THE WHITE HOUSE

WASHINGTON

April 18, 1984

MEMORANDUM FOR WILLIAM A. NISKANEN
MICHAEL J. HOROWITZ
ROBERT KABEL
DOUGLAS RIGGS
DENNIS MULLINS
LEHMANN LI

FROM: ROGER B. PORTER RBP

SUBJECT: Bildisco Letter and Hearings

Frank Lilly has prepared a revised version of the statement we have been discussing regarding the Bildisco legislation in the form of a letter. The revisions incorporate the suggestions made at the last meeting of our working group. A copy is attached.

A copy of the Department of Labor memorandum summarizing the testimony of the various witnesses at the April 10, 1984 hearings is also attached.

We will discuss these and other developments at our working group meeting on Friday.

cc: Francis X. Lilly

Attachments

DRAFT

Dear :

This is to inform you of the views of the Administration on the implications of the recent decision by the U.S. Supreme Court in National Labor Relations Board v. Bildisco & Bildisco. I would further like to inform you of the principles we believe should guide the Congress as it considers legislation designed to address the results of that decision.

As you are aware, in the Bildisco decision the Supreme Court held that an employer who had filed a petition for reorganization in bankruptcy could unilaterally abrogate a collective bargaining agreement. When this occurs, the employees would be able to pursue in the bankruptcy courts claims resulting from rejection of the contract. However, in the interim, the employer would legally be able to pay less than the agreed-upon wages and discontinue benefits and take other actions which could be contrary to the negotiated agreement.

As the Congress addresses the effects of this decision, we believe it is important that your consideration be placed in the overall context of furthering a healthy collective bargaining system. In passing the National Labor Relations Act in 1935, the Congress provided a legal framework for labor and industrial peace. Embodied in this framework is a system of free collective bargaining which enables workers to decide whether or not they wish to be represented by organized labor. In addition, both labor and management were given important tools that allow them to negotiate over benefits, job rights, and other matters of vital importance to both sides.

This Administration firmly believes that the continued health of the collective bargaining process is imperative for the well-being of this country. We will oppose any action that impedes that process which is otherwise unnecessary to protect the national interest. And it is with these considerations in mind that we address the issues raised by the Bildisco decision.

Let me briefly review the Supreme Court's decision. The 1978 Amendments to the Bankruptcy Code relaxed the conditions under which a company can file for Chapter 11 reorganziation. Having

filed for reorganization, the company may reject any executory contract if it makes good business sense to do so. In the Bildisco case, the employer filed a voluntary petition for reorganization under Chapter 11 and was authorized by the Bankruptcy Court to operate as a debtor-in-possession. While operating as such, the company requested permission from the Bankruptcy Court to reject an outstanding collective bargaining agreement and unilaterally changed certain terms of that agreement.

The Supreme Court held that the failure of the employer in reorganization to comply with the provisions of the NLRA regarding modification and termination of a collective bargaining agreement is not an unfair labor practice. The Court also ruled that the Bankruptcy Court should permit rejection "if the debtor can show that the collective bargaining agreement burdens the estate, and that after careful scrutiny, the equities balance in favor of rejecting the labor contract."

Legitimate concerns have been raised by both labor and management following the issuance of the Supreme Court's decision. To address the uncertainties resulting from the decision, various legislative proposals have been considered. Indeed, as you are aware, the House of Representatives has passed legislation which would impose certain restrictions on an employer's ability to reject a collective bargaining agreement.

The matter is now before the Senate. The Administration believes you should be guided by two principles in your considerations. First, the delicate balance which has been so important to our system of collective bargaining must be preserved; accordingly, we support legislation that removes from employers the ability to unilaterally reject a collective bargaining agreement, and provides the Bankruptcy Court, following the filing of a Chapter 11 petition, the authority to abrogate the contract in the absence of an agreement between employers and unions.

The second guideline we believe you should follow is that any legislative response to the Supreme Court's decision should result in the preservation of jobs. Businesses facing severe economic problems should be encouraged to assess their futures and take actions necessary to keep them in business and their workers working. As the Supreme Court noted, "(T)he fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs. . ." In

this regard, we support the basic standard set out for rejection and within that framework would support language achieving this purpose. In addition, we strongly believe that the legislation should establish a process which imposes realistic and workable timeframes and deadlines. An unnecessarily lengthy process is not in the best interests of either management or labor.

We stand ready to work with this Committee to achieve the objectives which I have described.

The Office of Management and Budget advises

Sincerely,

WITNESS LIST

Joint Hearing of the Senate Judiciary Committee

and the Senate Committee on Labor and Human Resources

BILDISCO: REJECTION OF UNION CONTRACTS IN BANKRUPTCY REORGANIZATION

Tuesday, April 10, 1984; hearing opens at 9:30 a.m.
SD-430 (Dirksen Senate Office Building)

WITNESSES SCHEDULED TO TESTIFY

International Brotherhood of Teamsters

Jackie Presser, General President
Robert Baptiste, Counsel, Washington, D.C.

AFL-CIO

Laurence Gold, Counsel, Washington, D.C.
Bruce Simon, Counsel, Cohen, Weiss and Simon, New York, New York
Robert Funk, United Food and Commercial Workers, Washington, D.C.

Panel 1

Chamber of Commerce of the United States

Robert T. Thompson, Thompson, Mann, Hutson, Washington, D.C.; Chairman, Executive Committee, and Chairman of the Labor Relations Committee
Mark A. de Bernardo, Labor Law Attorney, Washington, D.C.

National Association of Manufacturers

F. M. Lunnie, Jr., Assistant Vice President, Industrial Relations, Washington, D.C.
John S. Irving, Kirkland and Ellis, Washington, D.C.; Chairman of the NAM Labor Law Advisory Committee

Small Business Legislative Council

Herbert Liebenson, Executive Director, Washington, D.C.
Eugene Granoff, Vedder, Price, Kaufman, Kammolz and Day, Washington, D.C.

Panel 2

Hon. Ralph R. Mabey, LeBoeuf, Lamb, Leiby and MacRae, Salt Lake City, Utah
Herbert P. Minkel, Jr., Fried, Frank, Harris, Shriver and Jacobson, New York, New York
Daniel Lewis, Arnold and Porter, Washington, D.C.
Frank Lorenzo, Chief Executive Officer, Continental Airlines, Houston, Texas

JOINT HEARING OF THE SENATE JUDICIARY COMMITTEE AND THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES BILDISCO: REJECTION OF UNION CONTRACT IN BANKRUPTCY REORGANIZATION

Tuesday, April 10, 1984, 9:30 a.m.

Present for Judiciary:

Majority Members	Minority Members
Strom Thurmond, S.C., Chairman	Joseph R. Biden, Jr., Del.
Orrin G. Hatch, Utah	(ranking minority member)
Robert Dole, Kansas	Howard M. Metzenbaum, Ohio
Charles E. Grassley, Iowa	Dennis DeConcini, Ariz.
Jeremiah Denton, Ala.	Howell Heflin, Ala.
Arlen Specter, Pa.	

Present for Labor and Human Resources:

Majority Members	Minority Members
Orrin G. Hatch, Utah, Chairman	Howard M. Metzenbaum, Ohio
Dan Quayle, Ind.	
Don Nickles, Okla.	
Jeremiah Denton, Ala.	
Charles E. Grassley, Iowa	

Witnesses:

Jackie Presser, President of Teamsters read a statement and answered questions on the position that any amendment to the current law should:

1. Encourage good faith collective bargaining as a pre-condition to contract rejection.

2. Debtor should provide, in a timely manner, relevant information to the union concerning the cooperation and benefit levels for others (non-union) employees of the "debtor" corporation.

3. Unilateral changes in wages, hours and working conditions should be prohibited prior to a court ruling on a motion for rejection of the contract.

4. The debtor should be required to obtain the participation of the other parties to the bankruptcy prior to having the collective bargaining agreement rejected.

5. If all of these procedures have been followed, the debtor should have a prompt hearing on the motion to reject the collective bargaining agreement.

6. During the collective bargaining process prior to the hearing and at the hearing, the hearing, the debtor should be required to establish the relationship between the rejection of the collective bargaining agreement and the ultimate rehabilitation of the company.

7. The amendments should be made effective immediately.

Lawrence Gold, AFL-CIO wants the House bill (H.R. 5174) passed on March 21, 1984, with the provision added that the amendments are effective as of date of enactment. This would mean:

1. REA Express standards.

2. Expedited hearings in 28 days, and

3. No abrogation of the agreement before a decision is issued by the court.

Gold also stated that an interim modification of the contract by the bankruptcy court would be acceptable if it is worked out by the parties with serious penalties to either side if it is not adhered to. For the long run, it is not sound to have a bankruptcy judge state what is or is not going to be in the agreement on a permanent basis.

Robert T. Thompson, U. S. Chamber of Commerce spoke in support of the Bildisco decision:

1. Passage of H.R. 5174 would give unions too much power in labor relations.

2. Overturning Bildisco would keep unionized employers from using Chapter 11 reorganization.

3. Less incentive for unions to voluntarily make contract modifications.

4. Union organizing campaigns would be enhanced since unions could promise protection in the event of bankruptcy.

5. More businesses would fail rather than reorganize so that more jobs would be lost overall.

6. Chamber opposed to any overturning of Bildisco.

7. If necessary, would rather see "no abrogation of contract" left in and an expedited hearing agreed to for pressure purposes.

John Irving, Chairman of the National Association of Manufacturers Labor Law Advisory Committee also spoke in favor of the Bildisco decision:

1. Bankruptcy court must balance the equities to rule on rejection of a collective bargaining agreement as this standard is essential to avoid harm to debtor's, creditor's and public interest.

2. Returing to the REA Express standard would preclude rejection of collective bargaining agreements.

3. Onerous and expensive dangers inherent in a Chapter 11 proceeding would prevent abuse of the bankruptcy courts merely to undermine a union.

4. Post-Bildisco climate favors negotiation of voluntary modifications as exhibited by Eastern Airlines.

5. Prior approval for rejection might be acceptable if there is an expedited hearing.

Herbert Liebenson, Executive Director of the Small Business Legislative Council also supported the Bildisco decision:

1. Would not oppose a provision requiring prior approval by a bankruptcy court before unilaterally modifying a collective bargaining agreement.

2. Procedures must be simple and expeditious.

3. Must impose a reasonable standard (not REA Express).

4. Must require no notice and writing provision of the National Labor Relations Act.

5. Union must respond in good faith to employers request for discussions.

6. Must provide reasonable protection against disclosure of confidential information.

The Honorable Ralph R. Mabey, a former bankruptcy court judge, stated:

1. There was little difference between the REA Express standard and the Bildisco standard, in actual practice.

2. Non-union employees might be disadvantaged under the REA Express if the union has national concerns and the company's concerns are local.

3. The test proposed in H.R. 5174 could result in inequities where a company had an agreement with a union covering many employees and another agreement with a different union covering few employees if the latter would have no effect on reorganization.

4. Inability to reject an agreement early in the proceedings may make it impossible for the company to secure financing.

5. Interim relief should be provided.

Herbert Minkel, an attorney and a contributing editor of Collier on Bankruptcy, represented the Legislative Committee of the National Bankruptcy Conference. His position:

1. Bildisco issue is only relevant in the unusual situation where a financially ailing employer needs to reorganize but can afford a strike.

2. Any legislation dealing with the Bildisco area should require the debtor to comply with the NLRA and the contract until the courts approve rejection.

3. An accelerated hearing and decision on the application to reject is necessary.

4. Preserving the existing priority of claims arising from rejection, with damage for rejection treated as prepetition claims.

5. Use the Bildisco standard.

6. No retroactive application.

7. No greater obligations should be imposed on the debtor than the NLRB already imposes.

Frank Lorenzo, Chief Executive Officer of Continental Airlines:

1. The ability to abrogate a collective bargaining agreement early in the proceedings is essential.

2. It is impossible to succeed in a Chapter 11 reorganization unless wages are reduced to the industry level so that new financing and concessions from creditors can be obtained.

3. Risks inherent in Chapter 11 preclude its use except in extreme circumstances.

4. Opposes H.R. 5174, but suggests some compromise could be achieved in the area of no abrogation of the contract until a decision has been issues, if there is an expedited hearing.

Chris Jenkins 523-6113 Kelly

Roger Eaton 6405

3/20 lw Dole 4-6521

Thurmond 4-5972

801 524-4380 lw Hatch 4-5251

cut Thurmond staff out of it - but OK.

Dole Gunn

Harry Gold - AFL-CIO

1. any language at all / no hearings - complicated - whole bill in trouble?

2. ~~if language~~

→ Understanding is that compromise long has been offered to AFL-CIO
→ this is a very complicated matter - deserves careful scrutiny - hearings, etc

Dole is OK on trying to work out.

Comer - only chance to get '75 Act. III judge
Labor must carry the ball

John Irving NAM / U.S. Chamber says OK - can live with -

Thurmond "catalyst"
send back Senate bill
Waterdam - Ridisco - manipulate, the dessert
expedited relief - no ~~revision~~ reverse 9/0

Chris Hankin 523-6113
Kelly

Roger Porter 6405

3/20 lw Dole 4-6521 | Thurmond 4-5972

801 | 524-4380 lw Hatch 4-5251

cut Thurmond staff out of it - but OK

Dole Comm

Harry Gold - AFL-CIO

1. any language at all / no hearings - complicated
- whole bill in trouble?

2. ~~if language, [illegible]~~

compromise

→ understanding is that long has been offered to AFL-CIO
→ this is a very complicated matter -
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can live with -

Thurmond "catalyst"
send back Senate bill
~~Watergate~~ Bildisco - manipulate, the dissent
expedited relief - no ~~review~~ reverse 9/0

3/27

Senate Staff proposal — 2 step procedure vs. 1 step
- time frame generally less than DOL draft.

(F) ~~what~~ is intent? / does it bump in NLRB

"Good faith proposal" - under (4) must be made prior to 7 days for shop info.
for cpl. for rejection

also unusual req this term.

Admin. - Senate should include Bildisco
long. only if labor commits to push it in House.

212 DSOB

Hatch 4-5251

Rick Prendergast

4/10/84

Bildisco

draft statement ☆ - reviewed + rewritten

(1) time standard
(2) judge impact rule
(3) standard

10

13
20
23

4/20/84

expiration of extension may not be end of bankruptcy
ie. Jud. Conf. must issue a second emergency rule.

☆ 1st ext. - ext. to 25th May

B. timing problem on signature

✳ HHB - is he to become involved

☆ calls to HHB, Dole, Hatch
re. RR / reign statements - turn up the heat.

DRAFT
WN/4-10-84

Administration Statement on the "Bildisco" Legislation

This statement summarizes the position of the Administration on the issues raised by the recent decision by the Supreme Court in National Labor Relations Board v. Bildisco and Bildisco. In that case, the Court held (by a 5-4 vote) that an employer who had filed a petition for reorganization in bankruptcy could unilaterally abrogate a collective bargaining agreement without being guilty of an unfair labor practice under the National Labor Relations Act (NLRA). The Court also held (by a vote of 9-0) that a bankruptcy court may approve the rejection of a collective bargaining agreement upon a showing that the agreement "burdens the estate" and that "the equities balance in favor of rejecting the labor contract." The ruling in favor of this "balance of equities" standard rejected both the weaker "business judgment" standard that applies to other executory contracts under the 1978 Bankruptcy Act and a stronger standard that abrogation of the collective bargaining agreement be allowed only if necessary to permit a

successful reorganization. The Court qualified this standard in two important respects:

(1) The bankruptcy court must "be persuaded that reasonable efforts to negotiate a voluntary modification have been made and are not likely to produce a prompt and satisfactory solution." The Court did not require that NLRA procedures be followed or that any technical, labor law standard such as "bargained to impasse" be met. However, the NLRA's policy of negotiating differences must be honored, and the bankruptcy court should intervene only after "reasonable efforts to reach agreement have been made."

(2) The bankruptcy court must find that "the policy of chapter 11 ... to permit successful rehabilitation of debtors ... would be served by [rejection]." Balancing the equities does not mean a "free-wheeling consideration of every conceivable equity, but rather only how the equities relate to the success of the reorganization." Among the factors to be considered by the bankruptcy courts are "the likelihood and consequences of liquidation for the debtor absent rejection, the reduced value of the creditors' claims that would follow from [continuation of the union contract] and

the hardship that would impose on them, and the impact of rejection on the employees ... the degree of hardship faced by each party [and] any qualitative differences between the types of hardship each may face."

The Court, in this and other similar cases, recognized that there is an inherent conflict between the detailed procedures of the NLRA and the Bankruptcy Act and has correctly resolved this conflict in favor of the bankruptcy procedures. These procedures, however, need not be inconsistent with the general policy of the NLRA that collective bargaining agreements should be modified, if possible, by the mutual agreement of the union and employer, based on mutual access to the relevant information. The conditions faced by an employer in bankruptcy necessarily constrain the collective bargaining process but need not be inconsistent with this general policy.

The Administration approaches this issue with two general concerns:

(1) We wish to reenforce the collective bargaining process, without the involvement of Government including the bankruptcy court, to the extent consistent with the potential successful reorganization of the bankrupt employer.

(2) We support bankruptcy procedures and a standard for judging the rejection of a collective bargaining agreement that are most likely to preserve the jobs of the affected workers.

These concerns lead us to recommend that any legislature clarifying or modifying the Bildisco decision include the following general provisions:

(1) An employer should not be allowed to unilaterally reject a collective bargaining agreement without a reasonable attempt to negotiate a voluntary modification and without the prior approval of the bankruptcy court.

(2) The legislation should reenforce the "balance of equities" standard established by the Supreme Court for rejection of a collective bargaining agreement. This standard recognizes the special status of a collective bargaining agreement, relative to other executory contracts, and, we believe, is most likely to be consistent with preservation of the jobs of the affected workers.

(3) The legislation should establish a process that imposes reasonable time frames and deadlines. An unnecessarily lengthy process would reduce the potential for a successful reorganization and is not consistent with the employer or the employees.

We would be pleased to work with Congress to develop legislative language consistent with the three general provisions summarized above.

Votes 30-Day Extension of Deadline:

Congress Postpones Action On Bankruptcy Court Reform

Congress March 30 cleared a bill giving itself one month's breathing room to come up with legislation to put the nation's bankruptcy courts on sound legal footing.

Although the Senate and House had passed separate bankruptcy court reform bills, they could not come to agreement on the legislation before a March 31 deadline established in a 1978 bankruptcy reform law. *(Weekly Report p. 646; 1978 Almanac p. 179)*

Without congressional action or some interim move by the U.S. Judicial Conference, policy-making arm of the federal judiciary, the country technically would have been without functioning bankruptcy courts April 1.

When it became clear around 11:30 a.m. March 30 that no agreement on a reform bill was likely, Senate Majority Leader Howard H. Baker Jr., R-Tenn., proposed the bill (S 2507) extending the deadline for 30 days, saying this would give Congress time to hammer out an accord.

The Senate passed the extension bill by 78-0. Later that afternoon, the House slightly modified the measure and returned it to the Senate for final approval.

Sen. Joseph R. Biden Jr., D-Del., said the last-minute action was "making the best of a bad situation. Quite frankly, we've run out of runway. This is the only way we can go," he said.

Background

The court crisis stemmed from a 1982 Supreme Court decision invalidating the bankruptcy court system established in 1978 reform legislation. *(1982 Almanac p. 389)*

The justices ruled that Congress gave bankruptcy judges too much authority over a variety of legal matters but too little independence from other branches of government. The court gave Congress until the end of 1982 to find a solution. When legislators failed to meet that first deadline, the Judicial Conference issued an interim operating rule that has been in effect since late December 1982.

In brief, that rule gave overall authority for handling bankruptcy cases to the federal district courts, who then delegated clear-cut bankruptcy matters to the bankruptcy judges. Cases that involved other legal issues, such as a contract or antitrust claim, could be heard by the district court judges.

On March 31, a six-year transitional period envisioned under the 1978 legislation ended, and the interim rule in effect since December 1982 lapsed. S 2507 kept the status quo intact through April 30, however.

House, Senate Action

The Senate passed a bankruptcy bill (S 1013) on April 27, 1983; the House passed its own version (HR 5174) March 21. Although there were some differences between the court provisions of each measure, they were not irreconcilable. However, both bills included a number of other sections dealing with changes in the substantive bankruptcy laws, and the two chambers could not agree on which to include. *(Weekly Report p. 646)*

One major stumbling block was a provision in HR 5174 sought by organized labor that would make it harder for financially troubled companies to scuttle their union contracts.

The House bill was designed to overturn a Feb. 22 Supreme Court decision in which the court ruled 5-4 that a company can abrogate its union contract as soon as it files for bankruptcy, without waiting for court approval. HR 5174 would bar a company from throwing out union contracts without court approval.

The bill also modified a second part of the Supreme Court decision in which the justices ruled 9-0 that judges are not required to give special treatment to collective bargaining agreements in dealing with bankruptcy cases. HR 5174 would require courts to find that a company was on the verge of collapse before allowing a labor contract to be voided.

The Senate, prodded by business organizations, was resisting the House labor provisions, contending that they went too far in protecting unions. Sen. Orrin G. Hatch, R-Utah, and his staff led negotiations the week of March 26 among other senators and representatives of business and organized labor, but no agreement was reached.

The problem for the House was the breadth of the Senate bill. The House had agreed to pass a limited package — one that included new court provisions, the labor section and two other titles. One of them was designed to curb alleged abuses of bankruptcy law by consumers who could in fact pay off their debts. The other established new, expedited procedures for handling bankruptcies involving grain elevators.

The Senate bill included these sections but also tagged on several others, including a section to change procedures for handling bankruptcies in shopping centers; a section to expedite procedures for dealing with fish processing plants that go bankrupt; a section to bar a person from discharging through bankruptcy proceedings debts incurred as a result of a drunken driving accident; a section designed to protect persons who buy time-shared units in developments that later go bankrupt; and a section that would exempt certain short-term securities from bankruptcy proceedings.

The Senate bill also included a section creating 85 new federal judgeships — 61 district court positions and 24 federal appeals court slots.

When HR 5174 went to the House Rules Committee March 20, it included a provision creating 75 new federal judgeships, but at the direction of House Speaker Thomas P. O'Neill Jr., D-Mass., the judgeships were stricken from the bill.

Democrats were not eager to give President Reagan a host of new appointments in this election year.

One House staffer labeled the Senate package "ludicrous." But a Senate staffer charged that the House "has been trying to ignore these problems for years. It's time to deal with them." ▮

—By Nadine Cohodas

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 28, 1984

TO: M.B. Oglesby

THRU: Pam Turner

FROM: Bob Kabel

SUBJECT: Update on Bildisco

Senator Hatch has become personally involved in the negotiations on modified Bildisco language. He advised me this morning that his intent is to find language which is acceptable to certain union leaders and that the business community may not be fully supportive of the final language. Hatch stated that Senator Laxalt is aware of and supportive of his efforts. He indicated that he "expected" Administration support for whatever language was finally agreed to. I indicated that thus far, based on what we have seen, that the reaction in the Administration was favorable. It is my understanding that the AFL/CIO's revised language presented to the Judiciary Committee yesterday is the basis for today's discussions. I have distributed that language to Roger Porter, a copy of which is attached.

This morning Howard Greene indicated that the bankruptcy package may not be brought up until next week. Senators Thurmond and Dole apparently have advised Senator Baker that the bankruptcy system could continue temporarily beyond April 1. In light of this, the pressure to complete action, at least in the Senate, this week is reduced. Greene indicated that Chief Justice Burger has sent letters to the Senate indicating the critical need for immediate action on the bankruptcy court legislation. Thurmond and Dole are not persuaded by these letters to act until the Bildisco language is worked out satisfactorily.

Finally, everyone I speak with about this indicate that the 75 omnibus district and circuit court judgeships will be included in the Senate legislation sent back to the House. Both Thurmond and Hatch are depending on the unions to advocate passage of the entire package by the House including these additional Article III judgeships.

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

March 27, 1984

Memorandum

To: Vinton D. Lide
Doug Comer

From: Howard Marlowe and Larry Gold

Enclosed for your consideration please find suggestions for modifying the draft provision on the rejection of collective bargaining agreements we received from you yesterday. We are available at your convenience to discuss those suggestions.

So that there are no misunderstandings and no surprises, you should know that the AFL-CIO is working with its affiliates on one other majority priority with regard to the overall bankruptcy package — securing a provision making the bill effective on enactment. Our initial soundings indicate that such a provision has substantial support on the Republican side of the aisle and in the business community. As soon as we reach agreement on the collective bargaining issue or agree to disagree, we wish the opportunity to discuss the effective date issue.

In addition, if there is any intent to add a shopping center provision or any other substantive change to the House bill, we also wish the opportunity to discuss that aspect of this matter with you.

"§1113. REJECTION OF COLLECTIVE BARGAINING AGREEMENTS

(a) The debtor in possession, or trustee if one has been appointed under the provisions of this chapter, (other than a debtor covered by subchapter IV of this title and by title I of the Railway Labor Act) may reject or assume a collective bargaining agreement under this title only if and after the court approves the rejection or assumption of such agreement.

NLRA

(b)(1) Prior to filing an application for rejection of a collective bargaining agreement the debtor shall make a proposal to the authorized representative of the employees covered by the agreement for modifying the agreement in a manner that * taking into account all circumstances, incl. the debtor, makes only such ~~reduces the employee benefits and protections stated therein only to the extent~~ reasonable reductions, in the employee's bs & protections stated therein as are necessary ~~required~~ to permit a successful reorganization and shall, subject to subsection (d)(3) of this section, provide the representative the information necessary to evaluate the proposal.

(2) During the period from the making of a proposal provided for in paragraph (1) of this subsection until the hearing provided for in subsection (d)(1) of this section the debtor shall meet at reasonable times and confer in good faith with the authorized representative in an effort to reach mutually satisfactory modifications to the agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that the debtor has complied with the requirements of subsection (b) of this section and that (the balance of the equities is clearly in favor of rejection of the collective bargaining agreement.

(d)(1) Upon the filing of an application for rejection, the court shall schedule a hearing, to be held not later than twenty-one days after the filing of such application, at which all interested parties may appear and be heard. Adequate notice

shall be provided to such parties at least ten days in advance of the date for such hearing. The court may extend such time for a period not exceeding seven days where the circumstances of the case require such extension in the interests of justice, or for such additional period of time as the parties may consent to.

(2) The court shall rule upon such application for rejection within thirty days of the date of the commencement of the hearing. In the event that the court has not issued a final ruling on such application within such time, the court shall enter an interim order putting into effect the debtor's final proposal for modifying the collective bargaining agreement made pursuant to subsection (b)(2) of this section. The court may extend such time for a period not exceeding fifteen days where the circumstances of the case require such extension in the interests of justice, for for such additional period of time as the parties may consent to.

(3) The court may enter such protective orders on such terms as are consistent with the authorized representative's need to evaluate the debtor's proposal for modifying the collective bargaining agreement and the debtor's application for rejection and as may be necessary to prevent public disclosure of information in the possession of the debtor, the disclosure of which may compromise the position of the debtor with respect to its competitors in the industry in which it is engaged. add back confidential document in camera review

(e) No provision of this title shall be construed to permit a debtor in possession or trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement.

? + 28 + 45

28+30+15=73

effective date

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 26, 1984

TO: M.B. Oglesby

THRU: Pam Turner

FROM: Bob Kabel

SUBJECT: Bankruptcy Legislation -- Bildisco Language

I have been working with Jack Svahn and Nancy Risque concerning efforts in the Senate to include some modified Bildisco language in the bankruptcy court package which may be considered later this week on the Senate floor. At this point, the decision has been made by Chairman Thurmond to avoid a conference with the House and in lieu thereof, send back a bankruptcy package for further House action.

Thurmond's staff provided us with a copy of suggested language which Judiciary Committee staff has presented to organized labor on the Bildisco issue. This language maintains the 9-0 decision but modifies the 5-4 portion of the decision. Specifically it would provide for a hearing within 14 days of filing a bankruptcy petition and a ruling within 30 days of filing. In addition it provides that the debtor must demonstrate that it made a good faith proposal to the employees' union which would provide reasonable protection of employees benefits. It would utilize a "totality of circumstances" test while still permitting a successful reorganization.

Labor was to get back with the Committee this afternoon.

I have talked with Senator Thurmond about this matter in light of strong concerns here about the lack of orderly process in considering legislation on the Bildisco matter. This is a complicated matter and normally would be the type of issue that would receive careful attention through hearings and the mark-up process. There were no hearings in the House Judiciary Committee on the language adopted on the House floor as part of the bankruptcy package. There will be no hearing or mark-up in the Senate on this matter.

It is Senator Thurmond's view that "watered down" Bildisco language would provide a catalyst for passage of the remainder of the bankruptcy package including the 75 district court and circuit court of appeal judgeships included in the Senate bill but absent from the House bill. He appeared

determined to try to work out language that was acceptable and would pass the Senate sometime this week. I have attempted to reach Senator Dole without success. His staffer returned my call and indicated that Dole was also interested in working this out. He reiterated the thought that doing so was the only way to achieve the 75 judgeships included in the Senate bill. He also mentioned that the Judiciary staff had shared its basic Bildisco proposal with John Irving who represents NAM and the U.S. Chamber. Irving apparently expressed some concern but said that they could live with it.

I have a call into Senator Hatch who was in Utah today. I hope to speak to him tomorrow. I have talked with his Committee staff who have indicated the same basic matters as Dole's staff.

It seems to be the collective view that a conference would be counterproductive on this bill in light of Congressman Rodino's failure to succeed on any issue on this legislation. Apparently House staff is encouraging the Senate to avoid a conference and work it out in some other way. This is clearly what is happening.

In light of this, I need to know as quickly as possible whether we want to have any substantive input into the formulation of language on this issue. If so, we should communicate our thoughts during the day on Tuesday as Thurmond appears intent on reaching agreement on language and moving as rapidly as possible.

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR JOHN A. SVAHN

FROM: ROGER B. PORTER RBP

SUBJECT: Bildisco Legislation

The House of Representatives is scheduled to vote tomorrow on the bankruptcy court reform legislation that would include provisions on bankruptcy judges, consumer credit, and labor contract issues. House and Senate conferees will probably meet either at the end of this week or the beginning of next week.

As you requested, I convened a meeting today to consider the Administration's position on the legislation that would reverse the Supreme Court decision in N.L.R.B. vs. Bildisco. Frank Lilly and Ford Ford from Labor, Bill Niskanen from CEA, Mike Horowitz from OMB, Doug Riggs from Public Liaison, Lehmann Li, Mike Uhlmann, and myself attended the meeting.

The group agreed that the Administration is in a good position to argue that any legislation overturning the Bildisco decision is premature. No hearings have been held in either the House or the Senate. Senate conferees can make the procedural point that this is an important issue and merits testimony and discussion before any statute is enacted.

This is obviously our preferred position and outcome. Realistically, there is the feeling that Rodino's provisions are an extreme form on the assumption that he knows he will achieve a compromise at best in Conference. The Senate bill has no provisions relating to the Bildisco decision in it.

The group discussed some compromise language on the question of the standard that bankruptcy courts should use to approve rejection of labor contracts (the 9-0 decision) and agreed to recommend that the Administration be willing to support the attached "Substitute Test" developed by the Department of Labor. This language emphasizes the need for Courts to consider five criteria in evaluating particular cases.

The Department of Labor will prepare by close of business today compromise language on the issue of when a company can abrogate a labor contract after filing for Chapter 11 (the 5-4 decision). The group will meet again tomorrow to discuss the 5-4 issue.

Attachment

Substitute Test
H.R. 4908

Strike the text of proposed section 1113(e), Title 11, United States Code (section 3(a) of H.R. 4908), and insert in lieu thereof the following:

"(e) The court may not approve the rejection of a collective bargaining agreement to which subsection (a) applies unless it makes a specific finding that the policy of this Chapter requires such rejection after consideration of all the relevant circumstances including particular attention to:

"(1) the likelihood of debtor liquidation should rejectio be denied;

"(2) the likelihood of loss of more jobs should rejection be denied than would be the case should it be approved;

"(3) the impact on successful reorganization of any monetary claims that would lie as a result of agreement rejection;

"(4) the impact on employees of the loss of benefits and rights under the agreement should rejection be approved;

"(5) the good faith and motivations of the parties to the agreement, especially as they are reflected in negotiations between them on issues central to the question of agreement rejection."

THE WHITE HOUSE

WASHINGTON

March 22, 1984

MEMORANDUM FOR JOHN A. SVAHN

FROM: ROGER B. PORTER RBP

SUBJECT: Bildisco Legislation - II

The Bildisco Group (Lilly, Ford, Niskanen, Horowitz, Riggs, and myself) met again this morning to review language on the issue of when a company can abrogate a labor contract after filing for Chapter 11 (the 5-4 decision).

With House passage yesterday of the bankruptcy legislation, it is more important than ever to determine the answers to several key questions including:

1. What position will Senators Thurmond and Dole take on the legislation that would reverse the Bildisco decision?

2. How strongly would the Senate Republican conferees be prepared to oppose these provisions in conference on the ground that no hearings have been held in either House and that it is premature to enact legislation on such a complex and technical set of issues?

3. What is the possibility that Senator Thurmond will push to have the Bildisco provisions sent to the Senate Labor and Human Resources Committee (Hatch) for hearings?

Rodino Language

The group believes that the provisions in the House bill (sponsored by Congressman Rodino) are an extreme form of what organized labor wants and that there is a recognition by Rodino and others that something far less sweeping will emerge from Conference, if anything.

Among the problems with the Rodino language is that it would require bankruptcy judges to be expert in interpreting the National Labor Relations Act. More importantly, it could indefinitely delay a decision on a labor contract rejection. A union could demand all "relevant" financial and other information, and there would be no limit to the duration of a hearing.

Frank Lilly, the Solictor at Labor, is preparing a short paper on the problems with the Rodino language which should be ready late this afternoon.

Department of Labor Compromise Language

As an alternative to the Rodino language, the Department of Labor developed a substitute test for the conditions under which a company can abrogate a labor contract. A copy of their draft is attached.

1. By requiring that a trustee be appointed and provide notice of intent to file a motion to reject the labor contract, it would eliminate the possibility that a company could surprise a union by immediately rejecting a labor contract. The Labor draft requires at least 30 days before the trustee could file such a motion.

The intent is that during this time the company and the union would make every effort to reach a mutually satisfactory agreement and avoid the need for a formal filing and hearing.

2. By requiring both sides to make reasonable efforts to negotiate a voluntary modification of the collective bargaining agreement, there would be a strong incentive to negotiate since a bankruptcy court (under our draft on the 9-0 issue) would take such efforts into account when deciding whether to allow rejection of a labor contract.

3. To expedite the process, the court would have to begin a hearing within 14 days after receiving the motion, and would have to issue a decision on the motion within 30 days after the hearing was completed.

4. The principal concern that several of us expressed is that there is nothing which would require that the hearing itself be expedited. This leaves open the possbility that this whole process (30 days + 14 days + a hearing + 30 days) could drag on for an extended period of time. A delay in such matters (one of the principal difficulties with the Rodino language) itself constitutes a decision since many companies, where labor contracts are their principal problem, could do nothing during the interim to address their plight.

Frank Lilly agreed to examine the issue of ways in which we could introduce some limits on the hearing process itself without undermining due process. He will report back soon.

This issue is on an expedited timetable. With the March 31 deadline quickly approaching, a conference committee will almost undoubtedly convene shortly and we must determine soon answers to the questions about the position the Senate will take. Later this morning I was told that House and Senate staff are already meeting and discussing the Bildisco provisions in the House bill.

While everyone on the Group agrees that the preferable solution is for the provisions to be dropped from this legislation on the ground that hearings and a deliberative process are needed, we recognize that the pressures to work something out in Conference will be great.

As a second choice, we are comfortable with the draft language I sent yesterday on the standard that bankruptcy courts should use to approve rejection of a labor contract. If we can find some way to limit the length of hearings, we are also comfortable with the attached draft language on when a company can abrogate a labor contract after filing for Chapter 11.

Attachment

Substitute Test

H.R. ~~4333~~ 5174

Strike the text of proposed section 227(a) and insert in lieu thereof the following:

Sec. 227. (a) Title 11 of the United States Code is amended by inserting after section 1112 the following new section:

"§1113. Rejection of collective bargaining agreements

"(a) For purposes of this section, 'collective bargaining agreement' means a collective bargaining agreement which is covered by title II of the Railway Labor Act or the National Labor Relations Act.

"(b) The trustee may reject or assume a collective bargaining agreement under this title only if and after the court approves the rejection or assumption of such agreement.

"(c) The court shall hold a hearing on a motion to reject such an agreement within 14 days after the filing thereof, and shall issue a decision on the motion within 30 days after such hearing. The court may not approve the rejection of a collective bargaining agreement to which this section applies unless it makes specific findings that: Subsequent to the filing of the petition for reorganization under this chapter

"(1) the trustee has provided notice to all the parties in interest of intent to file a motion to reject such agreement at least 30 days before the filing ~~thereof~~ of the motion for rejection;

"(2) the trustee has made reasonable efforts to negotiate a voluntary modification of the C.B. agreement and continuation of such efforts ~~are~~ is not likely to produce a prompt and satisfactory response; and

Subsequent to filing of petition

"(3) [the policy of this Chapter] requires such rejection after consideration of all the relevant circumstances, including specific findings with respect to:

"(A) the good faith and motivations of the parties to the agreement, especially as they are reflected in negotiations between them on issues central to the question of agreement rejection;

"(B) the likelihood of debtor liquidation should rejection be denied;

"(C) the likelihood of loss of more jobs should rejection be denied than would be the case should it be approved;

"(D) the impact on successful reorganization of any monetary claims that would lie as a result of agreement rejection; and

"(E) the impact on employees of the loss of benefits and rights under the agreement should rejection be approved.

"(d) The financial information necessary and relevant to determining whether a collective bargaining agreement to which this section applies may be rejected under this title shall be made available, under such conditions and within such time as the court may specify, to the authorized representative of the employees who are subject to such agreement.

"(e) No provision of this title shall be construed to permit the trustee unilaterally to terminate or alter any of the wages, hours, terms and conditions established by a collective bargaining agreement.

constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.''.

Subtitle C--Amendments Relating to Rejection of Collective Bargaining Agreements in Bankruptcy

Sec. 275. Section 365(a) of title 11, United States Code, is amended by striking out ''and 766'' and inserting in lieu thereof '', 766, and 1113''.

Sec. 276. Section 503(b)(1)(A) of title 11, United States Code, is amended by inserting before the semicolon at the end thereof the following: '', except that such wages or salaries covered by a collective bargaining agreement to which section 1113 of this title applies shall only be measured at the rate prescribed for such services in such agreement''.

Sec. 277. (a) Title 11 of the United States Code is amended by inserting after section 1112 the following new section:

''§1113. Rejection of collective bargaining agreements

''(a) For purposes of this section 'collective bargaining agreement' means a collective bargaining agreement which is covered by title II of the Railway Labor Act or the National Labor Relations Act.

''(b) The trustee may reject or assume a collective bargaining agreement under this title only if and after the court approves the rejection or assumption of such

agreement.

''(c) The court, only on the motion of the trustee, may approve the rejection of a collective bargaining agreement under this title only after notice to all parties in interest and a hearing.

''(d)(1) The trustee shall--

''(A) meet and confer in good faith with the authorized representative of the employees who are subject to a collective bargaining agreement: and

''(B) provide such authorized representative with the relevant financial and other information.

''(2) The trustee may file a motion for the rejection of a collective bargaining agreement under this title if--

''(A) the trustee has proposed modifications in such agreement to such authorized representative deemed necessary by the trustee for successful financial reorganization of the debtor and preservation of the jobs covered by such agreement;

''(B) the trustee has considered but rejected as inadequate for successful financial reorganization of the debtor and preservation of the jobs covered by such agreement alternative proposals for modifying such agreement made by such authorized representatives: and

''(C) a prompt hearing on rejection is necessary to successful financial reorganization of the debtor.

''(e) The court, upon motion of the trustee to reject a collective bargaining agreement, shall hold an expedited hearing to determine whether such agreement may be rejected under this title, not less than 7 days and not more than 14 days after the filing of such motion, or within such additional time as the court, for cause, within such 14-day period fixes. Such hearing shall be completed no later than 14 days after the commencement of such hearing, or within such additional time as the court, for cause, within such 14-day period fixes.

''(f) The financial information relevant to determining whether a collective bargaining agreement may be rejected under this title shall be made available, under such conditions and within such time as the court may specify, to the authorized representative of the employees who are subject to such agreement.

''(g) The court may not approve the rejection of a collective bargaining agreement under this title unless--

''(1) the trustee has complied with subsection (d) of this section; and

''(2) absent rejection of such agreement, the jobs covered by such agreement will be lost and any financial reorganization of the debtor will fail.

''(h) No provision of this title shall be construed to permit the trustee unilaterally to terminate or alter any of

the wages, hours, terms and conditions established by a collective bargaining agreement.''.

(b) The table of sections of chapter 11 of title 11, United States Code, is amended by inserting after the item relating to section 1112 the following new item:

''1113. Rejection of collective bargaining agreements.''.

Subtitle B--Effective Date of Title

Sec. 299. (a) Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) The amendments made by this title shall not apply with respect to cases under title 11 of the United States Code commenced before the date of the enactment of this Act.

THE WHITE HOUSE

WASHINGTON

March 26, 1984

MEMORANDUM FOR JOHN A. SVAHN

FROM: ROGER B. PORTER RBP

SUBJECT: Bildisco - III

Frank Lilly informs me that conversations continued over the weekend involving representatives from Senators Thurmond, Dole, and Hatch's offices and from the AFL-CIO and the National Association of Manufacturers. These were apparently somewhat uncoordinated and ad hoc.

We seem to now be facing the following situation:

1. Organized labor sees the bankruptcy bill as their only real chance to secure legislation reversing the Bildisco decision this year and they will press hard and unremittingly to have it included in the bankruptcy bill.

2. At least among the Senate Republican staffers, there is no inclination to stand on the procedural point that no hearings have been held and that this is a terribly complicated and complex issue which deserves a more deliberative process.

3. Hatch's staffer, in particular, has shown no interest in soliciting the views of the Department of Labor on the substance of what he is discussing with labor and business.

4. Unless Senators Thurmond, Dole, and Hatch themselves are willing to stand fast on the procedural point and take the heat from organized labor it looks like we will end up with some legislation reversing Bildisco.

5. Unless we act, the Administration will be essentially excluded from putting the provisions together. There is little reason to be sanguine about the quality of the material under discussion by the Senate staffers at this point.

6. The material that our Bildisco group has pulled together looks more balanced and thoughtful than what is under consideration on the Hill.

7. We may want to either firm up Thurmond, Hatch, and Dole on the procedural point, or try to get involved in shaping the legislation.

"§ 1113. REJECTION OF COLLECTIVE BARGAINING AGREEMENTS

(a) For purposes of this section, 'collective bargaining agreement' means a collective bargaining agreement which is covered by title II of the Railway Labor Act or the National Labor Relations Act.

(b) The debtor in possession, or trustee if one has been appointed under the provisions of this chapter, may reject or assume a collective bargaining agreement under this title only if and after the court approves the rejection or assumption of such agreement.

(c) The court, upon application for rejection of a collective bargaining agreeme may approve such rejection in accordance with the procedures set forth in subsectio (d) of this section if, after due consideration of the equities of the case, it finds that such equities weigh in favor of rejection of the collective bargaining agreement.

(d)(1) Upon the filing of an application for rejection, the court shall schedule a hearing, to be held not later than fourteen days after the filing of such application, at which all interested shall appear and be heard. Adequate notice shall be provided to such parties at least ten days in advance of the date for such hearing.

(2) The court shall rule upon such application for rejection within thirty days of the date of its filing with the court. In the event that the court shall fail to rule upon such application within such time, the application shall be deemed to have been approved. The court may extend such time for a period not exceeding fifteen days where the circumstances of the case require such extension in the interests of justice, or for such additional period of time as the parties may consent to.

(3) All financial information of the debtor which is necessary to a fair evaluation of the application for rejection shall be disclosed to the authorized

reqresentatives of the debtor's employees at least seven days prior to the hearing upon such application. The court may enter such protective orders as may be necessary to prevent public disclosure of information in the possession of the debtor the disclosure of which may compromise the position of the debtor with respect

to its competitors in the industry in which it is engaged. Upon motion of the debtor showing just cause, the court shall examine confidential information of the debtor that may be submitted to the court in connection with the application for rejection in camera.

(4) Prior to ruling upon the application for rejection, the court shall determine that the trustee has made a good faith proposal to the authorized representativesof the debtor's employees that would provide reasonable protection of the employees benefits under the collective bargaining agreement ~~to the extent feasible,~~ with due consideration of the totality of circumstances facing the debtor and other creditors, while permitting a successful reorganization,and such proposal has not been accepted.

(e) An order of the court denying or approving an application for rejection shall be appealable to the district court for the district in which the bankruptcy court exercises jurisdiction. Notice of such appeal shall be filed within seven days after the adjudication of the motion, or the expiration of the time permitted under this section for such adjudication if the court fails to act upon such application. A hearing upon such appeal, and judgment thereon, shall be rendered within thirty days of the filing of the notice of appeal. The mandate of the district court shall issue immediately upon the determination of such appeal and shall take effect notwithstanding the prosecution, by any party, of any further appeal; provided, that such mandate may be stayed in accordance with the provisions of Rule 8(a) of the Federal Rules of Appellate Procedure.

(f) No provision of this title shall be construed to permit a debtor in possession or trustee to unilaterally terminate or alter any provision of a collective bargaining agreement.

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

March 27, 1984

Memorandum

To: Vinton D. Lide
Doug Comer

From: Howard Marlowe and Larry Gold

Enclosed for your consideration please find suggestions for modifying the draft provision on the rejection of collective bargaining agreements we received from you yesterday. We are available at your convenience to discuss those suggestions.

So that there are no misunderstandings and no surprises, you should know that the AFL-CIO is working with its affiliates on one other majority priority with regard to the overall bankruptcy package — securing a provision making the bill effective on enactment. Our initial soundings indicate that such a provision has substantial support on the Republican side of the aisle and in the business community. As soon as we reach agreement on the collective bargaining issue or agree to disagree, we wish the opportunity to discuss the effective date issue.

In addition, if there is any intent to add a shopping center provision or any other substantive change to the House bill, we also wish the opportunity to discuss that aspect of this matter with you.

"§1113. REJECTION OF COLLECTIVE BARGAINING AGREEMENTS

(a) The debtor in possession, or trustee if one has been appointed under the provisions of this chapter, (other than a debtor covered by subchapter IV of this title and by title I of the Railway Labor Act) may reject or assume a collective bargaining agreement under this title only if and after the court approves the rejection or assumption of such agreement.

(b)(1) Prior to filing an application for rejection of a collective bargaining agreement the debtor shall make a proposal to the authorized representative of the employees covered by the agreement for modifying the agreement in a manner that ~~reduces the employee benefits and protections stated therein only to the extent required~~ to permit a successful reorganization and shall, subject to subsection (d)(3) of this section, provide the representative the information necessary to evaluate the proposal.

(2) During the period from the making of a proposal provided for in paragraph (1) of this subsection until the hearing provided for in subsection (d)(1) of this section the debtor shall meet at reasonable times and confer in good faith with the authorized representative in an effort to reach mutually satisfactory modifications to the agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that the debtor has complied with the requirements of subsection (b) of this section and that (the balance of the equities is clearly in favor of rejection of the collective bargaining agreement.

(d)(1) Upon the filing of an application for rejection, the court shall schedule a hearing, to be held not later than twenty-one days after the filing of such application, at which all interested shall appear and be heard. Adequate notice

shall be provided to such parties at least ten days in advance of the date for such hearing. The court may extend such time for a period not exceeding seven days where the circumstances of the case require such extension in the interests of justice, or for such additional period of time as the parties may consent to.

(2) The court shall rule upon such application for rejection within thirty days of the date of the commencement of the hearing. In the event that the court has not issued a final ruling on such application within such time, the court shall enter an interim order putting into effect the debtor's final proposal for modifying the collective bargaining agreement made pursuant to subsection (b)(2) of this section. The court may extend such time for a period not exceeding fifteen days where the circumstances of the case require such extension in the interests of justice, for for such additional period of time as the parties may consent to.

(3) The court may enter such protective orders on such terms as are consistent with the authorized representative's need to evaluate the debtor's proposal for modifying the collective bargaining agreement and the debtor's application for rejection and as may be necessary to prevent public disclosure of information in the possession of the debtor, the disclosure of which may compromise the position of the debtor with respect to its competitors in the industry in which it is engaged. add back confidential document in camera review

(e) No provision of this title shall be construed to permit a debtor in possession or trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement.

? + 28 + 45

28+30+15=73

effective date

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NLRA

(b)(1) Prior to filing an application for rejection of a collective bargaining agreement the debtor shall make a proposal to the authorized representative of the employees covered by the agreement for modifying the agreement in a manner that * taking into account all circumstances, incl. the debtor, makes only such ~~reduces the employee benefits and protections stated therein only to the extent~~ reasonable reduction in the employee's bs & protections stated therein as are ~~required~~ to permit a successful reorganization and shall, subject to subsection (d)(3) of this section, provide the representative the information necessary to evaluate the proposal.

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(e) No provision of this title shall be construed to permit a debtor in possession or trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement.

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