

tion and Conciliation Service, and the Department of Labor. These agencies engage in operations and proceedings that vitally affect labor unions and their members. Therefore, we have a strong and vital interest in the efficient, effective operation of these agencies.

H.R. 5012 would require every agency to make all of its records promptly available to any person, with certain enumerated exceptions. These exceptions include: "(4) trade secrets and commercial or financial information obtained from the public and privileged or confidential; (5) interagency or intraagency memorandums or letters dealing solely with matters of law or policy; and (7) investigatory files compiled for law enforcement purpose except to the extent available by law to a private party."

Each of these exceptions contains broad loopholes through which information could be extracted from Government agencies or departments which could be used to delay or interfere with the expeditious disposition of agency actions or procedures. Furthermore, this legislation would require years of litigation before the scope and effects of the bill's imprecise language become clear and definite.

For example, clause (4), which purports to exempt from disclosure information obtained from the public which is "privileged or confidential," would not appear to exempt wage data submitted to the Bureau of Labor Statistics, and the Wage and Hour Division of the U.S. Department of Labor in confidence and used by them in preparing and publishing wage studies and surveys. This loophole is serious because these wage studies and surveys are used by the Department as a basis for the prevailing wage determination which the Department is required to make under the Walsh-Healey and Davis-Bacon Acts.

Unless the Bureau of Labor Statistics can continue to assure those from whom wage data are obtained that these data will be kept confidential, the Bureau's sources of information in these vital fields could be seriously jeopardized. As presently drafted, clause (4) would also seriously interfere with the effective enforcement of the Fair Labor Standards Act, the Labor-Management Reporting and Disclosure Act, and the Welfare and Pension Plans Disclosure Act.

Clause (5) contains another broad loophole. It fails to exempt interagency or intraagency memorandums or letters dealing with matters of fact. Indeed, the Senate Judiciary Committee, reporting on the similar bill which was before the Senate last year (S. Rept. 1219, 88th Cong., 2d sess.), stated specifically that while "the Government cannot operate effectively or honestly" if "opinions of the moment" of Government officials had to be spread on the public record, "there is no exemption for matters of a factual nature." Clause (5) is drawn in such a way, for example, that it would appear that memorandums prepared by agency employees for themselves or their superiors purporting to give their evaluation of the credibility of evidence obtained from witnesses or other sources would not be exempt from disclosure, even though the knowledge that their views may be made matters of public knowledge would inevitably interfere with their freedom of judgment and color their views. In addition, memorandums summarizing facts used as a basis for recommendations for agency action would likewise appear to be excluded from the exemption contained in clause (5).

Clause (7) would open up investigatory files to an extent that goes far beyond anything required by the courts, including the decision of the Supreme Court in the *Jencks* case. This clause, for example which provides for disclosure of investigatory files as soon as they "affect an action or proceeding or a private party's effective participation therein" is susceptible to the interpretation that once a complaint of unfair labor practice is filed by the General Counsel of the National Labor Relations Board, access could be had to the statements of all witnesses, whether or not these statements are relied upon to support the complaint.

Furthermore, witnesses would be unwilling to give statements if they knew that their statements were going to be made known to the parties before the hearing. While witnesses would continue to be protected in testifying at the hearing, they would enjoy no protection prior to that time. Obviously, the Board's procedures could be substantially interfered with, and further delays to clog the Board's already overloaded docket would be encouraged. Substantial litigation would be required before the full scope and effects of clause (7) would be made clear.

The foregoing points make it clear that H.R. 5012 may have serious, adverse effects on the activities of administrative agencies and particularly those Federal agencies engaged in operations and proceedings affecting labor unions and their members and working people generally.