Testimony of

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Prepared Statement of
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Hearing on S. 256

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Mr. Chairman and distinguished Senators, I am David McCall of the United Steelworkers of America. I welcome the opportunity to comment on S. 256.

I am the District Director for the state of Ohio, a state that has lost over 200,000 jobs in the last five years, and where our Union and the workers and retirees we represent have experienced bankruptcies at such companies as LTV Steel, Ormet Aluminum, Warren Consolidated Industries, Republic Engineered Products, and Wheeling-Pittsburgh Steel, among the largest. Beyond Ohio, our Union of over 1,000,000 active and retired Steelworkers has experienced bankruptcies at Bethlehem Steel, National Steel, Kaiser Aluminum, and other companies. Given the importance of bankruptcy law to the lives of workers and retirees, you can be sure that our International President, Leo Gerard, would have been here today but for his being out of the country. On his and my behalf and that of our Union, we thank you for holding this hearing and considering the perspectives we offer.

By itself, bankruptcy law cannot solve the many problems facing the American worker and pensioner today. It can't roll back a flood of imports that may undermine a plant or industry, and it cannot directly challenge the transfer of manufacturing jobs to other countries. Nor can it necessarily close the widening gap between rich and not-so-rich in our country, or greatly solve the problems in our health care and pension systems. When these other forces do drive companies under, however, our bankruptcy law should treat workers and retirees as fairly and humanely as possible.

Most of the bill now before this Committee -- S. 256 -- addresses consumer bankruptcies of course. Over the life of this bill and its predecessors, our Union and the rest of the AFL-CIO have viewed S. 256 generally as rendering wholesale changes in the consumer bankruptcy system that would shift the rules decidedly in favor of creditors and to the detriment of individuals. While we believe the bill would make it far more difficult for individuals and families to make fresh starts, and believe that it would do so because of perceived abuses which studies show are not the norm in the system, I know that other members of this panel will be addressing these points.

Let me offer you four points based on the experience of our Union with manufacturing companies in bankruptcy. And much of this experience came well after S. 256 was first conceived and drafted.

First, it would be hard to say what has been worst about the recent wave of bankruptcies in manufacturing - the loss of jobs, the hollowing out of American towns and cities, the shock to families, or the loss of hard-earned benefits. But surely one of the most tragic injuries we have seen is when retirees lose, through bankruptcy, their health insurance, just at the time in life when they need it most, and this has happened to over 250,000 retirees in our Union alone. These are individuals and spouses who spent a lifetime living with hard and dangerous jobs to earn what was supposed to be the peace of mind that comes from employer-paid retiree insurance, only to lose all that as a result of bankruptcy. As you know, retiree health benefits are typically neither funded nor guaranteed by a government agency. If the bankruptcy law is to be seen as legitimate and credible, it must be as humane and fair as possible on

this subject, and, while Congress has at least enacted Section 1114 of the Bankruptcy Code, that provision still has weaknesses, and I mean even beyond the fact it ultimately allows a judge to cut off all retiree health programs when "necessary for reorganization." Courts often cut the coverage off with exceedingly short notice, and some employers have sought to exploit provisions in both collectively bargained and non-union retiree insurance programs to terminate retiree benefits unilaterally and in defiance of the substantive and procedural protections of Section 1114. Another weakness of Section 1114 arises when a bankrupt company sells its assets to a buyer who absolutely refuses to fund or support any of the terminated health coverage whatsoever. I know Senators Leahy and Durbin and Rockefeller each have developed ideas that would dedicate a greater share of the bankruptcy estate to the vital needs of retirees who lost health coverage in the bankruptcy. In this connection, our Union has been able to bargain with some buyers for even better treatment than those proposals would allow, but the basic point is that the bankruptcy laws should set a better floor of protection below which no retiree can fall.

Second, pensions. Even with a comprehensive federal pension law and the operation of the Pension Benefit Guaranty Corporation with respect to defined benefit plans, too many victims of bankruptcies, especially those in manufacturing, are experiencing the shock and nightmare of losing even pension benefits because of the termination of their plans in bankruptcy and limitations in the amounts of federally guaranteed benefits. We recognize that this is the subject of a recent and comprehensive proposal from the Administration. One of our concerns will be to urge Congress to avoid taking steps that may be intended to encourage good pension funding but could unfortunately have the effect of actually forcing weak companies with underfunded plans to terminate them and simply add to the difficulties of both retirees and the PBGC.

Third, the bill before you proposes to raise the priority for wages from its application to wages and other items earned in the 90 days before filing up to a maximum of $4,925 to a new rule that would give priority to those items earned in the 180 days prior to filing up to a maximum of $10,000. This is progress, but it is not a complete solution. For example, courts in most areas of the country view severance pay -- a critical benefit for a worker who is losing his or her job -- as being earned over such a long time (often an entire working career) that even a rule prioritizing 180 days worth of accrual brings very little severance pay into the priority category. In short, there were two problems with the wage priority provision, both amount and accrual period, and this bill addresses only the amount problem.

Fourth, a section of this bill which does not appear until page 495 of a 501 page document, is entitled, "Preventing Corporate Bankruptcy Abuse." I believe a more comprehensive approach to the problem of corporate abuses would at least have to grapple with two other problems. First, so-called "key employee retention plans" or the notorious "KERPs." These are "golden parachutes" payable to the executives of a reorganizing company and rewarding them handsomely often after they have cut workers' pay, reduced or eliminated retiree benefits, shuttered plants, and sold them off. A second area of concern is the perennial problem of enormous sums of money going to bankruptcy professionals. Congress should look to a reasonable way of regulating these excesses. When workers learn of a KERP or a massive fee award, it puts our bankruptcy system in a bad light and often makes the difficult bargaining choices required in bankruptcy even harder to achieve.

Finally, let me conclude by making clear that our Union commits to working with this Committee and any of its members in your attempts to craft amendments that will help the bankruptcy courts take greater and fairer account of the interests of the workers and retirees of bankrupt companies. Thank you.