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Record No. 5199

In the Supreme Court of Appeals of Virginia at Richmond

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, ETC., ET AL.

v.

CITY OF NORFOLK

FROM THE COURT OF LAW AND CHANCERY OF CITY OF NORFOLK

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5199

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 14th day of June, 1960.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, ETC., ET AL., Appellants,

against

CITY OF NORFOLK, Appellee.

From the Court of Law and Chancery of City of Norfolk

Upon the petition of National Maritime Union of America, AFL-CIO, NMU Realties, Inc., Joseph Curran, John T. Dillon and Joseph J. Carleno an appeal is awarded them from a decree entered by the Court of Law and Chancery of the City of Norfolk on the 20th day of October, 1959, in a certain chancery cause then therein depending wherein the said petitioners were plaintiffs and City of Norfolk, Virginia, a municipal corporation, was defendant; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of five hundred dollars, with condition as the law directs.

RECORD

* * * * *

COMPLAINT FOR DECLARATORY JUDGMENT.

To the Honorable J. Hume Taylor Judge of the Court of Law and Chancery City of Norfolk.

The above complainants in their individual and representative capacities complain of the defendant and seek the relief as follows:

page 2 } A. PARTIES COMPLAINANT.

1. Complainant National Maritime Union of America, AFL-CIO, a voluntary, unincorporated membership association of seamen is a restricted segment and part of a large general seamen class of the United States, which association sues in its own name pursuant to Title 8, Sec. 66 of the Code of Virginia, permitting an unincorporated association to sue under its own name by which it is commonly known and called. The association has its national officers, its national council and governing body and national headquarters at 346 West 17th Street, New York, New York. The members of the association are located in small groups at NMU Hiring Halls in numerous ports of the United States. One of such groups *are* located at 334 West York Street, Norfolk, Virginia. The general purpose of the association and its small group located on York Street, Norfolk, Virginia, is the betterment of the employment of its members in the maritime industry and the training and providing for employment of its members as efficient maritime workers fully qualified for the performance of their duties, further providing hiring halls and other places of assembly for the registration for or the assignment of employment for the members of the association including those on York Street, Norfolk, Virginia. The association is a labor union and is a restricted segment and part of the large general seamen class of the United States, this large general seamen class being seamen who are unorganized and without union affiliation and some who are organized in union affiliation. The association is composed of members of the white and colored races and other races and and is completely non-discriminatory as to membership. In order to effect its aims and purposes and also the aims, purposes and operations of the maritime industry, the union has heretofore established assembly and meeting halls for the registration of and assignment of employment for its mem-

bers, said halls referred to herein as union hiring
page 3 } halls, at different ports of the United States and
on York Street, Norfolk, Virginia.

2. Complainant National Maritime Union of America, AFL-CIO, a voluntary, unincorporated membership association of the small group of NMU seamen of the National Maritime Union Hall at 334 York Street, Norfolk, Virginia, is one of the branch segments of the entire association of NMU seamen also known as the National Maritime Union of America, AFL-CIO. This complainant also sues herein pursuant to Title 8, Sec. 66 of the Code of Virginia mentioned in paragraph 1. This small group of NMU seamen has had its hiring hall and place of assembly for registration and employment at 334 West York Street, Norfolk, Virginia, since 1948.

3. Complainant NMU Realties, Inc., is a corporation organized and existing by virtue of the statutes of the State of New York. It is the holder in name only of the property owned by the individuals of the voluntary unincorporated association National Maritime Union of America, AFL-CIO who are the equitable and legal owners of NMU Realties, Inc., and the property to which said corporation holds bare legal title. There are no other owners of NMU Realties, Inc., except the individuals composing the association mentioned. This corporation exists only to hold bare legal title of the property owned by the individuals composing the association, is subservient to said association and exists only upon the consent of said association. Its dissolution may be effected at any time by said association. It is a permissable, tax exempt holding corporation for Union property pursuant to Section 501 (c) (2) of the Federal Tax Code. This complainant holds bare legal title for the other complainants suing herein to the following unencumbered property in the
1100 block of Boissevain Avenue, Norfolk Virginia,
page 4 } as follows:

Lots Nos. 7, 9, 11, 13, 15, 17, 14, 16, 18, 20, 22, 24, 26, 28, 30 and 32 all in block No. 6 shown on the plat of Chelsea, recorded in Map Book 1, page 74 in the Clerk's Office of the Corporation Court of the City of Norfolk.

The complainants desire to construct and build for use of themselves, a new union hiring hall and place of assembly for the registration for or the assignment of employment of their members, on their property mentioned above in the 1100 block of Boissevain Avenue, Norfolk, Virginia.

4. Complainant Joseph Curran is a citizen of the State of New York and sues herein as an individual member of and in this mixed class action, as class representative or group representative of the membership of the National Maritime

Union of America, AFL-CIO, a voluntary unincorporated membership association of seamen being a segment and part of a large, general seamen class of America. He shows the Court that the membership he represents exists as a part and segment of a large, general seaman class, said segment or part being the membership mentioned, all of whom have similar claims and seek the same relief as complainant Curran. Complainant Curran brings this class action for an object, purpose and end common to himself and to all members of the association, the same being a declaration by this Court of the invalidity and unconstitutionality of the defendant's ordinance as mentioned hereinafter, as being in violation of the United States Constitution and United States Statutes mentioned hereinafter. He is the President of the association. Complainant Curran has an interest in this controversy in common and similar with those for whom he sues in securing a declaration of the unconstitutionality and invalidity of said defendant's ordinance as mentioned hereinafter. Complainant Curran adequately and sufficiently represents the members of the small group of NMU seamen on York Street, Norfolk, Virginia, as well as the entire association page 5 } in that he has been chosen and elected as the leader and president of the membership for more than twenty years.

5. Complainant Curran also sues individually and as a member of and as class or group representative of the small group of NMU seamen of the National Maritime Union Hall at 334 West York Street, Norfolk, Virginia, being a member of that group seeking on behalf of that group an object, purpose and end common and similar to himself and to the members of the York Street group and having an intreest in this controversy in common with the said members, in seeking a declaration of the invalidity and unconstitutionality of the after mentioned ordinance of the defendant, as being in violation of the United States Constitution and United States Statutes. Complainant Curran adequately and sufficiently represents the membership of this small group on York Street having been chosen and elected as the leader and President of this group, for more than twenty years.

6. Complainant, John T. Dillon, individually and as a member of and as class or group representative of the small group of NMU seamen of the National Maritime Union hiring hall on York Street, Norfolk, sues in this class action as a member of such group and as a class or group representative of said small group. Complainant Dillon is the Port Agent of Hampton Roads, Virginia, elected by said group on York Street as their leader. He brings this class action for an object, purpose and end common and similar to himself and to

the members of the small group on York Street whom he represents in seeking a declaration of the invalidity and unconstitutionality of the defendant's ordinance mentioned hereinafter as being in violation of the United States Constitution and United States Statutes. Complainant Dillon adequately and sufficiently represents the members of the small group of NMU seamen on York Street, Norfolk, Virginia, page 6 } in that he is the chosen and elected Port Agent of said group, chosen by said group.

7. Complainant Joseph J. Carleno as an individual and as a member of and as class or group representative of the small group of NMU seamen of the National Maritime Union hiring hall on York Street, Norfolk, Virginia, brings this class action for an object, purpose, and end common to himself and to all members of said group, the same being the securing of a declaration by this Court of the invalidity and unconstitutionality of the defendant's after mentioned ordinance as being in violation of the United States Constitution and of the United States Statutes. Complainant Carleno adequately and sufficiently represents the members of this small group in that he has been a member of the same for approximately seventeen years and is a leader of said group mentioned.

8. The defendant City of Norfolk, Virginia, is a municipal corporation resident in Norfolk, Virginia. The after mentioned ordinance is an ordinance of the defendant City of Norfolk, Virginia, in effect at all times mentioned herein, the same having been promulgated as an ordinance by the City Council of the City of Norfolk, directly affecting all of the complainants herein as is mentioned herein.

B. STATUTE UNDER WHICH ACTION BROUGHT.

9. This is a petition and complaint of the above mentioned complainants, in their capacities in which they sue, brought in Equity under the Declaratory Judgment Statute of Virginia, Chapter 25, Code of Virginia, Title 8, Sections 578 through 585. Section 578 provides as follows:

"In cases of actual controversy courts of record within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, page 7 } municipal ordinances and other governmental regulations, may be so determined, and this enumeration

does not exclude other instances of actual antagonistic assertion and denial of right."

Complainants herein seek this Court's construction and adjudication of the invalidity and unconstitutionality of the after mentioned ordinance, as being in violation of the United States Constitution and the United States Statutes. An actual controversy exists between the complainants and the defendant because of the after mentioned ordinance and there is a denial of the legal rights of the complainants by reason of said ordinance, the facts and circumstances of said controversy and denial of rights being more particularly set forth hereinafter.

10. Previous to the filing of this bill, the complainants filed a complaint in the United States District Court for the Eastern District of Virginia, Norfolk Division, against the defendant herein, under the style of *JOSEPH CURRAN, ET ALS., Plaintiffs* v. *THE CITY OF NORFOLK, ET ALS.,* Defendants, Civil Action No. 2665. The object of said action mentioned was to secure the Court's holding that the after mentioned ordinance was unconstitutional as being in violation of the United States Constitution and United States Statutes and further requested certain other relief as mentioned therein. The defendant herein, City of Norfolk, moved that Court in said action to stay those proceedings on the ground that complainants herein should first seek a determination of the constitutionality as applied to them, of the after mentioned ordinance, in a court of competent jurisdiction of the Commonwealth of Virginia. That Court thereupon entered its order retaining jurisdiction of said cause, but declining to exercise said jurisdiction until the complainants proceeded in a court of competent jurisdiction of the Commonwealth of Virginia to determine the constitutionality and construction of the after mentioned ordinance.

page 8 } A true copy of said order of said Court is attached to this bill and prayed to be marked "Exhibit A."

C. FACTS OF COMPLAINANTS' CONTROVERSY.

11. Since 1937 the complainants have maintained at various locations in the City of Norfolk, Virginia, a hiring hall and place of assembly for the registration and assignment of its membership for employment on ships trading in the Port of Hampton Roads and other ports of the world. In 1947 complainants constructed their Union hiring hall at 334 West York Street, Norfolk, Virginia. This property mentioned was and is properly zoned for complainants' activities.

12. Defendant City of Norfolk, Virginia, on August 19,

1924, adopted its first comprehensive zoning ordinance purporting to divide and zone the City in various degrees of residential districts, various degrees of commercial districts, and various degrees of manufacturing districts and any specific activity or business was allowed to locate only in the proper zone for said activity. No activity was required to secure a use permit for it to locate in a zone declared for such activity.

13. On January 31, 1950 the City Council of Norfolk adopted and reenacted a new and more detailed General Zoning Ordinance repealing all provisions of the prior ordinance inconsistent with the same. The 1950 Ordinance was purportedly adopted by the City pursuant to the Acts of the Legislature of 1926 now known as Title 15, Section 819 et seq. of the Code of Virginia as amended. This ordinance purported to divide and zone the City in degrees of residential, commercial, and manufacturing districts, but in addition thereto a new section was adopted known as Section 18 USE PERMITS in which it was declared that certain page 9 } activities or uses could not locate in a district already properly zoned for same unless and on condition that the specific activity obtained a Use Permit for said use from the City Council and under sub-section 4 said Council may not issue said permit unless it were shown that the activity did not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood and will be in accord with the purposes of this ordinance and the City plan, provided that all other provisions of law and ordinance shall have been complied with. After which followed a designation of 21 specific uses for which a permit must be sought. Section 18 arbitrarily, unreasonably and discriminatorily selected from the different zones in the City, specific activities, requiring permits for these activities.

14. Complainants' hiring hall and place of assembly for the registration and assignment of employment of its members was not included as a specific activity for which a permit must be secured.

15. On January 17, 1951, Local 970 of the International Longshoremen's Association of the City of Norfolk publicly announced that it would build a new union and hiring hall on the corner of Omohundro Avenue and 34th Street, Norfolk, Virginia. The International Longshoremen's Association is a union composed of members of both the white and colored races. On January 23, 1951, the City Planning Commission publicly proposed that the City Council enact an ordinance specifying that union hiring halls be classified for limited

commercial districts, further proposing that said ordinance would also class hiring halls and places of assembly for registration for or assignment of employment (i. e., Union Halls) in the limited commercial classification. The Commission recommended an emergency ordinance be passed. On January 24, 1951, the City Council voted to call a

page 10 } public hearing on the Planning Commission's recommendation for union hiring halls to be classified within limited commercial districts and further that a "*Use Permit*" be required from the Council before constructing or using any establishment for such purposes. Hiring halls and other places of assembly had not been previously named or listed in Section 18 USE PERMIT ORDINANCE of the General Zoning Ordinance passed on January 31, 1950. The announced result to be obtained in requiring a use permit for a union hiring hall and other places of assembly for the registration of and assignment of employment was to discriminate and arbitrarily designate the allowance or disallowance of the location of a union hiring hall within a zone properly zoned for the same.

16. On February 13, 1951, the City Council adopted a purported emergency amendment ordinance to Section 18 aforementioned in which it declared that for the immediate preservation of the public peace, property, health and safety, Section 18 be immediately amended, and emergency declared to exist pursuant to Section 15 of the Norfolk Charter of 1918 and said section was amended to add a new activity or use for which a permit must be secured as follows:

"WHEREAS, it is necessary for the immediate preservation of the public peace, property, health and safety that provision be immediately made to so amend said Zoning Ordinance, an emergency is set forth and declared to exist, pursuant to Section 15 of the Norfolk Charter of 1918. therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

"Section 1:—That Paragraph A of Section 10 of the Zoning Ordinance of the City of Norfolk, 1950, prescribing uses permitted in C-2 Limited Commercial Districts, be and the same is hereby amended by adding a new permitted use, as follows:

page 11 } 22.1 Hiring halls and other places of assembly for the registration for or the assignment of employment, subject to securing a use permit.

"Section 2:—That Subsection 4 of Section 18 of the Zoning Ordinance of the City of Norfolk, 1950, relating to use permits,

be and the same is hereby amended by adding a new use, requiring such permit, as follows:

Use	District
"10.1 Hiring halls and other places of assembly for the registration for or the assignment of employment	C-2 through M-3.

"Section 3:—That this ordinance, being an emergency ordinance, shall be in effect from and after its adoption."

This purported amendatory ordinance was adopted immediately and placed in effect immediately.

Section 18 as now in effect with the above amendment and others is as follows:

"SECTION 18 USE PERMITS."

"1. Use Permits shall be secured from the City Council for any of the uses hereafter permitted, in any district for which a Use Permit is required by this ordinance.

"2. Application for a Use Permit shall be made in writing to the City Planning Commission, by the prospective occupant, and acknowledged by the owner of the property, accompanied by a check or cash payment of ten (10) dollars, which shall be applied to the cost of advertising and expense incidental to reviewing, publishing and processing the application.

"3. The City Planning Commissoin shall hold a public hearing on each application for a Use Permit, and shall cause such notice to be given of the public hearing at least fifteen (15) days in advance thereof by one publication of such notice in a newspaper of general circulation published in the City of Norfolk. In addition to the notice published in the newspaper, further notice shall be given by posting public hearing, the City Planning Commission shall report its recommendation in the matter to the City Manager.

"4. If the City Council shall find that the use for which a Use Permit is sought will not (1) adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, (2) will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood, and (3) will be in accord with the purposes of this ordinance and the City Plan of the City of
page 12 } Norfolk, it shall issue the Use Permit, provided that all other provisions of law and ordinance shall have been complied with. In granting any Use Permit, the Council shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform

to the foregoing requirements and that it will continue to do so.

"5. The City Manager is authorized to transfer a Use Permit that has been duly authorized and granted by the City Council, provided that such transfer is made under the conditions and within the location provided in the original permit.

"The following is a list of uses requiring a Use Permit in the various districts of this ordinance:

USE	DISTRICT
1. Airport and landing field	R-S
2. Animal or veterinary hospital	R-S
3. Automobile laundry	C-2 through M-3
4. Automobile parking station (for which a fee is charged)	C-2 through M-3
5. Automobile service station	C-2 through M-3
6. Baling of paper and paper products	M-1 and M-2
7. Cleaning establishment	C-2 through C-4
8. Commercial garage	C-2 through M-3
9. Convalescent home	In all districts
10. Dentist's office	R-4 and R-5
11. Dog kennel	R-S
12. Driving tee or range	R-S
13. Gasoline supply station	C-2 through M-3
14. HIRING HALLS AND OTHER PLACES OF ASSEMBLY FOR THE REGISTRATION FOR OR THE ASSIGNMENT OF EMPLOYMENT (Emphasis ours)	C-2 through M-3
15. Hospital	In all districts
16. Marine pleasure craft, sales and service	C-2 through M-3
17. Nursing home	In all districts
18. Physician's office	R-4 and R-5
19. Private club or lodge	R-1 through R-5
20. Railroad right of way and tracks	R-1 through C-1
21. Riding academy	R-S
22. Sanitarium	In all districts
23. Television or FM Radio station	In all districts
24. Theater	C-2 through M-3
25. Trailer Camp	M-1 and M-2
26. Virginia A. B. C. package store	C-2 through M-3
27. Any of the permitted uses listed in the M-3 Heavy Manufacturing District requiring a Use Permit as specified."	

17. The City of Norfolk Redevelopment and Housing Authority desiring to make certain changes and re-
page 13 } location of streets and highways within the City and to secure benefits of the Federal Housing and Federal Aid Highway Acts had heretofore made engineering plans for the extension through the City of a highway along Brambleton Avenue west through York Street and through the property of the complainants located at 334 West York Street. The said Housing Authority requires and will condemn and will take complainants' property on York Street heretofore used as a hiring hall and place of assembly for the registration and assignment of their members for employment, for the needs as mentioned and it became and is necessary for the complainants to locate their activities somewhere else in the City properly zoned for said activities.

18. Complainants desire to construct and build a new Union and hiring hall to cost approximately $200,000.00 and on May 21, 1957, entered into a contract for the purchase of the aftermentioned property for use in complainants' activities as a hiring hall and place of assembly for registration and assignment of its members in interstate employment, said hiring hall to be constructed in the 1100 block of Boissevain Avenue on unimproved property as follows:

Lots Nos. 7, 9, 11, 13, 15, 17, 14, 16, 18, 20, 22, 24, 26, 28 30 and 32 all in Block No. 6 shown on the Plat of Chelsea, recorded in Map Book 1, page 74 in the Clerk's Office of the Corporation Court of the City of Norfolk.

19. Pursuant to said Section 18 as amended complainants were required and did file application for use permit for a hiring hall on the above described property with the City Planning Commission in June, 1957. Architects' plans, drawings and building specifications were submitted. On August 29, 1957, Zoning Administrator Chase fully approved complainants' proposed building construction on the aforementioned property to be in compliance with the Norfolk City Zoning Ordinance and to be in full compliance
page 14 } with the building code. City Planning Engineer Locke fully approved the location of complainants' building and property in relation to a proposed tunnel near the property crossing the Elizabeth River finding that there would be no interference by said activity with the proposed tunnel project plans near the property.

20. A hearing was had before said Planning Commission but in the meantime certain protests had been made and certain scandalous, derogatory and improper objections in writ-

ing had been made to said Planning Commission from residents living in what is known as West Ghent which was separated from complainants' property and zone to the west by three continguous different zones. Allegations were made that some of the complainants were of the colored race and would be objectionable to the West Ghent objectors. Objections were submitted that complainants are a union and their presence near the West Ghent objectors was obnoxious to them. Further improper objections were made, too scandalous to allege here. Complainants denied and protested uselessly, the vicious, unjustified attacks and objections made concerning them, and produced evidence showing the falsity of said objections. Thereafter the Planning Commission recommended to the City Council against the issuance of the use permit.

21. A public hearing of the matter was set by the City Council in October, 1957, at which time the West Ghent objectors renewed their improper objections based in the main on racial prejudice, union prejudice, and allegations that complainants in particular and the seaman class as a whole are of a criminal and violent disposition and nature and are citizens inferior to said West Ghent objectors.

22. On February 4, 1958 the City Council acting under said unconstitutional ordinance and further unconstitutionally applying same in an arbitrary, unreasonable, discriminatory action, refused to grant said use permit for com-
page 15 } plainants' construction of their hiring hall. Com-
plainants allege that said ordinance is invalid and said action of the City Council was one of class prejudice, racial prejudice, union prejudice, wholly unconstitutional and discriminatory in effect, thereby depriving complainants of their Federal rights as given them under the Constitution and laws of the United States as a result of which complainants are prevented from constructing said hiring hall on their property because of said unconstitutional ordinance and the Council's actions thereunder.

23. Subsequent to the action of said Council, complainants fulfilled their contract and purchased the above mentioned property placing the bare legal title to same in the name of the complainant N. M. U. Realties, Inc., The purchase price was $20,250.00. All complainants are the owners of said property.

D. COMPLAINANTS' EMPLOYMENT AFFECTED.

24. Complainants are the largest union of seamen in the world offering employment to the maritime industry. The

union contracts with and supplies for employment in interstate commerce unlicensed crewmen to three-fourths of the entire maritime industry of the United States. In order to effect its aims and purposes and also the aims, purposes and operations of the maritime industry, the Union has heretofore established assembly and meeting halls referred to herein as union hiring halls, at Norfolk, Virginia, and different ports of the United States:

(a) For the purposes of lawful assembly;
(b) For the purpose of free speech and discussion of the registration for or assignment of employment;
(c) For the purpose of dissemination of written literature for the registration for or the assignment of em-
page 16 } ployment;
(d) For the purpose of solicitation of membership in the Union by word of mouth for the registration for or the assignment of employment;
(e) For the purposes of concerted lawful activities of the organized labor movement for the registration for or the assignment of employment;
(f) For the purpose of the transaction of Union business in the registration for or the assignment of employment;
(g) For the purposes of collective bargaining with employers for the registration for or the assignment of employment;
(h) For the purposes of the registration for or the assignment of employment in interstate commerce and for all other lawful purposes of the Union.

25. The Union halls are maintained at those important ports and places in the United States deemed suitable in the maritime industry for the efficiency of operations of the industry. Any member of the Union may register at the Union hall for employment in any port of the United States. Upon registration for employment at said Union hall assignment and hiring is by rotation and without discrimination, upon call from ships for crews.

26. Complainants are individuals associated in a voluntary unincorporated association as a labor union. Pursuant to their right to organize they are engaged in activities for the betterment of their employment and for registration and assignment of employment in which activities they must exercise their constitutional rights of freedom of speech and freedom of assembly. It is further requisite for complainants herein to hold and maintain property for meeting or assembly halls for the purposes of employment, otherwise they cannot

exercise their right to organize for employment, nor to meet, speak or assemble for the same. The municipal power to enact and enforce regulatory measures to preserve and promote the public health, safety and welfare may not be enacted or exercised as to limit or abridge the personal
page 17 } rights granted in the First Amendment and protected by the Fourteenth Amendment.

27. The complainants are a "deep sea" seamans' union and their registration for and assignment for employment are in interstate commerce. Their employment takes them in commerce between ports of the different states and ports of the world. The state and municipality are prevented from requiring a permit for their registration and assignment of employment in interstate commerce as this violates the Commerce Clause of the United States Constitution as stated hereinafter. The state and municipality are prevented from requiring a permit for the registration and assignment for employment of these complainants as Congress has preempted the field of labor relations and employment of a union in interstate commerce, pursuant to the Labor Relations Act as mentioned hereinafter, and the Commerce Clause of the United States Constitution.

E. DEFENDANT'S ORDINANCE VIOLATES THE UNITED STATES CONSTITUTION AND UNITED STATES STATUTE.

28. Defendant's aforementioned ordinance Section 18 USE PERMIT, violates certain specific federal constitutional rights of the complainants. The First Amendment of the Constitution of the United States provides:

"Congress shall make no law * * * abridging the freedom of speech * * * or the right of the people peaceably to assemble * * *."

29. These freedoms are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by State action and municipal ordinances adopted under State authority. The Fourteenth Amendment to the United States Constitution provides:

"* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws * * *."

page 18 } Article 1, Section 8 of the Constitution of the United States provides:

"The Congress shall have power * * * to regulate commerce * * * among the several states."

30. The National Labor Relations Act, as amended, Title 29, U. S. C. A. Sec. 157 states as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

31. The defendants' ordinance violates the above mentioned Articles and Amendments to the United States Constitution and the United States Statute in the after mentioned particulars.

F. SECTION 18 IN RELATION TO PERMITS FOR USE AS HIRING HALLS AND OTHER PLACES OF ASSEMBLY FOR THE REGISTRATION FOR OR THE ASSIGNMENT OF EMPLOYMENT CONTRAVENES THE UNITED STATES CONSTITUTION AND UNITED STATES STATUTES AND IS UNCONSTITUTIONAL, VOID AND INVALID AS APPLIED TO THE COMPLAINANTS.

32. Section 18 in relation to permits for hiring halls and other places of assembly for the registration for or assignment of employment as applied to the complainants, individuals engaged in registration, assignment of employment in interstate commerce and in concerted organized labor activities for employment, contravenes the Federal Constitution and Statutes and is unconstitutional, invalid and void in the following particulars, among others:

(a) It does not have definitive standards with relation to

complainants' use as hiring hall and place of assembly for registration or assignment of employment.

page 19 } (b) It fails to define, set forth, make clear or certain, what governing standards or criteria constitute "adversely" or "health" or "safety" or "neighborhood" or "detrimental" or "public welfare" or "injurious" or "purposes of this ordinance" or "all other provisions of law" or "such provisions in connection therewith" or "in its opinion" or "foregoing requirements," by which the City Council can be governed in measuring the effect or application of the use, or in granting or denying a use permit, this total absence of standards and criteria leaving the granting or denial of a permit to the whims, caprice and uncontrolled discretion of the City Council.

(c) As applied to complainants, a labor union, the use permit ordinance has no relation to health, public welfare, public safety, or injury to property nor does it have relation to any neighborhood whatsoever.

(d) It discriminates and is unequal between complainants' use and other uses it purports to affect.

(e) It is arbitrary, unreasonable and oppressive in conception, design and ends it attempts to secure.

(f) It is uncertain, indefinite and vague as to complainants' use it purports to affect.

(g) It fails to provide valid and constitutional standards or guides for the granting or withholding by the City Council of a permit for the uses it purports to affect.

(h) It provides for discriminatory regulations having no relation to the actions it purports to regulate.

(i) It allows arbitrary and capricious refusal and unlimited discretion in granting of permits for hiring halls and places of assembly for registration and assignment of employment in interstate commerce.

page 20 } (j) It prohibits lawful assembly for the purposes of registration for and assignment of employment on private property by requiring a permit for the same.

(k) It denies freedom of speech on private property in solicitation by word of mouth for registration for and assignment of employment by requiring a permit therefor.

(l) It denies the use and enjoyment of complainants' property by them for the registration for and assignment of employment, without due process of law, by requiring a permit for the same.

(m) It deprives complainants of their liberty in choosing to register for and to be assigned employment without due process of law, by requiring a permit for the same.

(n) It regulates and interferes with employment in interstate commerce, which it is prohibited from doing, by requiring a permit for the same.

(o) It is burdensome and oppressive on interstate commerce in requiring a permit for registration for and assignment of employment in interstate commerce.

(p) It attempts to license maritime employment, which it is prohibited from doing, by requiring a permit for the same.

(q) It denies the solicitation of membership in the Union by word of mouth for the registration for or assignment of employment in interstate commerce by requiring a permit for the same.

(r) It denies concerted lawful activities of the complainants in the organized labor movement in interstate commerce for the registration for or the assignment of employment.

page 21 } (s) It prohibits the transaction of labor union business in the registration for or the assignment of employment by requiring a permit therefor.

(t) It prohibits collective bargaining with employers for the registration for or the assignment of employment by requiring a permit therefor.

(u) It invades a field of labor relations reserved exclusively for and pre-empted by Congress, by requiring through state action, a permit to engage in labor relations in interstate commerce.

G. COMPLAINANTS' REQUESTED RELIEF.

33. These complainants file this action requesting the construction and declaration of the aforementioned city ordinance that the same is wholly invalid, void and unconstitutional as applied to these complainants by reason of the matters stated herein; that proper process herein shall issue and that the defendant City of Norfolk, Virginia be required to answer this bill but not under oath, the same being waived; that said ordinance mentioned be declared without legal effect or force.

Your complainants also pray for further leave to file such amendments to their bill as may be required and for such further, other, different and separate relief as the nature of their case may require.

NATIONAL MARITIME UNION
OF AMERICA, AFL-CIO, ETC.,
By SIDNEY H. KELSEY
Their Attorney.

* * * * *

page 22 } (COMPLAINANT'S EXHIBIT A).

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

Civil Action No. 2665.

Joseph Curran, et als., Plaintiffs,

v.

The City of Norfolk, et al., Defendants.

ORDER.

This cause came on the 7th day of August, 1958, to be heard upon the joint and several motion of the defendants, in which they moved the Court to stay further proceedings in this case on the ground that this Court should not exercise its jurisdiction until the controversy herein involved shall have been heard and determined by a court of competent and final jurisdiction of the Commonwealth of Virginia, and was argued by counsel. Thereafter briefs were filed in support of and in opposition to said motion.

The Court having maturely considered said motion, the argument of counsel and the briefs, is of the opinion that said motion is well taken and should be sustained, and it is therefore

ORDERED and ADJUDGED that said motion be and it hereby is sustained; that this Court doth retain jurisdiction of said cause, but declines at this time to exercise that jurisdiction, and doth retain the cause on the docket of this Court for a reasonable time to afford the plaintiffs an opportunity to proceed in a court of competent jurisdiction of the Commonwealth of Virginia to determine the constitutionality and construction of the ordinance of the City of Nor-
page 23 } folk described in the complaint and to prosecute such proceedings to final adjudication in a court of last resort of said Commonwealth.

/s/ WALTER E. HOFFMAN
United States District Judge.

Norfolk, Virginia
December 19, 1958.

Filed in the Clerk's Office the 10 day of February, 1959.

Teste:

W. L. PRIEUR, JR., Clerk
L. M. CALVERT, D. C.

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ANSWER.

Now comes The City of Norfolk and for answer to the bill of complaint says:

1. Having no knowledge of the matters and things stated in paragraph 1 of the bill except the statement that one group is located at 334 West York Street, Norfolk, Virginia, it neither denies nor affirms such allegations but calls for strict proof thereof if they are material. It avers that the complainants described in said paragraph are not necessary or proper parties to this suit and that the allegations therein contained are irrelevant and immaterial.

2. It admits the allegations of paragraph 2 of the bill and avers that the local group known as National Maritime Union of America, AFL-CIO, the complainant described therein, is the only complainant which is a necessary or proper party to this suit.

3. Having no knowledge of the matters and things alleged in paragraphs 3, 4, 5, 6 and 7 of the bill, it neither denies nor affirms the same but calls for strict proof thereof, if material. It avers, however, that the complainants described in those paragraphs are neither necessary nor proper parties to this suit and that the allegations therein contained are immaterial to the issues involved.

page 26 } 4. It admits the allegations of paragraph 8 of the bill except the allegation that the ordinance directly affects all of the complainants mentioned in the bill. It denies that said ordinance affects any of such complainants except the one described in paragraph 2.

5. It admits all the allegations of paragraph 9 of the bill except the allegation that the legal rights of the complainants are denied by the ordinance. That allegation it denies.

6. The allegations of paragraph 10 are true, but they are irrelevant and immaterial to the issues involved.

7. The allegations of paragraph 11 of the bill are true as to the local complainant described in paragraph 2 of the bill. As to the other complainants, said allegations are denied.

8. The allegations of paragraph 12, 13, 14, 15 and 16 are totally irrelevant to the issues involved in this suit because none of the ordinances therein referred to and as therein alleged was in effect at the time of the transactions of which the complainants complain. On April 9, 1957, the Council of the City of Norfolk adopted ordinance No. 18855, effective thirty days thereafter, amending and reordaining various sections of the Zoning Ordinance of 1950, including sections 10 and 18 thereof. Said Zoning Ordinance of 1950 as amended by ordinance No. 18855 is contained in a printed booklet entitled "Zoning Ordinance Norfolk, Virginia 1957." Subsequent to that time there have been further amendments by ordinance No. 19094 adopted October 8, 1957, effective November 8, 1957, and ordinance No. 19206, adopted December 17, 1957, effective January 17, 1958. Those amendments do not affect in any way the issues involved in this case. Said booklet contains the entire zoning ordinance for the City of Norfolk insofar as the same is applicable to the situation involved in this case and is the ordinance that was in effect at the time of all the transactions herein mentioned.

page 27 } A copy of said booklet, marked "Exhibit A," is filed herewith and incorporated herein by reference.

9. The allegations of paragraph 17 of the bill are true.

10. It admits that the complainant described in paragraph 2 of the bill desires to build a new union hall on the site mentioned in paragraph 18. It is informed that it entered into a contract for the purchase of the property therein described, but it is further informed that said contract was expressly made conditional upon said complainant obtaining a use permit for the erection and maintenance of the hall on said property, and that by its terms said complainant was relieved of any obligation if such use permit should be denied. It is not advised as to all of the activities of said complainant. Therefore it neither admits nor denies the remaining allegations of paragraph 18, but calls for strict proof.

11. The allegations of paragraph 19 are true in part. Said complainant did file an application for a use permit. The City's zoning administrator approved the proposed building,

but such approval was expressly subject to the applicant obtaining a use permit. The defendant's planning engineer advised the applicant that the route for the proposed second tunnel under the Elizabeth River would affect a portion of the property described in the contract but that it would not affect the exact location in which the applicant proposed to erect its building. All allegations in paragraph 19 inconsistent herewith are denied.

12. It admits that a hearing was had before the Planning Commission and before the City Council as alleged in paragraphs 20 and 21 and admits that at both hearing objections were made by various individuals and organizations. Such objections, however, were made on the responsibility of the parties who voiced the same and they, and they alone, are responsible therefor. The defendant neither admits nor denies the allegation that the evidence produced by it showed the falsity of said objection. The Planning Commission did recommend to the City Council that the use permit be denied.

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13. It admits that the City Council denied the use permit but it denies that the ordinance under which it acted was unconstitutional and denies that the application thereof was unconstitutional. It expressly denies that the action of the Council was due to class prejudice, racial prejudice or union prejudice, and denies that the action of the City Council deprived the complainants of any of their rights under the Constitution and laws of the United States.

14. It believes that the property involved was purchased by N. M. U. Realties, Inc. as alleged in paragraph 23 of the bill but avers that that was a separate and voluntary transaction entered into after the use permit had been denied and after, by virtue of the terms of the contract itself, complainants had been released of all obligations to purchase the same.

15. It neither admits nor denies the allegations of paragraphs 24, 25, 26 and 27 of the bill, but it denies that they are material or relevant to the issues involved. If material, it calls for strict proof thereof.

16. It denies the allegations of paragraph 28.

17. It admits that the quotations from the Constitution of the United States and the United States Code set forth in paragraphs 29 and 30 of the bill are accurate, but avers that each of them is irrelevant and immaterial to the issues involved in this suit.

18. It denies the allegations of paragraph 31 of the bill.

19. It denies the allegations of paragraph 32 of the bill.

20. All the allegations of the bill not herein specifically mentioned are denied.

page 29 } The ordinance under which the Council of the City of Norfolk acted is valid and it was validly applied, and the complainants are not entitled to the relief for which they pray.

THE CITY OF NORFOLK
By THOMAS WILLCOX
JONATHAN W. OLD
LEONARD H. DAVIS

Filed 2-27-59.

* * * * *

H. L. STOVALL, D. C.

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ORDER FOR SUBPOENAS *DUCES TECUM.*

Upon the Petition of the complainants herein for the issuance of subpoenas *duces tecum* for certain trial materials, records, files and memoranda, as mentioned in said Petition to be produced by the persons mentioned therein having possession and control thereof and that said records as mentioned are material and necessary to the complainant's cause, relating to the issues complainants allege are to be determined in this cause and that further the withholding of the production of the after mentioned records will materially prejudice complainants' case,

It is herewith ORDERED that the Clerk of this Court shall forthwith issue subpoenas *duces tecum* to the below named persons to produce the after mentioned records in their possession and control, as follows:

1. Subpoena *duces tecum* to Mr. Donald R. Locke, Secretary of City Planning Commission,

(A) To produce all records of executive meetings of the City Planning Commission during the year 1950 relating in

any way to the recommendations of said Commission to the City Council of Norfolk on the ordinance now known as Section 18 of Zoning Ordinance of City of Norfolk entitled "USE PERMITS."

(B) To produce all records during the year 1950 of the executive meetings of the City Planning Commission of recommendations made to the City Council relating in any way to Sub-section 4 of Section 18 of the Zoning Ordinance of the City of Norfolk.

page 38 } (C) To produce all records of the executive meetings of the City Planning Commission for the year 1951 relating in any way to recommendations for passage of emergency ordinance No. 15, 026 amending paragraph A of Section 10 and Subsection 4 of Section 18 of the Zoning Ordinance of 1950 by adding hiring halls and other places of assembly, etc., as a permitted use in C-2 districts by requiring a use permit therefor, especially those records of January 19, 1951, of the Planning Commission.

(D) To produce all records of the executive meetings of the Planning Commission during 1957 and 1958 relating in any way to the application of National Maritime Union of America for a use permit to construct a Union hiring hall in the 1100 block of Boissevain Avenue, Norfolk, Virginia.

(E) To produce all correspondence, letters, City interdepartmental memoranda during 1957 and 1958 addressed to, forwarded from or received by the City Planning Commission regarding in any way the application of National Maritime Union for use permit to construct a Union hiring hall in the 1100 block of Boissevain Avenue, Norfolk, Virginia.

2. Subpoena *duces tecum* to Mr. Louis S. Hudgins, Clerk, or his Deputy Clerk, Mrs. Mary M. Randolph, Clerk of the Council,

(A) To produce all records of every kind of executive non-public meetings of the City Council during 1951 relating to the adoption of Section 18 of the City Zoning Ordinance relating to use permits.

(B) All records of the City Council relating to the adoption on February 13, 1951, of an emergency ordinance No. 15,026 to amend paragraph A of Subsection 10 and Subsection 4 of Section 18 of the Zoning Ordinance of the City of Norfolk by adding hiring halls and other places of assembly for the registration for or the assignment of employment as a permitted use by requiring use permit.

(C) To produce all records of every kind of the City Coun-

cil relating in any way to the application of the National Maritime Union of America for use permit to construct a Union hiring hall in the 1100 block of Boissevain Avenue, Norfolk, Virginia.

(D) To produce all records of the executive non-public meetings of the City Council relating in any way to the application mentioned together with all records relating to the denial of said application during the years 1957 and 1958.

3. Subpoena *duces tecum* to Mr. Thomas F. Maxwell, City Manager,

page 39} (A) To produce all notes, memoranda or minutes of the executive non-public meetings of the City Council usually held on the day preceding the public meeting of the Council during 1957 and 1958 relating in any way to the application of the National Maritime Union of America for a use permit to construct a Union hiring hall in the 1100 block of Boissevain Avenue, Norfolk, Virginia, any memoranda, minutes, etc., further relating to what executive action was taken or decided at said non-public meetings.

(B) To produce all written recommendations made by the City Manager to the City Council relating in any way to the application for use permit as mentioned above together with recommendations as to granting or refusing said permit.

And said records shall be produced at the trial hereof on October 7th, 1959 at 10:00 A. M. in the Courtroom.

To the Clerk of the Court of Law and Chancery of the City of Norfolk, enter this decree in vacation 9-15 1959.

J. HUME TAYLOR
Judge, Court of Law and
Chancery of the City of Norfolk.

Issued as directed 9-15-59.

L. M. CALVERT, D. C.

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ORDER.

This cause came on this day to be heard upon the motion of the defendant to quash the subpoenas *duces tecum* directed to Donald R. Locke, Secretary of the City Planning Commission, and Louis S. Hudgins, Clerk of the Council, or his Deputy, Mrs. Mary M. Randolph, the parties appearing by counsel; and it appearing to the Court, from a consideration of the arguments of counsel and the issues presented by the pleadings, that the records which the defendant moved the Court to exclude from the subpoenas *duces tecum* are immaterial and irrelevant to the issues in this suit, the Court doth

ORDER that the subpoena *duces tecum* directed to Louis S. Hudgins, Clerk of the Council, or his Deputy, Mrs. Mary M. Randolph, be quashed to the extent of excluding from the subpoena *duces tecum* the records which complainants requested that they be directed to produce in their petition for subpoenas *duces tecum* in paragraphs designated therein as 2. (A) and (B).; and the Court doth further

ORDER that the subpoena *duces tecum* directed to Donald R. Locke, Secretary of the City Planning Commission, be quashed to the extent of excluding from the subpoena *duces tecum* the records which complainants requested

page 45 } that he be directed to produce in their petition for subpoenas *duces tecum* in paragraphs designated therein as 1. (A), (B), and (C).

The plaintiffs except to this order on the ground that the records as requested by subpoena *duces tecum* are material and necessary evidence to plaintiff's action and necessary for the proper determination of the issues by the Court.

To the Clerk of the Court of Law and Chancery of the City of Norfolk, enter this decree in vacation 9-30 1959.

J. HUME TAYLOR, Judge.

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ORDER.

This day appeared the parties by counsel and a pre-trial conference was held; and

It appearing to the Court that the complainants herein, prior to the institution of this suit, filed a complaint in the United States District Court for the Eastern District of Virginia, Norfolk Division, against the defendant herein, the object of which was to secure that Court's holding that Section 18 of the Zoning Ordinance of the City of Norfolk, Virginia, with respect to hiring halls and other places of assembly for the registration for or the assignment of employment was unconstitutional, and further requesting injunctive relief and damages against said defendant as a result of its refusal to grant a use permit to complainants under said ordinance; and

It appearing to the Court that said United States District Court entered its order in said action retaining jurisdiction of said cause, but declining to exercise said jurisdiction unless the complainants proceeded, in a court of competent jurisdiction of this Commonwealth, to determine the constitutionality of said ordinance, and, pursuant thereto, this cause was instituted under the Declaratory Judgment of the Statutes of Virginia, Code of Virginia, Sections 8-578 et seq., and that no injunctive relief or damages were claimed or page 47 } prayed; and

It further appearing to the Court that it is desirable to define and simplify the issues in this cause, pursuant to Rule 4:1 of the RULES of the Supreme Court of Appeals of Virginia; and

It further appearing to the Court that the sole and only issue before this Court is determination of the constitutional validity or invalidity of said ordinance and that the issue as to whether or not the action of the City Council, in denying the application of the complainants for a use permit under said ordinance, was proper and reasonable or arbitrary, unreasonable and discriminatory is not before this Court; now, therefore, the Court doth

ORDER AND DECREE that the sole and only issue that will be considered by it upon the trial of this cause is the constitutional validity or invalidity of Section 18 of the Zoning Ordinance of the City of Norfolk, Virginia, itself, as it relates to hiring halls and other places of assembly for the registration for or the assignment of employment; and doth

Further DECREE that only evidence relevant to that issue

will be admissable at the trial of this cause, and that no other evidence will be heard.

To which action of the Court, the complainants, by counsel, duly excepted and objected on the grounds that evidence relevant to the issue of constitutionality has been excluded by order of same date.

To the Clerk of the Court of Law and Chancery of the City of Norfolk, enter this decree in vacation 9-30 1959.

J. HUME TAYLOR, Judge.

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STIPULATION.

This day appeared the parties by counsel and the defendant by counsel entered into the following stipulation:

Without admitting the necessity or propriety of all of the several parties complainant, or the relevancy of the various allegations contained in paragraphs numbered 1 through 8, inclusive, 18, 24 and 25 of the Bill of Complaint, the truth of the various allegations of fact, as distinguished from conclusions of law, contained in said paragraphs is hereby admitted for the sole purpose of allowing the Court to determine the validity or invalidity of the ordinance generally referred to as the Zoning Ordinance of the City of Norfolk as the same is applicable to hiring halls and other places of assembly for the registration for or the assignment of employment. The purpose of these admissions by the defendant is to obviate the necessity of and relieve the plaintiffs from producing proofs of matters alleged therein. Regardless of all else, this admission is not to be construed to admit that the said ordinance is unconstitutional or invalid in any respect.

CITY OF NORFOLK, VIRGINIA
By TOY D. SAVAGE
Of Counsel.

Filed 9-30-59.

H. L. STOVALL, D. C.

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OPINION.

The complainant NMU Realties, Incorporated, a corporation existing under the laws of the State of New York, is the owner in fee simple of certain real estate in the eleven hundred block of Boissevain Avenue, Norfolk, Virginia, designated as lots numbered 7, 9, 11, 13, 14, 15, 16, 17, 18, 20, 22, 24, 26, 28, 30 and 32 in block numbered 6 as shown on the plat of Chelsea of record in the Clerk's Office of the Corporation Court of the City of Norfolk in Map Book 1, at page 74. The complainant, National Maritime Union of America, AFL-CIO, is an unincorporated membership association and, in addition to being the owner of all of the outstanding capital stock of the NMU Realties, Incorporated, is the prospective occupant of the hiring hall which it and the NMU Realties, Incorporated have requested to be allowed to erect and occupy at the location aforesaid. The complainants Joseph Curran, John T. Dillon and Joseph J. Corleno appear herein as representatives of the membership of the National Maritime Union of America, AFL-CIO.

Under the provisions of an ordinance adopted on January 31, 1950, as subsequently amended, and known as the Zoning Ordinance of the City of Norfolk, this city is, for the purposes of said ordinance, divided into classes of page 56 } districts. The real estate mentioned is situate in a district designated as "M-2: Light Manufacturing District." Section 18 of this ordinance provides that no hiring hall or other place of assembly for the registration for or the assignment of employment shall be operated in an M-2 District, or within any other district where such halls are allowed, without the prospective occupant and the owner of the property first obtaining a use permit from the City Council. It is provided by the ordinance that:

"If the City Council shall find the use for which a Use Permit is sought will not (1) adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, (2) will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood, and (3) will be in accord with the purposes of this ordinance and the City Plan of the City of Norfolk, it shall

issue the Use Permit, provided that all other provisions of law and ordinance shall have been complied with. In granting any Use Permit, the Council shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the foregoing requirements and that it will continue to do so."

It is the contention of the complainants, who have applied for and been refused a use permit to construct and operate a hiring hall at the location mentioned, that section 18 of the said ordinance invades and violates certain of their constitutional rights and immunities and is violative of sections 157 and 158 of the Federal statute known as the National Labor Relations Act; that, in any event, section 18 is invalid as it contains no rule, regulation or standard to guide the City Council in determining whether the granting of the use permit required would in fact adversely affect the health or safety of persons residing in the neighborhood, would be detrimental to the property therein or the public welfare and would be in accord with the purposes of the or-
page 57 } dinance and of the plan of the City of Norfolk.

While the prayer of the bill of complaint merely requests this court to declare the zoning ordinance "invalid, void and unconstitutional as applied to these complainants," it is the contention of the complainants that the action of City Council in refusing to issue the requested use permit was unreasonable, arbitrary and discriminatory. Counsel for complainants asks this court to make such a finding. Complainants first sought relief in the District Court of the United States for the Eastern District of Virginia. That case was stayed to allow complainants the opportunity to proceed in a state court to determine the constitutionality of the ordinance. Assuming that this court might review the Council's action under the aforesaid prayer, it would appear improper and would unquestionably violate the principles of comity for this court to attempt to dispose of any issue, other than the constitutionality of the ordinance, of the cause pending in the District Court.

The constitutionality of a properly drawn zoning ordinance may no longer be questioned, certainly not in Virginia. It was said in *West Brothers Brick Co.* v. *Alexandria*, 169 Va. 271, 281:

"Zoning ordinances have everywhere been adopted. Their validity was once challenged, but they are now generally recognized as a proper use of the police power. McQuillen's Municipal Corporations, Vol. 2, p. 1051. And certainly they

are valid in Virginia. *Nusbaum* v. *Norfolk,* 151 Va. 801, 145 S. E. 257; *Gorieb* v. *Fox,* 145 Va. 554, 134, S. E. 914, 916; Id., 274 U. S. 603, 47 S. Ct. 675, 71 L. Ed. 1228, 53 A. L. R. 1210; *Eubank* v. *City of Richmond,* 110 Va. 749, 67 S. E. 376, 19 Ann. Cas. 186; Id., 226 U. S. 137, 33 S. Ct. 76, 57 L. Ed. 156, 42 L. R. A. (N. S.) 1123, Ann. Cas. 1914B, 192, so long as they are not arbitrary and unreasonable. Under settled rules of construction, they must be sustained if their reasonableness is debatable. *Martin* v. *Danville,* 148 Va. 247, 138 S. E. 629, 630; *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365, 47 S. Ct. 114, 118, 71 L. Ed. 303 54 A. L. R. 1016. The city council of Alexandria is better acquainted with the necessities of that city than we are.

page 58 } In *Gorieb* v. *Fox, supra,* this court said:

'The legislature may, in the exercise of the police power, restrict personal and property rights in the interest of public health, public safety, and for the promotion of the general welfare.'

"This power 'embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety.' *Bacon* v. *Walker,* 204, U. S. 311, 27 S. Ct. 289, 291, 51 L. Ed. 499.

'The power is not limited to regulations designed to promote public health, public morals, or public safety, or to the suppression of what is offensive, disorderly, or unsanitary, but extends to so dealing with conditions which exist as to bring out of them the greatest welfare of the people by promoting public convenience or general prosperity."

Unless the provisions requiring a use permit for the operation of a hiring hall are clearly arbitrary and unreasonable, having no real or substantial relationship to the public health, safety, morals, general welfare or public convenience, this court must sustain the validity of the ordinance. If the reasonableness of the provisions of section 18 is fairly debatable, then, under the accepted rules of construction, it is the duty of this court to sustain the ordinance: a court may not arbitrarily substitute its judgment for that of the legislative body. *West Brothers Brick Co.* v. *Alexandria, supra; Cherrydale Cement Block Co.* v. *County Board,* 180 Va. 443; *County of Fairfax* v. *Parker,* 186 Va. 675; *Zahn* v. *Board of Public Works,* 274 U. S. 325.

There would appear to be a real and substantial relationship between the requirement of a use permit for the operation of a hiring hall and the general welfare and public con-

venience. The evidence discloses that under certain circumstances the operation of such a hall may well
page 59 } change the character of the adjoining and adjacent property. There is a tendency for boarding houses, moving picture theaters, taverns and pool halls to locate in their vicinity. Needless to say, the number of the persons served and the number of times they must attend the hiring hall to ascertain if they have secured employment would affect such a development. The entire character of a neighborhood may well be changed by the location of a hiring hall, to the extent that the district may no longer be acceptable for the use that it was intended and set aside for by the zoning ordinance. The proximity of a residential district and the route or routes that would normally be taken by persons going to and from such a hall are matters that should be considered by Council in granting or refusing such permits. Zoning ordinances are primarily designed for future and anticipated growth. *West Brothers Brick Co.* v. *Alexandria, supra,* p. 283. The character of hiring halls varies depending to a large extent upon the number of persons served, the number of times their presence is required on the premises and the industry involved. Preferably such halls should be situate within the area occupied by the industry to be served. A misplaced hiring hall depreciates property values in the neighborhood. All hiring halls, involving idle men as they do, are potential police problems. An acceptable location for one hiring hall is often unacceptable for another.

It would be impracticable, if not impossible, for Council to adopt rules or regulations more specific than those enumerated in the ordinance governing the location of all
page 60 } hiring halls, having due regard to the industry served, the peculiarities of the several districts, the proximity of residential districts, the route or routes that would normally be taken by the persons served traveling to and from the facility and the size and frequency of the operation at the hall. Under the ordinance in question City Council must issue a requested use permit if the proposed operation does not adversely affect the health or safety of persons residing or working in the neighborhood; is not detrimental to property or improvements therein or the public welfare; and is in accord with the purposes of the ordinances and the City Plan of the City of Norfolk. A court may not assume that Council's action thereunder will be unreasonable, arbitrary or capricious. *Gorieb* v. *Fox,* 274 U. S. 603, 607. If Council should act in such a manner, relief may be obtained from the courts. In fact the complainants herein have requested such relief from The District Court of the United

States for the Eastern District of Virginia. It was said in *Ours Properties, Inc.* v. *Ley,* 198 Va. 848, 852:

"Although there is some conflict among the decisions, a majority of the courts hold that considerable freedom to exercise discretion and judgment must be accorded officials in charge under a zoning ordinance, and that the courts should be liberal in upholding such ordinances in order to facilitate their proper administration."

Sections 157 and 158 of the National Labor Relations Act, relied upon by complainants to sustain their contention that in no event may a labor union be required to obtain a use permit as a condition precedent to operating a hiring hall, assure employers of the right to organize and bargain collectively and prescribe the rights of employers and page 61 } employees generally and in their relation with each other. It is obvious that section 18 of Norfolk's zoning ordinance in no way deprives complainants of any right conferred upon them by the National Labor Relations Act.

In *Andrews* v. *Board of Supervisors of Loudoun County,* Advance Sheets 6 of 200 Va. at p. 637, the Board of Supervisors of said county had enacted a zoning ordinance delegating to a Board of Zoning Appeals the authority to issue or to refuse use permits for the construction and operation of light and heavy industries in Rural Districts as it saw fit, "being guided in its decision by its opinion as to whether or not the proposed use would be desirable or advantageous to the neighborhood or the community or the county at large." The court in declaring this provision of the ordinance invalid said, p. 639:

"However, when a local municipal authority delegates, or attempts to delegate, such power, as it did in the present case, it must establish standards for the exercise of the authority delegated."

Complainants to a large extent rely upon this case to support their contention that section 18 of Norfolk's zoning ordinance is invalid by reason of its alleged failure to prescribe a proper rule, regulation or standard for the guidance of City Council in disposing of applications for use permits.

The right to enact a zoning ordinance is vested in the cities and towns. Section 15-819 of the Code of Virginia, page 62 } 1950. Norfolk in enacting such an ordinance did not delegate, or attempt to delegate, the right to

grant or refuse the use permits therein required to any board or agency; while the application for a use permit is referred to the Board of Zoning Appeals for its recommendation, the right to issue or refuse such permits is retained by the city, acting in the only way it may act—that is through its elected representatives, the City Council. The court does not mean to indicate that this rule does not apply when the discretionary right is retained by City Council. It does. However, in such cases the courts are more lenient in their interpretation and generally the rules or regulations guiding Council need not be as detailed or as specific as required when the discretionary right is delegated to another. And in such a case there is a well recognized exception to this rule which is set forth in *Gorieb* v. *Fox,* 145 Va. 554, reviewed and affirmed by the Supreme Court of the United States in 274 U. S. 603.

In the Gorieb case a building line was established by ordinance of the City of Roanoke, it being further provided therein that the City Council might permit the erection of a building closer to said street if it determined that the proposed location would serve the general welfare of the neighborhood. In disposing of the contention that this ordinance was unconstitutional, as it permitted City Council to act arbitrarily and without rule or standard to guide it, and in holding the ordinance valid, the Supreme Court of Appeals of Virginia stated, p. 563, that "where it is difficult or impracticable to lay down a definite rule, or where the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare," then no standard, rule or regulation to guide City Council in its application need be included in the ordinance.

As we have seen, it would be difficult and impracticable to provide standards more definite than those in-
page 63 } cluded in section 18 for the granting of use permits for hiring halls. There is dicta in this opinion indicating that this exception applies when the discretionary right is delegated to an administrative agent or agency. Regardless of this the Andrews case is clearly not one for the application of this exception. Under the use-permit provision of the Loudoun County ordinance the Board of Zoning Appeals could change the entire pattern of the ordinance. This is, of course, improper. As we have seen, the use-permit provision in Norfolk's ordinance is designed to preserve the character of the districts involved, and that of the neighboring districts.

The Supreme Court of the United States in reviewing and

affirming this decision of the Supreme Court of Appeals of Virginia said, p. 607:

"The proviso, under which the council acted, also is attacked as violating the equal protection clause on the ground that such proviso enables the council unfairly to discriminate between lot owners by fixing unequal distances from the street for the erection of buildings of the same character under like circumstances. We cannot, of course, construe the ordinance as meaning that the power may be thus exerted; nor may we assume in advance that it will be exercised by the council capriciously, arbitrarily, or with inequality. It will be time enough to complain when, if ever, the power shall be thus abused.

"The proviso evidently proceeds upon the consideration that an inflexible application of the ordinance may under some circumstances result in unnecessary hardship. In laying down a general rule, such as the one with which we are here concerned, the practical impossibility of anticipating and providing in specific terms for every exceptional case which may arise, is apparent. And yet the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. Hence the wisdom and necessity here of reserving the authority to determine whether, in specific cases of need, exceptions may be made without subverting the general purposes of the ordinance. We think it entirely plain that the reservation of authority in the present ordinance to deal in a special manner with such exceptional cases is unassailable upon constitutional grounds. *Wilson* v. *Eureka City,* 173 U. S. 32, 36-37; In *Re*: Flaherty, 105 Cal. 558, 562; *Ex parte* Fiske, 72 Cal. 125, 127."

page 64 } The authorities relied upon by the complainants are distinguishable from the instant case.

Staub v. *Baxley,* 355 U. S. 313; *Niemotko* v. *Maryland,* 340 U. S. 268; *Saia* v. *New York,* 334 U. S. 558; *Cantwell* v. *Connecticut,* 310 U. S. 296; *Hague* v. *C. I. O.,* 307 U. S. 496; and *Lovel* v. *Griffin,* 303 U. S. 444, all involved violations of the constitutional guarantee of freedom of speech, religion or assembly. None involved a zoning ordinance or the right to erect a building or to engage in a particular occupation within a specified area of a city. It would serve no useful purpose to recite the facts in each of these cases. Those of *Saia* v. *New York, supra,* are typical. It was held therein that an ordinance forbidding the use of sound amplification devices in public places within the city without permission of the chief

of police, and providing no standard for the exercise of his discretion, was unconstitutional.

In the *City of Winchester* v. *Glover,* 199 Va. 70, the court held an ordinance permitting City Council to refuse a permit for the operation of a gasoline service station, "if upon consideration of the application the public safety would be endangered by the filling station," to be invalid. It was the opinion of the court that, in the "light * * * of modern methods in handling petroleum products" it could not subscribe to the theory that "the operation of a gasoline service station is an inherently dangerous business."

Clearly this was not a proper case for the application of the rule set forth in the *Gorieb* v. *Fox cases, supra.* As the ordinance was held invalid, having been predicated page 65 } upon an erroneous assumption, it became a matter of no moment whether it contained an adequate standard, or no standard, to guide Council in its enforcement.

In the instant case complainants do not contend that Norfolk's entire zoning ordinance is invalid or that the city may not limit the districts within which a hiring hall may be operated; they contend that the requirement of a use permit is arbitrary and unreasonable, having no real relationship to the general welfare, and that the rule or regulation appearing therein to guide Council in the exercise of its discretion is insufficient. As it has been shown by competent evidence that there is a real and substantial relationship between the requirement of the use permit and the general welfare, and, further, that it would be difficult and impracticable to provide a regulation, more definite than that appearing in the ordinance, to guide Council in the exercise of its discretion, the instant case would appear to be a proper one for the application of the doctrine set forth in the *Gorieb* v. *Fox* cases.

What has been said of the case of the *City of Winchester* v. *Glover, supra,* applies with equal force to *Slaughter* v. *Post* (Ky.) 282 S. W. 1091. In that case an ordinance conferred upon City Council the arbitrary power to refuse a permit for the erection of a gasoline service station. The court, in declaring this ordinance invalid, stated, p. 1092: "A gasoline filling station, properly constructed and properly operated, is not a nuisance per se."

In *State Ex Rel. Makris* v. *Superior Court,* (Wash.) 193 Pac. 845, an ordinance authorizing the commissioner of public safety to revoke a license to sell candy or soft page 66 } drinks if, in his judgment, such action would preserve public morality, peace, or good order, was held invalid.

This is in accordance with the decision of the Virginia appellate court in *Andrews* v. *Board of Supervisors of Loudoun County, supra,* and is distinguishable from the instant case for the reasons stated in the discussion of that case.

In *Gulf Refining Co.* v. *Dallas,* (Texas) 10 S. W. (2d) 151, it was held that an ordinance conferring upon City Council the right to grant or deny applications for building permits, in the exercise of its unrestricted discretion, and authorizing the building inspector, after public hearing, to deny any application he determined would injure property or be hurtful to residents of the district, without defining the degree of hurt or injury, was invalid.

In *McCauley* v. *Albert E. Briede & Son,* (La.) 90 So. (2d) 78, Article XXV of the Zoning Ordinance of the City of New Orleans was declared unconstitutional. The pertinent parts of this article read as follows:

"The Council of the City of New Orleans may, by special permit and subject to such protective restrictions that are deemed necessary, authorize the location * * * of any of the following buildings or uses * * * in any district from which these are prohibited * * * by this Ordinance: * * * Cemeteries, mausoleums or mortuaries * * *;"

The ordinance contained no rule or standard to guide Council in the exercise of this discretion.

The two cases last mentioned differ from the instant case in that under the Norfolk ordinance the City Council's right to refuse a requested use permit is not unrestricted. The regulations or rules guiding Norfolk's City Coun-
page 67 } cil in granting or refusing a use permit are as definite as practicable considering the variety of facts and the complexities of situations which may confront it in the exercise of this power. It would be practically impossible to anticipate and provide in specific terms for every exceptional case which may arise under this section of the ordinance.

It is difficult to determine from the facts recited in the opinions of the two cases last mentioned whether the rule laid down in the *Gorieb* v. *Fox cases, supra,* should have been applied in either. However, apparently the proponents of these ordinances introduced no evidence which would justify the application of the rule. In the instant case the City of Norfolk introduced evidence which not only justifies but requires the application of this rule.

Under the evidence before it, and considering the purposes of a zoning ordinance, this court cannot say as a matter of law that the reasonableness of the requirements of section 18 of Norfolk's zoning ordinance is not fairly debatable, or that the rules or regulations appearing therein are not as definite as practicable under the circumstances. Under the settled rules of construction the validity of section 18 of this ordinance must be sustained. The relief requested by complainants must therefore be denied.

J. H. T.

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DECREE.

This cause, having duly matured, and the Court, by a former decree entered herein, having determined that it should limit its adjudication to the issue of the constitutional validity or invalidity of Section 18 of the Zoning Ordinance of the City of Norfolk, Virginia, as it relates to hiring halls and other places of assembly for the registration for or the assignment of employment, came on this day to be heard on this sole issue for determination by the Court, as provided in said former decree, and the Court, having heard the evidence in open court and the arguments of counsel, and after mature consideration and for the reasons set forth in its written opinion filed herein, doth

ADJUDGE, ORDER AND DECREE that Section 18 of the Zoning Ordinance of the City of Norfolk, Virginia, as it relates to hiring halls and other places of assembly for the registration for or the assignment of employment, is constitutional, and that the complainants' prayer that said section, as it relates to them, be declared unconstitutional, be, and it is hereby is, denied;

And nothing further remaining to be done in this cause, it is hereby ORDERED that the same be removed from the docket of this Court, and that the defendant recover of the complainants its court costs by it in its behalf expended;

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To which action of the Court the complainants,

by counsel, duly objected and excepted and indicated their intention to appeal therefrom.

Enter Oct. 20, 1959.

J. H. T.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS.

To the Clerk of the Court of Law and Chancery of the City of Norfolk, Virginia:

Notice is hereby given, pursuant to Section 4, Rule 5:1, of the Rules of the Supreme Court of Appeals of Virginia that the National Maritime Union of America, AFL-CIO, each and all of the above styled complainants
page 74 } herein do appeal from the final decree of the above Court entered on October 20, 1959, adverse to them, denying the relief sought by them.

Further pursuant to said Rule, the above complainants make the below assignment of errors in the judgment entered against them:

ASSIGNMENT OF ERRORS.

The lower Court erred:

ASSIGNMENT NO. 1.

In failing to declare that Section 18 Use Permit Ordinance of General Zoning Ordinance of City of Norfolk is invalid and unconstitutional as being violative of the First Amendment of the United States Constitution.

ASSIGNMENT NO. 2.

In failing to declare that Section 18 Use Permit Ordinance of General Zoning Ordinance of City of Norfolk is invalid and unconstitutional as being violative of the Fourteenth Amendment of the United States Constitution.

ASSIGNMENT NO. 3.

In failing to declare that Section 18 Use Permit Ordinance of the General Zoning Ordinance of City of Norfolk is invalid and unconstitutional as attempting to regulate and being burdensome on commerce in violation of Article 1, Section 8 of the United States Constitution.

ASSIGNMENT NO. 4.

In failing to declare Section 18 Use Permit Ordinance of the General Zoning Ordinance of the City of Norfolk invalid and unconstitutional as invading the field of and attempting to regulate plaintiffs' rights as given them under Sections 157, 158 of Title 29, U. S. C. A. of the National Labor Relations Act, as amended, which field has been preempted from state regulation and control.

ASSIGNMENT NO. 5.

In failing to declare Section 18 Use Permit Ordinance, of the General Zoning Ordinance of the City of Norfolk invalid and unconstitutional as:

A. Lacking sufficient definitive standards and criteria for granting or denying permit;

page 75 } B. As having no relation, in application to these plaintiffs, a maritime labor Union, maritime organized labor members, their representatives, to health, public welfare, public safety or property injury nor any relation to any neighborhood;

C. As being discriminatory and unequal between plaintiffs' hiring hall use and other uses it affects;

D. As being arbitrary, unreasonable and oppressive;

E. As being uncertain, indefinite and vague as to plaintiffs' hiring hall use it purports to affect;

F. As allowing in effect and result the arbitrary and capricious refusal and unlimited discretion in the granting of permits for hiring halls and places of assembly for registration and assignment of employment in interstate commerce.

ASSIGNMENT NO. 6.

In quashing plaintiffs' subpoenas *duces tecum* for production of material evidence and City records of Hudgins, Clerk of Council, Locke, Secretary of Planning Commission,

Maxwell, City Manager, said records disclosing discriminatory, unconstitutional and arbitrary effects and results of Section 18 Use Permit Ordinance on plaintiffs' application for permit said evidence further showing that plaintiffs' application for hiring hall had no relation to public health, safety, welfare or injury to property.

ASSIGNMENT NO. 7.

In prohibiting plaintiffs from introducing material and necessary evidence to show discriminatory results, unequal effects of Section 18 Use Permit Ordinance.

ASSIGNMENT NO. 8.

In failing to declare Section 18 Use Permit Ordinance of General Zoning Ordinance of City of Norfolk invalid and unconstitutional in accordance with the weight of the evidence and the law applicable to this cause.

NATIONAL MARITIME UNION
OF AMERICA, AFL-CIO,
ET ALS., Complainants
By SIDNEY H. KELSEY
Their Attorney.

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Filed 11-12-59.

L. M. CALVERT, D. C.

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9/30/59
page 2 } The Court: As I read the Order entered by Judge Hoffman the complainants were given the opportunity to bring action in the State Court to determine the constitutionality of the section of the Zoning Ordinance that they are complaining of, and that is the sole and only issue.

Do you agree with that, Mr. Kelsey?

Mr. Kelsey: Yes, sir, this whole case is solely to ask this Court to construe the Ordinance. We claim invalidity of the City Ordinance and ask for no other relief.

The Court: Well, your Bill of Complaint did, I believe. I think your Bill of Complaint also asked the Court to determine that if it determined that the Zoning Ordinance was constitutional, nevertheless that it determine that the action of the Council in refusing the Use Permit was unreasonable.

Mr. Kelsey: Oppressive and discriminatory.

The Court: I don't believe you are entitled to
9/30/59 that under the Order presented by Judge Hoff-
page 3 } man in the other case.

Mr. Kelsey: Actually that is not pressed, if your Honor please. The only purpose that I am here is pursuant to the Order as your Honor so correctly stated, and we are only asking this Court to construe the constitutionality of the Ordinance.

We are asking for no other affirmative relief either an injunction, damages or anything else because we have a pending case in the Federal Court asking for those things.

The Court: Yes, that is what I understood.

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Mr. Kelsey: I want to prove that in 1950 the general zoning ordinance was passed, Section 18, which did not have any criteria.

The Court: Wait a minute. You show that they passed 18, then we argue about the criteria later. 18 speaks for itself.

Mr. Kelsey: Well, if your Honor please, I don't think I am being clear.

The Court: You say it hasn't got any criteria. I say maybe you're right. Certainly the criteria is not very specific, I agree with you. But that is in the Ordinance.

What are you going to prove other than the Or-
9/30/58 dinance
page 43 } Mr. Kelsey: Well, I am going to prove that the action taken against these plaintiffs pursuant to that Ordinance you just mentioned was an action without standards or criteria.

The Court: Now, you are going into whether or not Council was acting reasonably or whether they were acting arbitrarily which I said I wasn't going to consider.

Mr. Kelsey: I am not saying, if your Honor please, why they did these things. I am only saying what they did and that is it. That is all we will prove.

The Court: What do they have to do with the case? Council have nothing to do with the case except the fact they turned it down. Otherwise it would be a moot question.

Now, you say that the Ordinance is unconstitutional?

Mr. Kelsey: And I have got to show the testimony of what was done, and that is what I want to prove.

9/30/59 page 44 } The Court: What do you mean what was done?

Mr. Kelsey: I have to show the effect of the Ordinance, if your Honor please. I agree with the Court one hundred per cent that the motives in passing is not relevant.

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Mr. Kelsey: Yes, sir. And I can't see how the Court can possibly determine the materiality or relevancy of these records without the records actually being produced in Court.

The Court: Because I say that if the Ordinance was adopted by majority vote, all the correspondence and discussion that preceded it especially anything other than the records or minutes of Council wherein they were adopted are immaterial and irrelevant, and I am going to sustain the motion.

Mr. Kelsey: We save our exceptions to the Court's ruling on the grounds that in a motion to quash the materiality or relevancy of the records is a matter of admission of evidence and not a matter of production; and we submit

9/30/58 page 75 } to the Court that the sole ground given to quash this subpoena is the materiality or irrelevancy. They are matters to be decided on by the Court on trial, not on production.

The Court: The Court has determined that the only relevant matter or the matter that allows the case to come for determination of the Court is whether or not the Ordinance is on its face as written is valid or invalid, and consequently any memorandum that preceded the adoption is of no moment.

Mr. Kelsey: We, of course, have stated our position. I will not restate it; but we don't agree that the matter should be determined on its face—the Ordinance on its face, whether it is constitutional or unconstitutional.

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Mr. Kelsey:

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If Your Honor please, I summoned Mr. Abbott, who is the Vice-Mayor and who at the public hearing of this matter in the Center Theater about two years ago made the statement of the Council, stating his reasons or his grounds, shall I say, and also stating what the Council attempted to do.

The Court: His grounds for what?

Mr. Kelsey: For denying this permit. Now, the Council did nothing but vote. Mr. Abbott made a motion in writing and that motion was duly published and taken in the transcript of the testimony and then Mr. Abbott, the Vice-Mayor, moved that the permit be denied and the Council then voted in favor of it, and that was the purpose of summoning Mr. Abbott. Now, I—

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The Court: Mr. Kelsey—

Mr. Kelsey: May I finish, please, sir?

The Court: Except that I think what I am going to say is relevant to what you have just stated. As you know, in our pre-trial conference, this Court held that it would not consider any testimony evidence as to and would not consider the issue that you attempted to raise in the bill of complaint that Council acted arbitrarily, capriciously or fraudulently in denying the permit.

Mr. Kelsey: We recognize your ruling, sir.

The Court: So Mr. Abbott's testimony as you have quoted it would merely go to that issue, which this Court has held is not properly before it. I do not mean that it is not a

proper issue for the Federal Court to determine but as this case came to this Court, you first sought relief in the United States District Court of the Eastern District of Virginia. That case was stayed by order entered by the Judge of that court, to allow the complainants to appear in a state court for the purpose of determining the constitutionality of the ordinance. In the opinion of this court, it would be improper and certainly violative of the principles of comity for this court to pass on any issue that is pending before
10/7-8/59 Judge Hoffman or anything other than on the nar-
page 7 } row issue that the order directed you to proceed upon, to-wit, the constitutionality of the ordinance—not whether or not Council acted properly in refusing you a permit.

Mr. Kelsey: Yes, sir. We recognize that is the true situation.

The Court: Wouldn't Mr. Abbott's testimony, if he were here, merely go to whether or not Council acted properly in refusing the permit?

Mr. Kelsey: Yes, that is true.

The Court: Well, that issue is not to be considered.

Mr. Kelsey: That is not all, if Your Honor please.

The Court: What else?

Mr. Kelsey: Mr. Abbott, in making the statement, which he later wrote out and handed to the reporter there, stated what effect the National Maritime Union had upon a so-called neighborhood. Now, I am yet unclear on Your Honor's ruling because, actually, if you are going to decide this case on the face of the ordinance which you said that you are going to do—

The Court: No, but I told you later that I would allow testimony. That was my original idea.

Mr. Kelsey: That is correct.

10/7-8/59 The Court: But subsequently I changed my
page 8 } opinion and I notified both counsel for the City and you that any evidence that you could produce which would show that the classification of hiring halls and the requirement of the use permit to erect one in an M-2 district was arbitrary, unreasonable or capricious would be allowed. But certainly from what you tell me, you would not put Mr. Abbott on as an expert witness to show that such classification is arbitrary and capricious, would you?

Mr. Kelsey: I think he would give the best testimony I could have that it is arbitrary.

The Court: Very well. If you insist, we shall just have to continue the case.

Mr. Kelsey: I am not asking for the continuance. If

Your Honor would let me get through, what I wanted to do was—

The Court: What are you asking?

Mr. Kelsey: I am asking for this, that Mr. Abbott's deposition be taken later if it is found to be necessary. That is all that I am asking; and that is customary in a matter where the witness has been excused.

The Court: I see no objection to that except this, which is not vital: I would like to dispose of this case with all reasonable speed and I think the deposition if it is to be taken, should be taken in the next few days.

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Mr. Kelsey: We will do so.

Mr. Savage: It depends, Your Honor, again on the state of Mr. Abbott's health in the next few days.

The Court: Well, I was assuming, which I may be erroneous in, that Mr. Abbott's health was sufficient to allow the taking of a deposition by counsel in the privacy of an office.

Mr. Savage: I am not qualified to pass on that.

The Court: I am not, either, but I am not in complete ignorance of Mr. Abbott's health. I was not surprised when I received that letter. I know he has been in bad health for some time. I also know that to a large extent he has continued the operating of duties and I assume that unless there has been a turn for the worse within the last few days, he would be capable. If I am wrong in that respect, we shall just have to defer.

Mr. Kelsey: If Your Honor please, may I state to the Court what I understood your telephone conversation to be to me last Thursday?

The Court: Certainly.

Mr. Kelsey: Your Honor telephoned me and stated that you had changed your mind about certain things relevant to the testimony, the evidence to be introduced. At the pre-trial conference Your Honor stated to counsel that you would not hear any evidence whatsoever as to the reasons or grounds for the Council refusing.

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The Court: I adhere to that.

Mr. Kelsey: Your conversation to me, as I recall the conversation, was this: Your Honor stated to me that you would permit evidence as to the desirability; the word "desirability" I questioned and tried to secure an explanation from you.

The Court: I am inclined to agree with you that the word "desirability" was not the proper word and I can tell you right now exactly, and I did so a moment ago. I don't see how I can make myself clearer. I am holding that it would

be improper and certainly violate the rules of comity for this court to go into the issue of whether or not Council acted improperly, capriciously, fraudulently, or otherwise, in refusing the use permit. That is, by reason of comity and by reason of the limitation in the order entered by Judge Hoffman. Under the law, which I understood you intended to introduce evidence on, I am not going to consider any testimony showing individual Councilmen's motives in voting for this ordinance.

Mr. Kelsey: I did not request such testimony.

10/7-8/59 page 11 } The Court: I understood that that was the purpose.

Mr. Kelsey: The motives are immaterial so far as I am concerned.

The Court: Right. We agree on that. You may introduce—either side—evidence to show that the classification and the requirement of a use permit for a hiring hall in an M-2 light manufacturing district is or is not arbitrary, unreasonable and without any real standard or basis or reason therefor. You may introduce testimony to that effect, that it is; and I assume that the City will have testimony that it is a reasonable classification. Of that, of course, I am not advised. Is that clear?

Mr. Kelsey: Yes, sir, but I am not contesting in this case any classification of a hiring hall in any particular zone of the city. I am contesting in this case the requirement for a permit to locate in a zone already zoned for that hiring hall.

The Court: Well, I think that is just a difference in words. We understand each other. You may show that that requirement of a use permit for a hiring hall is arbitrary, unreasonable, without standard or basis and—

Mr. Kelsey: That is fine. Thank you, Your Honor.

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JOSEPH CURRAN,

called as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Examined by Mr. Kelsey:

Joseph Curran.

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Q. Will you tell the Court how the union operates in the different ports of the United States so far as its offices and employment offices are concerned, please, sir?

A. Well, we operate in accordance with collective bargaining agreements. And in the agreement it specifies the method of employment. This was done to eliminate the old custom of obtaining men from any place, any corner, any taverns and different places like that; so that the operator would have a central place to obtain his people and at the same time it would build up a more reliable working force than existed in the old days. These centralized hiring facilities were established and it calls for the employer to notify the organization what jobs are available on the vessel. They are placed on a board at that time. The men have shipping cards by which they register and the oldest card meeting physical requirements, of course, and so forth, is then sent to the operator. He then, in turn, puts him through physical checkups and other checkups and either employs or doesn't employ a man. If he rejects him, another man is sent. Now, that is—

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Q. And will you tell us what the policy of the union is with reference to its aim or purpose of nondiscrimination so far as employment is concerned and so far as anything else is concerned?

A. Well, our union since its inception has not permitted discrimination for any reason. Seamen are made up like all the population of all races, creeds and colors. The United States Department of Commerce first and the Coast Guard now issues certificates of efficiency and passports or identification cards to all seamen, regardless of race, color or

creed and they must be handled on that basis by the union, by the shipowner.

10/7-8/59 page 53 } Q. Now—

A. These are federal certificates.

Q. I see. Pursuant to your employment agreement there and also the desire of the union to comply with the labor act, is there in the actual operation of the union any discrimination between the employment of a union man and an nonunion man on the part of the National Maritime Union or on the part of the shipowner here in Norfolk?

A. No, there is not. There is the requirement, of course, as there is in all employment, for seniority recognition.

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Q. Would you tell us what the practices were so far as hiring was concerned before, say, the Wagner Act was passed in 1935?

A. Well, it was a very bad practice. You had to go to certain gin mills where the bartender, owner of the place, had certain steamships companies on his payroll. They paid him to get men. And if you knew what gin mills they were and you patronized it, you were in line for that job. Then there were boardinghouses where you lived and you were called upon to pay a month's rent in advance and that boardinghouse had the access to some shipping companies and they would get the shipping for those companies. Now, in that case the man usually was shipped out within a couple of days and got none of his money back in the month's rent that he paid. And it was the practice of the boardinghouse to ship him out as rapidly as they could so as to make that profit from him of the month rent and at the same time get paid by the shipowner. Then there were many other ways of shipping. There was the custom of going from dock to dock and knowing somebody in the company. And if you had money, money was a pretty scarce article in those days—

10/7-8/59 page 55 } seamen worked for $20, $30 a month and in some cases for less, as against today where they get three and four hundred dollars a month base pay—so that you paid off if you had the money. If you

didn't pay off, you did favors for people, and you got jobs. And it was a pretty dismal state of affairs. Sometimes a seaman that was on the beach didn't get work for three, four, five or six months at a time and he would have to go around the shore looking for what work he could. Today, because of the rotary system of shipping and the seniority and so forth, few seamen except a highly skilled rating—of which there are very few—will stay very long in any one port. If he wants to ship, he will move very rapidly today.

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Q. Mr. Curran, what has put a stop to the evils that you have mentioned about shipping off the dock and shipping off the gin mill and out of the boarding house? What institution or practice which is now in effect has put a stop to that?

A. The union hiring hall.

Q. And—

A. The shipowners' agreement there. They made that presentation before the National Labor Relations Board in Washington, D. C., accompanying the union about two years ago.

Q. Has the institution in the maritime industry of the hiring hall, a union hiring hall, put an end to those practices of years ago before '35?

10/7-8/59 A. It has.

page 57 } Q. Is the maritime industry, the deep sea industry, completely unionized, the majority of them unionized?

A. Yes; in one form or another, yes.

Q. The National Maritime Union I believe is the largest of the unlicensed seamen maritime unions, is that not correct, Mr. Curran?

A. Yes.

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JOHN T. DILLON,

called as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Examined by Mr. Kelsey:

Q. You are Mr. John T. Dillon and you are the Port Agent of the National Maritime Union at Norfolk?

A. Yes, sir.

Q. As Port Agent, you are responsible for the operation of the union's suboffice on York Street, is that
10/7-8/59 correct, sir?
page 61 } A. That is right.

Q. Mr. Dillon, would you tell us, please, you have been over here I believe for how long? How long have you been here?

A. Going on 16 months now.

Q. Would you tell us approximately—I know it varies but as well as you can—the average shipping of seamen in and out from month to month? You can take a year say from '57 or '58. I know you have got your records here but generally is all the Court would be interested in, I think.

A. The amount the men ship, on a monthly basis?

Q. Yes, usually. That depends on shipping; we know that, of course.

A. The fluctuation of the shipping picture in the port—but it averages out anywhere from 125 to 200 men a month.

By the Court:

Q. You mean you secure employment for from 125 to 200 men a month?

A. That is right. As the shipping picture fluctuates, it drops, raises.

By Mr. Kelsey:

Q. With a heavy shipping, you could go more or
10/7-8/59 if there is light shipping, you would go less, is that
page 62 } correct?

A. That is right.

Q. So the employment or the hiring there at the hall is dependent upon the shipping conditions in the port?

A. That is correct.

Q. Would you tell us, please, whether you ship out non-union men from the National Maritime Union Hall?

A. We operate our branch in Norfolk under the orders and the—of the National Labor Relations Board in compliance with their orders, the Taft-Hartley law, that any seaman with

John T. Dillon.

validated U. S.—United States Coast Guard papers, can be registered and grouped in the seniority classifications that we have, whether he is union or nonunion. The only restrictions we have is in a contract between the companies and the union and this has the blessing of the National Labor Relations Board wherein all of our agreements which you presented—I have this particular one here, the collier agreement, the men that we refuse to register and refuse to supply to the companies and, as I say, signed by both labor and management. We have seven specifications here, which include habitual drunkenness, illegal possession or use of narcotics—

Q. These are men you refuse to ship?

A. We refuse them entrance to our union hall.

Q. Name those that you refuse?

A. Habitual—

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page 63 } The Court: He named two.

A. Habitual drunkenness, illegal possession or use of narcotics, illegal possession of lethal weapons, vicious tendencies, immoral or indecent conduct, frequent and unreasonable absence from duty aboard the vessels, and loyalty to the United States. These men were refused entrance to our hall and refused to register them on these grounds.

By Mr. Kelsey:

Q. If they are nonunion men they are refused entrance; if they are union men, is the practice of the union for such things as that to prefer charges against those people if you find them, is that correct?

A. Irregardless of being members or nonmembers of the organization, the contract between management and labor in this states that they shall not be registered or shipped to the contracted vessels and companies.

Q. All right. Now, Mr. Dillon, since you have been the Port Agent here, would you tell the Court what efforts you have made regarding cooperation with the Federal Bureau of Investigation, the Norfolk City Police Department and the City officials in law enforcement so far as your union is concerned? Tell us what you have done since you have been here.

A. Well, I have met with—

John T. Dillon.

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page 64 } Mr. Savage: I object to this. I don't believe it is relevant, Your Honor, as to what he has done.

The Court: What is the materiality of this?

Mr. Kelsey: Well, the materiality of it, counsel gets up here and says to the Court "We are going to show a bunch of idle men down around there and where there is idleness, there is evil."

The Court : I will allow the question.

Mr. Kelsey: Go on, Mr. Dillon, and tell us.

A. We have worked between the Federal Bureau of Investigation, different offices in that branch, the City Police and other government agencies, Customs, Immigration; why, we have worked together rather famously over the past 16 months. I have been able to help them tremendously and they have given me the same support.

By Mr. Kelsey:

Q. Have you given information when it has been requested of you by the Narcotics Bureau when they come to you for information if they have certain information they want to secure, and feel that you might have some information to help them? Have you done that, sir?

A. We have always cooperated that way, yes.

Q. And so far as the Federal Bureau of Investigation is concerned, have you done that, also?

10/7-8/59 A. (The witness nodded) Any government
page 65 } agency or law enforcement agency.

Q. Has there been any request made to you by the Chief of Police or any City official that you have not either complied with or tried to comply with if it were proper for you to do so?

A. No. I have complied with all of their requests that would be for the benefit of the union and for law enforcement in this area.

Q. All right. Some point has been mentioned about idle men and that idleness breeds evil. I am not going into the moral side of it because that is according to what has been said here by counsel. But still I want to know about the National Maritime Union itself allowing people, its members —so far as you can control—to become nuisances on the street, what you are able to testify to, the 16 months since you have been here?

John T. Dillon.

A. In the past 16 months that I have been in this port I can honestly say that we have had no trouble, no problems, no type of disturbances in or outside the union hall as far as the membership of our organization is concerned. I think we have held this port under very tight rein. The membership is quite happy with it. And I have had no complaints from any local people or local law enforcement people, none whatsoever.

10/7-8/59 page 66 } Q. All right. Will you tell us the day-to-day operation of the union hall so far as the 10:00 o'clock, 2:00 o'clock, call is concerned and tell us how men come to the hall, how they leave, who is there during the day and when you close up.

A. Well, taking it—

Q. Would you speak a little louder, please, sir?

A. Taking it on a daily basis, we open our hall at 8:00 o'clock in the morning. The men are registered for rotary shipping between 9:00 and 10:00 in the morning. And at 10:00 o'clock the majority of the men who are registered in the port apply for any available jobs aboard the vessels. By 10:15 to 10:30 when the job opportunities are there and finished by 10:30, most of the men who are local people here in Norfolk out in different suburbs of Norfolk, usually go to their homes because the next job opportunities, "job call" as we put it in our union, come at 2:00 o'clock in the afternoon. So that actually between 10:30 and a quarter to 2:00 in the afternoon if you have twelve or fourteen men standing around the hall it is quite a bit, if it is over ten, twelve, fourteen men.

By the Court:

Q. You mean by that it is unusual?

A. Yes; except on meeting days, which I want to get to.

10/7-8/59
page 67 } By Mr. Kelsey:

Q. Now, the 2:00 o'clock call, tell us what happens there.

A. Usually at the 2:00 o'clock call, a quarter to 2:00 in the afternoon the men start to come back in to see if there are any jobs available on the vessels. We average, oh, maybe a hundred, maybe eighty to a hundred men at that particular time. And by 2:15 to 2:30 when all the job assignments are given out, most of the men go out, go off to theaters, whatever they might have, whatever business they have in

John T. Dillon.

the local area. And between 2:30 and closing time, which is 5:00 o'clock at night, we have the same situation where we have approximately a dozen men at the most standing around the hall.

Q. You have a meeting once a month, is that correct?

A. That is correct, yes, sir.

Q. And your meeting night, regardless whether the union member is a resident of Norfolk or not, if he is in port and has his book up, he is eligible to vote and to take part in the union meeting, is that correct?

A. Union meetings in the National Maritime Union are compulsory. We have our meetings the last Monday of every month and we hold them here in the City of Norfolk at 2:30 in the afternoon, which would be the time that the job call of 2:00 o'clock is finished; and rather than put any additional strain on the men having them come back later in the day, after the 2:00 o'clock call, 2:30 we have the hall set up to hold our meetings. The longest one we have had here so far has been about an hour and five minutes. They average about 45 to 50 minutes. In completion of the time we stamp the men's cards to show that they have been at the meeting, which is part of their rotary shipping and I would say by the time the meeting is over, 3:30 at the most when we have all the cards stamped, the men go and the hall is practically deserted at that time of the meeting night.

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Q. The hall is not opened at night unless there is an emergency, is that correct?

The Court: What time does it close in the evening?

Mr. Kelsey: 5:00 o'clock, Judge, he said.

The Witness: 5:00 o'clock, Your Honor.

By Mr. Kelsey:

Q. Now, at night when, if ever, is the hall open?

A. The only time we have the emergencies would be in the line of a strike, organizing or an emergency within the union that would arise and would call for it. I think we have had only in the past 16 months two times that we had the hall open at night was in regards to supplying our men for peaceful picketing and during the ITF situation, which Your Honor is familiar with. And another time in helping our United Marine Division in the organization of some LST's that were running between Camden and Norfolk when we supplied pickets around the clock for this organization.

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John T. Dillon.

Q. Will you tell us what your staff is here in Norfolk? And I think you have a suboffice over in Newport News.

A. We have two secretaries in the port. One young lady handles pension welfare insurance, vacation benefits for the membership and their families, where the families of the membership come under that, their children, wives, dependents come under our pension welfare plan. And the other secretary handles the business of the port in regards to communications from other ports, the national office and other unions and requests for assistance or information.

Q. Who else is there on your staff?

A. We have a union official here is an elected patrolman, as we all are every two years. He covers the ships and takes care of the work in port along with me. James Rice has been a resident of Norfolk some twenty years. And we have one other patrolman assigned to Newport News. He runs that office there. We have two patrolmen and myself are the three officials of the port.

Q. All right, Mr. Dillon. I want to separate two things and ask you this question. I want to separate the employment features of the union office from the organizing and concerted labor activities of the union. Where is it, from what place do you do your organizing and solicitation for membership in the union and that you speak to others about the labor movement and to join the labor movement?

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A. Well, acutally, on an organizing basis the men that you would attempt to organize would be—

Mr. Sawyer: If Your Honor please, I object to that line of testimony. It is entirely irrelevant. If this were a union hall involved here, there would be no necessity for a use permit. But what we are interested in is a hiring hall. He is attempting to center his testimony on organizational activity and general union activity, which is entirely irrelevant here. All we are interested in is this hiring hall and the hiring hall activities.

The Court: The hiring hall—

The Witness: This is a branch, Your Honor.

The Court: One minute, please. His remarks were addressed to me.

The Witness: Oh, excuse me.

The Court: A hiring hall would be operated by a union; unquestionably, this particular hiring hall by this particular union. It is one of the contentions of the complainants that

the use permit or anything which would stop the building of the hiring hall is violative of the National Labor
10/7-8/59 Relations Act. I think I will allow this. I have
page 71 } limited the testimony to a rather restricted area.
Now I am going to be rather liberal in my ruling on what would come within that area. I will overrule it.

Mr. Sawyer: We except to that, if Your Honor please.

By Mr. Kelsey:

Q. Tell us, if you use the hall for union activities such as organizing and solicitation of membership and speaking to others about joining the National Maritime Union.

A. Yes. Any member or official of the NMU; that is part of our constitution to organize the unorganized and approach a man on the nonunion vessel and talk unionism to him, which I could do, any official or member, as I say.

Q. And you have done?

A. Have done.

Q. Is that correct?

A. Yes, sir.

Q. Go ahead.

A. Not only approach him in the area where his vessel might be. I could also ask him to come up to the union hall and show him our contracts, our pensions, welfare plans, vacation plans and what the union would have to offer. I could ask any number to appear in our hall.

Q. So you use the hall, then, for your legitimate
10/7-8/59 labor activities as allowed by the national law?
page 72 } A. That is right.
Q. The labor act; is that correct?

A. It is under the National Labor Relations.

Q. Now, so far as a place to assemble, is that the only place that this union has to assemble its members, in the hiring hall or the union hall?

The Court: You mean the only place within the corporate limits?

Mr. Kelsey: Yes, sir, Norfolk.

A. This is the only place we have in the City of Norfolk.

By Mr. Kelsey:

Q. Is this the only place you have to assemble for your meetings?

A. That is right.

John T. Dillon.

Q. Is it the only place in 41 other ports that you may know of where the National Maritime Union has offices, they are the only places to assemble?
A. That is right.

Mr. Savage: If Your Honor please, he wouldn't be qualified to know anything about these 41 other places. He may know.
The Court: I am inclined to agree with you. I sustain the objection.
10/7-8/59 Mr. Kelsey: We are interested in Norfolk. That
page 73 } is all, Your Honor.

CROSS EXAMINATION.

By Mr. Sawyer:
Q. Mr. Dillon, I believe you testified that your average of shipping men out was approximately 125 to 200 men a month?
A. Yes, sir.
Q. Now, how many men do you have registered?
A. We carry an average—

The Court: You mean during any specific month or how long?

By Mr. Sawyer:
Q. Your average registration.
A. On the average—

The Court: On any specific day, then, the average registration.
Mr. Kelsey: If Your Honor please, may I say this: I think the question would be almost impossible to answer. If he wishes to know the average registration and shipping out from month to month, I think Mr. Dillon could give it, but there is no such thing as an average in the shipping industry.
10/7-8/59 The Court: Well, Mr. Dillon has testified that
page 74 } the overall average of men shipping out through his union or through the activities of the union in the City of Norfolk is from 125 to 200 seamen.
Mr. Kelsey: All right.
The Court: Go ahead.

John T. Dillon.

A. On the normal basis in this area, 250 men on the registration list in that period would be a fair figure.

By the Court:

Q. What period?

A. In any given monthly period. The only time that this has differed would be in—during a strike situation of another industry. And another one that would affect us, which happened since I have been here, was the fact that the price of coal leaving the port of Hampton Roads dropped so low for American ships they couldn't afford to carry it and make a profit, laid their ships up, that at one time we had a figure of 600 men between Norfolk and Newport News and approximately 450 of them being here at Norfolk. That was the only time that shipping list jumped that far in the time I have been here.

By Mr. Sawyer:

Q. How many members do you have in Norfolk now?

A. Approximately—

Mr. Kelsey: You mean resident members, people
10/7-8/59 who live here, or what do you mean by that?
page 75 } Mr. Sawyer: I would like to know both, if he can answer that.

The Court: Resident and transient.

Mr. Kelsey: There is no such thing as—

Mr. Sawyer: Is Mr. Kelsey testifying or the witness?

The Court: He is just trying to clarify. No such thing as what?

Mr. Kelsey: Trying to help out.

The Court: No such thing as what? You said no such thing.

Mr. Kelsey: It is no such thing as—these people come in and out. What I am trying to say, there are resident members, people who live in Norfolk.

The Court: All right. What Mr. Sawyer wants to know is how many are residents and how many transient members he would have in general in the City of Norfolk, I assume.

Mr. Sawyer: Yes, sir, that is correct.

A. I believe in the last report—I just returned to my office this week; the patrolman I left in charge of the port, I think his figure was 260 some odd men available for shipping. But we publish this in our official organ.

John T. Dillon.

By the Court:

10/7-8/59 page 76 } Q. Two hundred sixty some available for shipping. How would that be divided between resident and transient?

A. That would be rather hard to break down because of the fact that we keep no local basis, but—

The Court: All right; go ahead, Mr. Sawyer.

Mr. Sawyer: I don't believe, Your Honor, that Mr. Dillon completely answered that question of how many resident members he had.

The Court: All right, ask him.

By Mr. Sawyer:

Q. How many resident members do you have? Do you know, Mr. Dillon?

A. If you mean out of this 260 odd, no I couldn't. If you asked locally, I have been familiar around Norfolk for some, oh, I would say 15 years. I come here the first time 17 years ago. I could say that I know a couple of hundred men, not from Norfolk particularly but around Virginia areas, in here.

Q. Mr. Dillon, in the record at a hearing on application for this permit before the City Council, your counsel made the statement that—

Mr. Kelsey: What page?

Mr. Sawyer: Page 11.

By Mr. Sawyer:

10/7-8/59 page 77 } Q. (Reading) "The membership is approximately twelve hundred who are Norfolk residents." Would you agree with that? Is that correct?

A. Well, I wouldn't have those figures available in regards to the local men. They could become available through our IBM system in our headquarters branch in New York City.

Q. You just don't know the answer to that question?

A. No. Just the men that I know that are from Norfolk or the local areas, that is the only ones I could speak for.

Q. As I understand it, you have stated there was an average of 260 now available for assignment on ships?

A. That is true.

Q. How many of those men come to the hall at the first call?

John T. Dillon.

A. Usually the men applying for jobs at the time of the—all the cards in the port, and I would say it would run eighty, ninety, a hundred men. That would be a top figure, too.

Q. A hundred men would be the top figure of men that would answer a call?

A. That is right, yes, sir.

Q. What happens to the other 160?

A. You see a man coming in—we have a length of time in our shipping cards of 90 days. A man has 90 days to take his choice of a job. A man that has a card that is only two weeks, three weeks, possibly even a month old, if he lives down through the Carolinas or out in different parts of Virginia or Maryland—which happens here; they go home and only come back and make their union meetings, which I say are compulsory. Some of them stay home as long as two months, in the last three or four weeks of their 90 days come and apply for the job of their choice. Actually, a man living in Carolina—and I can point out about three that I see sitting here right now—when they come in to register, go to their residence in North Carolina, I don't see them for approximately two months outside of the meetings they come for.

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Q. Well, Mr. Dillon, as I understand you, you estimated a hundred would report—

A. Yes, sir.

Q. —for assignment to work. Now, how much time would be consumed in assigning those men the first time they reported?

A. Well, if there are job opportunities come at 10:00 o'clock in the morning, by the time the men complete their shipping cards for the jobs, the time we make up their assignment slips, the name of the dock where the ship is laving and if they have to report to the company office, the whole transaction normally takes a half hour unless you have a tremendous amount of jobs that particular day.

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Q. Where do the men assemble?

A. In the union hiring hall. We have a loud speaker system that we use to call the jobs.

Q. You say it takes only half an hour?

A. On the average, yes, sir, unless we have a tremendous amount of shipping.

Q. Does your hall have any recreational facilities?

A. We have tables and chairs available in the back. The

men play checkers, chess, dominos, sit around, play different games of cards, whatever they care to.

Q. Why are they taking recreation at that time? Are they waiting for jobs?

A. Well, the possibility would be that a man wanted to kill any time. We have checkerboards available. We have a chess set available. We have cards available for them. We have a television that is available; that has not been repaired lately and it does work without a picture, which we intend to have fixed. Right now some men would stay around listening to the World Series in the union hall with their television.

Q. Mr. Dillon, you stated that since you had been in charge here at Norfolk you had consistently cooperated with the police and with the FBI?

A. Yes, sir.

Q. And they, in turn, had cooperated with you?

10/7-8/59 A. Yes.

page 80 } Q. What was the occasion for that cooperation—

A. Well—

Q. —from either of you?

A. At times I have had people from the FBI come in—in fact, the last one I could remember which prior to my going on vacation and being taken ill, were a young man that deserted the Army after serving some time in a South American or Central American area where the Army was operating. They couldn't find any trace of him. He come from a Mid-Western city and they were trying to find out through other government agencies any way that he might leave the country to go back to Central America or South American and what his possibilities would be of getting out. We would tell them, of course, the man would need government documents, he would have to get from the Coast Guard. We would make all information available that we would have in regards to that.

Q. Have you cooperated with any of these police authorities in connection with narcotics?

Mr. Kelsey: He said that he had.

The Court: He has a right to cross examine. Go ahead.

A. Yes. I have with both government and locally where they would come in and possibly show me pictures of a man

John T. Dillon.

that were available. And at one time we had no
10/7-8/59 record of some new men coming into the industry.
page 81 } I had them bring in passport size photographs of
themselves and if they had ever been to sea anywhere, to give me a notarized document in their handwriting of any vessels they had been on, the rating they had aboard that vessel, and I would know where he had been to sea and could pinpoint the seniority if I had to register him under the Taft-Hartley law. On one occasion I had a young man come in from Portsmouth, Virginia, that had attempted to register—

By Mr. Kelsey:

Q. Excuse me, are you referring to nonunion men?

A. Yes, sir.

Q. You are not referring to National Maritime Union men?

A. I have their record available any time I want in New York City.

Q. You have the union members' record always available; these are nonunion men you are speaking of?

A. (The witness nodded).

Q. All right; go ahead.

A. That is right. And on this occasion I accepted the man's application for employment with his record of sea time and his two passport sized photos. And under the Taft-Hartley law, which he threatened to go to the National Labor Relations Board if I didn't register him; I told him I only
wanted his record of past sea experience, which he
10/7-8/59 gave me. A member of the government agency in-
page 82 } volved in it asked me within a week's time if this
man had attempted to register for shipping. He was in possession of United States Coast Guard documents. Having had some argument with the man in regards to his registration, I immediately caught the name, gave it to the government agent involved and asked them what the man was wanted for. He said they had him under surveillance for narcotics which he had a conviction of. Now, this man not being a member of the union, I had his record available including his home address and two passport sized photos which I supplied to the Customs authority who came to the union hall for assistance and he, in turn, gave me a copy of a narcotics conviction in Portsmouth, Virginia, which I sent to my principals in New York and they immediately had him taken off. As we put out our LAP's on these people to

all ports, that they are not to be registered or referred to employment because of a past record, booze or conviction of narcotics.

By Mr. Sawyer:

Q. Mr. Dillon, I assume that in your position you do have opportunities to cooperate with the police and the police to cooperate with you?

A. Yes, sir.

Q. Thank you. Now, did I understand you, Mr. Dillon, to state that a hundred men would come to report in the morning for assignment of employment and you would clear them out of the hall, in half an hour's time all would be gone?

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A. I wouldn't say we would assign a hundred. We would have a hundred men available for the jobs which were there, which might be five or six jobs. After those five or six jobs are gone, the men drift out themselves.

Q. How long does it take them to drift out?

A. Well, they usually come in at a quarter to 10:00 and, as I say, the job call and the time for them to leave usually happens within a half hour.

Q. Mr. Dillon, here is a picture in your NMU pamphlet.

A. Yes, sir.

The Court: What page?

Mr. Sawyer: On Page 100.

By Mr. Sawyer:

Q. And the caption of the picture is that "In hiring hall men wait for jobs, pass time by talking, watch T-V."

Mr. Kelsey: This is a union hall, if Your Honor please. They have a right to stay in their own union hall. We are talking about hiring halls, if Your Honor please.

The Court: Is this distinguished?

Mr. Kelsey: No. This is the union hall.

Mr. Sawyer: I am questioning about the hiring hall.

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The Court: This picture on Page 100 has a blackboard back there; I assume it is a hiring hall.

Mr. Kelsey: It is all the same thing, Judge.

The Court: Well, all right, if they are both the same thing, go ahead, Mr. Sawyer.

John T. Dillon.

A. Yes, sir, I will answer your question in regards to that. Most of the pictures you are looking at—

By Mr. Sawyer:
Q. Read the caption of the picture.
A. I think I know that book as well as I know my own name.

The Court: Read the caption to the Court is what he asked you to do. Do you mind?

A. Yes. (Reading) "In hiring hall men wait for jobs, pass time by talking, watch T-V. Separate halls service Deck, Engine and Steward Departments." But the picture you have shown, you are showing me, sir, is a picture of New York City where they crew the four biggest passenger ships and six of the smaller ones in the United States and have a membership of three to four thousand men daily on the beach. This is the port of Norfolk where I have approximately a hundred daily, but that there is a six-story building; that is all types of facilities and has a different hiring hall for each department aboard these vessels. We have employed in the port of New York approximately two hundred men in one day for one passenger ship.

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By Mr. Sawyer:
Q. Mr. Dillon, then there are different types of hiring halls?
A. In different parts of the country.
Q. And different sizes?
A. Yes, sir.
Q. And some of them are operated differently?
A. We all operate under a national policy as far as the operation of the hall is concerned. The size is different, yes, and the facilities are different, yes, sir.
Q. Some of them have larger recreation halls, some of them have none?
A. Yes, sir.
Q. We are having a longshoremen's strike here that is affecting this port at the present time—

Mr. Kelsey: If Your Honor please, I don't know what the longshoremen's strike has got to do with this.
The Court: Mr. Kelsey, I certainly cannot pass upon

the relevancy of the question unless you allow Mr. Sawyer to finish the question.

Mr. Kelsey: All right, sir.

The Court: When he does, if you make your objection I will pass on it.

10/7-8/59
page 86 } By Mr. Sawyer:

Q. —and as a result, a number of ships are tied up in port, is that correct?

A. Yes, sir.

The Court: Do you object?

Mr. Kelsey: I object to this.

The Court: Overruled; go ahead.

Mr. Kelsey: Overrule—

The Court: Overrule your objection.

Mr. Kelsey: Yes, sir.

By Mr. Sawyer:

Q. The seamen now on these ships, do they report to your hiring hall?

A. They have no occasion to. They are employed aboard the vessel. They are still employed aboard. The only reason they would have to come to the hiring hall, if they had some type of dispute aboard this vessel where they would want an official to come down and to take care of the dispute according to the agreement. In fact, he wouldn't have to come to the hall, he could pick up the phone and call us. We are available at all times.

Q. Mr. Dillon, during the past year have you had any disorder of any kind, any occasion to call the police or have the police visit your hall on York Street?

10/7-8/59 A. No, I have no occasion to call them for any
page 87 } disturbance inside the union hall. I do recall one instance, though, on a look out where one of the buildings had been torn down there was some type of a dispute between two men and one of them had gotten hurt. To the best of my knowledge, the membership that told me about a man's being hurt and they wanted to call an ambulance, they were not seamen or not members of our organization. If they were, they certainly were not in the union hall and never came near it to the best of my knowledge.

Mr. Sawyer: That is all. Thank you.

John T. Dillon.

RE-DIRECT EXAMINATION.

By Mr. Kelsey:

Q. Mr. Dillon, one more question. The union hall or hiring hall on York Street is a union hall and a hiring hall combined, is that correct?

A. Yes. These are branches of our headquarters in New York.

Q. All right.

A. I mean we operate the business of our national headquarters here locally, and the hiring is just part of the business. I mean the hiring is to the men, to the membership, is the big part. To the branch, the business, running
10/7-8/59 of this union is also a big part.
page 88 } Q. Now, as to the union hall as such, your union members have the right to use that hall and go in there for recreation at all times? That is correct, is it not?

A. That is right.

Q. That is your union hall?

A. (The witness nodded).

Q. It is like if you belonged to the Elks, you would go to the Elks Club, is that correct—

A. That is correct.

Q. —for your recreation. The union hall in Norfolk, the suboffice or the branch office of the National Maritime Union in Norfolk, doubles both as a hiring hall for the industry and a union hall for the men for their union activities, is that correct?

A. That is correct; under the policies of our organization.

RE-CROSS EXAMINATION.

By Mr. Sawyer:

Q. Mr. Dillon, in any other cities do you have a separate union hall and a hiring hall? How about New York City? A. The city of New York, as I mentioned before,
10/7-8/59 it is a six-story building with all types of offices
page 89 } which keep our national offices. We have our pension-welfare plan people in there with their different machineries. We—

Q. Where is your hiring hall?

A. The hiring hall is situated on the ground floor entrance to the building.

Q. It is in the same building?

A. It is in the same building, yes, sir. In the same re-

spect where aboard our passenger ships in New York which the majority of our passenger ship personnel go—

The Court: Aren't we going a little far afield?

Mr. Sawyer: All right, sir. All I was trying to find, Your Honor, from this witness was whether in any city he had a separate hiring hall and a separate union hall.

A. Our branches are all combined. It is all part of the business of our organization.

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LINWOOD F. PERKINS,

called as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Examined by Mr. Kelsey:

* * * * *

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* * * * *

By Mr. Kelsey:

Q. Mr. Perkins, in what classification so far as this zoning ordinance is concerned, did you place the application of the National Maritime Union for a permit for the proposed union hall on Boissevain Avenue?

Mr. Savage: That question is still unintelligible.

The Court: You object?

Mr. Savage: Yes, sir, I object.

The Court: I sustain the objection, for two grounds: one, no member of the legislative body is ever called upon to state his reasons for voting; two, this Court has already held, and counsel for the complainants had noted his exception, that it is not going to consider Council's action in refusing to issue the permit in question. The whole question is whether or not

the ordinance itself or, rather, Section 18 of the ordinance, is constitutional and valid.

Mr. Kelsey: All right, sir; I will ask this question for the purposes of the record and ask the witness not to answer it until Your Honor rules on it.

By Mr. Kelsey:

Q. Mr. Perkins, will you state what standards you used in refusing to grant the permit of the National Maritime Union for a hiring hall on Boissevain Avenue?

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page 108 } Mr. Savage: If Your Honor please, I object on the ground that the ordinance speaks for itself.

The Court: Sustained, for the reasons heretofore stated, the same reasons.

Mr. Savage: That one I could understand.

Mr. Kelsey: It looks as though I am not going to be able to get any testimony, Judge.

The Court: Frankly, under my rulings I have never seen how you could, your reason for having Councilmen here as witnesses, but it was not up to me to pass upon that. There may be some questions you can ask Councilmen that I don't know. Offhand, I can't conceive of any but I can be mistaken in that respect.

Mr. Kelsey: If Your Honor please, I issued summonses about three weeks or maybe four weeks before trial for all of the gentlemen of the Council and it wasn't until last week that Your Honor advised us of the ruling. However—

The Court: I understand.

Mr. Kelsey: However, I believe I am entitled to get Mr. Perkins' answer in the record, for whatever purpose it may be and for the purpose of the record I think that I should have his answer.

The Court: I am not going to allow it. I am
10/7-8/59 so convinced that no member of the legislative
page 109 } body ever has to justify his vote for or against any measure in any judicial proceedings that I am not going to require that. I think that is fundamental to our general laws and the rights of Councilmen, and I have no idea of allowing Councilmen to be examined either for the record or any other purpose on their motives in voting for or against an ordinance.

Mr. Kelsey: May I state to the Court, sir, that I am not asking for motives at all.

L. C. Page.

The Court: You are asking his reasons.

Mr. Kelsey: No, sir. I am not asking for reasons. I asked upon what grounds or what standards he used to refuse the permit. That is all I asked.

The Court: The distinction is too fine for this Court. I can't see the difference. I so rule. Note your exception.

Mr. Kelsey: We note our exception to Your Honor's ruling.

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10/7-8/59
page 113 } L. C. PAGE,

called as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

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Mr. Kelsey: I presume, if Your Honor please, that your same ruling would apply to the same questions—

The Court: —to each and every member of
10/7-8/59 Council.
page 115 } Mr. Kelsey: To each and every member of Council, they being summoned and present as follows: Mayor W. T. Duckworth of the City of Norfolk; Mr. Abbott has been excused; Mr. Lewis L. Layton, Mr. N. B. Etheridge, Mr. Roy B. Martin, Jr. And I presume, if Your Honor please, that you will adhere to your same ruling in regard to the members of the Planning Commission who are subpoenaed by the plaintiffs and are present, they being Colonel James W. Roberts,—Mr. Hofheimer is excused—Mr. S. Carlisle Morrisette, Mr. Frank M. Miles, Mr. Wendell L. Winn; and, if Your Honor please, I summoned Mr. Jonathan W. Old, who was formerly City Attorney, for the same purposes that I wish to examine the Council on, and in view of Your Honor's ruling I will not call Mr. Old. It was only for that distinct purpose that I called him, to ask the same questions that I would ask the Council; and also Mr. Thomas

F. Maxwell, City Manager, all of whom were summoned by the plaintiffs and, as I understand your ruling, you will not allow me to examine any of these gentlemen as to what standards or criteria they applied with reference to the refusal of the permit ordinance; and as I also understand Your Honor's ruling, I cannot question these gentlemen as to what effect, if any, the permit ordinance has on employment in interstate commerce, is that correct?

10/7-8/59 page 116 } The Court: I don't quite understand that last thing. Say that again. You may not examine on what effect, if any—

Mr. Kelsey: I would like to ask the members of Council, if I may, to state what result was hoped to be accomplished by the passage of the hiring hall amendment as it related to a hiring hall of a labor union.

Mr. Savage: I object. It is the same thing; he is just expressing motive in another way.

The Court: I would sustain the objection and would not allow them to testify even for the record only.

Mr. Kelsey: All right, sir; and we, of course, have noted our exceptions and would like for that to run to all these witnesses, please, sir.

The Court: Very well.

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FRED W. TUEMMLER,

called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Examined by Mr. Savage:

10/7-8/59 page 120 } Q. Will you please state your name and occupation, sir?

A. My name is Fred W. Tuemmler. I am a city and regional planning consultant in my own practice as Fred W. Tuemmler and Associates, with offices in Hyattsville, Maryland.

Q. How long have you been connected with city planning work, Mr. Tuemmler?

A. For over 20 years, since 1938 when I went with the New York City Planning Commission after having served in engi-

neering offices in the City of New York for about 14 years. After that I went to the Maryland National Capital Park and Planning Commission as its Director of Planning for a period of 11 years, from 1941 until 1952; and since January 1, 1953, I have been in private practice under the firm name that I gave a moment ago.

Q. What is your educational background, Mr. Tuemmler?

A. Background in education, in—some in Columbia University and the remainder of it in specialized training programs, in-service training in the City of New York and elsewhere.

Q. Have you had occasion, Mr. Tuemmler, to draft zoning ordinances of cities or counties?

A. Yes, I have. I have drafted, oh, perhaps half a dozen or more and have written amendments to several, also.

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Q. Have you had occasion to testify in other cases concerning city matters as an expert?

A. Yes, I have, in numerous cases in the District of Columbia, in Montgomery County, Maryland, Prince George's County, Howard County, Baltimore City, Baltimore County, in Arlington, Virginia, Fairfax County, Virginia, Alexandria.

Q. Thank you, Mr. Tuemmler.

Mr. Savage: Your Honor, I submit that he has been fully qualified as an expert.

The Court: Mr. Kelsey, do you wish to be heard on that?

Mr. Kelsey: No, sir, I do not, if Your Honor please.

The Court: Go ahead.

Mr. Kelsey: If Your Honor please, he may be an expert, I say, as an engineer but I submit to Your Honor that he has not been qualified as an expert so far as the determination of legislation affecting zoning plans. Now, there is a difference between an engineer expressing his opinion as an engineer; that I have no objection to. But expressing his opinion as to the advisability of the classification of certain types of uses I do object to because he has no right to do that.

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The Court: Mr. Kelsey, the only thing I can tell you, you make your objections to the specific questions as propounded to him. I am not sure I understand the distinction that you make. In any event, it would be hard for the Court to have to apply it without the benefit of your objection.

Mr. Kelsey: All right.

Fred W. Tuemmler.

Mr. Savage: He has testified that he has drafted the zoning plans and ordinances of several counties and cities.

Mr. Kelsey: He is not a lawyer. A civil engineer can't draft a law.

Mr. Savage: He drafts them. They are in effect; I don't know whether he can or not.

The Court: I am going to allow him to testify as an expert. You may object to any specific questions that may be asked him.

The Witness: Your Honor—

By Mr. Savage:

Q. Mr. Tuemmler, what are the reasons in your opinion for including the use permit theory in zoning ordinances?

Mr. Kelsey: If Your Honor please, I object to this. Here is a civil engineer, a qualified man I admit, but now he is going to give an opinion, if Your Honor please, upon legislative and political matters which he has no qualification for doing whatsoever.

10/7-8/59 page 123 } The Court: I will allow the question.
Mr. Savage: You may answer the question, Mr. Tuemmler.

A. The reason for it is that it has been found over the years since—

Mr. Kelsey: If Your Honor please, may I object again? You have ruled that we cannot introduce any reasons for the bringing in of a use permit, hiring hall law. You have refused to let me question the Council.

The Court: I refused to let you question Council on the reasons that motivated them for voting for or against any ordinance or any other matter that comes up before them in their legislative capacity. This gentleman is qualified as an expert, the Court will so hold, and he has asked him as an expert the reasons for the use permits under certain circumstances.

Mr. Savage: The Courts have allowed that evidence. *West Brothers Brick Co.* v. *Alexandria* specifically referred to the testimony of experts as to the reason for the zoning ordinance.

Mr. Kelsey: If Your Honor is going to allow this expert to testify to the reasons for the hiring hall permit ordinance,

Fred W. Tuemmler.

then I have a perfect right to ask the gentlemen who passed that ordinance, their reasons for passing a hiring
10/7-8/59 hall ordinance.
page 124 } The Court: I disagree with you. One, you are asking a legislator what motivated him in voting as he did under certain circumstances. That the Court is holding as a matter of law is never admissible. Here this gentleman is qualified as an expert in testifying as to the theory, the reason for certain aspects of the law. I think the distinction is clear. Note your exception.

Mr. Kelsey: We except to Your Honor's ruling on the ground that the gentleman is not an expert so far as legislative matters are concerned. We concede that he is an expert as a civil engineer but that is all we do concede.

Mr. Savage: May I repeat the question, Your Honor?

By Mr. Savage?

Q. Mr. Tuemmler, will you state to the Court, please, the reason in your opinion for the incorporation of the use permit theory in the zoning ordinances of cities?

A. Well, over the period of years since zoning ordinances were first enacted, it has been discovered that some uses have peculiar impacts on areas, sometimes included within the zone itself and sometimes in external areas. And because of the planning nature of these uses, because of the effect that they may have on the general plan or the master
10/7-8/59 plan or, as it is expressed in the zoning ordinance,
page 125 } or in any of the plans prepared by the city, it has been recognized that it is necessary to apply different tests to those. It has been found, too, that these uses may have the peculiar effect on the neighborhood, affecting the health, safety and welfare of the people within or without the area under consideration, and sometimes affects property values.

Mr. Kelsey: If Your Honor please, I object to the generalized statements of this gentleman as affecting general welfare, affecting this, that and the other, unless he is specific and states what does affect public welfare and what does not, sir. He is just saying a lot of pretty words.

The Court: Mr. Kelsey, I overrule your motion. You will have the opportunity to cross examine him and bring out what he means by his several statements.

Mr. Kelsey: I except to Your Honor's ruling.

Fred W. Tuemmler.

By Mr. Savage:

Q. You were referring to these activities which have a special impact. Would you decribe that in a little more detail as to types of uses that do have those impacts?

A. Yes. For example, well, a medical clinic, for example, might be regarded as an appropriate use in an apartment house zone. And perhaps in an apartment house area where the uses are of great intensity, this might not be regarded as having any special impact on the community. On the other hand, if it were an apartment house area of garden type apartments where the density was low and the use might be located at a point near a traffic intersection where special hazards might be created, it might be entirely undesirable. Another use I can think of, offhand, is an automobile filling station that might be entirely appropriate in one place because the related uses around it would not have any special impact. On the other hand, if there is a school close by, there might be additional impact. And I think that the general principles involved have been to examine the uses in the light of all of these factors relating to traffic and transportation and noise and light and traffic congestion and depreciation of properties and the amenities of the community, and to apply these tests and make a determination in each case based upon the effect that this proposed use would have in this particular location.

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Q. Mr. Tuemmler, are you familiar with the zoning ordinances of other counties and cities?

A. Oh, yes, quite a number of them.

Q. In your experience with those, do they have theories similar to the use permit theory in Norfolk that is used in the Norfolk ordinance?

A. Yes. They—

Mr. Kelsey: If Your Honor please, I object to this.

The Court: I sustain the objection. Strike that. I don't think whether or not other cities have it would affect the validity of the ordinance.

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By Mr. Savage:

Q. Mr. Tuemmler, in your opinion, would a hiring hall have this kind of special impact that you were referring to earlier?

Mr. Kelsey: If Your Honor please, I object to this ques-

tion. He is asking this gentleman to decide this case right now by that question and that usurps Your Honor's judicial function, his stating his opinion as to adversely affecting or not adversely affecting; the Court has to determine those things.

The Court: I assume he will give his reasons for it. Overruled.

Mr. Kelsey: I except, if Your Honor please.

By Mr. Savage:

Q. Mr. Tuemmler, I will repeat the question. Is a hiring hall the kind of activity, having the special impact to which you referred that makes the use permit treatment of it proper?

A. Yes, it is.

Q. What are your reasons for that, for saying that?

A. The reason I believe it is the kind of use that has an impact on the community is because of the fact that a large, substantial number of people come to this location each day. From the testimony that I heard this morning, it is evident—

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Mr. Kelsey: If Your Honor please, I object to this. This gentleman can't comment on testimony and make an argument in this court.

The Court: I overrule your motion. All he is going to say is that from the testimony this morning that he heard, so many people come, so many people don't come. I will allow it. Go ahead.

A. And from other information that I have developed since I have been called into this case—

Mr. Kelsey: I object to that, if Your Honor please.

The Court: Why?

Mr. Kelsey: Unless he states his information.

The Court: A witness can't state everything at once. He will be subject to cross examination, Mr. Kelsey.

A. (Continuing) And my observation in other locations where uses similar to this are in effect, I am of the opinion that this—that it is proper to have a use permit. For one reason—one reason is this; this use, the hiring hall, is per-

10/7-8/59 page 129 } mitted in the Norfolk ordinance in a C-2 zone subject to the use permit and in the other zones that descend below that. The ancillary uses that may come as a result of this use would—could contribute in some instances to a devaluation of a surrounding area or changing its character adversely. Now, this wouldn't be true in every case. But certainly the other uses that could or would be induced to come in, such as restaurants, places of amusement like possibly pool halls and other places of that type, and perhaps taverns and rooming houses—all in certain instances could be quite aggravating and depreciating to a surrounding community. And therefore I think it would be entirely reasonable for the Council to review a case of that kind and pass judgment on that specific use of that specific location. Therefore, I think it would be entirely appropriate to have the use permits requirement apply to a use such as a hiring hall.

By Mr. Savage:

Q. Mr. Tuemmler, in your opinion would a hiring hall have a special impact on a manufacturing district?

Mr. Kelsey: If Your Honor please, Your Honor should not allow this question. He is asking if a hiring hall would have an adverse effect in a manufacturing district or whatever district he is talking about. Well, the Council has said that it would have one—which is a legislative matter.

10/7-8/59 page 130 } The Court: This gentleman is testifying as an expert, Mr. Kelsey. He is giving his opinion as one of the exceptions to the general rule where opinions are admissible when a man testifies as an expert.

Mr. Savage: Also, I didn't ask him if it had an adverse effect, I asked him if it had a special effect.

The Court: I so realize. What effect if any would it have, in a sense is what you asked.

By Mr. Savage:

Q. Would it have a special effect in a manufacturing area, Mr. Tuemmler?

A. Under certain circumstances it could have, yes.

Q. What are some of those circumstances in which it might have a special impact?

A. Well, for example, if land was set aside for manufacturing use, it might very well pre-empt that land from the use for which it was set aside. If a community in its judgment

Fred W. Tuemmler.

decides that a certain area is appropriate for manufacturing use, and certain circumstances indicate that it would be undesirable to allow a use such as a hiring hall in a specific location because of the fact that that land would be pre-empted from the use which is most appropriate, I think that would be one special effect it could have. There are others, too. For instance, a hiring hall to which a number of people would be coming each day could be located, say, near an unguarded railroad crossing. That would be hazard to the very safety of the people who would be going there. That might be another reason. So it is possible, I think, even in a manufacturing zone, to consider that there would be special considerations relating to that use in that location.

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Q. Would the location of adjoining zones or the uses made of adjoining zones have any effect upon your opinion as to its effect?

A. Yes.

Q. In what respect?

A. Well, proximity, for example, would be one. Even though a use such as a hiring hall might be entirely within the C-2 zone, which was the first zone in which it is permitted, or even in an M-3 zone, which is the lowest classification, proximity to, say, an adjoining residential zone or to an adjoining commercial zone if it were in the lower category, might be very detrimental to the uses already established there. For example, suppose the use were being considered in an M-2 zone that were immediately adjacent to a B-2 zone. Perhaps—

Q. What was the second zone you mentioned?

A. B-2.

Mr. Kelsey: May I just make my objection and I won't object any more: I object to this witness making all sorts of comparisons. We are talking about Boissevain Avenue and the hiring hall permit in the City of Norfolk.

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The Court: We are talking about the ordinance as a whole, too.

Mr. Savage: Yes, sir.

Mr. Kelsey: He is just giving all kinds of theories out of the air that are just completely fantastic. I don't believe that this gentleman should ever be allowed to say all these things. I can give my personal opinion as well as he can.

Fred W. Tuemmler.

Mr. Savage: Mr. Kelsey hasn't spent so many years—
The Court: Overruled. Go ahead.

By Mr. Savage:

Q. You may continue. You were discussing the location depending upon the zone adjoining the zone in which it was to be located.

A. Yes. I think I was saying that if it were in an M-2 zone and it were in an area in close proximity to a B-2 zone—

Q. Excuse me. What would a B-2 zone be?

A. That would be one of the commercial zones. Then the—it would—it could be that—and this, of course, is hypothetical but it could be that the uses immediately adjacent in the B-2 area might find the hiring hall at that specific location incompatible with the uses already established. On the other hand, if it were in proximity to a residential area, the same thing could be true and would probably be more so because of the fact that there would be a tendency to introduce into those residential areas some of the downgrading influences that I referred to before, such as rooming houses and maybe attempt to reclassify land for other *commerical* use or—and so on. These are the various things that could happen.

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Q. Thank you. Mr. Tuemmler, I show you a copy of the zoning ordinance of the City of Norfolk and ask you whether or not you familiarized yourself with that ordinance?

A. Yes, I have.

Q. Mr. Tuemmler, have you read and examined the standards set forth in Paragraph 4 of Section 18 of that ordinance?

Mr. Kelsey: Judge, this is terrible. Here he is going to ask the witness to judge what standards are in the ordinance.

The Court: All he has asked him so far is has he read the standards in paragraph—I believe you said 4?

Mr. Savage: Yes, sir.

The Court: —of Section 18 of the ordinance. If then, he asks him whether or not in his opinion they are proper standards, I would be inclined to sustain your objection, but he hasn't asked that yet.

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By Mr. Savage:

Q. Have you read the standards set forth?

A. Yes, I have. You said Paragraph 4?

Fred W. Tuemmler.

Q. Paragraph 4.
A. Yes, I have.
Q. Setting forth three standards, I believe?
A. That is correct.
Q. Or three groups of standards?
A. Yes, I have read that.
Q. Mr. Tuemmler, in your opinion would it be practical to more particularize or detail those standards than they are now?

Mr. Kelsey: I object.
The Court: I sustain the objection. That is a question that the Court has to determine, assuming that the Court holds that such standards are necessary under the facts of the ordinance, whether or not these are sufficiently specific and definite.
Mr. Savage: I have not asked him whether or not they are sufficiently specific or lawful or proper. I have asked him in his opinion could they be made more specific.
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Mr. Kelsey: He is asking him to redraw the ordinance.
The Court: Essentially the same thing. I sustain the objection.
Mr. Savage: I except to the Court's ruling. This is an expert who has drafted many ordinances. He has tried his hand.
Mr. Kelsey: He can't be, Judge.
The Court: I have ruled.

By Mr. Savage:
Q. Mr. Tuemmler, could you enumerate standards which are more specific than this in this use permit section?

Mr. Kelsey: If Your Honor please, in enumerating he is trying to say—
The Court: Essentially he is doing the same thing. I sustain the objection.
Mr. Savage: I except to the Court's ruling on that. The opinion of an expert as to what type of standards can be established in zoning ordinances is the essence of our case in many respects.
The Court: It may be. I am not going to allow any testimony on that.
Mr. Sawyer: Your Honor, our theory of this case is that

Fred W. Tuemmler.

the hiring hall has specific characteristics and that it is not practical—

10/7-8/59 page 136 } The Court: You may have this witness testify that it has specific characteristics and then you may argue that under those characteristics this is as specific as practical, or as specific as possible; but I am not going to let this gentleman state his opinion as to what it is the business of this court to determine.

Mr. Savage: It is my understanding that this court has to determine whether or not these standards are adequate under the law.

The Court: That would be one of the questions. It wouldn't be the whole question, no.

Mr. Savage: It would seem to me in rendering that decision, the Court should have the benefit of expert opinion as to whether or not they could have been made better.

The Court: I disagree with you. Note your exception.

Mr. Kelsey: It is a judicial function, if Your Honor please.

Mr. Savage: The City excepts to the Court's ruling in this matter on the basis of the case of *Gorieb* v. *Fox,* decided by the Supreme Court of the United States, holding that standards which it was impossible, impractical or difficult to make more certain and detailed, were sufficient. Further,

10/7-8/59 page 137 } on the ground that expert testimony in that regard is admissible and relevant to this case.

Your Honor, I wonder if the Court would allow Mr. Tuemmler to answer that question for the purpose of the record?

The Court: It seems to me so clear that you are leaving his sphere as an expert on planning and asking him then whether it is possible to draft exceptions or standards more clearly than they are. If standards are necessary and it is impossible to declare them, then the ordinance will have to be changed in some respects to make it valid. The mere fact that it was impossible to make the standards clearer would not change the law if the law requires definite standards and these standards are not clear. I think that is going too far, beyond the realm of expert testimony. I have sustained the objection and will not allow it into the record.

Mr. Savage: We further except to the Court's additional ruling that it will not be allowed for the record in order that the answer might have been considered.

Fred W. Tuemmler.

By Mr. Savage:

Q. Mr. Tuemmler, in your opinion, under the theory of use permits that you have earlier described in determining whether a particular use can be located in a particular place, what are the governing principles?

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Mr. Kelsey: Just a moment. For *determing* what?

Mr. Savage: Whether a particular use may be located in a particular place.

Mr. Kelsey: If Your Honor please, I object to this on the ground that that is purely a legislative matter which the governing body that passes such an ordinance must consider, and this gentleman is—

The Court: This gentleman is an expert. It is saying what should be considered in making such determination, that is all. I will allow it.

Mr. Kelsey: I except, sir.

A. In the ordinances that I have drafted—and I have done about seven such ordinances—the things taken into account have been such as, one, the effect that a specific use that we are considering for a use permit would have on the master plan or general plan for the community; two, what effect this use would have on this area itself; that is, the specific location, the surrounding neighborhood and what effect it would have on adjacent zones and neighborhoods. And the—this would, of course, relate to the expressions I used before, the health and safety and welfare of the people within the area and outside and the effect on property and its use and value. And then, in addition to this, I have in a number of instances where it was possible to do so, set up certain minimum requirements that had to be met and then provided, in addition to that, that the body, reviewing body or the council or board of appeals, whichever it might be that had to grant the special exception, could add additional conditions when its review indicated that these were necessary. But the most important aspects of review for that council or board were not the mere meeting of minimum requirements but the determination of whether or not in its judgment it was a suitable use to put in a specific location within the general framework of that zone.

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Fred W. Tuemmler.

By Mr. Savage:

Q. Would it be practical, Mr. Tuemmler, in an ordinance of this kind to provide that none of the listed uses be located as much as five hundred feet from a residence?

Mr. Kelsey: If Your Honor please, I object to that again on the ground that the practicality of the placing of any particular permit use is one to be determined by the legislative body of the City.

The Court: You are absolutely right, it is one to be determined by the legislative body.

Mr. Kelsey: Not this gentleman.

The Court: But this gentleman is not attempting to pass an ordinance, he is testifying as an expert what should be considered in drafting an ordinance and whether or not it can be drafted a certain way or whether it would be practical to draft it a certain way or would not be.

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Mr. Savage: That is our position, Your Honor.

The Court: Go ahead.

Mr. Kelsey: I except to Your Honor's rulings.

By Mr. Savage:

Q. The question was: Would it be practical to provide in an ordinance similar to that of the City of Norfolk, that none of the listed uses requiring a use permit could be located within five hundred feet of a residence or any other distance, specific distance from a residence?

A. I think it would be rather difficult to do that. No, I don't think so. I don't think that would be the type of approach I would use, no.

Q. Why is that?

A. Well, in the first place, setting up an arbitrary distance might in some cases be an injustice. This is one of the reasons why flexibility is required and the judgment factor is needed. It is not possible in every case to set up these detailed requirements. Sometimes it is possible to set up minimum, some minimum requirements but not in every case.

Mr. Kelsey: If Your Honor please, I respectfully request Your Honor to strike from the record the testimony of this gentleman—who wants to get it in, what the Court has refused to let his counsel ask him, and that is whether or not the details can be set forth in the ordinance.

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Edwin E. Bibb.

The Court: He says it is not practical. I will allow it. Overruled.

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EDWIN E. BIBB,
called as a witness on behalf of the City, and having been first duly sworn, testified as follows:

Examined by Mr. Savage:
Q. Will you state your name?
A. Edwin E. Bibb.
Q. What is your business, Mr. Bibb?
A. Lighting fixture distributor.
Q. Where is your business located?
A. 701 Colonial Avenue.
Q. Where was it located before that?
A. 350 York Street.
Q. Is that near the NMU hiring hall?
A. Next door.
Q. Did you have occasion to observe the external characteristics of that hiring hall?
A. Yes, sir.

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Mr. Kelsey: If Your Honor please, I object to this. I don't know what the external situation of the hall on York Street has to do with Boissevain Avenue where we are making the application.

The Court: Well, it was occupied by the same union, was it not?

Mr. Kelsey: Of course, what it looked like on the outside doesn't make any difference; the site; they are right now offering a large sum of money for it.

The Court: I don't think he meant the external building.

Mr. Savage: No, sir.

The Court: Go ahead. He is not referring to the structure on York Street.

Edwin E. Bibb.

Mr. Savage: No, sir. I want to ask Mr. Bibb what he saw, what occurred in that location.

Mr. Kelsey: If Your Honor please, I know what the purpose of this is because this gentleman has put it in writing in a letter which will not bear public printing. But he has no right to bring in any testimony regarding any individual or what happened over there at the union hall or anything else. That is not in issue.

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The Court: You may be right under normal circumstances, that isolated instances would not be admissible. But you will recall that this morning Mr. Dillon I think the gentleman's name was, testified that there had never been—he had been manager or secretary—

Mr. Kelsey: Sixteen months. That is only—

The Court: And that the only time that he had ever had any unfortunate occurrence, any hoodlumism—I forget how he expressed it.

Mr. Kelsey: He did not say that word, sir.

The Court: I don't protend to be quoting him verbatim; the only time was when there was a fight out in the adjoining lot and that in his opinion or in any event, he did not recognize the two men fighting as being members of the union. So clearly, if there have been any unfortunate instances around there from union members or seamen using the union hall, that would be admissible.

Mr. Savage: We are glad to put that in to rebut the earlier testimony. It is our position that the hiring halls are different, have different characteristics. We intend to put on evidence as to other hiring halls so as to show the reasonableness of the classification of the hiring hall.

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Mr. Kelsey: If Your Honor please, that is not the purpose of this witness. The purpose of this witness is to smear the National Maritime Union. He has already done it.

The Court: Mr. Kelsey, you mav be absolutely right. I have no idea. The witness was called, has been sworn, has taken the stand and you have not allowed him to testify. I don't know whether he is here to smear it or not. I will allow him to testify as to facts. I will not allow him to testify as to conclusions.

Mr. Kelsey: All right, sir.

The Court: Now, that is true not only of this witness but any witness other than the expert witness.

Edwin E. Bibb.

By Mr. Savage:

Q. Mr. Bibb, will you tell the Court what you have observed concerning the hiring hall located next to your place of business, and over what period of time?

A. I was at 350 York Street for 21 years from March 1936 on. The hiring hall was built, as I recall, along about 1947 or 1948, so that I was there next door as a neighbor from the time of completion until I moved in March of 1957, a period of about nine years. It was necessary for me to call the police—

Mr. Kelsey: Now, if Your Honor please, I object to this. I knew what he was going to do.

The Court: He has a perfect right to testify as to factual matters.

10/7-8/59 page 168 } Mr. Kelsey: It has no materiality to the issues.

The Court: Why not?

Mr. Kelsey: You wouldn't let me bring in anything, Judge, that I wanted to say about it.

The Court: Mr. Kelsey, I don't see how I could express myself clearer. I will attempt to do it one more time. Any evidence which shows that the requirement of a use permit for a hiring hall is arbitrary, capricious, and unreasonable will be allowed. I have stated that I think four or five times today. I state it again. Any evidence that shows that there is customarily disorder around or in the vicinity of a hall or specifically the hall occupied by the National Maritime Union of America, clearly would be admissible in showing that in certain areas it should not be allowed to be located.

Mr. Kelsey: We except to Your Honor's remarks and ruling, sir. This is neither more nor less than what you have refused to let me do. Now, please hear me, Judge.

The Court: Mr. Kelsey, I have told you not once but fifteen times that any evidence you have that shows that the requirement of a use permit is arbitrary and capricious, is admissible and I have allowed you to show by testimony of Mr. Dillon that there had never been any trouble there. It is exactly the reverse of what you show.

10/7-8/59 page 169 } Mr. Kelsey: For sixteen months.

The Court: For the sixteen months. Well, you could have gotten other witnesses for the other period of time. Go ahead.

Mr. Kelsey: I except, Your Honor.

Edwin E. Bibb.

A. First of all, let me go back to the time when I learned that the building was going to be put up for the use of the National Maritime Union.

By the Court:
Q. What building? At York Street?
A. At the corner of York and Dunmore, yes, sir. Prior to that, from time to time I had seen accounts in the paper of—

The Court: One minute.
Mr. Savage: Mr. Bibb—
The Court: You will have to explain to this witness that he has got to give specific instances, not conclusions, not what he read, not what someone told him. Mr. Kelsey, of course, is right in that respect.

By Mr. Savage:
Q. If you would, restrict your testimony to what you saw, what you did, what you heard; things of that kind.
A. All right.

The Court: To what he said, what he heard. What he did might not have been justified.

10/7-8/59
page 170 } A. All right. I telephoned Mr. Calvin Dalby, the Director of—

The Court: One minute. That has not a thing to do with it, what you told Mr. Calvin Dalby.
The Witness: Judge, I think that if you would hear this out, that there could be a bearing.
Mr. Savage: No.
The Court: Mr. Bibb, I will run this court if you don't mind.

By Mr. Savage:
Q. If you will just testify what you saw and what you heard in connection with this hiring hall, Mr. Bibb, I think that is what the Court would like to hear.
A. I saw excessive loitering on the street; groups of from 25 to 50 men or more at times. I saw fights. I saw drunkenness.

Edwin E. Bibb.

Mr. Kelsey: I object to this unless the witness states the time when this occurred, when it was.

The Court: Mr. Kelsey, he will be subject to cross examination. Go ahead.

A. I heard obscene language.

By the Court:

Q. Was this emanating from people that you saw go in or come out of the hiring hall?

10/7-8/59 page 171 } A. I—there were—it was from men who were generally in the field that is about 75 feet wide between the hiring hall and the store that I occupied.

Mr. Kelsey: Your Honor, I object to this. This is the rankest sort of testimony. He is trying to pin something on somebody who was on a lot that is right next to the hiring hall. It was next to his store. Now, if I could come in and charge him with that and charge his store with being—

The Court: It was between the hiring hall and his place of business.

Mr. Kelsey: That hasn't anything to do with the hiring hall unless it happened in the hiring hall.

The Court: Not necessarily.

Mr. Kelsey: I object to it and ask that it be stricken.

The Court: I will allow it. If it was in that area, then it would be up to the Court to determine whether or not the evidence justified a finding that they were men from the hiring hall. Go ahead.

A. Maybe I should have said on the National Maritime Union's vacant lot between their building and mine used for parking and so forth.

Mr. Kelsey: We don't own any vacant lot. That is what this witness doesn't know, we don't own any

10/7-8/59 page 172 } vacant lot between the buildings.

Mr. Savage: He will have an opportunity to cross examine this witness.

The Court: He certainly will. I will ask him—

By the Court:

Q. What makes you think the vacant lot between your store

Edwin E. Bibb.

and the National Maritime Union hiring hall belonged to the National Maritime Union?

A. Because prior to the construction of the building, Mr. W. B. Rudolph of the firm of Rudolph, Cooke and Van Leeuwen, their architects, came in the store one day and asked—

Mr. Kelsey: Now—

The Court: I sustain the objection. That would be hearsay testimony.

Mr. Savage: He was answering the question as to why he thought it, if Your Honor please.

By the Court:

Q. Well, what legitimate reason did you have for coming to that conclusion, I should have said. Go ahead.

A. Because they—

The Court: That is what I should have said. I withdraw the question.

Mr. Kelsey: I object to this gentleman's testifying. He wants to do it anyway.

10/7-8/59 page 173 } The Court: Unless you can tell me that these men that were unruly, were profane, you saw them using the hall, they were in some way identified with the National Maritime Union hiring hall, I am going to sustain Mr. Kelsey's objection to this line of testimony.

By Mr. Savage:

Q. Mr. Bibb, did you see or hear these men do anything that identified them with the hiring hall that was next door to you?

Mr. Kelsey: I object, if Your Honor please; unless Mr. Savage says when; what is he talking about, this year, last year, ten years ago, fifty years ago?

The Court: I will allow the question. He will be subject to cross examination.

Mr. Kelsey: His question is not right. He can answer anything.

The Court: He can't answer every question at once. Go ahead.

Edwin E. Bibb.

By Mr. Savage:
Q. I will repeat the question, Mr. Bibb. Did you see or hear anything to indicate that these men involved in these events that you have described were in any way connected with the NMU hiring hall?

Mr. Kelsey: Would you note our exception to the question and answer, please.

10/7-8/59 A. The fact that I saw the same men in the same
page 174 } space repeatedly.

By the Court:
Q. In that lot?
A. In that lot.

By Mr. Savage:
Q. Did you ever see any of them go in the hiring hall or come out of the hiring hall?

Mr. Kelsey: I object to leading the witness.

A. Yes.

The Court: He is not leading him, he is asking whether he ever saw. All right, go ahead.
Mr. Savage: I understood the witness to answer yes to the question.
The Court: He did.

By the Court:
Q. Will you proceed to say what else you have seen or heard?
A. One man involved was the sergeant at arms for the hall.
Q. Involved in what?
A. Sir?
Q. Involved in what?

Mr. Kelsey: That is what I would like to know. The sergeant at arms of the hiring hall was involved in what?

10/7-8/59
page 175 } A. Involved in the fight.

Edwin E. Bibb.

By the Court:
Q. What fight?

Mr. Kelsey: I didn't know there was any fight, either.

By Mr. Savage:
Q. Did you see a fight involving the sergeant at arms at the hiring hall, Mr. Bibb?
A. Yes.
Q. When was that?
A. I can't give you the date.
Q. How long ago?

By the Court:
Q. Approximately how long ago?
A. Probably 1952 or '—3.

Mr. Kelsey: If Your Honor please, this is terrible. I move that all this be stricken out. That hasn't anything to do with this now, seven or eight years later.
The Court: I am inclined to agree with you.
Mr. Kelsey: It is just so remote as to be ridiculous.
The Court: What happened seven or eight years ago is not of any particular moment but it is admissible testimony. Overruled. Go ahead.

10/7-8/59
page 176 } By Mr. Savage:
Q. Mr. Bibb, what else have you observed as to the general character of the activities around the hiring hall?
A. I don't know what I can say, so I don't know how to answer your question, sir.
Q. Did any of these men—

Mr. Kelsey: I object to counsel leading this witness.
The Court: He has not led him yet.
Mr. Kelsey: He says "Did any of these men"; there can't be but one answer to that, that is yes.
The Court: It starts out in a leading way.
Mr. Savage: It is not possible to be leading in saying "Did any of these men."
The Court: It is improper.
Mr. Kelsey: May it please the Court—

Edwin E. Bibb.

The Court: One minute, Mr. Kelsey. Let Mr. Savage propound his question, and then object if you wish to.

By Mr. Savage:
Q. Did you or did you not have complaints from customers with respect to being disturbed on the sidewalk outside of the NMU hall?

Mr. Kelsey: I object.
10/7-8/59 The Court: Sustained; it is hearsay. Bring the
page 177 } customers.
Mr. Savage: I am not trying to prove actual acts of disturbance, I am trying to prove he heard complaints.
The Court: The complaints may not have been justified. I sustain the objection.

By Mr. Savage:
Q. You have testified that you saw men congregating out in front of the hiring hall. During what period of time did you observe this?
A. During the whole time that I was—from the time the union occupied the hall until the time that I moved away.
Q. What time?

Mr. Kelsey: When was that?

By the Court:
Q. When did you move away? What year?
A. March 1, 1957.

By Mr. Savage:
Q. What did you observe those men doing when they were congregating in front of the hiring hall?
A. In general, standing around in groups talking.
Q. Anything else they were doing?

Mr. Kelsey: Don't suggest to the witness.
The Court: That is not suggesting.

10/7-8/59
page 178 } A. Standing around in a circle passing the bottle, which I assumed was whiskey, drinking.

Mr. Kelsey: I request that that be stricken out.
The Court: So ordered.

J. C. Councill.

By Mr. Savage:

Q. Mr. Bibb, did you observe any disorder or did you ever observe any disorder among any such group and, if so, when?

A. I observed fights.

Q. When did you observe them, Mr. Bibb?

A. I have no record of the date.

Q. Was it only on one occasion?

A. No, several repeated occasions.

Mr. Kelsey: I object, if Your Honor please. He asked the witness and the witness says he can't recall. Now—

The Court: All right, Mr. Kelsey, but let's see if this witness knows anything. Then, if he doesn't, we can dispense with him.

Mr. Savage: It is difficult for this witness to testify under cross examination and direct examination at the same time, Your Honor.

The Court: It is impossible.

10/7-8/59 page 179 } Mr. Kelsey: I have a right to object. I should object.

The Court: All right, but let Mr. Savage finish his question before you object to the question. Then I will pass on that and then let the witness finish his answer before you ask that it be stricken, and I will pass on that.

Mr. Kelsey: Yes, sir.

By Mr. Savage:

Q. You said you observed disorder. I asked you if you had observed it on more than one occasion?

A. Numerous occasions.

Q. Over what period of time?

A. From 1948 until 1957.

* * * * *

10/7-8/59
page 180 } J. C. COUNCILL,

called as a witness on behalf of the City, and having been first duly sworn, testified as follows:

Examined by Mr. Savage:

Q. Mr. Councill, will you state your name and business, please?

J. C. Councill.

A. J. C. Councill, J. C. Councill and Company, Incorporated, real estate, rentals and insurance.

Q. Where is your place of business, Mr. Councill?

A. 512 West 35th Street.

Q. Do you handle rental property, Mr. Councill?

A. Yes, sir.

Q. You have occasion frequently to go in the area of Wide Street and Princess Anne Road?

A. Yes, sir.

Q. What have you observed there?

Mr. Kelsey: If Your Honor please, I object to this. Here they have got the International Longshoremen's hiring hall which is down here on Wide Street and Princess Anne Road that this gentleman, Mr. Councill, is referring to, which the City Council has already granted a use permit for, and they want to connect up this hall with the National Maritime Union. They are going to blame us for all the sins in the world before they get through.

10/7-8/59 page 181 } The Court: Mr. Kelsey, if the ordinance applies to all hiring halls, is justified by hiring halls in general, then it is justified even though in the case of your particular union there may be no legitimate reason for inserting it. But there can be no distinction and if hiring halls as a whole require this use permit, then that is some justification for it.

Mr. Kelsey: Yes, sir, if Your Honor please. It is not justification—may I say this to the Court—actually, if counsel is trying to prove that a hiring hall itself is a dangerous thing, something immoral, something illegal, if it is all of those horrible things then that is something different and we are willing to stand with no testimony on that.

The Court: They are attempting to show that hiring halls in certain areas of the city are objectionable.

Mr. Savage: In other areas, they may not be. That is the whole theory of the case.

The Court: What did you say?

Mr. Kelsey: They have no constitutional right; it is objectionable, what they might say—

The Court: Mr. Kelsey, I am here to hear testimony as to whether or not it is a reasonable requirement to require a use permit for a hiring hall. That does not merely

10/7-8/59 page 182 } mean hiring halls that the NMU may wish to build but it is hiring halls that any organization may wish to build. And the conditions that exist in

the area of the hiring halls by reason of their presence there is a matter that should be considered by the Court in determining whether or not there is justification for the use permit requirement.

Mr. Kelsey: We except to Your Honor's rulings.

By Mr. Savage:

Q. Mr. Councill, the question was: What did you observe in passing? You testified that you passed Wide Street and Princess Anne Road frequently, and the next question was: What did you observe in so passing?

The Court: Well, is there a hiring hall at that location?

Mr. Savage: Yes, sir, there is.

The Court: Bring that out from testimony.

Mr. Savage: That was to be asked in the next question.

Mr. Kelsey: It is no hiring hall. It is a union hall there of the ILA. There is no hiring hall there.

The Court: That is what the testimony is going to show. You are not on the witness stand. This gentleman will be asked—ask him now whether or not there is a hiring hall at that location.

10/7-8/59
page 183 } By Mr. Savage:

Q. Is there a hiring hall located at that location, Mr. Councill?

A. Yes, sir.

The Court: All right. Go ahead.

By Mr. Savage:

Q. Mr. Councill, what did you observe or have you observed in the numerous times you have ridden by Wide—

A. I have passed there several times during the week and there is always right many out there around on the side and in the front of the place.

Q. When you say right many, how many do you mean, Mr. Councill?

A. I would say sometimes might not be over 25; sometimes it is over 100 out there.

Q. What times of the day are they primarily there, Mr. Councill, or are they there the same all the time?

A. Well, I think they are there off and on all day because I pass different times along there, I see them out there.

J. C. Councill.

Mr. Savage: If Your Honor please, has this witness ever testified in this court before? I should like to qualify him as a real estate expert.

The Court: I don't recall whether he has testified.

10/7-8/59
page 184 } By Mr. Savage:

Q. Mr. Councill, how many years have you been in the real estate business in the City of Norfolk, Virginia?

The Court: He will have to be qualified.

Mr. Savage: There is no chance of your stipulating?

Mr. Kelsey: I am sure he must be a real estate expert but not to express all these opinions that he is doing.

By Mr. Savage:

Q. Mr. Councill, in your opinion has the hiring hall at the corner of Wide Street and Princess Anne Road had an effect on the property values in that neighborhood?

Mr. Kelsey: If Your Honor please, I object to this. The Court has to decide these things.

The Court: I cannot decide them without evidence. The Court, theoretically at least, comes here knowing nothing of the case and hearing the testimony, and that is what Mr. Savage is attempting to put on. Go ahead. Overruled.

Mr. Kelsey: I except, if Your Honor please.

The Witness: What is your question?

By Mr. Savage:

Q. I asked you if the location of the hiring hall at Wide and Princess Anne had had any appreciable ef-
10/7-8/59 fect on property values in the area.
page 185 } A. Well, I don't know as it has had any big effect because that is up there in the slum district, anyway.

Q. Mr. Councill, in your opinion, if a hiring hall of that character was located in the area in which your office is located, which I believe you testified was in the 500 block of West 35th Street?

A. Yes.

Q. —do you think it would have an effect on property values?

J. C. Councill.

Mr. Kelsey: I object to this, Judge.
The Court: What type of area is that? How is that zoned?
Mr. Savage: That is zoned C—the plat is in evidence.
The Witness: Commercial.
Mr. Savage: It is a commercial zone.
The Court: I think we had better hold his testimony down to the M-2 zone.

By Mr. Savage:
Q. Mr. Councill, in your opinion, if the hiring hall at the corner of Wide and Princess Anne were located in other commercial zones, would it be likely to affect property values?

Mr. Kelsey: If Your Honor please, may I object to that?
10/7-8/59 page 186 } The Court: Practically, I don't believe anybody can answer that. That depends upon the area. I don't believe anybody would be capable of answering that.

By the Court:
Q. Am I not right, Mr. Councill?
A. Yes.

Mr. Savage: I think that is the exact answer I wanted to get from the witness. That is all.

CROSS EXAMINATION.

By Mr. Kelsey:
Q. Mr. Councill, is it illegal for men to stand around on the street?
A. I don't think so.

Mr. Savage: He is asking this witness for a legal conclusion. I object to that.
The Court: But that is all right. He has answered it.

By Mr. Kelsey:
Q. You see plenty of people walking down Granby Street, don't you?

A. Well, they can create a nuisance by a whole gang of them congregating around the place.

10/7-8/59 page 187 } Q. Have you ever called the police for the gang you saw out there?

A. No, sir, I have not.

Q. Then you must not have thought very much—

A. I haven't seen no fights there or anything to call police for.

Q. It is perfectly all right for a group of fellows to stand out there; they haven't any place to go and they are going to stand around?

A. Well, I guess they would.

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CHARLES D. GRIFFIN,

called as a witness on behalf of the City, and having been first duly sworn, testified as follows:

Examined by Mr. Savage:

Q. State your name and business, please?

A. Charles D. Griffin, General Secretary of the Young Men's Christian Association, Norfolk.

Q. What branch do you have your offices in, Mr. Griffin?

A. Well, it is commonly known as the Central Branch. We have—I am the General Secretary, of course, of the YMCA's here in Norfolk.

10/7-8/59 page 188 } Q. Where is the Central Branch YMCA located with respect to the NMU hiring hall?

A. Well, the YMCA address is 312 West Bute Street. The YMCA property extends for a city block and the union hall is on one—off one corner of our property, off our parking lot.

By the Court:

Q. Your property is at the southeast corner of Dunmore and York, and they are at the northwest corner of Dunmore and York?

Mr. Savage: Opposite corners.

By the Court:

Q. Is that right?

A. Essentially that is correct, yes, sir. Our building faces Bute Street and the back of it is on York Street.

Charles D. Griffin.

By Mr. Savage:

Q. Now, Mr. Griffin, have you had occasion to observe the goings on—a colloquial way to put it—in the vicinity of the NMU hall?

A. Yes, sir, I have.

Q. Would you tell the Court what you have heard and seen?

A. Well, Mr. Savage, I have observed numerous fights on the street outside the union hall, on union hall property or on the line of the union hall property.

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Mr. Kelsey: I object to this question and answer unless something is tied in. "I have observed"—

Mr. Savage: Give me a chance.

The Court: Mr. Kelsey, if a building is customarily occupied by men and there are numerous fights in the very area, the very immediate area of that building on numerous occasions, there isn't but one conclusion that the Court could draw.

Mr. Kelsey: All right, sir.

By Mr. Savage:

Q. What was the last time you saw a fight outside of the hiring hall?

A. Mr. Savage, I believe it was either July or August. It was in—

Q. July or August of 1959, this year?

A. Yes, sir.

Q. What occurred at that time?

A. I first observed a man lying in the adjacent lot to the union hall, flat down, completely out. And after going over and standing over the man, I observed that he had been severely beaten up. And shortly after that, the police department or the police patrol car came and began to take charge of this particular person. They tried to get him up in the patrol car but he was too far gone for that and they had to phone for the ambulance or wagon to come and get him. And during that time of observation and listening to what was going on, a man reported to the police in my presence that a seaman from Baltimore was the one that committed this act in the tavern across the street.

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Charles D. Griffin.

Mr. Kelsey: Strike it.
The Court: Strike that, as the evidence is hearsay.

By Mr. Savage:
Q. What happened after a report was made to the police?
A. After this report was made to the police, the police caught up with this man and brought him over to the person that was lying on the ground that was passed out, and they tried to get him to identify the man they brought over, but he was too far gone, he couldn't. But the man himself identified this person as his buddy, a seaman from Baltimore.

Mr. Kelsey: I object to all this. This is something out of this world to let in. It is just smear, smear, smear. The Court should not—let us be done with such rotten testimony as this.

The Court: Why is this a smear? It is factual
10/7-8/59 testimony, isn't it?
page 191 } Mr. Kelsey: No, sir. It cannot be charged against these plaintiffs.
The Court: I don't know. Go ahead. Overruled.

By Mr. Savage:
Q. Did the man try to excape from the police?
A. The man not only tried but did and went into the union hall and the police had to go in and get him and bring him out. Shortly after bringing him outside the door or after he got him out in front of the union hall, this man hit this large policeman up the side of the head with a fist, and the policemen then—of course, there were three policemen then. They manhandled him and put him in the wagon which had arrived on the scene.
Q. You have said that you were the secretary of the YMCA. Do any of the persons associated with the NMU stay for night lodging at the YMCA?
A. Yes, sir, they do.
Q. How do you know that they are NMU seamen?
A. Well, they register as such, their place of employment.
Q. Now, what has your experience been with those people who have registered at the YMCA?

Mr. Kelsey: If Your Honor please—
The Court: I sustain the objection. What they do other than at the union hall I am not the slightest bit interested in.

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ROBERT F. RIPLEY,
called as a witness on behalf of the City, and having been first duly sworn, testified as follows:

Examined by Mr. Savage:
Q. State your name and occupation, please.
A. Robert F. Ripley; real estate broker.
Q. How long have you been in the real estate business, Mr. Ripley?
A. Since 1945.
Q. Are you familiar with real estate in the City of Norfolk, Virginia?
A. Yes, sir.
Q. What types of real estate have you dealt in, Mr. Ripley?
A. All types of real estate—residential sales and for the past five years principally commercial and industrial development.
Q. Have you had occasion to appraise real estate in the City of Norfolk?
A. Yes, I have.
10/7-8/59 page 200 } Q. Have you had occasion to appear as an expert witness in the courts of this state and of this city?
A. Yes, sir.

Mr. Savage: I submit, Your Honor, he is qualified as a real estate expert.
The Court: I would so hold. Do you wish to be heard?
Mr. Kelsey: I have no objection to his qualifications as a real estate expert. I submit that the testimony is immaterial.
The Court: I will pass on that when it is presented.

By Mr. Savage:
Q. Mr. Ripley, have you had occasion to make a study of the effects on real estate property values of hiring halls in the City of Norfolk?

Robert F. Ripley.

Mr. Kelsey: If Your Honor please, may I make this objection to the Court? I object to any testimony which the City is now putting on to show the reasons why the Council denied the permit to this union. Your Honor has refused to let me even question the Councilmen on reasons. Now, I am not interested in the reasons, I am only interested in the grounds on which they did so. This gentleman, Your Honor, is going to testify as to the bad effects of such a thing if there is such a thing, and why the Council did what they did.

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The Court: No, I don't so understand it. If he attempts to do it, when objection is interposed I will sustain the objection. As I understand it, the purpose of Mr. Ripley's testimony is to show that in certain areas a hiring hall would adversely affect the surrounding territory finance-wise; that in other areas there would be no such impact and that, Mr. Savage will argue—not Mr. Ripley, Mr. Savage—is one of the reasons for the requirement of a use permit. The reasons for requiring the use permit, whether or not they are substantial and reasonable—real, substantial and reasonable grounds for requiring the use permit is one of the issues and probably the primary issue that we have to meet in this case. You are contending that the requirement of a use permit is arbitrary and without any real substance.

Mr. Kelsey: That the permit ordinance is.

The Court: Yes, the requirement of a use permit. That is exactly what it says.

Mr. Kelsey: Yes, sir.

The Court: Mr. Savage is saying that there is a real and substantial reason for that requirement that is justifiable under the facts he is developing. That is the issue.

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Mr. Kelsey: That is not the sole issue, may I say.

The Court: It is not the sole issue but it is an issue.

Mr. Kelsey: It is an issue whether this ordinance in its four corners stated any standard to go by.

The Court: That is another issue but there is also the issue whether or not there is any real and substantial basis for the requirement of a use permit.

Mr. Kelsey: May we except to Your Honor's ruling, on the basis stated.

By Mr. Savage:

Q. Mr. Ripley, will you state to the Court, please, the

opinion that you have arrived at, if any, with reference to the effect of the location of hiring halls on property values as a result of your study and your experience in the field?

A. I have made a close study of this particular subject in the past eight or ten days, in view of the fact that I would be testifying here. However, my past experience in real estate, in residential sections and commercial sections and industrial sections, has shown me that prospective purchasers who would improve a piece of property are very sensitive about the trend of a neighborhood. It doesn't make any

10/7-8/59 difference what the trend is, doesn't make any
page 203 } difference whether it is a residential trend or a commercial trend or an industrial trend, they are very sensitive about what is going to be and what is going to happen in a neighborhood. For example, we have had property under option for large companies and they have made exhaustive studies to see what would happen or what the future projected in the neighborhood—realizing, of course, that in the case of residential property that what the future offered would affect the values of the property; in commercial property, what the future offered would affect the values of the property; and in manufacturing or industrial areas, what the future offered affected values of property. The sensitivity of the change of—any change in a neighborhood is what the prospective purchaser is looking toward. With that in mind, I have gone over the city and looked at various hiring halls. And in looking at these halls and in discussing in the various neighborhoods with the people that are actually occupying the land in the neighborhoods, I find that certain hiring halls—in fact, all hiring halls are desirable but they are desirable in a location that is conducive to their environment. And I find that—I think that a particular type of hiring hall is better suited in one location than another location based on my experience as a real estate man.

Q. Mr. Ripley, what specific effect—

10/7-8/59
page 204 } The Court: Excuse me. You say that a particular hiring hall might be better suited for one location than another, is that what you said?

The Witness: Yes, sir.

The Court: Go ahead.

By Mr. Savage:

Q. Mr. Ripley, would the effect, in your opinion, of a given

Robert F. Ripley.

hiring hall be the same in every commercial zone in which it was located?

A. No, sir.

Q. What would be the difference between the effect or what are your reasons for saying it wouldn't be the same?

A. Well, one may not have any reason for being there.

Q. What do you mean by not having a reason for being there?

A. Well, you take an industrial location or a—well, take the building trades, for example. They would have more reason to be located in an area close to, say, the place where the bids are opened. And that—in this particular instance out near 21st Street we have a Builders and Contractors Exchange there and you will find more of the building trades in that area, and that is conducive to that. That is what I mean.

10/7-8/59 page 205 } Q. Well now, what other differences, if any, do you find between one commercial zone and another commercial zone of the same classification that would vary the impact of the hiring hall on that location?

A. Will you repeat that again, Mr. Savage, please?

Q. I have asked you as to whether the effect would be the same on every commercial zone and you have answered no, that it wouldn't, first, because it would not go with an area as far as supporting the business to which it was attached. And what other differences in impact might there be?

A. Well, I—I note—I don't know whether this answers your question or not but I note that certain streets are developing in a commercial, in a semi-manufacturing trend. Take, for example, Ballentine Boulevard from Princess Anne Road to Virginia Beach Boulevard is developing into an orderly type of semi-manufacturing, somewhat manufacturing and commercial. To inject anything in that neighborhood that would be—would violate or be different from what they are establishing there and what is the trend of establishment there, would be detrimental to values.

Q. Would a hiring hall, in your opinion, affect, have an impact on that particular neighborhood that you named?

A. I—I don't see that a hiring hall has any place in that, on that block, as an example.

10/7-8/59 page 206 } Q. Why wouldn't it have a place on that block?

A. Because there is no reason for it there. There is no reason for—there is no reason, a hiring hall to be placed next to a steel fabricating place or a

printing shop or—I am thinking about that block particularly; there is no reason for it.

Q. Mr. Ripley, would the effect of a hiring hall be the same in one manufacturing zone as in another?

A. No, it would not.

Q. What would the impact of a hiring hall have on property values in a manufacturing zone, if any?

A. Well, you say hiring halls. You mean—you are speaking of general hiring halls. Can you bring it to a specific type of hiring hall?

Q. What effect would the NMU hiring hall have on manufacturing?

Mr. Kelsey: If Your Honor please I object to this. I don't know if the gentleman knows what the NMU hall is.

The Court: I sustain the objection until that has been shown that he knows the character, the operation of the NMU hiring hall.

By Mr. Savage:

10/7-8/59 page 207

Mr. Ripley, as far as hiring halls in general are concerned, could you tell the Court what your opinion is as to whether or not it would have an effect or would be likely to have an effect on a manufacturing zone?

Mr. Kelsey: If Your Honor please, this is purely—

The Court: That is a general question.

Mr. Kelsey: Fantasy.

The Court: The witness has been qualified as an expert. I have no reason to believe it is guesswork. It is a question of knowledge. It is peculiarly within the—

Mr. Kelsey: He has never sold one, he has never handled one. He doesn't know anything about it. My opinion is as good as his.

The Court: You are making those statements. I don't know them to be true, nor do I admit that that would be disqualifying him as an expert. He is an expert in real estate. The facts that you mentioned could very well be subject to cross examination and could very well be argued as affecting his testimony, but after he has qualified as an expert, it does not eliminate or make his testimony inadmissible.

Mr. Kelsey: All right.

The Court: Go ahead, Mr. Savage.

Robert F. Ripley.

Mr. Savage: I should like to call the Court's attention to an earlier question of this witness for the specific
10/7-8/59 purpose. He testified he made a study, had been
page 208 } to this hiring hall, looked at the surrounding areas.

The Court: I was here when he testified.

Mr. Savage: I submit it qualifies him to say what effect it might have on manufacturing.

The Court: I will allow the question.

By Mr. Savage:

Q. Will you say what effect a hiring hall might have on any—

A. We have in a hiring hall—and I speak generally—a gathering of people who come there to seek employment and are assigned to jobs normally. If a particular type of hiring hall, whatever it may be, is not the type that should be in the neighborhood or doesn't fit into the type of industry or type of hiring that is needed in the neighborhood, it would inject into that community an infiltration of non-conforming people that tend to help tear down the values because of their being there.

Q. I understand you to say that it changes the character of the neighborhood?

A. Yes.

Q. In what ways does it change the character of the neighborhood?

A. Well, it would bring into the neighborhood allied or businesses that would support it

10/7-8/59 Q. Such as?

page 209 } A. Well, any type of hiring hall is going to bring into the neighborhood stores, some of different kinds that would sell things that the people would like to have. Possibly the injection of the application for a theater, that type of thing; and possibly taverns.

Q. In your opinion, would that change of character be detrimental or advantageous to property values in the neighborhoods?

Mr. Kelsey: If Your Honor please, this is general. He is trying to say that a hiring hall as such, in the testimony he has tried to introduce, is not only immoral, it is illegal, it is terrible, it is everything. The law allows a hiring hall. I object, if Your Honor please, to his saying what a hiring

hall would do and what it wouldn't do, which he can't say any more than he could say what a tavern would do.

The Court: Mr. Ripley has been engaged in the real estate business for some years. He states that within the last few days, I forget how many, I think you said eight or nine, didn't you? What did you say?

The Witness: Since 1945.

The Court: No. I mean your special study.

The Witness: Oh, about eight or nine days.

10/7-8/59 page 210 } The Court: In the last eight or nine days he has made a special study. He is testifying as an expert. The questions that Mr. Savage has propounded to him so far are relevant to the issue and are the types of questions that are proper to propound to an expert. His testimony, as I say, is subject to cross examination. You may bring out in the cross examination why they should not be entitled to great weight. You may show that he has not, as you say, ever negotiated the sale of a hiring hall. There are all sorts of questions you can ask on cross examination which would go to the weight of his testimony; but your objections are to the weight of his testimony, not to the admissibility of his testimony. The Court rules that the questions asked up to this point; at least, as to which objections have not been sustained by the Court, are admissible. Go ahead.

By Mr. Savage:

Q. Mr. Ripley, you just testified that the location of a hiring hall in a manufacturing area might change the character of the neighborhood. Now, my question is, would such a change in your opinion be detrimental or beneficial to the property values in that area?

A. If the hiring hall is in the wrong area, it would be detrimental to the values of the area. For this reason—

10/7-8/59 page 211 } Mr. Kelsey: Just a moment. Please let me make an objection, Your Honor.

The Court: Certainly; but also please attempt at least to make the objection when the question is propounded or when the witness is not testifying. But go ahead, make your objection. What is it?

Mr. Kelsey: My objection is that the question asks the witness would a hiring hall affect conditions if it were in the wrong area. I don't know what wrong area he is—

The Court: That was not the question. The question

was would it affect the value of the adjoining property and he says if it is in the wrong area it would. I assume he was going to say if it was in a proper area it would not. Now he has already testified that where there is a congregation of a particular type of business within an area, a hiring hall for that type of business would be proper for that area; that a hiring hall attracting industries that are not of the type congregated in the area would be improperly placed. He has already testified to that; so when he says "the wrong area," he is referring to his previous testimony. Go ahead, Mr. Ripley.

Mr. Kelsey: Note our exceptions to Your Honor's rulings.

10/7-8/59 page 212 } A. Getting back to the neighborhood—I speak in terms of neighborhood as manufacturing, as commercial, as residential, any one of them, all of them the same, and the sensitivity of it, if any type of industry or any type of business—in this case, hiring halls appears to be a business—is put in the wrong neighborhood, they will cause the people in the neighborhood or the business or whatever is there, to have a tendency to move, creating a vacuum, and that vacuum is usually filled with less desirable business or less desirable people or less desirable whatever you may have in the neighborhood.

Mr. Savage: Answer Mr. Kelsey.

CROSS EXAMINATION.

By Mr. Kelsey:

Q. Mr. Ripley, you were formerly a City Councilman, were you not?

A. Yes, sir.

Q. What years did you serve in the Council?

A. '52 to '56.

Q. 1952?

A. I think it was September '52. I don't recall exactly.

Q. Or '50?

10/7-8/59 page 213 } A. '52; I think it was four years.

Q. Were you a member of the Council that voted in the hiring hall ordinance?

A. No, sir.

Mr. Savage: I object.

The Court: I will allow it.

Robert F. Ripley.

A. I don't recall voting.

By Mr. Kelsey:
Q. You don't recall voting it in?
A. No, sir.
Q. Now, Mr. Ripley, what hiring halls have you studied that you are talking about?
A. I have been to—
Q. Name them.
A. I have looked at your particular hiring hall that you have on York Street.
Q. We are not asking for York Street, we are asking for Boissevain Avenue.
A. Where you were. There is no hiring hall there so I didn't study one then.
Q. You didn't even go out there, did you?
A. Oh, yes, I did.
Q. When did you go out there?
A. Within the past eight—

10/7-8/59 page 214 } The Court: Excuse me one minute. We got away from the question. He said he had looked at the hiring hall at York Street. I assume he was going to say other hiring halls, I don't know. You asked him another question before he had had opportunity to do so. Let's let him say what hiring halls he has studied. Go ahead, Mr. Ripley.

A. I looked at the hiring hall at 304 East 25th Street.

By Mr. Kelsey:
Q. Whose hiring hall is that?
A. It is mechanics. It is a building trade hiring hall. And then the one at 745 East 26th Street.

By the Court:
Q. What is that?
A. It is also a building—

By Mr. Kelsey:
Q. East 25th?
A. East 26th.
Q. Whose hall is that?
A. That is a building trade hiring hall. And I have just

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ridden around the city looking at the various areas where they hire people.

Q. All right. Now, that is a very general answer, Mr. Ripley. I want to know where you get all of this
10/7-8/59 information you are testifying from. You have
page 215 } only told us you have seen two hiring halls. Now, where are the rest of them?

A. Three.

Mr. Savage: That is not correct.

The Court: He said three hiring halls in areas where people are hired.

Mr. Kelsey: That is what he says.

By Mr. Kelsey:

Q. Now, I want to know where the others are that you are such an expert on.

A. I told you.

Q. Well, you haven't told me; you have only told me 25th Street, 26th Street and the NMU hall on York Street. That is three of them.

A. That is right. That is enough.

Q. Well, I want to know where the rest of them are that you have looked at.

A. That is all that I deemed was necessary to see to form my opinion.

Q. Well, actually you didn't need to do that at all; you had already made up your mind, hadn't you?

A. That is what you said. I say no.

Q. Is that correct or not?

A. No.

Mr. Davis: Your answer was no?

10/7-8/59
page 216 } By Mr. Kelsey:

Q. You speak of hiring halls. Do you know what the zoning is on Boissevain Avenue in the 1100 block of Boissevain Avenue?

A. It is M-2.

Q. M-2. What is that zone? A light manufacturing zone or heavy?

A. Light I think, but I will have to look it up. (Witness consulting a book)

Q. Do you know?

Robert F. Ripley.

A. Light manufacturing.

Q. You have been down there, is that correct?

A. That is correct.

Q. Did you see a Negro longshoreman hiring hall on the foot of Boissevain Avenue or not?

A. I know there is general hiring down there but I didn't see a Negro—I didn't go to it, to be frank with you.

Q. Well, you looked around so much, I want to know if you found one down there.

A. I didn't go.

Q. Do you say there is not one down there?

A. I didn't go to the foot of Boissevain Avenue looking for a hiring hall.

10/7-8/59 page 217 } Q. Do you know—

A. No.

Q. —that there is one down there?

A. No.

Q. Do you know what is down there?

A. I know that is the entrance to the Norfolk and Western piers in that area.

Q. And what else is down there?

A. Well, we have Norfolk Sash and Door and then on up to the Norfolk General Hospital you have just general trucking companies and people who are transferring freight back and forth.

Q. You have got a lot of people coming in and out of trucking places. Have you got a brewery down there, too, on Boissevain Avenue?

A. I don't know.

Q. In the 1200 block?

A. I don't know.

Q. Well, Mr. Ripley, if you were so carefully examining Boissevain Avenue for your testimony, why is it you didn't see the brewery there?

A. The only thing I looked at Boissevain Avenue for was to see what the majority of the business on Boissevain Avenue constituted. And I gathered—and I went as far as the Norfolk Sash and Door and that is as far as I went, and I gathered from that that you had a general commercial distributing area.

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Q. All right. Now, do you believe that a hiring hall is going to force a trucking company to leave Boissevain Avenue, a brewery to leave Boissevain Avenue, another Negro

longshoremen's hiring hall to leave Boissevain Avenue? Do you believe that?

A. I say this: I don't know what will happen but I say this based on past experience that if the injection of a hiring hall on Boissevain Avenue is not what the general area likes, then it will force the character of the neighborhood to change. And that is all I say.

Q. All right. What neighborhood are you speaking of? West Ghent?

A. That business neighborhood on Boissevain Avenue.

Q. All right. You mean the business on Boissevain Avenue?

A. The business neighborhood.

Q. Would it suprise you to know that some of the business on Boissevain Avenue would like to have the hiring hall there?

A. I don't know.

Q. Would that surprise you?

A. I don't know.

Q. Would you—

10/7-8/59 page 219 } The Court: Now, gentlemen, let's orient ourselves. It looks to me that we are now going into whether or not Boissevain Avenue is a suitable place for a hiring hall. That is not the question before the Court. The question before the Court is whether or not the requirement—and I mean the specific question for these witnesses—whether or not the requirement of a use permit for a hiring hall in any area or all the areas wherein hiring halls are permitted, is a reasonable requirement and has a substantial basis and, consequently, may be included in a zoning ordinance: not whether or not this particular location is proper. That would be relevant in determining whether or not Council acted in a proper manner in refusing the use permit, which I have stated on numerous occasions is not an issue before this Court.

Mr. Savage: If Your Honor please, I further object on the ground that he has gone beyond the scope of the direct examination and to that extent he is not entitled to this line of questioning.

Mr. Kelsey: You asked him about Boissevain Avenue. You opened it up yourself.

Mr. Savage: I don't think Boissevain Avenue was mentioned in any direct question or answer.

Robert F. Ripley.

The Court: I don't believe it was. Bear in
10/7-8/59 mind in your cross examination the substance of
page 220 } what the Court has just stated and what I have
stated on numerous occasions, and on which issue you disagree with me and have noted your exception to.

Mr. Kelsey: All right, sir.

By Mr. Kelsey:

Q. Mr. Ripley, you say the "influx," your words were "the influx of less desirable people." What do you mean by that phrase "less desirable"? Who is less desirable?

A. Well, I tried to explain that a few minutes ago. A neighborhood, whatever level it may be in, is happy with what it has and prosperous with what it has. A change in that level, whatever level it may be, higher or lower, would tend to change the neighborhood itself, the character of the neighborhood itself. That is what I mean by less desirable people.

Q. You, of course, know what a manufacturing zone is because you were a Councilman and you are familiar with zoning, isn't that right?

A. I am reasonably familiar with it, yes.

Q. All right; you are reasonably familiar. And in a manufacturing zone, that is where you put industries, light and heavy industries and factories and things of that nature, is that not true?

10/7-8/59 A. Normally you do, yes.

page 221 } Q. Normally. All right. Now, if you cannot put a hiring hall—which you now classify as being something less than desirable—in the lowest strata of zoning, where are you going to put it, Mr. Ripley?

A. First, I haven't classified them. The second thing is that no matter what their classification may be, and no matter what the zoning may be, one type of hiring hall in one location may be desirable and another type at the same location may not be desirable, and it all depends on the judgment of men involved, whoever they may be, as to whether it should be or shouldn't be there.

Q. Now, a hiring hall as I understand it—and see if you understand it this way—is where men register for employment and are assigned employment; is that correct?

A. That is correct.

Q. Is that correct, the way you understand it?

A. That is correct.

Q. You are not relating hiring halls, are you, to who those

men are, white, colored, what religion they belong to or any of those things, are you?

A. No.

Q. A man is a man and he comes to work regardless of how he dresses or anything else, he comes for work at a hiring hall, is that right?

10/7-8/59 page 222 } A. That is what he does, yes.

Q. Do you know where the unemployment office is where people come for employment?

A. Do I know?

Q. The City unemployment office, the State unemployment office?

A. I know there is one on Granby Street.

Q. All right. There is one on Granby Street and people come—

By the Court:

Q. Where on Granby Street, Mr. Ripley?

A. Across from—under the bowling alley on Ninth Street.

By Mr. Kelsey:

Q. It is right there opposite Mr. Lewis Layton's Atlantic Equipment Company, the Councilman's Atlantic Equipment Company, isn't it?

A. That is correct.

Q. Have you ever heard of Mr. Layton making objection about people coming and going, in seeking employment at the State unemployment office?

A. Never asked him.

Q. Do you object to it yourself?

A. I do.

Q. You do object to it?

10/7-8/59 page 223 } A. Yes.

Q. Why?

A. Because I have occasions to go down and hire people at that location and it is very, very distasteful for me to go in there because of the character of people that hang around.

Q. Oh; now it is a matter of taste. You don't like the people?

A. I am speaking of hiring halls, not people. It is—

Q. It offends your taste that a man, working man, should have on overalls and not be as clean as some others, with bad shoes and things; is that what offends?

Robert F. Ripley.

Mr. Savage: I don't think it is a proper line of questioning.

The Court: I will—

The Witness: Mr. Kelsey—

The Court: I feel that it is going a little far afield but it is hard to pinpoint what is and what is not. I will allow it.

A. Mr. Kelsey, I happen to be born and raised in the country, in the seafaring neighborhood of Mathews County and no person has any greater respect for the seafaring people than I do. My whole family is based on and makes its living on seafaring. You know one of them, Lee Hudgins.

10/7-8/59
page 224 } By Mr. Kelsey:

Q. That is not—

A. You are trying to say to me that I have a disrespect for people who wear overalls, and you cannot get me to say that in this court.

Q. You said in this court that it is distasteful to you when you go down to the State unemployment bureau to hire a man that you have got to go in there and mix with people who are unemployed, to get a job?

A. That is not what I meant. What I meant—

Q. Well, what did you mean?

A. Well, what I meant is, it is distasteful to have a place like that located in the location that it is located in. And that was what I meant. My words were wrong, were phrased wrong.

Q. You didn't say that. You said when you went down there, regardless of where it was. Do you agree that a hiring hall is a necssary thing for employment?

A. I do.

Q. You do agree to that, do you not?

A. (The witness nodded).

Q. And do you agree also that in assigning seamen a hiring hall is a necessary thing?

A. Absolutely.

10/7-8/59 Q. Absolutely?
page 225 } A. Yes, sir.

Q. You speak of neighborhood, and placing hiring halls in wrong neighborhoods. What is a neighborhood? Is it a zone?

A. (Witness looking at something—

Robert F. Ripley.

Q. There is no definition in the zoning plan, I can tell you that.

A. Well, the general definition that I have written down, I prefer to read it if you don't object to it. (Reading) "An urban or suburban residential or commercial area exhibiting a fairly high degree of homogeneity—"

Q. What? Fair what?

A. Homogeneity.

The Court: Fairly high degree of homogeneity.

A. (Continuing) "As to housing tendency, income and population characteristics."

By Mr. Kelsey:

Q. All right. Now, is M-2 a residential neighborhood; or a neighborhood, according to your definition?

A. It is a neighborhood in which people gather that seek the same thing in life, generally.

Q. Your definition said where people are residing?

A. I did not say. I said if you—

Q. Could I see your written definition?

10/7-8/59 page 226 } A. Yes. Get her to read it back to you. I will give it to you if you like. I would like to have this to testify. I am testifying from this, I would like to have it.

The Court: He merely wants it back before he is asked further questions.

Mr. Kelsey: Yes, sir. I will give it back.

By Mr. Kelsey:

Q. The definition that you have read to us is "An urban or suburban residential or commercial area exhibiting a fairly high degree of homogeneity as to housing tendency, income and population characteristics."

A. Let's go a little further and add manufacturing to that.

Q. Good. Residential districts hold their own for a long time. Actually, the agent—

Mr. Savage: You said you were going to read what he has testified to.

Mr. Kelsey: You want me to—

Robert F. Ripley.

The Court: You wanted to read the definition, you said. You have finished with the definition.

By Mr. Kelsey:

Q. (Handing the document back to Mr. Ripley) Mr. Ripley, let's be fair, please. You are not telling the Court here now—I am sure you don't wish to give this impression to the Court—that in a manufacturing or industrial zone a hiring hall, because of its characteristics, should not be placed? You are not trying to tell us that, are you?

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A. I say this, that the hiring hall—depending on the kind of hiring hall—may have a place in industrial, one particular industrial zone, where it may not have a place in another particular industrial zone. And when I refer to neighborhood, I refer to residential, commercial and manufacturing neighborhoods, not just one particular type of neighborhood.

Q. What do you mean by the kind of hiring hall? A hiring hall is where people come and go for employment.

The Court: He means the kind of employment handled by the hiring hall.

Mr. Kelsey: He didn't say that, sir.

The Court: He did earlier.

Mr. Savage: His reply earlier to that—

By Mr. Kelsey:

Q. He said the maritime industry had to have one. Are you saying the maritime industry hiring hall, then, should not be in a manufacturing or industrial zone? Is that what you are saying?

A. No.

Q. Are you saying that the NMU hiring hall should not be in a manufacturing or industrial zone?

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A. No.

Q. So you admit that it should be, then, is that correct?

A. That is right.

Q. And, in fact, the City zoning plan allows it in from C-1 right on through for seven zones, does it not?

A. Through M-3.

Q. Through M-3. So actually, Mr. Ripley, your tastes are more or less offended by these things. It isn't the fact that you object to hiring halls in particular, is it?

Robert F. Ripley.

A. Mr. Kelsey, I have answered your question several times.

Q. I am asking you to answer this question, Mr. Ripley.

A. My taste is not offended.

Q. Your taste is not offended?

A. No.

Q. So what you told us about going to the unemployment bureau is not true, is it?

A. Repeat your question.

Mr. Kelsey: Read that, please.

(The last question was read by the reporter.)

A. I explained that previously.

10/7-8/59
page 229 } By Mr. Kelsey:

Q. Mr. Ripley, do you happen to know Mr. Saul Salzberg, who appraises property for the City?

A. Yes, sir.

Q. Do you have a respect for his opinions?

A. I have respect for him yes, sir.

Q. All right. Now, I am going to introduce testimony later concerning Mr. Salzberg's opinion and I am going to ask you if you would agree with his opinion, and I will read what his testimony will be as to his opinion.

Mr. Savage: I object to this, Your Honor.

The Court: I sustain the objection. You may ask the witness questions to go to the weight or the credibility of his testimony, but not whether or not he agrees or disagrees. You may ask him whether or not he agrees with any specific dogma or statement that you wish but not whether he agrees with Mr. Salzberg generally.

By Mr. Kelsey:

Q. All right. Would you agree with this statement, Mr. Ripley—

Mr. Savage: Your Honor, I believe under these circumstances he is doing the same thing by indirection.

Robert F. Ripley.

The Court: I will allow him to do it, then. I
10/7-8/59 think he can ask, Do you agree that such and such
page 230 } a formula is correct?

Mr. Savage: He holds Mr. Salzberg's letter in his hands now and is asking whether he agrees with Mr. Salzberg or not.

The Court: I have ruled he may not say that. Go ahead, Mr. Kelsey.

By Mr. Kelsey:

Q. Would you agree, Mr. Ripley, that the building of a hiring hall—and we are speaking of Boissevain Avenue, the site that you looked over—will not be a detriment to the commercial neighborhood nor will it lower the value of property on Boissevain Avenue, same being now used and zoned M-1 andM -2, and will increase the value of the land to a taxpayer; do you agree with that statement?

Mr. Savage: I object to that, Your Honor.

The Court: I sustain the objection. Mr. Kelsey, the question that this Court has to determine is not whether or not the 1100 block of Boissevain Avenue is a proper location for the hiring hall of the NMU or any other hiring hall. The question is whether or not the requirement of a use permit has a substantial basis and is a legitimate requirement in a zoning ordinance. Now, whether or not a specific hall should
be built in a specific place naming the place, is
10/7-8/59 not up to this Court. This Court is not here to
page 231 } determine and will not allow evidence on it.

Whether or not the use permit requirement is substantial and necessary and helpful, any such testimony will be allowed. You may ask him, and you have asked him, whether or not hiring halls generally are desirable, and the witness has answered on the subject, the places that they should be and the places that they shouldn't be according to this witness.

By Mr. Kelsey:

Q. Mr. Ripley, do you agree that a hiring hall may increase the value of property in certain zones?

A. I have answered you that. In certain areas, certain hiring halls may increase; in certain areas, certain hiring halls may decrease. I can't pass on any of them until I know what you are talking about.

Q. All right. I am referring generally to hiring halls

such as the State unemployment bureau, which is a hiring hall. I don't know whether they have a permit. I doubt if they do, but still that is on Granby Street; you know where it is. Does that decrease the value of property on Granby Street, Mr. Ripley?

Mr. Savage: May I ask Mr. Kelsey to repeat the question? I didn't get the first part of it.

Mr. Kelsey: I was referring to the State unemployment bureau.

10/7-8/59 page 232 } Mr. Savage: I object to that, Your Honor. That is not a hiring hall.

Mr. Kelsey: Well, it is a hiring hall where people come and are hired and assigned work.

The Court: It has some of the characteristics of a hiring hall. I will allow it.

By Mr. Kelsey:

Q. Do you think that the hiring hall of the State on Granby Street devaluates the property there?

A. I do.

Q. You do?

A. I do.

Q. You agree, then, that it should not be there, is that correct?

A. I do. If it were my opinion, it wouldn't be there.

Q. And you do that because of the example that you gave, that you hate to walk in there because it is distasteful, the people are, is that right?

A. You refer to the testimony; you will find that I explained my answer.

Q. I know but you made that statement, did you not, that it was distasteful?

A. I explained.

Q. Did you make that statement?

10/7-8/59 page 233 } A. I explained my answer and qualified it and told you that I used the wrong use of words and it is not what I meant.

Mr. Kelsey: All right; come down. That is all.

RE-DIRECT EXAMINATION.

By Mr. Savage:

Q. Mr. Ripley, on cross examination you were asked

whether or not there would be an objection to a hiring hall going in a manufacturing zone. Your answer was no. Would that be true regardless of the character of the manufacturing zone?

The Court: I think—

A. I answered it.

Mr. Savage: He has covered that. I just wanted the record to be clear.

A. I think I answered it.

RE-CROSS EXAMINATION.

By Mr. Kelsey:

Q. From your experience as City Councilman, Mr. Ripley, and in dealing with zoning problems, in which you say that you have had some experience, you know that the entire city is zoned in commercial, residential and manufacturing zones, do you not?

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A. That is right.

Q. And you know that the City zoning plan says that in each district or zone these different uses shall be placed; in the residential part, nothing but residences there, isn't that right?

A. That is right.

Q. In commercial zones, nothing but businesses of a certain type, is that correct?

A. You are getting me to something that I don't want to get into.

Q. Well, I know.

A. There are certain exceptions to each of these that you are now referring to, commercial and I assume you are going to manufacturing.

Q. What are the exceptions there, then?

A. The exceptions are limited by the use permit.

Q. That is what we are getting at. So in the manufacturing zone there are also certain heavy industries that can be placed there, is that not right?

A. That is correct.

Q. Well, after the city has zoned and said a union hiring hall can be placed in certain areas, is it not a rather un-

usual thing in the zoning law to say no, but only
10/7-8/59 a hiring hall which is legitimate to go there; it
page 235 } has got to get a permit?

Mr. Savage: I object to this, Your Honor.
The Court: I sustain the objection. Mr. Ripley is here as an expert on real estate and not as an expert in the planning or drafting of zoning ordinances.
Mr. Kelsey: A City Councilman, he should know something.
The Court: I understand.
Mr. Kelsey: Was, I should say.

By Mr. Kelsey:
Q. You have never sold a hiring hall, have you, in your real estate business?
A. No, sir.
Q. You don't expect you ever will, do you?
A. I doubt it.

The Court: One minute. That is projecting beyond the realm in which the witness can testify, I am afraid.

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HAROLD ANDERSON,
called as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Examined by Mr. Kelsey:
Q. You are Police Chief Harold Anderson, of the City of Norfolk, and in charge of the Norfolk City Police Department, is that correct?
A. That is right, sir.
Q. Chief, in accordance with your official duties, did you make a report to the Public Safety Director concerning the National Maritime Union on York Street so far as concerned people congregating, and other things there? And I will hand you this report and ask you if you made such a report.

Harold Anderson.

Mr. Savage: If Your Honor please, I object to this.

The Court: I sustain the objection. Mr. Kelsey, you may ask him whether or not he has had any trouble, whether or not the records of his department indicate he has had any trouble, and whether or not so far as his observation is concerned it is an orderly business as operated; then if he 10/7-8/59 states to the contrary in this report, you may say page 237 } that you are taken by surprise and cross examine him on this. But you are asking him whether or not he did this. You may ask him the facts. You may develop the facts that are in that report by the questions as I have suggested, but not in this manner.

Mr. Kelsey: Your Honor let in yesterday all of this testimony, through the witness Bibb and the rest of the witnesses, about this.

The Court: Mr. Kelsey, I don't see how I can make myself clearer. I said you may ask him those same questions; but you may not ask him whether or not he made this report.

Mr. Kelsey: I won't ask him.

The Court: Until he denies the statements in there; then you may say you are taken by surprise and cross examine him. But now you are essentially cross examining your own witness.

Mr. Savage: That is the point I wanted to make.

The Court: Give the paper back to Mr. Kelsey if you will.

(The witness complied.)

By Mr. Kelsey:

Q. Chief, pursuant to your official duties, would 10/7-8/59 you tell us what observations you have made in page 238 } relation to police experience regarding the National Maritime union hall on York Street? Tell us what you have observed in relation to the police experience, experience of the police department, from your knowledge of the records and so forth, as to this union hall on York Street.

A. My experience in that direction has been rather limited and rather superficial. It has been more or less to direct subordinate commanding officers to carry on surveillance of all labor matters, labor hiring halls and potential labor trouble. I haven't personally done a great deal of it. I have had it—I have directed it to be done.

C. M. Merritt.

Q. You have personally, however, been inside of—

Mr. Savage: If Your Honor please, this is his witness and should not be led.

The Court: "Have you personally been inside?" There is no essential difference between—

Mr. Kelsey: I will withdraw it.

By Mr. Kelsey:

Q. Have you personally been inside of the National Maritime Union hall on York Street?

A. I have been in there one time and one time only, and then for a very short time.

Q. All right. Now, Chief, will you tell us whether or not the National Maritime Union hiring hall in Norfolk has been any police problem so far as you are concerned, your department is concerned?

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A. It has been a police problem inasmuch as any—any hiring hall is a potential police problem.

Q. Will you state what the characteristics of this hiring hall are on York Street as it relates to the police department: and in that connection, whether or not the characteristics of this hall have been such that it was a bad police problem, a good police problem, an average police problem or any problem whatsoever so far as you know?

A. In my personal opinion, the NMU hall on York Street is better than a national average of halls of that kind in as far as conduct and you might say atmosphere and conditions conducive to the best welfare of the community.

Mr. Kelsey: Thank you so much.

Mr. Savage: We have no questions.

C. M. MERRITT,

called as a witness on behalf of the complainants, and having been first duly sworn, testified as follows:

Examined by Mr. Kelsey:

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C. M. Merritt.

10/7-8/59 page 243 } Q. All right, sir. One more question, Judge, please. Would you tell us whether or not the seamen who frequent this hall give the police less cause for concern than any other areas?

Mr. Savage: A leading question.
The Court: He said whether or not the seamen there give more or less trouble than they do in other areas where they congregate, I assume is what you mean?
Mr. Kelsey: Yes, sir.
The Court: Can you answer that question?

(The witness nodded.)

By Mr. Kelsey:
Q. I would like to refresh your memory by showing—

The Court: One minute. Until his memory needs refreshing, it will not be refreshed.
Mr. Kelsey: Excuse me.
The Court: All right, Inspector, you understand the question?
The Witness: May I just repeat it to see if I do?
The Court: Yes.

A. Are you asking me, sir, if the NMU hall at its present location gives us any more difficulty or the persons frequenting that hall give us any more difficulty than in a similar area elsewhere?

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page 244 } By Mr. Kelsey:
Q. Well, I would say that is a fair question. I will ask you that, too, in addition to the other one. Would you answer that one first?
A. My answer to that would be no.
Q. It does not?
A. That is right.

Mr. Kelsey: Thank you, sir.
Mr. Savage: We have no questions.

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page 270 } AFTERNOON SESSION.

(Met pursuant to the morning session, with the same parties present as heretofore noted.)

The Court: All right, gentlemen. The Court will come to order. Gentlemen, before we commence the actual argument, I have come to the conclusion that the evidence does not sustain the contention of the City that there was any undue rowdyism, unlawfulness or disorder over the period of years that the National Maritime Union was occupying the York Street property. Do you disagree with me in that respect?

Mr. Savage: I do, Your Honor, respectfully disagree.

The Court: The only testimony that I heard, the only substantial testimony, was that of Mr. Bibb and I can't remember the gentleman's name, the secretary of the Central YMCA; I don't recall. Was there any other testimony?

Mr. Kelsey: That is all.

The Court: On the contrary, the complainants have had the Chief of Police, Inspector Merritt of the Police Department, Mrs. Harland and the gentleman who had the store at 607 Botetourt Street which ran back
10/7-8/59 to the property of the hiring hall, I don't recall
page 271 } his name.

Mr. Kelsey: Mr. Theodore Baker.

The Court: Mr. Baker. And the testimony of Mr. Bibb, and the secretary of the Central YMCA, was not particularly impressive in that they stated that they had seen disorder but when cross examined, and possibly on direct examination—certainly on cross examination they admitted that they could not say that this disorder emanated from the hiring hall or from persons that were using the hiring hall. In any event, isolated instances of disorder, if not too many, would not show that the place was disorderly. Fights may occur at the best run places. Fights can occur directly in front of a church by members who have just come out of it, and unless they were of too great frequency it would not show that that church was a disorderly place. That is my opinion. I will hear argument on it but, frankly, that is my analysis of the evidence on that particular phase of the case. Mr. Kelsey, under the circumstances you need not dwell on that in your opening argument. If the City is able to convince me, make me doubtful in their argument, I will so inform you when you have a chance of rebuttal.

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The Court: There was no real standard in the Gorieb case except the general welfare of the neighborhood.

Mr. Savage: They held that that was all you could really put when they were talking about the terms of the zoning.

The Court: Judge Spratley in the Loudon County case said that was no standard at all.

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A Copy—Teste:

H. G. TURNER, Clerk.

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