the business to be covered at a regular meeting may be accomplished; * * * In cases of emergency * * * to act to protect the interests and welfare of the local; * * * study the labor movement closely and formulate concrete policies to strengthen our local — said policies to be in accord with the I.L.W.U."

[4]

The district court rejected appellant's offer of evidence that he had no intent to bring about any substantive evil, and it refused to give requested instructions requiring a finding of such intent

[5]

339 U.S. at 393, 70 S.Ct. at 681: "Communists, we may assume, carry on legitimate political activities."

[6]

Thus Dennis held that proof of intent to overthrow the Government by force was an essential element of both § 2(a) (1) of the Smith Act (making it unlawful "to knowingly or willfully advocate * * * or teach" forceful overthrow of the Government), and § 2(a) (3) of the Act (making it unlawful "to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage" such overthrow). The opinion of Chief Justice Vinson, for four members of the court, declared that implicit in the very nature of advocacy of and organization for advocacy of overthrow is an intent to bring about that overthrow. 341 U.S. at 499, 71 S.Ct. 857. Scales involved conviction under the Smith Act clause making it unlawful to become or be a member of any such society advocating or teaching overthrow of the Government, "knowing the purposes thereof." The court declared that the reasoning in Dennis "applies equally to the membership clause," and held that the clause requires proof of specific intent to further illegal and constitutionally unprotected party activities directed toward forcible overthrow of the Government. In Yates, Scales and Noto v. United States, supra, the court, by construing the word "advocate," held that the activity which is punishable by the first clause of the section and in which the organization must engage to warrant punishment of its members under the membership clause, is "advocacy `not of * * * mere abstract doctrine of forcible overthrow, but of action to that end, by the use of language reasonably and ordinarily calculated to incite persons to * * * action' immediately or in the future." Noto v. United States, supra, 367 U.S. at 297, 81 S.Ct. at 1520 quoting from Yates v. United States, supra, 354 U.S. at 316, 77 S. Ct. 1064

DUNIWAY, Circuit Judge (concurring):

71 I concur in the opinion of my brother Merrill. However, because I do not think that his opinion sufficiently answers the arguments advanced by my brother Hamley, I feel obligated to state my views as to those arguments.

72 I think that the question raised by my brother Hamley is not quite the question that this case presents. In my opinion, if a particular executive board, under the constitution or bylaws or other governing instruments of the union, has powers that bring it within the meaning of 29 U.S.C. § 504 ("executive board or similar governing body"), then it makes no difference that, in practice, the executive board does not exercise some of those powers. It would still have the right to exercise them. I think that Congress was aiming at membership in a board having such a right. Therefore, the court could properly look to the union constitution, which was the only governing instrument in evidence. I also think that, assuming that the copy of the constitution in evidence is in fact the constitution, and that it is a correct copy, the question as to whether the executive board is one falling within the statute is a pure question of law. It is not transmogrified into a question of fact because the defendant contends that the board does not fall within the statute. If, in a particular case, the government sought to show that a board in fact had and exercised *more* power than the constitution gave it, the question might be different, but it is not before us.

73 I cannot tell from Judge Hamley's opinion whether he bases his statement that the question is one of fact upon a construction of the union constitution or upon the evidence offered by the union to show that, in practice, the board did not exercise the full powers that the constitution conferred

upon it. If his statement refers to a construction of the constitution, then I think that he is plainly wrong. The meaning and effect of such a document has always been considered a question of law. If his statement refers to the union's evidence as to practice, where, as here, the practice is introduced to show that the board exercises less power than it has, my answer is that, as a matter of law, such practice is immaterial; it would have been improper for the jury to base its decision on that evidence, and the trial judge should have excluded it. Its admission is not an error of which Brown can complain, nor, *a fortiori,* is it an error to fail to tell the jury that it should consider that evidence in deciding whether the executive board was such a board as is referred to in the statute. To tell the jury that would have been error.

74 Here, as Judge Merrill points out, there was no controversy as to the authenticity or accuracy of the copy of the union's constitution that was in evidence. These facts were "admitted" just as fully and effectively as if there had been a formal stipulation about them. So, in my view, the only question left, on this phase of the case, was one of law.

75 If I am in error in the foregoing analysis, however, I think that the result would be the same. I agree with Judge Merrill that, even if we accept as true all of the factual contentions of appellant as to this issue, the question is still one of law.

76 The dispensing power of the jury — its power to decide a criminal case for the defendant, against both the law as stated by the judge and the facts as shown by the evidence, is long established. I think that it lies at the heart of the problem that is here presented. But it does not, in my opinion, require a reversal here.

77 My view is supported by high authority. In Horning v. District of Columbia, 1920, 254 U.S. 135, 41 S.Ct. 53, 65 L.Ed. 185, defendant was charged with violation of a District of Columbia law forbidding pawnbroking at interest in excess of 6%. Defendant admitted that he was pawnbroking, but denied that he was doing so within the District. He testified that he warehoused pledges in the District, but granted loans and signed contracts only in Virginia. He maintained an automobile service to transport customers across the bridge to his office. The court charged that, on that state of facts, he was a pawnbroker in the District. Defendant claimed that the court thus effectively decided against his only defense. Mr. Justice Holmes affirmed:

78 "This is not a case of the judge's expressing an opinion upon the evidence, as he would have had a right to do * * *. The facts were not in dispute, and what he did was to say so and lay down the law applicable to them. In such a case obviously the function of the jury if they do their duty is little more than formal. The judge cannot direct a verdict it is true, and the jury has the power to bring in a verdict in the teeth of both law and facts. But the judge always has the right and duty to tell them what the law is upon this or that state of facts that may be found * * *. Perhaps there was a regrettable peremptoriness of tone — but the jury were allowed the technical right, if it can be called so, to decide against the law and the facts — and that is all there was left for them after the defendant and his witnesses took the stand." (254 U.S. pp. 138-139, 41 S.Ct. p. 54.)

79 This court has come to a similar conclusion in Peterson v. United States, 9 Cir., 1925, 4 F.2d 702. Defendant, charged with illegally possessing and selling whiskey, admitted possessing the liquor under circumstances that he claimed were not illegal. The charge advised the jury that defendant's testimony admitted illegal possession. Affirmed: "In declaring that the possession was unlawful, the court did no more than to state the law applicable to the admitted facts." (p. 702)

80 Nordgren v. United States, 9 Cir., 1950, 181 F.2d 718, 12 Alaska 671, which is discussed by Judge Hamley, also seems to me to be squarely in point. There is no claim that, in the present case, the court did not do what trial judges invariably do, and what the trial judge did in Nordgren, namely, tell the jury that it was their sole province to determine the facts. The judge did so instruct the jury, not once, but three times. This case does differ from Nordgren in one respect, namely, that here the court was asked to tell the jury that the question of whether the executive board was such a board as the statute refers to was a question of fact for them to decide. The court's reference to the lack of such a request, in Nordgren, is at most, only an alternative ground of decision, and, more realistically, a sort of bolstering afterthought.

81 See also the decision of Judge Gilbert in May v. United States, 9 Cir., 1907, 157 F. 1, 5-6. I can

find no persuasive basis on which to distinguish these cases from the one before us.

82 In attempting to hew a path between "law" and "fact" it is difficult if not impossible not to lapse into semantics. I suppose no one would argue that it is not the judge's province to interpret a statute for the jury — this is a "question of law," and one on which he is the expert. I do not think that, in doing so, he is required to limit himself to bland abstractions, although that is what most judges usually do. If a judge is to give effective guidance to the jury, he ought to be as specific in his instructions as the facts of the case allow him to be. I do not see why, in interpreting a statute, he may not state that an admitted board falls within the statute's reference to a board. Defendant's argument is, after all, one of legal analysis, and the judge is better able than the jury to evaluate it. And yet, when the judge personalizes his statutory interpretation to apply to defendant's situation when the question to be decided is a necessary increment in the determination of defendant's guilt, Judge Hamley would call it a question of fact. Impliedly he would sacrifice expertise to protect the jury's discretion to decide irrationally.

83 I do not think that it aids analysis to argue, as does Judge Hamley, that it is error to direct a verdict in a criminal case (which it is) and that therefore an instruction which "takes a fact question away from the jury" is a partial direction and also error. This assumes too much. The vice in directing the verdict is that the jury is deprived of any opportunity to decide the case. Even though the judge does, in a sense, decide some issues through peremptory instructions of "law" the jury still gets the whole case for a final determination of guilt or innocence. When the jury entertains that final question in the privacy of the jury room its freedom is unrestricted. This is the dispensing power, and all must concede that if the decision is for defendant it is unreviewable and uncorrectable. In practice, it is no doubt less likely that the jury will exercise an independent choice on an issue presented to them as a matter of "law." But this only gets us back to the original problem: How far may the judge go in inducing responsible exercise of the dispensing power without unduly infringing on that power?

84 Perhaps this question can be narrowed still further. Judge Hamley distinguishes, and seems to approve, cases which involve, not peremptory jury instructions, but only "permissible comment" by the trial judge. But I suggest that the fact that a federal judge is given some latitude of permissible comment is a commitment against the irrational verdict and a not inconsiderable impingement on the jury's discretion. Conceding that a jury might feel less compulsion to follow a judge's considered opinion than his peremptory instruction "as a matter of law," I doubt whether the difference in effect often is or ought to be substantial. Mr. Justice Holmes addressed himself to this point in Horning v. District of Columbia, supra, and clearly was not troubled by it. Nor was this court in Peterson v. United States, supra.

85 I do not see that the method adopted by the trial judge here, which finds support in decisions of this circuit and the only Supreme Court case that seems in point, constitutes any significant abridgment of the defendant's right to trial by jury. Moreover, I respectfully suggest that the cases upon which Judge Hamley relies do not as strongly support the result that he would reach as his opinion indicates that they do.

86 Most clearly distinguishable is Sullivan v. United States, 1949, 85 U.S.App. D.C. 409, 178 F.2d 723. Defendant was charged with "forging and uttering a physician's prescription for a narcotic drug" for the purpose of defrauding the United States. He admitted that he forged the prescription and presented it at a drugstore, but denied his intent to obtain a drug. The charge nevertheless told the jury that he had admitted "forging and uttering" within the statutory definition. This was reversed on appeal, because the admitted conduct was not within the statute unless there was intent to obtain narcotics, and that intent was denied. Clearly this case is one in which the trial court either erroneously stated the law, or, as the court seems to have treated it, assumed a fact on which defendant had testified to the contrary.

87 United States v. Manuszak, 3 Cir., 1956, 234 F.2d 421, is distinguishable on a different ground. The question there was defendant's guilt on a charge of interstate shipment of stolen goods. The government introduced witnesses to prove the theft, interstate movement, and defendant's involvement. The defense was that the accused was not the man, and knew nothing about the events. The court charged that there was no question that a theft had taken place and the only question was whether defendant had been properly identified as a participant. This was held

reversible error because the theft was a necessary element, and its existence was for the jury. But it is clear that the appellate court was concerned that all evidence proving the theft was put on by the government. Overwhelming as it was, and uncontested, there was still the question of credibility, and this is always for the trier of fact. Where as in the present case defendant affirmatively accepts and relies on the evidence which establishes an issue in the case, the credibility aspect is absent. Note also that in Manuszak, the question decided by the court was one of "physical fact" not legal significance. The question was: "Did certain acts take place"; not "did these admitted acts amount in law to theft"? The former question is not one which the judge has any special competence to answer by virtue of his legal training and experience; the latter is.

88 The same analysis, the significance of credibility, may explain United States v. McKenzie, 6 Cir., 1962, 301 F.2d 880, and Roe v. United States, 5 Cir., 1961, 287 F.2d 435. McKenzie presents the same problem as Manuszak; defendant charged with possession of illicit whiskey; government witnesses testify as to the crime, and identify defendant as a participant; defendant denies his presence and any knowledge of the alleged acts. One must believe the government witnesses to believe anything took place at all, as well as that defendant was a party. In Roe, the charge was sale of securities without registration. The items sold were mineral leases, which defendants claimed were not "investment contracts," and hence not "securities" within the 1933 Act. The Court of Appeals first analyzed the evidence (without indicating which side had produced it) and held, "as a matter of law, the evidence of these transactions, *if credited,* would constitute" the sale of a security. (Emphasis mine) If, as seems likely, the summarized evidence was government evidence, the same credibility problem is present. It must be conceded, however, that the language in both of these cases suggests that the court would have reached the same result if credibility had not been in issue.

89 Brooks v. United States, 5 Cir., 1957, 240 F.2d 905, is also explainable on the credibility point. The question assumed in the charge was the authority of an official, before whom defendant was alleged to have sworn falsely, to administer oaths. The official testified as to his authority and introduced his commission into evidence. The charge was that as a matter of law he was authorized. This was held to be error because it deprived the jury of the right to test the credibility of the witnesses, and to determine whether they believed the government's evidence beyond a reasonable doubt.

90 A careful reading of Carothers v. United States, 5 Cir., 1947, 161 F.2d 718, suggests that this case undercuts, rather than supports, Judge Hamley's position. Defendants were charged with violations of OPA maximum price regulations. The trial court's charge assumed the charging of prices above the applicable maximums. As to one defendant, the court reversed, saying that the court below had directed a verdict as to a material fact. But it added that "the evidence as to the March, 1942, maximum price was quite meager and unsatisfactory." On the other hand, it sustained the jury charge as to two other defendants because "the defendant's schedules and the administrator's order * * * had fixed *as matter of law* the selling price." (Id. at 722).

91 This leaves only United States v. Raub, 7 Cir., 1949, 177 F.2d 312. In this case both the charge below and the reversing opinion above are so cloudy as to leave me uncertain as to what principle was applied. Defendant was charged with willful evasion of taxes by the filing of a fraudulent return. His defense was an attempted justification of his return as accurate within the revenue statutes, coupled with a denial of fraudulent intent based on his acting on the advice of his attorney. The oral charge, as reproduced in the opinion, was in effect "No doubt he did what he was charged with, you must decide if it was with purpose or intent to evade taxes." The Court of Appeals held that this prejudged the essential issue of "fraud" and was reversible error. If by this the court meant that the judge might not instruct the jury that the return was false under the law, then this ruling is perhaps contra to the trial court's charge in the present case. But the opinion's ambiguous use of the word "fraud", which to me implies intentional wrongdoing, may suggest that the court was primarily concerned with weighting the question of willfulness against defendant. At best, Raub is not a careful or persuasive analysis of the problem.

92 In short, I think that the trial court's instruction was correct. It was short, sensible, direct, and fully supported by the conceded fact — the union constitution. It had the great virtue of not dealing in vague abstractions. The jury still had the dispensing power, which, as Justice Holmes pointed

out, is a "power to bring in a verdict in the teeth of both law and facts." The charge in no way deprived it of that power.

93 HAMLEY, Circuit Judge (dissenting).

94 Without reaching the constitutional question I would reverse and remand for a new trial. I would do so on the ground that the trial court erroneously and prejudicially decided a question of fact which should have been left to the jury, namely, whether the executive board of Local 10, I.L.W.U. is an "executive board" of a labor organization within the meaning of section 504 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 536, 29 U.S.C. § 504. This question of fact was decided by the court adversely to appellant when the court instructed the jury:

95 "I instruct you that as a matter of law, the Executive Board of Local 10, ILWU, is an executive board of a labor organization within the purview of the statute."

96 The trial court should have instructed the jury as to the meaning of the term "executive board," as used in section 504, leaving it to the jury to determine whether the executive board of Local 10 is an executive board in this statutory sense.

97 In my view, a union executive board within the meaning of section 504 is any internal body of a union which, under the constitution and by-laws of the union as understood and given effect by the members, has the power substantially to influence or affect action by the union threatening an interruption of commerce. Such a definition gives recognition to the underlying purpose of the legislation which, as pointed out by the majority, is "effectively to prevent the interruption of a free flow of commerce by political strikes."

98 As I read the evidence and consider the reasonable inferences therefrom, I believe it cannot be said that the evidence shows beyond dispute that the executive board of Local 10 had such power. But even if I am mistaken as to this, it is at the very least clear that appellant did not admit that the executive board of Local 10 had this power. This being true, it was improper for the trial court to decide the question as one of law.

99 Stating my view in the form of a general proposition, it is this: A trial court may not take from the jury in a criminal case and decide adversely to the defendant, an essential question of fact put in issue by a plea of not guilty and not thereafter admitted, even where the prosecution's view of the fact is supported by overwhelming and undisputed evidence.

100 There is one decision by this court which may be thought to state a view contrary to that expressed above. This is Nordgren v. United States, 9 Cir., 181 F.2d 718, 12 Alaska 671, involving a prosecution for offering and giving a bribe to a person acting for and on behalf of the United States in an official capacity. It was essential to conviction in that case that the person to whom the bribe was offered and given be a person acting for and on behalf of the United States in an official capacity. There was no dispute in the evidence as to this though the defendant did not concede the fact. The trial court instructed that the person was acting in an official capacity. Affirming, this court said (page 721 of 181 F.2d):

101 "We think the charge was not error. There was, as already indicated, no controversy as to the facts pertaining to the functions MacKenzie was performing, and the charge did not misdescribe his duties. Moreover appellant did not ask for an instruction submitting to the jury the question whether MacKenzie was performing an official function. The court in the course of its charge repeatedly informed the jury that it was their sole province to determine the facts."

102 The statement in this quotation that appellant failed to ask for an instruction submitting the question to the jury, suggests that if such an instruction had been requested it would have been held to be error for the court to take the question from the jury. In the case now before us appellant not only took appropriate exception to the instruction given, but specifically requested that the jury be told that this was a question of fact.

103 The statement in the quotation from Nordgren to the effect that the court repeatedly informed the jury that it was their sole province to determine the facts, suggests that this court may have regarded the questioned instruction as in the nature of a permissible comment on the evidence rather than as a binding determination of fact. If so, Nordgren cannot be regarded as authority for

the proposition that a trial judge may take questions of fact from a jury in a criminal case where the evidence is undisputed.

104 Nevertheless, Nordgren has been construed by some courts as stating such a proposition. See United States v. Lovely, 4 Cir., 319 F.2d 673, 682, note 11; Schwachter v. United States, 6 Cir., 237 F.2d 640, 644.

105 Among the other circuits, only the Second appears to sanction the determination of questions of fact by the trial court in a criminal case, where the evidence is undisputed. Such a determination was given approval in United States v. Mura, 2 Cir., 191 F.2d 886. This was a prosecution for transporting stolen cars in interstate commerce. The trial court instructed the jury: "The automobiles that the Government believes have been identified all crossed the border between New York and New Jersey * * *." In sustaining this instruction the court stated that the evidence was conclusive, that the jury was not instructed that defendant transported the cars, and that the question of the defendant's guilt was left to the jury "under a perfectly impartial charge."[1]

106 In the Third, Fifth, Sixth, Seventh and District of Columbia Circuits, involving all of the more recent decisions on the question, such an instruction has been held to constitute reversible error. See United States v. McKenzie, 6 Cir., 301 F.2d 880;[2] Roe v. United States, 5 Cir., 287 F.2d 435; Brooks v. United States, 5 Cir., 240 F.2d 905; United States v. Manuszak, 3 Cir., 234 F.2d 421; Sullivan v. United States, 85 U.S. App.D.C. 409, 178 F.2d 723; United States v. Raub, 7 Cir., 177 F.2d 312; and Carothers v. United States, 5 Cir., 161 F.2d 718.[3]

107 Some discussion of a few of these cases will reveal the reasoning which has led a majority of the federal appellate courts to disapprove instructions deciding factual questions as if they were questions of law.

108 In United States v. McKenzie, the defendant was prosecuted for possessing distilled spirits, the immediate container thereof not having affixed thereto the required internal revenue stamps. The trial court, in effect, instructed the jury that the identification of appellant was the only issue left in the case. Reversing, the Sixth Circuit said (page 882 of 301 F.2d):

109 "No matter how conclusive the evidence may be in a criminal case on a controverted material fact, the trial judge cannot make the finding or withdraw the issue from the jury."

110 In Roe v. United States, the defendant was prosecuted for the sale and delivery of securities through the use of the mails without prior registration. The trial court instructed the jury, on undisputed evidence that the documents which the defendant was charged with selling and delivering were investment contracts. Reversing, the Fifth Circuit said (page 440 of 287 F.2d):

111 "* * * no fact, not even an undisputed fact, may be determined by the Judge. The plea of not guilty puts all in issue, even the most patent truths. In our federal system, the Trial Court may never instruct a verdict either in whole or in part."

112 In Brooks v. United States, the defendant was prosecuted for perjury. The trial court instructed the jury that a named special agent of the Internal Revenue Service was, at the time he was alleged to have administered an oath to defendant, authorized to administer oaths. Reversing, the Fifth Circuit said (page 906 of 240 F.2d):

113 "* * * it [the instruction] deprived the jury of its function of determining whether or not, under the evidence and as exclusive judges of the facts and of the credibility of the witness, they believed beyond a reasonable doubt that Perry was an officer authorized to administer oaths in 1955 and this violated appellants' constitutional right to a trial by jury as guaranteed by the Sixth Amendment."

114 In United States v. Manuszak, the defendant was prosecuted for theft of goods from an interstate shipment. One of the facts essential to conviction was that a theft of goods had occurred. The evidence was undisputed that there had been such a theft and the trial court so instructed the jury. Reversing, the Third Circuit said (page 424 of 234 F. 2d):

115 "The presumption of innocence to which appellant was entitled demanded that all factual elements of the government's case be submitted to the jury. It is immaterial that the government's

evidence as to the actual theft was uncontradicted. The acceptance of such evidence and the credibility of witnesses is for the jury, even though to the court the only possible reasonable result is the acceptance and belief of the government's evidence. A partial direction of the verdict occurs when the court determines an essential fact, and this denies the appellant trial by jury."

116 While the Supreme Court appears not to have dealt with the precise question, it has held that "* * * a judge may not direct a verdict of guilty no matter how conclusive the evidence." United Brotherhood of Carpenters & Joiners v. United States, 330 U.S. 395, 408, 67 S.Ct. 775, 782, 91 L.Ed. 973. I agree with the Fifth Circuit's holding in Roe v. United States, and the Third Circuit's holding in United States v. Manuszak, that when a trial court, in a criminal case, decides a factual issue as a matter of law, it is giving a partial direction of the verdict, and that this is forbidden under the rule prohibiting directed verdicts in criminal cases. If a verdict may not be directed on all issues, it may not be directed on any issue, for the issue upon which direction is given may be, to the jury, the dispositive issue in the case.

117 If Nordgren v. United States, 9 Cir., 181 F.2d 718, 12 Alaska 671, is deemed to announce a contrary rule, I believe it should be overruled.

Notes:

[1]

There is another Second Circuit case, United States v. Rainone, 2 Cir., 192 F. 2d 860, which might appear to represent a similar holding. There was, however, no formal instruction, but only a remark by the trial judge to the effect that "there was not any question as to whether the automobile was taken from Brooklyn to Stamford." The court of appeals seems to have regarded this as permissible comment, stating that the record revealed nothing indicating that the defendant was adversely affected by the remark

As pointed out above, our decision in Nordgren v. United States, may also fall in this category. Dusky v. United States, 8 Cir., 271 F.2d 385, rev'd on other grounds, 362 U.S. 402, 80 S.Ct. 788, 4 L. Ed.2d 824, also appears to involve comment on the evidence rather than a categorical instruction resolving an issue of fact.

A contention that a court instruction took a question of fact from the jury will not be entertained in a collateral proceeding under 28 U.S.C. § 2255, at least where the evidence indisputably supports the instruction. See United States v. Lovely, 4 Cir., 319 F.2d 673; United States v. Jonikas, 7 Cir., 197 F.2d 675. And of course the trial court may instruct that a particular fact is undisputed if it was a fact admitted by the defendant during the trial. Horning v. District of Columbia, 254 U.S. 135, 41 S.Ct. 53, 65 L.Ed. 185; Young v. United States, 9 Cir., 286 F.2d 13; Peterson v. United States, 9 Cir., 4 F.2d 702.

[2]

This decision is to be compared with two earlier Sixth Circuit decisions in one of which (Schwachter v. United States, 6 Cir., 237 F.2d 640), such an instruction was also disapproved, and in the second of which (Malone v. United States, 6 Cir., 238 F.2d 851), such an instruction was upheld

[3]

I do not include in this list cases such as Dixon v. United States, 8 Cir., 295 F.2d 396, where the evidence was in dispute. All courts appear to recognize that factual questions in a criminal prosecution cannot be decided by the trial court where the evidence is in conflict

118 CHAMBERS, Circuit Judge (dissenting).

119 I agree with Judge Merrill insofar as he holds that Brown's executive board was one within the meaning of 29 U.S.C. § 504 and that it was correct for the trial judge to tell the jury so. Therefore, I would disagree with Judge Hamley's dissent that such was a jury question.

120 But as of now I would hold the statute constitutional. A far different case we would have if the statute proscribed a Communist party member's right to be a member of a union or to get a job.

121 I cannot agree that Douds, 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed. 925; Bates v. Little Rock, 361

U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480; Scales v. United States, 367 U.S. 203, 81 S.Ct. 1469, 6 L.Ed.2d 782; and Noto v. United States, 367 U.S. 290, 81 S.Ct. 1517, 6 L.Ed.2d 836, necessarily indicate we should declare § 504 unconstitutional.

122 I shall not repeat Judge Merrill's excellent summary of the Congressional reasons for adopting § 504.

123 All through our United States Code we find restrictions on conflicts of interest with criminal penalties therefor, only because experience has shown "a disposition to commit" on the part of executives. See 18 U.S.C. § 281, § 283; 38 U.S.C. § 1764(a); 38 U.S.C. § 1664; 18 U.S.C. § 1909; 12 U.S.C. § 377; 15 U.S.C. § 19; 12 U.S.C. § 1812; 15 U.S.C. § 78(d); 49 U.S.C. § 1321; and 49 U.S.C. § 11. The fact that a high percentage would discharge their duties without favoritism is to no avail. "Disposition of the class of persons to commit" is enough for the proscription.

124 Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796, holds one cannot be barred from becoming a lawyer merely because one is or has been a member of the Communist party. I would suppose though that an integrated state bar act might permissibly provide that one could not be an officer of that organization if he were a Communist.

125 One needs a basic right to a job. One doesn't need a right to be a union officer or to be an executive with a possible conflict of interest with his government.

126 BARNES, Circuit Judge (dissenting).

127 I concur with Judge Chambers, both in his agreement with Judge Merrill's opinion, and in his dissent therefrom, as well as his dissent with Judge Hamley on the jury question. I believe that the delicate "balance struck by Congress comports with the dictates of the Constitution." The "wide scope of congressional power to keep from the channels of commerce that which would hinder and obstruct such commerce" is not, to me, violative of § 504 here considered.

128 While a police officer or a congressional employee, under investigation, has a "right" to invoke the Fifth Amendment — he has no right to hold a particular job thereafter. Appellant herein had a right to be a certain kind of member in the Communist Party, but has no "right" to hold office in labor unions, which office directs the labor union's policy, once Congress has seen fit to refuse him such office holding. The congressional right to protect the full flow of interstate commerce must itself be protected; not at all odds, but when reasonably exercised, as I feel it here was. In this I disagree with the majority.

Document 7
-- Goggle Archie Brown -- p. 12.

UNITED STATES, Petitioner, v. Archie BROWN. - AltLaw
It is of course true that § 504 does not contain the words 'Archie Brown,' and that it inflicts its deprivation upon more than three people. ...
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UNITED STATES, Petitioner, v. Archie BROWN.

United States Supreme Court
June 7, 1965
381 U.S. 437; 85 S.Ct. 1707; 14 L.Ed.2d 484
Archibald Cox, Sol. Gen., for petitioner.
Richard Gladstein, San Francisco, Cal., for respondent.
Mr. Chief Justice WARREN delivered the opinion of the Court.

1

In this case we review for the first time a conviction under § 504 of the Labor-Management Reporting and Disclosure Act of 1959, which makes it a crime for a member of the Communist Party to serve as an officer or (except in clerical or custodial positions) as an employee of a labor union.1 Section 504, the purpose of which is to protect the national economy by minimizing the danger of political strikes,2 was enacted to replace § 9(h) of the National Labor Relations Act, as amended by the Taft-Hartley Act, which conditioned a union's access to the National Labor Relations Board upon the filing of affidavits by all of the union's officers attesting that they were not members of or affiliated with the Communist Party.3

2

Respondent has been a working longshoreman on the San Francisco docks, and an open and avowed Communist, for more than a quarter of a century. He was elected to the Executive Board of Local 10 of the International Longshoremen's and Warehousemen's Union for consecutive one-year terms in 1959, 1960, and 1961. On May 24, 1961, respondent was charged in a one-count indictment returned in the Northern District of California with 'knowingly and wilfully serv(ing) as a member of an executive board of a labor organization * * * while a member of the Communist Party, in wilful violation of Title 29, United States Code, Section 504.' It was neither charged nor proven that respondent at any time advocated or suggested illegal activity by the union, or proposed a political strike.4 The jury found respondent guilty, and he was sentenced to six months' imprisonment. The Court of Appeals for the Ninth Circuit, sitting en banc, reversed and remanded with instructions to set aside the conviction and dismiss the indictment, holding that § 504 violates the First and Fifth Amendments to the Constitution. 334 F.2d 488. We granted certiorari, 379 U.S. 899, 85 S.Ct. 187, 13 L.Ed.2d 174.

3

Respondent urges—in addition to the grounds relied on by the court below—that the statute under which he was convicted is a bill of attainder, and therefore violates Art. I, § 9, of the Constitution.5 We agree that § 504 is void as a bill of attainder and affirm the decision of the Court of Appeals on that basis. We therefore find it unnecessary to consider the First and Fifth Amendment arguments.

This is followed by a very lengthy analysis as to what is a bill of attainder.

Document 8
-- Harry Bridges and "the Archie Brown case."

And as something of a closing aside, it perhaps should also noted that in 1962 Bridges received a letter from the office of the U. S. Attorney General in which the following was said: " we note that Archie Brown has been convicted of violating Section 504 of the Landrum - Griffin Act. We thought we'd call your attention to the fact that if he loses his appeal, you may be in violation of the Act . You knowingly supported him when he ran for that office . . . " *

* Larrowe, ibid., p. 344. Also see pp. 342 - 343.