

Delegate Marvin Smith.

DELEGATE M. SMITH: Delegate Bothe, I am sure down at law school you heard Professor Reno, on more than one occasion, say we have got to get on. Do you think maybe it is time to get on to debate?

DELEGATE BOTHE: I have no control over the questions. I would be delighted to sit down.

THE CHAIRMAN: Delegate Groh.

DELEGATE GROH: Delegate Bothe, do you subscribe to the basic premise that the function of the Declaration of Rights is to set out those rights which individuals hold secure against governmental interference or transgression?

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: No, I do not fully subscribe to that precept. I think that the Declaration of Rights is an instrument intended to protect the individual in his relationships with other individuals which the State ultimately must regulate.

I do not feel that the Declaration of Rights must or can remain silent when the major activity, the occupation of the people is somewhere else and when you have employees who are larger than the State, whose positions affect the daily lives of the citizens of the State to a much greater or equal degree as the activities of the State itself. I feel that the constitution can deal with them, and I point out to you, Delegate Groh, interestingly enough, that in constitutions, with the exception of that of Hawaii, in which the right of employees to organize and bargain collectively is stated, it is in the Declaration of Rights.

THE CHAIRMAN: Delegate Groh.

DELEGATE GROH: Then I take it that you are not in favor of including any other areas where we designate rights of one individual against another individual?

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: Could you give me an example?

THE CHAIRMAN: Delegate Groh.

DELEGATE GROH: For instance, *Winhard v. Tennant*.

DELEGATE BOTHE: I do not think that belongs in the Declaration of Rights. Our constitution does not deal with a number of them. For instance, under free speech you deal with libel and give a citi-

zen a right of action against another for his use of free speech.

The constitution cannot be pure on this subject matter. The State is what must effectuate the right. If you have the right, it is the courts and the executive and the various aspects of government that make it a reality.

THE CHAIRMAN: Delegate Hutchinson.

DELEGATE HUTCHINSON: Delegate Bothe, under your provision, if your provisions happen to be adopted by this Convention, what recourse would a small employer have?

I am thinking of a particular example. If a man owns a laundry and he has twenty employees and the employees bargain collectively, and he cannot meet their demands, and they refuse to work, what recourse does he have? Can he fire them and hire someone else?

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: Of course he can.

THE CHAIRMAN: Delegate Hutchinson.

DELEGATE HUTCHINSON: Could they pursue their case to the court and say that he refused to allow them to bargain collectively?

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: As an attorney representing all kinds of people, I have had people come to me and want to go to court. You can file suit on any ground. As far as the guarantee is concerned, it certainly does not require employers to hire people who do not do the jobs. It only forbids employers from firing them because they want to organize and bargain collectively.

THE CHAIRMAN: Are there any other questions?

Delegate Hostetter.

DELEGATE HOSTETTER: Just one further question. In the National Labor Relations Act, is it not a fact that if notice is given to the employer by the employees that they wish to negotiate, no threats whatsoever can be made to the employees after that particular time?

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: I think you misconstrued the Act. No threats can ever be made to employees for their union activity before or after, nor should any ever occur.

THE CHAIRMAN: Are there any further questions?