News release: **106 PROFESSORS PETITION NLRB FOR REGULATION OF CAPTIVE- AUDIENCES**

One-hundred and six (106) professors of labor law and employment relations have just filed an "interested person's" petition with the National Labor Relations Board, the intent of which is to correct an unfair and undemocratic practice that American employers have long used to keep unions from winning NLRB elections. That practice is conducting what has come to be known as "captive-audience" meetings. These are anti-union talk sessions that management stages with employees on company premises during paid working time, with attendance compulsory and the union denied an equal opportunity to address those employees. It is a practice that employers tend to use almost reflexively whenever their employees are engaged in union organizing or seem likely to become so engaged. Such conduct was originally held to be a violation of the National Labor Relations Act, but that was changed in1953 by a Republican dominated Labor Board. Although the Board in 1966 commenced a reconsideration of that ruling, it never completed the process, deliberately leaving the matter open for change sometime in the future— which may now be about to happen.

Among these hundred and six "interested persons" who seek to make that happen— all professors—are many who rank high on a "who's-who" list of labor-relations experts. The author of the petition and principal petitioner is Professor Emeritus Charles J. Morris of Southern Methodist University's Dedman School of Law, a widely recognized authority on the National Labor Relation Act. The professors who join with him vouch for the accuracy of the labor and Constitutional law conclusions contained in the petition and its proposal for regulating captive-audience conduct.

The petitioners assert that it would be appropriate to restore the Labor Board's original rule, which was that conducting a captive-audience meeting without an equal opportunity for a union response violates the law, for the violation stems from denial of that response, not from the employer's engaging in an anti-union noncoercive speech to those employees, which is protected by both the Act and the Constitution. Nevertheless, petitioners chose not to go that far. Their petition simply seeks a rule that requires that if and when an employer conducts a pre-election captive-audience meeting without granting the union a similar opportunity and the union loses that election, the election will be set aside and a new one ordered because the employer has interfered with the "laboratory conditions" commonly required for a free and fair election.

The petition points out that a similar rule has long prevailed for union elections on the airlines and railroads, which are covered by the Railway Labor Act, a similar yet different statute The National Mediation Board, which administers those elections, invalidates any election where captive-audience meetings have been held and the union loses, whereupon a new election is ordered. That practice has had a noticeable impact, for such meetings almost never occur during union-organizing campaigns on the airlines and railroads, and there have been very few instances of such violations. Petitioners assert that the absence of captive audiences in those industries might even be a significant factor—though certainly not the only factor—that accounts for the high rate of union membership—sixty-two percent—among airline and railroad employees; whereas it is less than seven percent among private-sector employees as a whole, a difference about which the public seems unaware.

The “interested person” petitioning process which these professors are using is itself noteworthy, for although this rulemaking procedure has been available since the Administrative Procedure Act was enacted in 1946, it has been rarely used at the NLRB. It is especially appropriate now, however, for although that agency announced its intent to revisit the captive-audience issue several decades ago, some notable event was evidently needed to jump-start that process. This concerned “interest” of over a hundred labor-relations specialists has now produced that event.