CHAIRMAN DUNLOP: Well, will the meeting please come to order? As you know from my closing remarks in the morning session, we have three presidents of labor organizations to begin the afternoon and then to be followed by John Ong of The Business Roundtable.

Our first presentation this afternoon is Albert Shanker, President of the American Federation of Teachers and particularly appears as Chairman of the Board of the Department of Professional Employees of the AFL-CIO.

Al, it's great to see you and delighted to hear from you.

MR. SHANKER: Thank you. It's good to be here. Thank you for giving the department this opportunity to present our views on what we feel is a very important issue in the consideration of changes in labor law.

I guess we've gone through more than a decade now of various individual books and Commission reports dealing with the nature of the new workforce and high-performance workplaces and so forth. So I would just drop that at the beginning and say that I
accept most of what's been written about what's needed and what's coming in.

A very important element in this is some downsizing of organizations, greater employee participation, a certain flattening of structures, a certain movement of tasks that used to be performed by management in distant places, distributed to people who are closer to the job, and that all of this, of course, if it holds true, as it does for many workers closer to production lines, it's especially true for professional employees. The very nature of professionalism is to have expertise in a given field and to have the power to exercise judgment.

And so the particular issue that I want to raise is the issue of the Supreme Court Yeshiva decision, which I would urge that the Commission would propose that it be reversed legislatively because I think it does exactly the opposite of what we want to do in terms of encouraging, in terms of changing, the law insofar as the law stands in the way of desirable practices in terms of the new type of workplace.

Now, if you'll recall, the employees at Yeshiva, the faculty, formed an independent union. And Yeshiva went to the NLRB. NLRB turned them down. Yeshiva essentially said that the members
of the faculty by virtue of being members of a faculty
senate and by virtue of engaging in peer review and
by virtue of being consulted on various matters for
the university constituted management. And the
Supreme Court went along five to four. Now, this, of
course, is a private sector decision and so far has
not been applied in the public sector.

Now, I think you're familiar with the vast
growth of professional and technical employees, a 283
percent increase since 1950 and about 16 percent of
the workforce at the present time. And they also
represent a part of the workforce which is highly
unionized. Twenty-six percent of professionals were
represented by unions in 1992, a higher rate than that
of the workforce in general.

Now, you referred to my wearing a hat as
Chair of the Board of the Department for Professional
Employees that was formed in 1977 and started with 13
unions, most of which had a fairly small number of
professionals at that time. And it has grown
substantially over that period of time.

So that we now have 26 national, unions
and we've got people in the music and art fields.
We've got doctors and nurses and people in the film
industry and people in various technical fields.

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Now, this particular decision actually forces people to choose between having a union and engaging in what are considered desirable practices in the modern workplace.

Let me give an example. Some years ago we sought to represent and did gain representation rights for the College of Osteopathic Medicine and Surgery. It's in Des Moines, Iowa.

The reason that the people in that college decided they wanted a union is that they were doctors and they were being not treated very well and not listened to. They eventually decided that the only way they could get to the table and talk to people about various professional issues was to have a union.

Well, we were elected, and we sat at the bargaining table. And we negotiated various faculty committees on various professional issues.

After a couple of contracts and after we got all of these things into place, which developed in the form of faculty participation, management went to the Labor Board and said, "Well, now these people need to be Yeshibaed because they're being consulted."

Sure enough, we lost bargaining. Through the process of bargaining, we lost our bargaining rights.

Well, now that's a model which any group
of unionized employees in the private sector really has to fear. Let's say there is a union in place and let's say the union is willing and wants to have a different type of workplace, a type of workplace in which some of the rigidities of some of the work rules are removed and a lot more decision-making is right there at the work site level.

If you move enough of that decision-making over, management at some point can then come along and file and say "These workers no longer have a right to a union because now they're doing some of the work or making some of the decisions that management used to make traditionally."

That's a private sector case. There are some public sector cases which are important. I realize that that's not the focus of this Commission, but these are illustrations, I think, of work practices that you might want to encourage in the private sector as well. We almost lost bargaining rights in the public sector here, too, because it was a similar issue.

In Toledo, Ohio, for many years the voters turned down their millage votes and the schools would close in March and teachers would go out on strike to collect their salaries. More and more parents left
the city and left the school system.

Finally, a new superintendent and a new union leader came along, and they decided they had to reverse the process. They did a lot of very interesting things.

One of the things they did was they decided that the superintendent and the head of the union would select 8 or 10 of the teachers that they felt were the best teachers in the district.

And they would delegate to these teachers the responsibility of hiring all new teachers and training them during the probationary period and effectively making a decision at the end of the training period whether they should get tenure or not, whether they should stay. So, in other words, it's a form of peer training, peer assistance, and peer review as a final result.

In addition to that, these same teachers, if an experienced teacher were found to be falling apart, maybe somebody who was fine, but now something was happening, a team of three of these teachers would be assigned to give assistance, they called it, an intervention program.

At the end of that, the team either said that this person has been assisted and has profited
through this assistance and no further action need be taken or they would issue a report that the person had not sufficiently improved and that that report could then be used in proceedings against that teacher.

Well, a complaint was filed that we were not fairly representing our employees because the union was involved in selecting union members, who served on a committee, who could effectively hire or fire. And we had to get to the legislature.

By one vote we managed to preserve a program which the Rand Corporation in its study of school reform practices across the country said that this was an outstanding district in terms of their practices. But this and other practices which Rand pointed to would have been reversed had Yeshiva been sustained in the public sector.

Now, there's another example similar, again the public sector, but a practice that you might find desirable in other places as well. In Rochester, New York, there was a longstanding constant periodic dispute every time the contract was renegotiated.

The teachers had in their contract a typical kind of transfer seniority provision, where if there was an open slot, a senior person could bid for it and get it. Management always argued the
senior person wasn't necessarily the best person to do the job, and they wanted to have the power to decide who transferred.

There was a resolution I think five or six years ago where both management -- the union gave up its seniority provision. Management retreated from its management's rights position. Instead, they decided that the teachers in each school would elect a committee.

The committee would consult with the entire faculty to see what the needs of the school were, "Were they weak in this subject or that?" and that the committee meeting with the principal on the basis of the priorities set by the faculty would then interview applicants and would make decisions on the basis of the needs of the school.

Well, there's another one. And that's a practice that you might want to see elsewhere, would be applicable in terms of teams of employees making decisions as to who should be a member of a team. And, yet, clearly that's a decision that might very well lead an employer who had second thoughts about the union at some later point to file.

I'll just give one final example, then conclude. Some years ago there was the beginning of
something called the National Board for Professional Teaching Standards. Carnegie has put a lot of money into it. The U.S. government has invested $25 million now into research.

The whole idea was that just as there are board-certified pediatricians and anesthesiologists, et cetera, that there ought to be an opportunity for practicing teachers to strive for something higher than minimum licensing, which most states have.

And the idea was that teachers who could show that they were really super, not on the basis of a traditional merit pay scheme, but on the basis of a national professional board that would certify to this, could then be used as team leaders, that you might get rid of the bureaucracy at the center and have people who continue to be practicing teachers working with others, that they would have somewhat different compensation and a different role somewhat of a leadership and perhaps quasi-management role.

In the discussions, now the national board will issue its first certificate next year. And one of the big issues that's out there on the part of local unions that would have to negotiate provisions for different relationships of salaries is: Well, if people are board-certified and they have a different
role, do they move over to management?

So I put these issues before you, those in the public sector, not asking you -- there's one other reason that I put them before you. And that is that with this exception, with the exception of Yeshiva, which we've so far managed to fend off in the public sector, most public employee relations boards do want to parallel what's happening in the private sector.

I don't know how long we're going to keep Yeshiva in the private sector and maintain public employee relations boards and have a different policy on this. We came very close on this issue in Pennsylvania.

So on the basis of different types of workplace practices, a workplace which doesn't have the clear distinction between supervisors and workers that was contemplated when the law was originally written, Yeshiva stands in the way by compelling unionized employees or employees that may want a union to choose between either a workplace in which they participate and forego collective bargaining or one where they have collective bargaining and after they have it, make sure they don't negotiate any provisions which enable them to participate.
Thank you.

CHAIRMAN DUNLOP: Thank you very much, Al. Are there any questions from my colleagues about this presentation? How would you amend the statute with respect to this boundary line for professional employees?

MR. SHANKER: Well, I'm not sure that it should only be for professional employees, but suppose that there is a provision that employee participation -- something that would recognize that employee participation in -- I don't know. I guess it needs some broad categorization of what you would call these things. These change from year to year.

"Shall not be the basis for denying collective bargaining rights to employees." I would have a very general provision which would sort of indicate an effort to encourage broad-scale employee participation.

CHAIRMAN DUNLOP: Al, would you say that the vice presidents of a bank are a suitable unit for bargaining with management? How far would you go?

MR. SHANKER: No, not the vice president of our union either.

(Laughter.)

MR. SHANKER: I don't think the union is
eager to negotiate that to get that vice president nor
do I think that he's eager to come in. So while I
think that's an interesting example, it's also an
unlikely one.

MR. WEILER: If I can just add these two
comments, and I'd like your reactions to them. First,
as you were intimating as you were going along, it is
important to underline the fact that Yeshiva's
significance is not confined to professional
employees.

MR. SHANKER: No.

MR. WEILER: The Yeshiva doctrine is one
which threatens the ability to exercise rights under
the National Labor Relations Act for anybody who is
involved in any serious team system of production and,
indeed, any such team system of production that is
instituted unilaterally by the employer as well as one
that is collectively negotiated by the employees with
the employer; and that, secondly, there is actually
no statutory predicate for Yeshiva.

There is no managerial exclusion in the
National Labor Relations Act, let alone one that
applies in this context. The managerial exclusion was
developed by the board in the late '60s and endorsed
by the U.S. Supreme Court in the early '70s in a case
called *Bell Aerospace*, which involved, actually, buyers for the Bell Aerospace Company.

What was different about Yeshiva in a sense may be a way of responding to the question that Chairman Dunlop put to you. What was different about Yeshiva was that there the managerial authority was exercised by the employees only collectively, rather than individually, that a fundamental difference between a vice president and a faculty member of a senate, for example, is that the vice president, and even the lower-echelon Bell Aerospace buyers, are making their judgments individually, rather than only collectively.

And so one possible route, dealing narrowly with the Yeshiva problem, is simply to say that somebody should not be deemed to be an excluded employee or deemed to be excluded from the right to exercise bargaining simply on the grounds that they have some kind of collective responsibility for the firm.

CHAIRMAN DUNLOP: Tom?

MR. KOCHAN: Al, you have a lot of experience as well with different bargaining units for professionals. And certainly let's take them in the schools: school principals, as opposed to the
teachers, being in separate bargaining units.

I would be interested in your view of how that kind of structure can be rationalized where you now have more team forms of work organization, you want to get the engineers to work with the production workers, you want to get the supervisors and the principals to work with the faculty and the staff.

Do you see carrying forward our tradition of separate bargaining units for professionals, separate bargaining units for principals in the school system as being a wise course for the future or should we rethink that doctrine as well?

MR. SHANKER: Well, there you do have a conflict in terms of the new and the traditional. Obviously the traditional in most of these places where you have a union, you continue to have regular bargaining. You continue to have some grievances. But also you have some new relationships.

The principal in the school is usually the person who has made a decision at the school level that results in a teacher bringing a grievance on the principal, the first person acting on behalf of a management, who then makes a decision on accepting or turning down the grievance.

So there that's quite different than a

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group of employees making a decision that there were
-- I mean, that's not true certainly of the people at
Yeshiva. They weren't acting under anyone else's
orders. They weren't reporting back.

I mean, this wasn't the vice president of
a bank. This was a bunch of people exercising
professional judgment on a number of issues, not on
behalf of anyone else.

So I would still have some reservations
about opening that up, especially where there -- see,
although insofar as, let's say, one of these
board-certified teachers or insofar as these teachers
do have some effective hiring and firing, while they
don't do things in terms of other grievances, it does
reopen that question to some extent.

I don't know where I would come down on
it right now. But you're right. It does reopen it.

CHAIRMAN DUNLOP: Paula?

MS. VOOS: I have a question. In a way
it's a follow-up on the degree of authority that is
necessary to be considered a supervisor under the law
because certainly it's not only whether it's
collective or individual authority, but the degree of
authority that arises, for example, with nurses very
often and whether they are deemed to be supervisors,
college professors. You know, although I'm in the public sector, I'm supervisor of a teaching assistant and I have considerable supervisory authority.

Our current law obviously draws the line, as you know, very low. And I wondered if you would comment on what the appropriate line would be.

I do know, for example, with regard to principals my husband was a teacher in Massachusetts, and the principal of his school was in the bargaining unit; in fact, helped negotiate for the union, not your organization, but the professional National Education Association affiliate there.

MR. SHANKER: They used to be professional, but they're now union.

(Laughter.)

MS. VOOS: But in any case, some of the teachers call them the union, whatever. I know in some states principals are, in fact, in teachers' bargaining units.

So would you comment on what should be the level at which we might want to exclude supervisors and what should be the level at which individuals should have the opportunity to choose to join or not join a labor organization?

MR. SHANKER: Well, I didn't submit
anything in writing today. I'm going to. And I will respond to that. It's a tough one. I don't have the answer to it yet, which is why I can't respond to it now.

CHAIRMAN DUNLOP: Al, may I come back to a similar question by being just a little sharper? When Mr. Kirkland appeared before this Commission, he commented that he was a member of a union, the Masters, Mates and Pilots organization of many years existence.

And he expressed the view that it was somewhat reprehensible, I inferred, that they were not privileged as masters, mates, or pilots to have the benefits of protection of law, of the National Labor Relations Act.

What's the difference between a master, mate? After all, a master, who runs a vessel across the Atlantic is a pretty responsible fellow. What's his difference in an executive vice president or a vice president of a bank?

MR. FRASER: Vice president of a bank can't get you drowned.

(Laughter.)

MR. SHANKER: Well, financially drowned.

MR. FRASER: You can't drown when you can
sink.

MS. VOOS: That's right.

MR. SHANKER: Well, look, there will be questions of judgment here. You obviously have a concentration of management functions in the vice president.

I'm dealing with a situation where you're taking maybe three million teachers and taking bits of functions that used to be exercised by somebody in the central office.

And here are people still 95 percent of their time doing what they always did, but you're giving them a little bit more. And practically all the time they're doing exactly what they did before as with there being no question that they were employees, but now you're in terms of this new workplace moving some of that decision-making and getting it to be more teamwork, rather than individual work.

None of them ever get to that vice presidency with this. It's very far removed.

MR. WEILER: Can I just maybe push you a little further on some of the implications of this Yeshiva doctrine, of the managerial exclusion doctrine, for the broader array of labor law and labor
relations issues?

In a sense, the rationale for Yeshiva is the traditional labor law view that there's a hands-on relationship between the employees, on the one side, and the employer, on the other side, of the bargaining table and that in a sense, just as employers have insisted that union members shouldn't be at the heart of management, so alone unions have insisted that employers shouldn't be at the heart of employee organizations.

And in a sense the same question can and should be put to employer representatives, who are saying "Don't touch Yeshiva. Don't touch the managerial dividing line." Well, if that's the case, why are you arguing that something should be done about 882 and Electromation?

But the other side of the question that I'm putting to you is: If we need a lot more flexibility on the employee side in terms of letting employees at whatever point at least considerably up the organizational ladder have the right to collective bargaining, shouldn't the law also permit comparably a great degree of flexibility to employers in nonunion environments to develop these kinds of team systems of production and employee representation that give

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a flexibility to the organization that maybe we need for the upcoming century?

MR. SHANKER: Well, I imagine that they're doing these things in a lot of these places. And I know that Electromation raises a new -- I guess at some point you'd need a judgment as to where it's an employee involvement plan.

And the whole issue of whether it's really an effort to create a company-dominated union still lurks around there, which I guess is what you're raising.

MR. WEILER: The other side is that management complains that any weakening of Yeshiva will create a union-dominated management. And to the extent that the union movement, for example, feels that it's extremely important to stop company-dominated unions, isn't it equally important from the other side to stop union-dominated management or to the extent that we think we don't really have a big problem of union-dominated management, perhaps we really don't have quite as big a problem, as the Wagner Act suggests, of company-dominated unions?

MR. SHANKER: Well, I think that the union-dominated management is -- what is it that these teams are going to -- what sorts of decisions are they
And I guess you would need to look at this in an industrial workplace and a professional workplace, but if you've got a situation where you've got teams working and there's some sort of an incentive plan to get the teams to function properly; that is, if the company's doing very well, if you get something out of it, and you're not going to make your decisions on the basis of what your personal needs or prejudices are; that is, the assumption is that you've got enough of an incentive system there so you're going to be making them in terms of better productivity and better product, you're not making decisions as to all sorts of top -- I mean, essentially, the teams are asking questions about "How many lemons are we turning out? Why? Is it the quality of the materials? Is it the way we arrange our work? Is it somebody who's on the team who is not performing who needs some help? Is it somebody who's beyond help and needs to be replaced?" or if would think or a bunch of teachers who would ask a bunch of questions, it's not "How do you run the school?" It's "Here are five of us who all teach the fifth grade" or "who are in the mathematics department."

So I would think the nature of the
decisions that you're dealing with here, which is the
most effective allocation of time, materials, the
kinds of training that are necessary, that while in
those days when the worker was a hired hand, those
sure were somebody else's decisions, but they're
pretty far from the corporate board-type stuff.

It is not taking over all of management.

These are things -- I assume that what's being handed
over to these employees are really judgment about
issues that are right in front of them that are
related to their work and the quality of the product.

I distinguish that from being represented on the
board. That's a different level thing.

I'm now talking about what teams do in
terms of their work trying to reduce the number of
accidents and improve the quality of product. That's
different from the sort of system-wide representation,
where there might be issues raised of unionizing
management.

But I don't see that issue when you're
dealing with essentially the issue of the quality of
the product and the number of accidents and things
like that.

CHAIRMAN DUNLOP: Thank you very much, Mr.

Shanker.
MR. SHANKER: Thank you.

CHAIRMAN DUNLOP: We have enjoyed your presentation. And I take it you will be sending something in writing in response to one of our questions. Thank you.

MR. SHANKER: Thank you.

CHAIRMAN DUNLOP: Now, the next presentation in this sequence of three is Mr. Robert Georgine, who is the President of the Building and Construction Trades Department of the AFL-CIO.

Is Mr. Georgine here? Go ahead. Welcome, Bob. How are you? Do you know the members of the Commission?

MR. GEORGINE: Most of them, not all of them.

CHAIRMAN DUNLOP: Now, Bob, it is my understanding that you have a paper, but that you prefer to talk informally with us and that we should feel free to ask you our sharpest questions. Is that correct?

MR. GEORGINE: Not too sharp so that I can't answer them.

CHAIRMAN DUNLOP: Go ahead.

MR. GEORGINE: Well, thank you very much for allowing me to come before you.

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