STATEMENT OF SENATOR STROM THURMOND (D-SC) ON SENATE FLOOR REGARDING THURMOND AMENDMENT TO STRIKE SECTION 605 FROM S. 3974, JUNE __, 1958.

MR. PRESIDENT:

Speed and prompt action in judicial or quasi-judicial determinations constitute a most important factor in the determination of procedures to be prescribed for use by a particular judicial or quasi-judicial body. It should be noted, however, that in order to be consistent with the democratic processes which form the basis for the protection of individual rights in this great democracy, the lapse of time is not given as high a priority as in those countries utilizing an authoritarian form of government. As important as speed may be, the safeguarding of individual rights has never been sacrificed in the interest of haste in our democratic system. Neither have we let financial considerations determine the extent to which full due process could be accorded to our citizens or a portion of them.

Section 605 of the proposed bill departs from these laudatory principles. Section 9(c) of the National Labor Relations Act, as amended, provides that a hearing shall be accorded by the National Labor Relations Board upon the request of either party prior to a certification election. The hearing is provided for the explicit purpose of determining whether a question of representation exists. Section 9(c)(4) provides that the parties may waive such a hearing by stipulation. The proposed bill, under the provisions of Section 605, would authorize the National Labor Relations Board to conduct so-called "prehearing elections". This is another way of saying that the parties
no longer have the benefit of a hearing as a matter of right. Under Section 605 of the proposed bill, the National Labor Relations Board would be required to hold a hearing after the election at the insistence of either of the parties.

The Committee, in its report, gives as the principal reasons for the abolition of hearings as a matter of right prior to an election, the considerations of time, work-load of the National Labor Relations Board, and the expense entailed in conducting the hearings and preparing reports thereon. There is no question but that parties entitled to these hearings have availed themselves of this stage of the proceedings, as is brought out by the tables included in the Committee Report on Page 28. The procedure sought to be abolished by Section 605 is not one which has fallen by the wayside from disuse, but, on the contrary, is a procedure which both labor unions and managements have utilized consistently when it was applicable.

It may be true, as the Committee states, that on occasions a party has demanded a hearing under Section 9(c) of the National Labor Relations Act for tactical purpose or for purposes of delay. This could be said of almost any judicial procedure or quasi-judicial procedure afforded to parties under our system of Government, and is certainly no justification for abolishing this particular step in the proceedings. Unquestionably, the Board, upon the hearing, can determine whether either of the parties is relying upon a sham claim and take the appropriate action, with the result being no more than the attendant delay. For my part, I would rather countenance many delays than to deny substantive due process to one party, whether it be a labor union or an employer.
The requirement of a hearing subsequent to an election is, as a practical matter, a nullity. We must not be so naive as to expect that the National Labor Relations Board will, as a quasi-judicial body, reverse its own previous decision handed down as a quasi-administrative body. Such a reversal might sound feasible in theory, or read well in a statute, but, as a practical matter, it might as well have been omitted from the bill except insofar as it would diminish the apparent effect of the change in the minds of the legislators who must vote on the provision.

The hearings which are afforded to parties as a matter of right under Section 9(c) of the National Labor Relations Act are a necessary and vital step in the procedure for collective bargaining established in the Act. Even in those cases where the issues to be determined by the hearing are most narrow and where the decision at the hearing would be in the most circumscribed area, the hearing provides a forum in which the issues to be presented to the workers in the election are formally drawn and the positions of the labor unions and management are brought into focus, thereby enabling the workers to vote more intelligently in the election which follows. If the hearings accomplished nothing more than presenting the issues, clearly drawn, to the workers, there would be sufficient reason for retaining the hearings as a matter of right prior to any certification election. I cannot reconcile leaving such an important decision, as to whether or not a hearing is to be granted prior to the election, to an administrative agency, or, indeed, to any person; for this amounts to accepting the allegations of one of the parties at face value without verification by prescribed rules followed during a hearing.
The amendment which I offer would delete Section 605 from the proposed bill. This amendment involves the basic right of the workers themselves and of management to due process which they have in the past been accorded and on which they have relied for a protection of their basic rights. During any debate on legislation of this nature, almost every provision which is discussed is declared to be more favorable either to management or to labor, and on these matters there is room for a great difference of opinion. The amendment which I propose is not only favorable but is vital to both labor and management equally. I cannot even see how it would adversely affect the National Labor Relations Board, for it is the duty of Congress to provide sufficient funds and to authorize sufficient personnel, so that these essential procedures can be afforded to the parties without undue stress and extra labor on the part of those in the National Labor Relations Board. The decisions which result from the hearings, and from the elections that follow, are basic to this country's system of collective bargaining. Any delays which might result from a continuance of the existing procedure are more than offset by the protection afforded to basic rights of the parties.

Let us not destroy the best parts of the existing law under the pretext of streamlining the procedure, or in an effort to meet the demands to enact some labor legislation. It would be preferable to enact no legislation at all than to destroy the good and workable portions of the legislation now in existence, thus abolishing the progress which our predecessor Congresses have made.

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