punish persons having a particular belief. The "belief" in question is a belief in the principles of the Communist Party, or in the overthrow of the Government of the United States by unlawful means.

But such beliefs, however much we may dislike them, were not, as we have shown, the targets of the statute. The Act does not penalize anyone for possessing or expressing them. The target is potential *conduct* which Congress is authorized to exclude from the area of activities protected by the law. Belief and affiliation, it is true, are utilized as the basis for describing the class from whom such potential conduct may be expected. But, as we have shown, *supra,* pp. 21–48), it is the possession of the very beliefs and affiliations named in Section 9 (h) which leads individuals to engage in the conduct which Congress did not desire to protect. Under such circumstances, the Constitution does not inhibit the use of belief and affiliation as a basis for discrimination between those from whom particular conduct may be expected and those from whom it may not.

Here the Act reaches only persons who combine the belief in question with the occupation of a position from which harm is to be expected to a public interest which Congress may legitimately protect. The effort is to prevent persons having such a belief from occupying positions of that sort. The law applies only when there is an

overt act, the holding of a union office, by a person with the belief in question.

A hypothetical example may clarify our position. Assume a group so strongly opposed to private property that it advocates taking whatever one wants wherever one finds it. Although such persons could legitimately form a party for political activity through which a change in the law to permit such conduct would be advocated, a legislature could reasonably prohibit persons having such a belief from being employed as bank guards, or for that matter as bank presidents.

In short, where a belief is likely to cause a person to engage in conduct harmful to the people or the Nation, the legislature may preclude persons of that belief from occupying positions which will enable them to engage in such conduct. The legislature need not wait until the anticipated danger has occurred; it may take reasonable precautions to safeguard the public interest against the reasonable likelihood of danger. To be more specific, Congress need not permit individual Communists to be officers of labor organizations until each individual abuses his position by seeking to bring on a strike which may cripple the United States in the maintenance of its security or in the effectuation of a policy opposed by Soviet Russia. Congress need not leave the barn door open until far more than a horse has been stolen, but may take reasonable anticipatory precautions.

That the Constitution permits regulation of conduct based upon belief when there is reasonable basis to anticipate that a particular belief might lead to conduct which could legitimately be proscribed is shown by the decision of this Court in *In re Summers,* 325 U. S. 561. It was there held that the State of Illinois could, consistently with the First Amendment embodied in the Fourteenth, deny admission to its bar to one, otherwise qualified, who was a conscientious objector to war. This Court took the position that since, in the view of the Illinois Supreme Court, the oath required of applicants for admission to the bar, to support the Constitution of Illinois, carried with it a willingness to perform military service, the applicant's objections to service could be validly treated as a barrier to admission. 325 U. S. at 573.

The rationale of this decision makes clear its direct bearing on the instant case. This Court pointed out that there was no doubt as to the power of Illinois to require military service. 325 U. S. 572. This undoubted power of the State was relevant only as a justification for the requirement that an applicant for admission to the bar swear his willingness to perform such service. Were there no power to require military service, there would be no power to exact an oath foreswearing the applicant's conscientious scruples against such service. Such scruples are beyond the reach of Government except where they bear

reasonably on conduct which Government can legitimately require. That this is the test is made even more clear by the dissent in the *Summers* case. Mr. Justice Black there said (325 U. S. at 578):

> I cannot agree that a state can lawfully bar from a semi-public position a well-qualified man of good character solely because he entertains a religious belief which might prompt him at some time in the future to violate a law which has not yet been and may never be enacted. *Under our Constitution men are punished for what they do or fail to do and not for what they think and believe.* [Italics supplied.]

The quarrel of the dissenters in the *Summers* case was not with the view that belief may be deemed relevant to future conduct and may be the basis for governmental restrictions; it was, rather, that it was wholly illusory, on the facts in that case, to relate the applicant's belief to future illegal conduct. Mr. Justice Black said (325 U. S. at 577): "The probability that Illinois would ever call the petitioner to serve in a war has little more reality than an imaginary quantity in mathematics." In the case at bar, on the other hand, the probability that Communist union officers will cause interruptions to commerce by political strikes is one of the most real of our time.

In another very important respect, this case is a much easier one than was the *Summers* case.

For in that case, the position from which Summers was barred (attorney) had no special relationship to military service; attorneys are certainly no more necessary to the armed forces than most citizens in other occupations. But in this case, the position of union officer has a direct, special and peculiar relationship to strikes in interstate commerce.

The *Summers* case is not the only one in which the constitutional admissibility of governmental restrictions which rest on the relationship between present attitudes and future conduct has been recognized. In *Hirabayashi* v. *United States,* 320 U. S. 81, and in *Korematsu* v. *United States,* 323 U. S. 214, the war power of Congress was held to justify discriminatory treatment invading the civil rights of persons of Japanese ancestry. The Court held that during war with Japan, Congress and the military authorities could reasonably believe that the danger of sabotage was more likely to stem from persons of Japanese ancestry than from other citizens, and accordingly affirmed criminal convictions for such acts as appearing on the streets after curfew hours and remaining in a "military area," which happened to be the convicted citizens' own home. In these cases, membership in a particular race—a mere accident of birth—was held to justify an inference concerning future conduct and to permit restrictions justifiable only in terms of that inference. There, two steps had to be taken in the process of relat-

ing the restriction imposed to conduct which the government could legitimately prohibit. It had first to be assumed that persons of Japanese ancestry might be ideologically sympathetic toward the then Japanese Government. Only on that assumption was there a belief which could, in turn, be related to seditious conduct. In the case at bar, no such assumption as that involved in the first step taken in the Japanese cases is invited. Congress has not required a union officer to take an oath that he is not a Russian; Congress acted merely on the view that those who in fact believed in Communism might well act in accordance with their beliefs.

2. Having established that it is permissible for Congress to relate belief and future conduct and to impose regulations premised on such a relationship, we proceed now to the question whether it is sufficient justification for a legislative classification based on belief or political affiliation that the belief or affiliation be reasonably related to future conduct or whether there must be a showing that the existence of the belief or affiliation creates a "clear and present danger" of the conduct which it is the legitimate objective of the legislature to proscribe. We think that the authorities discussed below demonstrate that the less stringent test is applicable, although we do maintain (see *supra,* pp. 51–58) that the more stringent is met in this case.

It has long been recognized that the Fifth Amendment, though lacking an equal protection clause, guards against legislation by the Federal Government which either imposes regulations upon, or grants benefits to, certain groups and not others, where the basis for distinguishing between those subjected to the regulation, or entitled to receive the benefits, and those not regulated or benefited, is irrelevant to the legitimate purposes for which the regulation is imposed or the benefit granted. See *Hirabayashi* v. *United States,* 320 U. S. 81, 100. Because differences of "color, race, nativity, religious opinions, political affiliations," (*American Sugar Refining Co.* v. *Louisiana,* 179 U. S. 89, 92), "are in most circumstances irrelevant" to the legitimate purposes for which benefits may be granted or regulation imposed, distinctions based upon such factors are, in most circumstances, "therefore prohibited" by the Fifth Amendment. *Hirabayashi* v. *United States,* 320 U. S. 81, 100; *Hurd* v. *Hodge,* 334 U. S. 24. As Mr. Justice Black pointed out, speaking for the Court in *Kotch* v. *Pilot Commr's,* 330 U. S. 552, 556, "a law applied to deny a person a right to earn a living or hold any job because of hostility to his particular race, religion, beliefs, or because of any other reason having *no rational relation* to the regulated activities," could not be supported under the Constitution. [Italics supplied.]

However, this Court has said that, "it by no means follows" that because the fact of race is "in most circumstances irrelevant" to legislative purposes, even that fact is always irrelevant (*Hirabayashi* v. *United States, supra*). Alienage, too, has often been held irrelevant to the objects of specific legislation (*Takahashi* v. *Fish and Game Commission,* 334 U. S. 410), but this Court has said that "it does not follow that alien race and allegiance may not bear in some instances such a relation to a legitimate object of legislation as to be made the basis of a permitted classification." *Clarke* v. *Deckebach,* 274 U. S. 392, 396. Where factors such as these are deemed to be relevant to the attainment of legitimate legislative policies, their use as a basis for distinction "is not to be condemned merely because in other and in most circumstances [such] distinctions are irrelevant." *Hirabayashi* case, *supra,* 320 U. S. at p. 101.

The *Korematsu* and *Hirabayashi* cases, *supra,* afford a striking illustration of the distinction between the types of governmental action to which the clear and present danger rule applies and those to which the "rational basis" test applies. In those cases, the Court considered two questions: (1) whether the possibility of sabotage was so grave and imminent a danger to national security as to justify denial to individuals of their fundamental civil rights to freedom of movement and freedom to choose their own place of residence,

and (2) whether Congress and the military authorities could reasonably believe that the evil to be feared was more likely to stem from citizens of Japanese ancestry, than from other classes of citizens. As to the first question, the Court seems to have applied the "clear and present danger" rule. See 320 U. S. at 99, and 323 U. S. at 217–218. The second question was decided pursuant to the "reasonable relation" rule. On this point, in the *Hirabayashi* case, the Court noted that it could not say that with respect to the specific issue involved there was "no ground for differentiating citizens of Japanese ancestry from other groups in the United States." 320 U. S. at 101.

Applying the approach of these cases to the instant case, it becomes apparent that only if Congress had prohibited Communists and believers in violent overthrow of government from holding office in labor unions, as it has not, and only if appellants further established that the right to hold office in labor unions, like the right to leave one's house after 8 p. m., is a fundamental civil right and that government therefore could not impose reasonable limitations upon the classes of persons who may hold such office (but see p. 83, n. 43, *supra*), would the question be presented whether the presence of Communists and believers in violent overthrow of government in such positions gave rise to a clear and imminent danger of substantive evils which would justify such a restriction.

Where distinctions based on race, religion, alienage, or political belief and affiliation are made in regulatory legislation, the question presented is whether these factors are relevant to the particular valid objects of the regulation. Where such distinctions are made, as in the instant case, in connection with the grant of benefits, the sole question presented is whether the factors used are incidental and reasonably related to the particular purposes for which the benefits are properly granted.

In each case in which this Court has upheld discriminatory treatment, it has looked to the relationship between the ground for discrimination and the benefit thereby denied. And a consideration of these cases reveals that relationships far less substantial than that here evidenced have been held sufficient to justify discriminatory treatment. Thus in *United Public Workers* v. *Mitchell,* 330 U. S. 75, it was held that, in the exercise of its power to promote the efficiency of the public service, Congress could properly bar from public employment persons who exercised their constitutional right to engage in political activity.[44] The Court pointed out that it was

[44] The Court, in passing, quoted Mr. Justice Holmes' classic epigram, "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." *McAuliffe* v. *New Bedford*, 155 Mass. 216, 220 (330 U. S. at 99, note 34). Compare *Crane* v. *New York*, 239 U. S. 195, 198, and *Clarke* v. *Deckebach*, 274 U. S. 392, upholding the power of a state to bar aliens from public employment.

sufficient to sustain the legislation that Congress "reasonably deemed" the "cumulative effect" of political activity by government employees an interference "with the efficiency of the public service." 330 U. S. at 101. See also, *Oklahoma* v. *Civil Service Commission,* 330 U. S. 127, 142–143.

The *Mitchell* case did not turn on the ground that government employment is a privilege which government can grant or withhold on any ground. This Court's opinion expressly recognized that Congress could not constitutionally "enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take any active part in missionary work." 330 U. S. 75, 100. The critical distinction between denial of federal employment on grounds such as these and denial on the ground of active participation in political activity is that the former type of affiliations or activities have no relation to the efficiency of the public service; partisan political activity may have. And, since the right to engage in partisan political activity is protected by the First Amendment equally with, for example, the right to affiliate with the Republican Party, the refusal of this Court to test the validity of the regulation in terms of "clear and present" danger demonstrates that legislative classification, even where it is based upon activities or affilia-

tions protected by the First Amendment, is valid unless it is shown that the particular activity or affiliation bears no relation to the legitimate governmental objective which the classification is designed to achieve.

This Court has recognized that Congress has constitutionally excluded anarchists, and could constitutionally exclude Communists, from citizenship (*Schneiderman* v. *United States,* 320 U. S. 118 at 132, 163, 172); presumably on the theory that belief in anarchy or communism is not unrelated to the question whether an alien would make a good citizen (cf. *Turner* v. *Williams,* 194 U. S. 279). But the discrimination against anarchists is no more directly related to a legitimate congressional objective than is the exclusion of Communist-dominated unions from access to the facilities of the Board. See also *Friedman* v. *Schwellenbach,* 159 F. 2d 22 (App. D. C.), certiorari denied, 330 U. S. 838, where the United States Court of Appeals for the District of Columbia upheld the use of the factors of adherence to the Communist Party line and active participation in organizations dominated by the Communist Party as a basis for denying to individuals the privilege of retaining governmental employment. Such beliefs and affiliations were deemed relevant to the loyalty with which individuals might perform their governmental duties.

Even discriminatory state action, which, unlike Section 9 (h), must satisfy the "equal protection" clause of the Fourteenth Amendment (cf. *Currin* v. *Wallace,* 306 U. S. 1, 14), has been upheld by this Court where reasonable grounds can be adduced to support the distinction. Thus *In re Summers,* 325 U. S. 561, already discussed (*supra,* pp. 95–97), held that a state may constitutionally deny membership in its bar to persons who, because of religious conviction, refuse to take an oath to bear arms in time of war. *Hamilton* v. *Regents,* 293 U. S. 245, held that a state may bar from its colleges persons who, for religious reasons, refused to attend classes in military training. *Hawker* v. *New York,* 170 U. S. 189, held that a state could constitutionally prevent persons who had previously been convicted of a felony from practicing medicine. Cf. *Dent.* v. *West Virginia,* 129 U. S. 114.

Moreover, while a state may not, under the Constitution, arbitrarily ban aliens from lawful occupations (*Truax* v. *Raich,* 239 U. S. 33; *Takahashi* case, *supra*), it is established that a state may guard against presumed evil propensities of certain aliens by prohibiting all aliens from operating pool halls (*Clarke* v. *Deckebach,* 274 U. S. 392, 396–397); engaging in the insurance business (*Pearl Assurance Co.* v. *Harrington,* 38 F. Supp. 411 (D. Mass.), af-

firmed, 313 U. S. 549); shooting wild game or carrying arms used for sporting purposes (*Patsone* v. *Pennsylvania,* 232 U. S. 138), and even from owning land (*Terrace* v. *Thompson,* 263 U. S. 197; *Porterfield* v. *Webb,* 263 U. S. 225; *Webb* v. *O'Brien,* 263 U. S. 313).

Finally, in *Kotch* v. *Pilot Commissioners,* 330 U. S. 552, it was held that a state could constitutionally deny the right to practice the occupation of river pilot to all except friends and relatives of licensed pilots. Although such a basis for classification would, in most cases, be prohibited by the Constitution, this Court held that because it was not shown that this classification was totally unrelated to the legitimate governmental objective of securing a safe and efficient pilotage system, the legislation as administered was immune from attack.

C. SECTION 9 (H) DOES NOT DENY ACCESS TO FACILITIES AFFORDED BY THE GOVERNMENT FOR THE DISSEMINATION OF INFORMATION ON GROUNDS OF BELIEF

We have shown, *supra,* pp. 81–87, that Section 9 (h) neither illegalizes Communist views or beliefs nor denies to Communists and the like the right to be union officers. We have insisted, rather, that the narrow effect of Section 9 (h) is to withhold the benefits of the National Labor Relations Act from unions whose officers fail to file the affidavits required by that Section. And we have insisted, *supra,* pp. 88–106, that such denial is a regulation

not of belief but of potential conduct—conduct which Congress plainly could proscribe.

The appellants take the view, however, that a showing that there is a reasonable relationship between the evil Congress can combat and any particular views or political beliefs cannot suffice to validate Section 9 (h). They insist that the much more stringent requirement that a clear and present danger be shown is applicable, and that this is shown, beyond peradventure, by the fact that this test has been applied even in cases involving denial of benefits previously granted by government. In support, they cite *Hannegan* v. *Esquire,* 327 U. S. 146; *Milwaukee Publishing Co.* v. *Burleson,* 255 U. S. 407, 417 (dissenting opinion); *West Virginia Board of Education* v. *Barnette,* 319 U. S. 624; *National Broadcasting Co.* v. *United States,* 319 U. S. 190, 226; and *Danskin* v. *San Diego Unified School District,* 28 Cal. 2d 536. (Br. 34–35.)

We have already dealt with the significance to this case of this Court's decision in *West Virginia Board of Education* v. *Barnette, supra.* We have shown that this decision and the many others cited by the appellants struck down governmental acts which impinged immediately and directly on religious or political beliefs. See *supra,* pp. 82–85. Appellants seek, however, especially to assimilate the *Barnette* case to that at bar because, they say, that, too, involved an attempted denial of a "privi-

lege" of attending public school, it being a privilege since private schools were available (Br. 34). But as this Court expressly stated, attendance of the public school was "not optional," and *Hamilton* v. *Regents,* 293 U. S. 245, was expressly distinguished on that ground. 319 U. S. 632. The *Barnette* case, therefore, did not involve a "privilege," but had the effect of penalizing persons of a particular belief (319 U. S. at 629) and hence impinged directly on a civil right.

Other cases cited by appellants only bear a superficial resemblance to this. The *Esquire* decision, the dissent of Mr. Justice Brandeis in the *Milwaukee Publishing* case, the California decision in the *Danskin* case, and the dictum in the *National Broadcasting Co.* case upon which reliance is placed by the appellants, all related to a denial of what may, in a sense, be characterized as a "privilege." In that respect they resemble the situation at bar. But the privileges there afforded by government, unlike the benefits afforded by the Labor Act, were the making available of means for the dissemination of information. *Esquire* and *Milwaukee Publishing* involved the use of postal facilities by magazines and newspapers; the *Danskin* case involved a governmental proffer of school facilities for use as a meeting place but a denial of such facilities to Communists; the *National Broadcasting Co.* case, of course, was concerned with the terms on which the Government could make available radio broadcasting media.

These cases all called for the application of the principle that a government, undertaking to facilitate the dissemination of information or freedom of assembly, cannot pick and choose, without urgent reason for so doing, among the views to be disseminated or the meetings to be held. Under our Constitution, governments have no power to facilitate only the expression of favored views, or meetings of approved groups. But these cases do not suggest that Congress may not impose other conditions on the use of governmental facilities in order to protect the public from injury. *Donaldson* v. *Read Magazine,* 333 U. S. 178, which also involved restrictions upon the use of the mails, proves the contrary.

But the Labor Act was not a governmental proffer of facilities for the dissemination of information; the Act created an agency for the purpose of promoting industrial peace. The denial of such a governmental facility is not at all comparable, in its relation to First Amendment rights, to the discriminatory denial of radio, meeting or postal facilities, and need not be subject to the same stringent limitations.

D. SECTION 9 (H) DOES NOT REQUIRE A "TEST OATH" AS A MEANS OF SUPPRESSING HERETICAL BELIEFS

Since beliefs and affiliations *per se* are, as we have shown, not the targets of the statute, it follows that appellants' equation of the affidavit provision of the act to the test oaths, which were adopted in England during the Restoration Period

and were carried over to some of the American colonies (Br. 24–25), is wholly inapposite. The test oaths stemmed from the Test Acts,[45] enacted by the English Parliament out of hostility to the Roman Catholics. These Acts required all persons holding any office under the Crown and all members of Parliament to subscribe a declaration against transubstantiation.[46] The test oaths, unlike the affidavit provision here, were clearly an attempt to prescribe what shall be orthodox in belief and involved discrimination against the minority group (the Roman Catholics) solely because of prejudice against its views.

The basic aversion of free men to "test oaths" was articulated in our Constitution in Article VI, which provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." The judgment, embodied in Article VI, that religious beliefs can be deemed to have no relationship to conduct in public office can have nothing to do with the congressional judgment that a belief in Communism has a great deal to do with a union officer's propensity for political strikes.

Certainly, the mere requirement of a qualifying oath as to one's views is not proscribed by the Con-

[45] 25 Charles II, c. 2; 30 Charles II, st. 2, c. 1.

[46] See 6 Holdsworth, *A History of English Law* (Methmen & Co. Ltd., London, 1924), pp. 199, 181, 184–185; 2 Channing, *History of the United States* (Macmillan Co., 1937), p. 455.

stitution, as many familiar examples show, and is not in itself an evil.[47] So long as the oath requirement is reasonably related to conduct which the Government can proscribe, as distinguished from views which it cannot, it is within the power of Congress to impose.

Related to the appellants' attack on the requirement of an oath, and their characterization of it as an odious test oath as to belief, is their repeated assertion that Section 9 (h) is a product of "unreserved hysteria", a "direct reflection of a widespread and bitter attack upon the civil rights of Americans—an attack which has received an all-

[47] Article II, Sec. 1, cl. 8 of the Constitution itself prescribes the "Oath or Affirmation" to be taken by the President "before he enter on the Execution of his Office."

This Court requires an oath or affirmation upon admission to its bar. Rule 2 (4).

All federal employees, the President alone excepted, must take the oath prescribed in 5 U. S. C. 16, which includes a promise to "bear true faith and allegiance to" "the Constitution of the United States."

8 U. S. C. 735a: "A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court (1) to support the Constitution of the United States, (2) to renounce and adjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen, (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same."

8 U. S. C. 735b prescribes the precise language of the oath and adds "and that I take this obligation freely without any mental reservation or purpose of evasion."

embracing official sanction", and an attempt to prescribe what shall be orthodox in politics and economics (Br. 92 and *passim*). The short answer to these charges is that "Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts." *Sonzinsky* v. *United States,* 300 U. S. 506, 513–514; *Goesaert* v. *Cleary,* No. 49, this Term, decided December 20, 1948, slip opinion, p. 3; *Veazie Bank* v. *Fenno,* 8 Wall. 533, 548; *McCray* v. *United States,* 195 U. S. 27, 56–59; *United States* v. *Doremus,* 249 U. S. 86, 93–94; *Magnano Co.* v. *Hamilton,* 292 U. S. 40, 44, 45. This "Act was not passed because Congress disapproved of the views and beliefs of [the excluded group], but because Congress recognized that * * * persons who entertained [those] views * * * might not use the powers and benefits conferred by the Act for the purposes intended by Congress." *United Steel Workers* v. *National Labor Relations Board, supra,* 170 F. 2d at 264.

In *United States* v. *Schneider,* 45 F. Supp. 848, 850 (E. D. Wis.), District Judge Duffy held unconstitutional a statutory provision denying work relief to Communists on the ground that "There is no necessary or logical connection between the political or social beliefs of a person and his distress." But where, as here, there is a "necessary * * * connection" between membership in or support of the Communist Party, or belief in violent overthrow of government, and the uses to which the powers of

union office may be put, Congress is not precluded by the Constitution from utilizing those facts as a basis for classification. Freedom of political belief or affiliation does not preclude Congress from taking cognizance of tendencies to conduct which may stem from the possession of particular beliefs or affiliations. The doctrine of freedom of belief and affiliation may not be used to blind legislatures to facts of common knowledge, or to preclude legislatures from properly exercising their constitutional power in the public interest.

IV

SECTION 9 (H) IS NOT UNCONSTITUTIONALLY INDEFINITE

Appellants contend (Br. 66–74) that Section 9 (h) is unconstitutional because the facts which union officers are required to aver as a condition to obtaining the benefits of the Act are vague and indefinite. Appellants do not suggest that a union officer would have any difficulty in knowing whether or not he was "a member of the Communist Party" or that "he does not believe in, and is not a member of * * * any organization that believes in or teaches, the overthrow of the United States Government by force * * *". The attack is directed at his knowledge of whether he was "affiliated with" the Communist Party, whether he "supports" an organization anxious to overthrow the Government, and whether such overthrow was to be sought by "unconstitutional methods." Whether these phrases are so indefinite as to re-

quire the invalidation of Section 9 (h) on that ground is a question which can properly be answered only after an analysis of the words themselves in the light of the facts that only wilfully false statements in the affidavits are punishable (see pp. 116–120, *infra*), and that no one has suggested words which, though more incisive, could accomplish the legitimate ends Congress sought to attain.

The expressions "affiliated with" and "supports" are common words whose meaning is generally known, although there will, of course, be a question as to their application to particular borderline situations.[48] We think there can be even less question as to the definiteness of the expression "unconstitutional methods", when used in relation to the overthrow of the Government of the United States. Obviously, the only constitutional method is by amendment to the Constitution—or, if the "overthrow of the Government" is directed merely at the persons holding office in it at a particular time, by replacing them through the peaceful processes of free elections.

The fact that there may be cases in which the applicability of Section 9 (h) is somewhat doubtful does not render the statute unconstitutionally indefinite. Men ordinarily speak in words which lack a mechanical precision of denotation. There will be found around almost every statute an in-

[48] As to the meaning of "affiliates", see *Bridges* v. *Wixon*, 326 U. S. 135, 141.

evitable fringe of uncertainty and doubt. This periphery of indefiniteness may be more extensive in some cases than in others but its existence is ordinarily inescapable.

Furthermore, as this Court has several times noted (even in a case involving the death penalty), "in most English words and phrases there lurk uncertainties." *Robinson* v. *United States,* 324 U. S. 282, 286. "Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but not one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash* v. *United States,* 229 U. S. 373." *United States* v. *Wurzbach,* 280 U. S. 396, 399.

A statute will therefore not be found constitutionally indefinite because of the possibility of doubt in peripheral cases. If there is a hard core of circumstances to which a statute will unquestionably apply, as to which the ordinary person would have no doubt as to its application, and if this constitutes the mass of situations with which the act deals, constitutional requirements are fulfilled.

That Section 9 (h) is a statute of this sort, despite doubts which may arise in borderline situations, is demonstrated by the fact that literally thousands of officers of labor organizations have, since the passage of the Act, filed the affidavits contemplated by Section 9 (h) without apparent qualms concerning the truth of their assertions.

This Court has recently stated: "That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense." *United States* v. *Petrillo,* 332 U. S. 1, 7; *Robinson* v. *United States,* 324 U. S. 282, 285–286. In the *Petrillo* case, it was recognized that this was particularly true when more specific language suitable to carrying out the legislative purpose was difficult to suggest. In the *United Steel Workers* case, the Court of Appeals for the Seventh Circuit properly observed that Section 9 (h) is "as specific as the nature of the problem permits." 170 F. 2d at 266.

In any event, we are not faced with the necessity of determining the definiteness of the phrases in question in the abstract. Affiants under Section 9 (h) are protected against punishment so long as they act in good faith. The sole penalty provided for the filing of false affidavits under Section 9 (h) is prosecution under Section 35 (A) of the Criminal Code (18 U. S. C. 80). That Section provides criminal penalties for "knowingly and willfully" making fraudulent or fictitious statements to any agency of the Federal Government. Clearly, no affiant could successfully be prosecuted under this Section for filing a false affidavit under Section 9 (h) unless it could be proved that he knowingly lied in making the averments contained in his affidavit.

Inasmuch as only wilfully false statements are punishable, the statute establishes a subjective test, the understanding of the affiant himself. As the lower courts have held, "A union official is simply asked to say whether he is 'affiliated'; *i. e.*, whether he considers himself as affiliated. We may safely assume that any man intelligent and schooled enough to be chosen as a union official will be familiar with the word 'affiliated' and will have a definite idea of its meaning. His notion of the word's significance may not coincide with that of another, and may not be what a dictionary gives. But he is not called upon to define 'affiliated' in his affidavit. He is asked to say whether he considers himself affiliated in the sense in which that word has significance to him. There is no vagueness or uncertainty in his own personal definition." [49]

Section 9 (h) "requires only that persons who knowingly engage in the activities set forth in Section 9 (h), or who knowingly believe in the enumerated doctrines, or who knowingly support organizations which disseminate such doctrines, shall not obtain access to the machinery set up by Congress for the purpose of advancing a specific public policy; hence if an affiant honestly believes that he is not affiliated with the Communist Party, that he does not support any organization which to his knowledge teaches the overthrow of the United States Government by means which he knows to be

[49] *National Maritime Union* v. *Herzog*, 78 F. Supp. at 172.

illegal or unconstitutional, such an affiant would be in no danger of conviction under Sec. 35 (A) of the Criminal Code." [50]

This Court has declared that "The constitutional vice" in an indefinite statute "is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning. See *United States* v. *Cohen Grocery Co.* [255 U. S. 81]. But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." *Screws* v. *United States,* 325 U. S. 91, 101–102. As a consequence, in no case in which *scienter* was clearly made an element of the offense has the Court held a statute invalid for indefiniteness.[51] Conversely,

[50] *United Steel Workers* v. *N. L. R. B.*, 170 F. 2d at 266–267 (C. A. 7).

[51] Section 4 of the Lever Act was held invalid in *United States* v. *Cohen Grocery Co.*, 255 U. S. 81; *Weeds, Inc.* v. *United States*, 255 U. S. 109; and *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233. The statute as quoted in 255 U. S. at 86 reads as though intent were required. But the

in many cases the Court has clearly indicated that the presence of such a requirement removes any question as to an act's validity. *United States* v. *Ragen,* 314 U. S. 513, 523–524; *Gorin* v. *United States,* 312 U. S. 19, 27–28; *Screws* v. *United States,* 325 U. S. 91, 101–105; *Omaechevarria* v. *Idaho,* 246 U. S. 343, 348; *Hygrade Provision Co.* v. *Sherman,* 266 U. S. 497, 502–503; *United States* v. *Petrillo,* 332 U. S. 1; cf. *Winters* v. *New York,* 333 U. S. 507, 519.

Appellants urge, citing *Winters* v. *New York,* 333 U. S. 507, that a higher standard of definiteness is required when a statute impinges against First Amendment freedoms. Our first answer to this

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full text of the Section, as set out in 255 U. S. at 81–82, shows that intent was no part of the clauses under attack.

The accumulation of statutes held invalid in *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, and *Collins* v. *Kentucky*, 234 U. S. 634, was construed by the state court to make unlawful any combination "for the purpose or *with the effect* of fixing a price that was greater or less than the real value of the article" (234 U. S. at 221). [Italics added.]

The statute condemned in *Herndon* v. *Lowry*, 301 U. S. 242, did not in terms require intent, but, as construed by the state court, punished the attempt to incite insurrection, if force was contemplated by the inciter "at any time within which he might reasonably expect his influence to continue" (310 U. S. at 254–255). The statute as thus construed might be thought to require either (1) an intent to stimulate force and violence, or (2) an intent to utter words which "might, at some time in the indefinite future" (301 U. S. at 262) lead to force and violence. It is clear that this Court adopted the latter construction, and thus assumed that the statute reached a person, "however peaceful his own intent" (301 U. S. at 262).

contention is that, for reasons already stated, pp. 81, *et seq., supra,* Section 9 (h) does not. It does not punish for thinking, saying, speaking, assembling, or for anything else protected by the First Amendment. There is thus no occasion in these cases for the special solicitude reserved for cases which, like *Winters* itself, involve laws restricting these freedoms.

But apart from this, even in the field of First Amendment rights, a statute will not be found unconstitutionally indefinite where *scienter* is an element of the offense. For where the press, speech and assembly are involved, as in other situations, the necessity of a willful violation serves to remove the danger that a person will be punished for conduct which he would not know was illegal. We think this Court so recognized in the *Winters* case itself, when it pointed out that in the statute there under consideration, "no intent or purpose is required". 333 U. S. at 519. And no case suggests the contrary.

One additional observation is pertinent. The requirement that a statute not be vague or indefinite applies only where the statute exacts "obedience to a rule or standard" (*Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, 243) which either "forbids or requires the doing of an act" (*Connally* v. *General Construction Co.,* 269 U. S. 385, 391). Section 9 (h) does neither. No one is required to execute the affidavits contemplated by that Section, and thereby to subject himself to even

the possibility of punishment. No one is prohibited from engaging in the activities set forth in that Section, or from believing in the doctrines enumerated. The statute requires only that persons who knowingly engage in such activities, or knowingly believe in the enumerated doctrines, or knowingly support organizations which disseminate such doctrines, shall not obtain access to the machinery set up by Congress for the purpose of advancing a specific public policy, and shall not through willful misrepresentation attempt to obtain benefits barred to them.

V

SECTION 9 (H) IS NOT A BILL OF ATTAINDER

The appellants' contention (Br. 82–92) that Section 9 (h) is invalid as constituting a bill of attainder within the meaning of Art. I, Sec. 9, cl. 3 of the Constitution is, in essence, merely another form of statement of its general contention that Section 9 (h) regulates unorthodox belief, as opposed to the Government's view that Section 9 (h) regulates potential conduct by denying access to Board facilities to persons whose views create a likelihood that they will misuse those facilities.

Section 9 (h) imposes no punishment; it does not even describe qualifications for union office. What it does do is to impose conditions on a union's right to the benefits accorded by the National Labor Relations Act as a means of reducing obstructions to commerce caused by strikes. So viewed, Section

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9 (h) contains nothing like the legislative determination of guilt and the legislative punishment which are the characteristics of a bill of attainder. *United States* v. *Lovett,* 328 U. S. 303.

But even assuming, *arguendo,* that Section 9 (h) may be construed as a denial of the right to hold union office, it is, nevertheless, not a bill of attainder. This Court has, on several occasions, upheld the constitutional validity of statutes prescribing qualifications for public office or for practicing a profession, even though they operate to disqualify an incumbent who was unable to meet the prescribed qualifications. *Hawker* v. *New York,* 170 U. S. 189 (statute disqualifying from medical practice persons convicted of a felony before its enactment); *Dent* v. *West Virginia,* 129 U. S. 114 (statute requiring proof of graduation from reputable medical school as condition on ~~legal~~ medical practice); *Clarke* v. *Deckebach,* 274 U. S. 392 (aliens disqualified from operating pool rooms); *Heim* v. *McCall,* 239 U. S. 175 (aliens disqualified from public employment); *Crane* v. *New York,* 239 U. S. 195 (same); see also *Ex parte Wall,* 107 U. S. 265; *Ex parte Curtis,* 106 U. S. 371. And in both *Cummings* v. *Missouri,* 4 Wall. 277, 319, and *Ex parte Garland,* 4 Wall. 333, 380, this Court, though striking down the enactments in question as constituting bills of attainder, recognized the power of government to impose qualifications. The question on which the Court divided in those cases was simply whether the enactments there involved did, in fact, impose

qualifications or punishment. Thus, in *Cummings,* the Court said: "It is evident from the nature of the pursuits and professions of the parties, placed under disabilities by the constitution of Missouri, that many of the acts, from the taint of which they must purge themselves, have no possible relation to their fitness for those pursuits and professions." 4 Wall. at 319. Compare *In re Summers,* 325 U. S. 561, discussed *supra,* pp. 95–97.

Here we are concerned with the function of acting as officer of a collective bargaining agent. The "rights and duties given to the sole bargaining agent [are] highly fiduciary." *National Maritime Union* v. *Herzog,* 78 F. Supp. at 172. See *Steele* v. *Louisville & Nashville R. Co.,* 323 U. S. 192; *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen,* 323 U. S. 210; *Wallace Corp.* v. *National Labor Relations Board,* 323 U. S. 248. And the same must obviously be true as to the officers through whom the bargaining agents act. This Court has compared the function of the bargaining agent to those of government itself. *Steele* v. *Louisville & Nashville R. Co.,* 323 U. S. at 198; *Wallace Corp.* v. *National Labor Board,* 323 U. S. at 255; *J. I. Case Co.* v. *National Labor Relations Board,* 321 U. S. 332, 335.

Plainly, "the qualifications of a person exercising quasi governmental functions may be prescribed by the sovereign. Congress clearly has the right to assure the minority of the workers, who are represented against their choice by the agent, and the employer, who must deal with the agent to

the exclusion of others, that the agent possesses minimum qualifications for the post." (*National Maritime Union* v. *Herzog,* 78 F. Supp. at 173.) And Congress has the power to impose qualifications designed to protect the general public interest as well. That interest may be imperiled if labor union officials subscribe to a philosophy which openly advocates using labor organizations and their strike weapon as a means of undermining the policies of this Government in relation to other nations and our form of Government itself.

A measure imposing qualifications for holding office or following a particular vocation is thus not within the interdiction of Art. 1, Sec. 9, cl. 3, unless it is such only in form and is, in fact, a punishment But, as stated in *United Steel Workers* v. *National Labor Relations Board, supra,* 170 F. 2d at 267, "Section 9 (h) does not rest upon any finding of guilt" and, certainly, imposes no punishment on the basis of such a finding. This is made clear by all that we have already said in the course of this brief. But the matter is put beyond doubt by comparing Section 9 (h) with the enactments stricken in the *Cummings, Garland* and *Lovett cases.*

In all of these "bill of attainder" cases, the enactments held invalid operated as a permanent disqualification. In all, those against whom the enactments were directed could never qualify while the laws stood. Lovett would have been barred from the federal service even though his views were wholly altered in later years; Cummings could never

preach and Garland could never appear in this Court though they deeply repented their affiliation with, or support of, the Confederacy. On the other hand, nothing in Section 9 (h) prevents a union officer from, at any time, filing the qualifying affidavit. Indeed, a proposed amendment which would have foreclosed a change in heart was rejected on the specific ground, stated by Congressman Hartley, that "I do not want to deprive one who has seen the light and who has made an honest reform of the right to be a member of a labor organization." 93 Cong. Rec. 3627. While permanency of disqualification does not *per se* convert a qualification requirement into a punishment (cf. *Hawker* v. *New York, supra,* 170 U. S. 189), the absence of permanency is certainly persuasive that the enactment is not penal.[52]

An analysis of the statute involved in the *Lovett* case (Urgent Deficiency Appropriation Act, 1943, 57 Stat. 431) also provides a revealing insight into the difference between a bill of attainder and a qualifying statute. Section 304, the provision stricken in that case, bore no relation to a measure fixing qualifications for federal office. This is shown by contrasting it with Section 301 whose validity has been unquestioned and which, not unlike Section 9 (h) here involved, provided that no part of the

[52] The line between civil and criminal contempts, based on the familiar distinction drawn between remedial and penal measures, may supply a helpful analogy. *Penfield Co.* v. *S. E. C.*, 330 U. S. 585, 590, and cases cited.

appropriation could be used to pay the salary of any person "who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence." That section, like Section 9 (h), and unlike the stricken Section 304, operated equally upon all persons and expressed the judgment of Congress that anyone who advocates the overthrow of the Government by force or violence is not qualified for Government service.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted.

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APPENDIX A

1. The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working

conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist

labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfer with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective

bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

2. The pertinent provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141 *et seq.*) are as follows:

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

"FINDINGS AND POLICIES

"SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or

unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organ-

izations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

"DEFINITIONS

"SEC. 2. When used in this Act—

* * * * *

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse,

or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * *

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activites for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

* * * * *

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: * * * (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

* * * * *

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees

shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employes in a bargaining unit of guards if such organization admits to membership, or is af-

filiated directly or indirectly with an organization which admits to membership, employees other than guards.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the

identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

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

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

* * * * *

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor

organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition

under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits."

* * * * *

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or conmodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, han-

dling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

APPENDIX B

The following labor organizations bar Communists from office.

A. F. L.

Communists may not hold international or local office in the 16 unions listed below. In the first 11 unions listed, this prohibition results from constitutional clauses barring Communists from membership and, as a consequence from office. The next 4 unions apply the bar to international and local office-holding *per se,* but have no clause specifically covering membership alone. The last union covers international officers only.

Name	*Date of constitution* [1]	*Page*
Bridge & Iron Workers	1944	5
Railway Clerks	1947	121–122
Retail Clerks	1947	10
Teamsters	1947	6–7
Telegraphers	1943	32
Chemical Workers	1947	4
Coopers	1947	28
Distillery Workers	1946	7
Glass Bottle Blowers	1946	4
Printing Pressmen	1940	83
Farm Labor	[1948]	4
Hatters	1948	20, 44
Hotel Workers	1947	9
Automobile Workers	1945	8
Upholsterers	1946	40, 136
Seafarers	1944	10

[1] These constitutions are filed with the Affidavits Compliance Branch of the N. L. R. B. as being currently (December 1948) in effect; the date in brackets is for one undated on its face. In all, the constitution of 100 A. F. L. unions were examined. According to the B. L. S. "Directory of Labor Unions" (Bull. 937, p. 3) the A. F. L. had 105 affiliates at the beginning of 1948.

C. I. O.

Communists may not hold international or local office in the 9 unions listed below. In the first 4 unions listed this prohibition results from constitutional clauses barring Communists from membership and in consequence from office. The last 5 unions apply the bar to international and local of-

fice-holding *per se,* but have no clause specifically covering membership alone.

Name	*Date of constitution* [1]	*Page*
Oil Workers	1947	4
Rubber Workers	1946	35
Utility Workers	1946	9
Woodworkers	1945	1–3
Steelworkers	1948	5
Marine & Shipbuilding Workers	1944	8
Plaything & Novelty Workers	1946	14
Automobile Workers	1947	22
Textile Workers	1946	12

[1] These are the constitutions filed with the Affidavit Compliance Section as being currently (December 1948) in effect. In all, the constitutions of 35 C. I. O. unions were examined. According to the BLS "Directory of Labor Unions" (Bull. 937, p. 3) the C. I. O. had 40 affiliates at the beginning of 1948.

INDEPENDENTS

Communists may not hold international or local office in the 10 unions listed below. In the first 5 unions listed, this prohibition results from constitutional clauses barring Communists from membership and in consequence from office. The next 4 unions apply the bar to international and local office-holding *per se,* but have no clause specifically covering membership alone. The last union covers international offices only.

Name	*Date of Constitution* [1]	*Page*
International Guards Union of America	[1948]	2
International Guards & Watchmens Association	[1948]	5
Guards & Watchmen, Inc	1947	6
United Aircraft Welders of America	1946	2
United Mine Workers of America	1944	49
Gulf States Employees Association	[1948]	1
American Watch Workers Union	[1948]	Art. VIII Sec. 1 (4)
Associated Unions of America	1946	16
Plant Guard Workers of America	1948	5
Interstate Metal Workers	1947	2

[1] These constitutions are filed with the Affidavit Compliance Section as being currently (December 1948) in effect; the dates in brackets are for those undated on their face. The United Mine Workers had not filed its constitution with the Board. The information is based upon the latest copy of its constitution on file in the Board's library. In all, the constitutions of 60 independent unions were examined.

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