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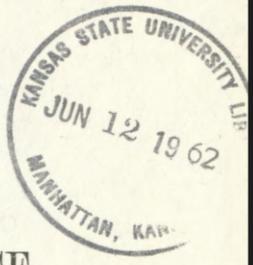
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HIGHER LEVEL COMPENSATION FOR POSTAL EMPLOYEES

GOVERNMENT

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HEARING BEFORE THE COMMITTEE ON OFFICE AND CIVIL SERVICE USE OF REPRESENTATIVES EIGHTY-SEVENTH CONGRESS SECOND SESSION ON H.R. 10265

A BILL TO AUTHORIZE THE POSTMASTER GENERAL IN HIS DISCRETION TO PAY INCREASED BASIC SALARY TO POSTAL FIELD SERVICE EMPLOYEES FOR SERVICES PERFORMED BEFORE THE EXPIRATION OF 30 DAYS FOLLOWING THEIR ASSIGNMENTS TO DUTIES AND RESPONSIBILITIES OF HIGHER SALARY LEVELS, AND FOR OTHER PURPOSES

MAY 11, 1962

Printed for the use of the
Committee on Post Office and Civil Service



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HIGHER LEVEL COMPENSATION FOR POSTAL EMPLOYEES

FRIDAY, MAY 11, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE
ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 215, House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will please come to order.

This subcommittee was appointed to consider H.R. 10265. I sponsored this bill to correct an inequity imposed on a substantial number of our postal employees.

This inequity arose by reason of a series of events associated with the provisions of section 204(b) of the Postal Field Service Compensation Act of 1955, as now contained in 39 U.S.C. 3335(b). This provision permits the Postmaster General to assign a postal employee to higher level service and, after an employee has been so assigned for more than 30 days in a calendar year, the Postmaster General must pay the employee the pay of the higher level.

The Post Office Department regulations controlling such assignments permits the higher level pay in some cases, even though the particular employee may not have performed 30 days' higher level service in the current calendar year. The Comptroller General held on February 1, 1962, B-138999, that a postal employee must perform 30 days of higher level service in each calendar year before he is entitled to higher level pay in that particular calendar year for the days in excess of 30.

As a result of this decision, the Post Office Department has suspended payment of the higher level pay except in those cases where the employee has performed at least 30 days' higher level service in the current calendar year. In addition, the Government will require the employees who have received higher level pay without regard to the 30-day requirement, to restore or repay to the Government the amounts received.

The purpose of my bill is to give the Postmaster General authority to pay the higher level pay for higher level service as he deems advisable, without regard to the 30 days in each calendar year requirement. Also, section 2 of my proposal will validate past payments, so that the employees will not be required to refund the amounts which have been received for higher level service prior to meeting the 30-day in each calendar year requirement. I ask that there be included in the record, the following: The bill H.R. 10265; the decision of the Comptroller General of February 1, 1962, B-138999; my letter of February

19, 1962, to the Comptroller General, advising him of my intention to sponsor this legislation, and the reply of the Comptroller General of February 26, 1962, advising that recovery of the overpayments would be delayed, but that the practice should be discontinued.

(The documents referred to follow:)

[H.R. 10265, 87th Cong., 2d sess.]

A BILL To authorize the Postmaster General in his discretion to pay increased basic salary to postal field service employees for services performed before the expiration of thirty days following their assignments to duties and responsibilities of higher salary levels, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3335(b) of title 39, United States Code, is amended by adding at the end thereof the following sentence: "The Postmaster General may pay, as he deems advisable, in cases of such assignments, a basic salary computed in accordance with the provisions of such section 3559 without regard to the requirement in this subsection of assignment for more than thirty days in a calendar year."

SEC. 2. Each payment of an increase in basic salary which was made prior to the date of enactment of this Act for services performed for periods of thirty days or less in any calendar year in the course of an assignment referred to in section 3335(b) of title 39, United States Code, by a postal field service employee assigned to duties and responsibilities of a higher salary level, and which would have been authorized by such section 3335(b), if such services had been performed in the course of such assignment after the completion by such employee of thirty days of service in any calendar year in such higher salary level, are hereby validated to the same extent as if such services had been performed after the completion of thirty days of service in any calendar year in the course of such assignment.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, February 1, 1962.

The Honorable the POSTMASTER GENERAL

DEAR MR. POSTMASTER GENERAL: During the review of your Department's regional payroll operations by our Civil Accounting and Auditing Division a question was raised concerning the legality of section 756.542a(4)(b), as amended, effective October 7, 1960, which reads, as follows:

"An employee who has once established eligibility for higher level compensation is not required to requalify year after year. So long as he received compensation in the preceding calendar year for service in a level above the current level of his position, he shall be paid for all higher level service performed in the then current calendar year."

Section 204(b), Postal Field Service Compensation Act of 1955, Public Law 68, 69 Stat. 117, 39 U.S.C. 3335(b), the applicable statutory provision, reads as follows:

"(b) As the needs of the service require, the Postmaster General may assign an employee from time to time to perform, without change in compensation, duties, and responsibilities, other than the duties and responsibilities specifically set forth in his position description. If an employee is assigned for more than thirty days in a calendar year to duties and responsibilities of a salary level which is higher than the salary level to which his position is assigned, except to perform service in a relief capacity for a supervisor granted compensatory time pursuant to section 3573 of this title, the Postmaster General shall pay for the period of his assignment in excess of thirty days, a basic salary computed in accordance with the provisions of section 3559 of this title."

Our Civil Accounting and Auditing Division on June 30, 1961, requested the comments of your General Counsel concerning the regulation which says that the employee "is not required to requalify year after year" to receive the benefits of the statute just quoted. On July 31, reference 58-F-5, he directed attention to the fact that nothing in the legislative history "states that the Postmaster General could not, in his discretion, immediately commence payment for the performance of higher level service." He says the hearings, House Report No. 728, and the language of section 204(b) simply impose a ceiling on the amount of higher level service that can be required without the payment of higher compensation. He further says that neither the hearings nor House Report No. 728 nor the language

of section 204(b) impose a requirement that the employee must perform a minimum of 30 calendar days' service per calendar year before he may be paid higher compensation. He points out that based upon his expressed views, and in view of the language of section 807 of the Postal Field Service Compensation Act of 1955, 69 Stat. 130, 39 U.S.C. 501, authorizing the Postmaster General to issue such regulations as may be necessary for the administration of the act, section 756.542a(4)(b), quoted above, was issued.

Section 204(b) requires higher level pay for all higher level service performed in a calendar year in excess of 30 days. The language of the statute is clear and unambiguous and in our opinion the legislative history seems clearly to support the proposition that the term "in a calendar year" was intended to provide a small period in each year during which an employee's services could be used in a higher grade position without the requirement of adjusting his pay to the higher rate. Thus, on page 19, House Report No. 728, 84th Congress, accompanying S. 2061, which bill, upon enactment, became the Postal Field Service Compensation Act of 1955, Public Law 68, concerning section 204(b), it is pointed out that an employee performing higher level duties for more than 30 days in any one calendar year will be paid for each day over 30 during the year he works in a higher level position at the higher level salary. We have not found any other applicable statutory provision, nor has one been pointed out to us, which authorizes the Postmaster General to commence higher level pay until the employee has performed 30 days of higher level service in the calendar year. Our opinion is that section 807, above, may not be used as a basis for authorizing the higher level pay and, except for the provisions of section 204(b), we are not aware of any authority for the payment of higher level pay. Without the provisions of section 204(b) postal employees assigned to higher level service would have to be considered as on detail or assignment and under a well established rule would be entitled only to the compensation of their regular positions, i.e., the lower level positions to which they were appointed. 33 Comp. Gen. 96, 97 and cases cited; 24 id. 816, 818. Also see *Price v. United States* (80 F. Supp. 542); *Coleman v. United States* (100 Ct. Cl. 41); *Doorkin v. United States* (101 Ct. Cl. 296); *Amundson v. United States* (120 F. Supp. 201).

We are of the opinion that the clear language of the statute requires that a postal employee must perform 30 days of higher level service each calendar year before he is entitled to higher level pay for the days in excess thereof. Hence, since the language of section 756.542a(4)(b), quoted above, does not so provide the section does not conform with section 204(b) of the cited statute and is, therefore, invalid. Prompt steps should be taken to revise that section to conform herewith.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C., February 19, 1962.

HON. JOSEPH CAMPBELL,
Comptroller General of the United States,
Washington, D.C.

DEAR GENERAL CAMPBELL: There has come to my attention your decision to the Postmaster General (B-138999, February 1, 1962) holding to be improper the Post Office Department regulation which permits a postal employee to be paid at a higher rate for higher level service before the employee meets the 30-day in each calendar year requirement at the higher level service provided for by law.

Undoubtedly, you are aware that bills were sponsored in the 86th Congress and referred to our committee for consideration (for example, H.R. 540 and H.R. 6825) which would have established a procedure much more liberal than the procedure adopted by the Post Office Department regulation. It is my understanding that the sponsors of the bills did not press for committee action on the assumption that the less liberal procedure established by the regulations was agreed to by the employees as an acceptable solution to the problem.

I believe it would be an unjustified hardship and a gross inequity to the employees to require the mandatory restoration of the 30-day in each year requirement at this time, without giving Congress an opportunity to consider legislation on this subject. Accordingly, I am sponsoring legislation immediately which

4 HIGHER LEVEL COMPENSATION FOR POSTAL EMPLOYEES

will give the Postmaster General authority to pay the higher level salary before completion of the 30-day requirement in those cases in which he deems such action to be advisable. This would permit continuation of the existing practice. A copy of the draft bill is enclosed.

It will be appreciated if you could withhold any action otherwise necessary to change the existing procedure until such time as Congress has had an opportunity to act on the matter. I have forwarded a copy of this letter to the Postmaster General for his information.

With kindest personal regards, I am
Sincerely yours,

DAVID N. HENDERSON, M.C.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, February 26, 1962.

B-138999.

HON. DAVID N. HENDERSON,
House of Representatives.

DEAR MR. HENDERSON: Your letter of February 19, 1962, concerns our decision to the Postmaster General dated February 1, 1962, B-138999, which held improper the Post Office Department regulation permitting a postal employee to be paid at a higher rate for higher level service before the employee meets the 30-day-in-each-calendar-year requirement at the higher level service provided for by law. You advise that you are sponsoring legislation immediately which will have the effect of validating the Postmaster General's regulation. You say that it would be an unjustified hardship and a gross inequity to the employees to make restoration for amounts heretofore paid under the regulation, and you ask that we withhold any action otherwise necessary to change the existing procedure until such time as the Congress has had an opportunity to act on the matter.

We recognize the probable hardship to employees in requiring restoration of funds and in compliance with your request we will withhold any action seeking recovery of funds paid under the regulation prior to the date of our decision until the close of the current session of the Congress. However, since our view is that the regulation involved does not comply with the existing statute, we do not have the authority to authorize the continuation thereunder of payments which in our opinion are in violation of the law. The Postmaster General is being advised accordingly.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

Mr. HENDERSON. Copies of these letters are in the files before each member of the subcommittee.

I am pleased to see that we have such an impressive group of people this morning who are interested in my bill. However, several of us are on rather tight schedules this morning and I urge the witnesses to be as brief as possible in order that we may conclude the hearings.

We will now hear representatives from the Post Office Department.

I am advised that Mr. Herbert Block, Director of the Compensation Division, is with us, and Mr. Adam Wenchel, Acting Deputy General Counsel of the Post Office Department.

Gentlemen, you may proceed.

**STATEMENT OF HERBERT BLOCK, DIRECTOR OF COMPENSATION
DIVISION, ACCOMPANIED BY ADAM WENCHEL, ACTING DEPUTY
GENERAL COUNSEL, POST OFFICE DEPARTMENT**

Mr. WENCHEL. Mr. Chairman, I am Adam Wenchel, Acting Deputy General Counsel. Mr. Murphy, who hoped to be with us this morning, found he could not be here. However, we have sub-

mitted the statement which he would have presented had he been here and we would like to have that entered in the record.

Mr. HENDERSON. Without objection, it is so ordered.
(The statement follows:)

PREPARED STATEMENT OF ASSISTANT POSTMASTER GENERAL
RICHARD J. MURPHY

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity to give you the views of the Post Office Department on H.R. 10265. This bill would validate, retroactively to the effective date, December 3, 1955, of section 204(b) of Public Law 68, 84th Congress (now codified as 39 U.S.C., sec. 3335(b)), the opinion of the Department as to the meaning of this section. The need for the bill stems from the fact that the opinion of the Department as to the meaning of this section is contrary to an opinion expressed in Decision B-138999, February 1, 1962, of the Comptroller General of the United States. As a result of that decision our regulations were invalidated.

39 U.S.C., section 3335(b), reads as follows:

"As the needs of the service require, the Postmaster General may assign an employee from time to time to perform, without change of compensation, duties, and responsibilities, other than the duties and responsibilities specifically set forth in his position description. If an employee is assigned for more than thirty days in a calendar year to duties and responsibilities of a salary level which is higher than the salary level to which his position is assigned, except to perform service in a relief capacity for a supervisor granted compensatory time pursuant to section 3573 of this title, the Postmaster General shall pay for the period of his assignment in excess of thirty days, a basic salary computed in accordance with the provisions of section 3559 of this title."

Prior to the cited decision of the Comptroller General, the Department was of the opinion that this section permitted the Department to pay an employee detailed to a higher level position at a rate of the higher level position in certain situations before 30 days of eligible service in a calendar year. This action seemed appropriate and legal on the following additional basis:

Section 807 of Public Law 68, 84th Congress, reads as follows:

"The Postmaster General is hereby authorized to issue such regulations as may be necessary for the administration of this Act."

39 U.S.C., section 501, through the clause numbered (1) reads as follows:

"In addition to his other duties the Postmaster General shall—

(1) prescribe rules and regulations that he deems necessary to accomplish the objectives of this title;".

Pursuant to the foregoing opinion, the Department has, from time to time, found circumstances in which payment at a rate of the higher level position for service therein, but before performance of 30 days of such service in the same calendar year, is necessary to accomplish the objectives of Public Law 68, 84th Congress. When it has found such circumstances, the Department has acted to authorize the payment. The earliest such actions were taken in the period immediately after the effective date of section 204(b), December 3, 1955. They preceded the issuance of any regulations for the administration of this section and were taken on an individual case basis. The first regulations that were subsequently issued in March 1956 incorporated one particular circumstance in which waiver of the so-called 30-day waiting period in the same calendar year was allowed.

I mention these matters of administrative history to highlight the fact that the departmental opinion under discussion is not recent. It does not go back only to the time during which the particular regulation declared invalid by the Comptroller General was under consideration in 1960. It goes back, instead, to the very beginning of the Department's administration of Public Law 68, 84th Congress. As experience in the administration of this law accumulated, additional circumstances justifying waiver came to light. When they did, the regulations were amended to include them. This process continued through the years, the most recent addition being issued in November 1961, more than a year after issuance of the particular regulation declared invalid by the Comptroller General. It came as a surprise, therefore, when the Comptroller General, more than 6 years after the law became effective, in ruling for the first time on this aspect of the law, based his declaration that a particular one of these regulations is invalid on his opinion that the Department lacks the authority to waive the 30-day waiting period in the same calendar year under any circumstances.

By the date of this Comptroller General's decision, the published regulations of the Postmaster General specified seven circumstances in which waiver was allowed. At this place in my statement, I am putting into the record a copy of the Postal Manual pages containing these regulations. On these pages the regulations are identified for ready consultation. Although these regulations plainly set forth the nature of the circumstances in which waiver was allowed, they may not always disclose the reason for the judgment that waiver was appropriate in these circumstances. Accordingly, I am also putting into the record an explanatory statement, with an example, for each of these circumstances. These explanatory statements are attached to the Postal Manual pages containing the regulations.

The Comptroller General's decision declared invalid the regulation in 756542a(4)(b). The last paragraph of the decision, containing this declaration, begins with an expression of the Comptroller General's opinion as to the meaning of section 204(b) which is contrary to the opinion of the Department underlying the issuance of all the concerned regulations. Therefore, the Department has necessarily suspended payments under all these regulations.

On February 19, 1962, Hon. David N. Henderson, House of Representatives, wrote to the Comptroller General, asking that the General Accounting Office withhold any action otherwise necessary to change the existing procedure until such time as the Congress has had an opportunity to act on the bill, H.R. 10265, which is now under discussion and which he introduced on the same date. On February 26, 1962, the Comptroller General informed Congressman Henderson that the General Accounting Office will withhold any action seeking recovery of funds paid under the regulation prior to the date of the cited decision until the close of the current session of the Congress, but that the General Accounting Office does not have the authority to authorize the continuation of payments under the regulation. On the same date, the Postmaster General informed the Comptroller General that, although the Department intends to adhere rigidly to the decision, it does intend to press for legislation which would permit the practices which the Comptroller General had found to be unlawful.

As matters now stand, therefore, unless the Congress enacts before the close of the current session either H.R. 10265 or some other bill having language of the same meaning, recovery will have to be undertaken of all payments made to employees under the regulation declared invalid since December 3, 1955, and the date of the decision of the Comptroller General declaring it invalid, February 1, 1962. It is estimated that these payments total about \$1½ million. A great number of different employees received these payments, which it would be necessary for them to refund. Section 316 of H.R. 10480, introduced on February 19, 1962, by Chairman Murray of the Committee on Post Office and Civil Service, House of Representatives, has language which, although worded differently than H.R. 10265, has the same meaning. Its passage, as part of the proposed Federal Salary Reform Act of 1962, supported by this administration, would have the same effect as the passage of H.R. 10265.

Moreover, unless either H.R. 10265 or section 316 of H.R. 10480 is enacted before the close of the current session of the Congress, employees will continue to be deprived of the benefits of the regulations which it has been necessary to suspend, and the Department will continue to be without authority either to lift the suspension of these regulations or to exercise its judgment as to other subsequently discovered circumstances in which payment of higher level compensation for service in higher level positions, before 30 days of such service in the same calendar year, may be necessary to accomplish the objectives of the Postal Field Service Compensation Act.

The Department needs the authority which H.R. 10265 would confer in order to administer equitably the position evaluation and pay administration plans established by the Postal Field Service Compensation Act of 1955, as amended. The circumstances set forth in the accompanying regulations illustrate the kinds of circumstances in which this authority would be used, and the explanatory statements attached to them illustrate the lines of reasoning that would underlie the use of this authority. They demonstrate that the Department would use this authority in a conservative and responsible manner. The Department understands and agrees with the evident intent of the Congress that, in the ordinary circumstances of assignment, from time to time, to the work of a higher level position, 30 days of such assignment in the same calendar year precede entitlement of the employee to payment at a rate of the higher level position. The Department would object to any proposal that this condition be removed as the general rule, for its removal as the general rule would be both unduly expensive and as destructive of the administrative discretion needed as the opposite and equally inflexible rule imposed by the Comptroller General's decision.

In conclusion, our reasons for supporting the passage of this bill may be summarized as follows:

First, it is necessary to prevent actions for the recovery of funds paid in the past to numbers of employees under regulations believed to be valid at the time of the payments.

Second, it is necessary to restore the benefits suspended by reason of the Comptroller General's decision.

Third, it is necessary to permit the Department to act reasonably on the circumstances coming to its attention in the future that are analogous to the circumstances set forth in the regulations now suspended.

For all these reasons, I wholeheartedly endorse both this bill and section 316 of H.R. 10480.

Thank you for this opportunity to express our views. I will be pleased to answer any questions that the subcommittee may have.

EXPLANATORY STATEMENTS

Postal Manual 756.542a(4)(a)

This regulation applies to an employee who is assigned recurrently and systematically to a different and higher level position than the one he occupies by reason of an official personnel action. For example, he might be occupying the key position of distribution clerk, R.P.O., level 5, but his regularly scheduled tour of duty provides for a majority of trips in the capacity of this key position and other trips in the capacity of the standard position of clerk in charge, R.P.O., level 6. His schedule might even be so constructed that he serves in the level 5 key position while traveling in one direction between two terminals on certain runs and serves in the level 6 standard position while traveling in the opposite direction between the same two terminals on the same runs.

Postal Manual 756.542a(4)(b)

This regulation applies to an employee who has performed, in the immediately preceding calendar year, more than 30 days of service in a different and higher level position than the one he occupies by reason of an official personnel action. For example, he might be an occupant of the key position of distribution clerk, level 4, who was assigned during the immediately preceding calendar year for 35 days of service in the standard position of distribution and dispatch expediter, level 5. For the last 5 of these days he received compensation at the applicable rate of level 5. In the succeeding calendar year he is again assigned to serve on certain days in the level 5 standard position.

Postal Manual 756.542a(6)(a)

This regulation applies to an employee who performs service in a postmaster position two, three, or four levels higher than the key position of clerk, third-class post office, level 2, which he occupies by reason of an official personnel action. For example, he might be a substitute employee occupying this level 2 key position, earning \$7.32 for 3 hours per day of service in it, who performs 2 days of service in the key position of postmaster, third-class office, level 6, during the absence on sick leave of the postmaster. On each of these 2 days the employee in the example conforms to the 8-hour work schedule of the postmaster. Without the regulation being explained, the employee in the example would be compensated in the amount of \$19.52 for each of these 2 days, if he *had not* already performed 30 days of higher level service in the same calendar year, and he would be compensated in the amount of \$17.38 for each of the same 2 days, if he *had* already performed 30 days of higher level service in the same calendar year. With the regulation being explained, the employee in the example would be compensated in the amount of \$17.38 for each of these 2 days, irrespective of whether he had already performed 30 days of higher level service in the same calendar year. The amount of \$17.38 is the daily rate of basic compensation that the employee would earn if he were to be promoted to the level 6 postmaster key position.

The regulation being explained was issued to prevent instances, like the foregoing example, in which an employee might receive a larger amount of compensation for replacing the postmaster than he could receive if promoted to the postmaster position.

Postal Manual 756.542a(6)(b)

An employee to whom this regulation was applicable performs service in a mobile organization when assigned to a higher level position than the one he occupies, by reason of an official personnel action, in a stationary organization.

For example, he might be occupying the key position of distribution clerk, level 4, in the outgoing mails section of a post office, but is assigned to the key position of distribution clerk, R.P.O., level 5, because of the absence from duty of the employee who was previously scheduled to make a particular trip. Timekeeping is performed in accordance with different rules for employees in mobile and stationary organizations. Without the regulation being explained, timekeeping would be performed in accordance with the stationary organization rules for the level 5 key position service, if it is performed before completion of 30 days of such service in the same calendar year, and would be performed in accordance with the mobile organization rules if it is performed after completion of 30 days of such service in the same calendar year. With the regulation being explained, timekeeping would be performed in accordance with the mobile organization rules for the level 5 key position service, irrespective of whether the employee had already performed 30 days of higher level service in the same calendar year.

The regulation being explained was issued to standardize the application of timekeeping procedures for service in mobile organizations and prevent the confusions attendant on the absence of such standardization.

Postal Manual 756.542a(6)(c)

This regulation, like *Postal Manual 756.542a(4)(b)*, was issued because the purpose of the general rule of 30 days of higher level service in a calendar year before entitlement to higher level compensation has been satisfied in the circumstance set forth by the regulation.

Postal Manual 756.542a(6)(d)

An employee to whom this regulation was applicable can perform service in the particular higher level position at only one time during a year and for only a short period at this one time. When called upon to perform this service, he makes an extraordinary contribution to meeting the most complex workload problem that the post office experiences. For example, he might be occupying, by reason of an official personnel action, the key position of distribution clerk, level 4, but is assigned during the Christmas period to the standard position of auxiliary foreman, Christmas, level 6. Without the regulation, there would be many instances in which employees like this example could not receive any pay recognition for their unusual service. Therefore, the regulation was issued to assure such recognition in all cases.

Postal Manual 756.542a(6)(e)

This regulation, like *Postal Manual 756.542a(6)(a)*, was issued to prevent instances in which an employee might receive a larger amount of compensation for replacing the postmaster than he could receive if promoted to the postmaster position.

MR. WENCHEL. We have Mr. Block here, the Director of the Compensation Division who will be glad, I am sure, to answer any questions which you may have.

MR. HENDERSON. Mr. Block, would you like to highlight the statement and then perhaps the members would like to ask you some questions.

MR. BLOCK. Essentially, we thought we had authority under the law to pay an employee for a period of duty in higher level positions without waiting for a 30-day qualifying period to expire under situations which we thought were appropriate.

For example, a situation in which a third-class office clerk took the place of an absent postmaster. We thought that the employee was entitled to the higher level compensation because he was performing all of the duties of the postmaster and there was no alternative in our estimation. We have also waived the 30-day requirement in situations where an employee from a post office, stationary installation, went aboard an R.P.O. car, railway mail car, and performed the duties of an R.P.O. clerk.

A stationary clerk is level 4 and an R.P.O. clerk is level 5. An R.P.O. clerk is given the level 5 primarily because of the hazards of the operation. He performs his duties in a rolling car and there are

frequent working conditions which take place aboard a car which are not the same as in a stationary installation.

We felt that that was a situation in which the employee should immediately receive the extra pay.

Those are just a couple of examples and we have a few others, if you would like.

Mr. HENDERSON. Mr. Daniels?

Mr. DANIELS. How long has this practice been going on of compensating such employees for these services?

Mr. BLOCK. On an individual basis, ever since 1956, questions like that have come up. We have waived the 30-day requirement on an individual basis since 1956.

In subsequent years, we issued regulations to cover the broad cases and as recently as 1960, we issued one broad coverage: for the third-class clerk covering for a postmaster; for a stationery clerk covering for an R.P.O. clerk; for an employee designated as a foreman of Christmas assistants; and for situations in which an employee, paid in the preceding year in a higher level, could carry over that credit for subsequent years.

Mr. DANIELS. Is this a correct statement then: If the employee performed the services of a higher level, even though he did not perform such services for 30 days in a current year, he was compensated for such services, since 1956?

Mr. BLOCK. That would be on an individual case basis and in some cases only. We cannot say all employees were covered.

Mr. DANIELS. But it has been done?

Mr. BLOCK. It has been done.

Mr. HENDERSON. What would be the Department's estimate of the amount of repayments that would have to be repaid by employees if the bill were not enacted in the light of the Comptroller's decision?

Mr. BLOCK. About \$1½ million would have to be repaid.

Mr. HENDERSON. What would be the estimate of the additional cost of the enactment of the bill?

Mr. BLOCK. It will be about \$250,000 a year.

Mr. HENDERSON. Mr. Johansen, do you have questions of the witness?

Mr. JOHANSEN. I want to apologize to the witness since I was talking to counsel trying to get myself filled in on a little background, but would the witness just state very briefly what cannot be done now that could be done if this bill were enacted? I may be asking the witness to repeat himself and I apologize for it.

Mr. BLOCK. Under the law as interpreted now by the Comptroller General, an employee who performs higher level work, for example, a level 4 clerk taking the place of an absent foreman, under the law he would have to serve 30 working days covering for that absent employee before he would be entitled to the higher level pay.

On the 31st day of higher level coverage, then he would be given the higher level pay.

Mr. JOHANSEN. Starting then, not retroactive?

Mr. BLOCK. Starting on the 31st day he would be entitled to higher level pay as though promoted to that job.

What we have done in a few situations is that we have said the employee was entitled to the higher level pay immediately and not on the 31st day.

Mr. JOHANSEN. Would this still make it discretionary with the Department?

Mr. BLOCK. The way Mr. Henderson's bill is written it would make it discretionary. We would be able to select those situations which we felt were unusual enough to warrant waiving the 30 days.

Mr. JOHANSEN. In other words, you would have discretion to do it if you saw fit and as it is now, you have no discretion under the Comptroller General's rule?

Mr. BLOCK. That is right, sir.

Mr. JOHANSEN. Is this a process that must be repeated each year? In other words, if it happens to me as an employee this year, I have to fulfill the 30 days and then I go back to my regular job after maybe a total of 2 months, and in those 2 months I am only paid at the higher level for 1 month under the existing situation?

Mr. BLOCK. That is right.

Mr. JOHANSEN. Whereas then, next year, if the same thing is repeated, the 30-day interval would still apply?

Mr. BLOCK. Yes; that is correct.

For example, we have had situations where a lower level employee covered for a higher level employee, say at the end of the year, and he started covering in November. The absent man was out sick with maybe an unusual operation, and he is out November, December, January, and February. The lower level employee could cover for him in November, and in December he would be paid at the higher level.

The way we have interpreted it in the past, we would let him continue drawing the higher level pay in January and February.

Under the ruling now of the Comptroller General, at the end of the year, December 31, he is finished with the higher level pay and has to start a brand new waiting period and not be paid in January even though he is doing the same job on a continuing basis.

Mr. JOHANSEN. I would think that would be ridiculous on its face.

What about the initial 30-day period? Would the Department be free to waive that?

Mr. BLOCK. Yes, sir.

Mr. JOHANSEN. The first time, the first year?

Mr. BLOCK. Yes, sir.

Under Mr. Henderson's bill, we would be permitted to waive it.

Mr. JOHANSEN. What was the original theory back of the 30-day period? Possibly it was a matter of a person's not having the experience or the qualifications?

Mr. BLOCK. That is right. It was a matter of developing into the job, giving management an opportunity to see how well he was doing the job.

Mr. JOHANSEN. He had the 30 days once. The fact that it ceases to be 1962 and becomes 1963, he does not lose the experience or whatever qualifications he gained by that 30 days, does he?

Mr. BLOCK. That is correct.

Mr. JOHANSEN. Thank you.

Mr. DANIELS. Mr. Chairman, I have one or two questions. You testified the additional cost would be \$250,000?

Mr. BLOCK. Yes, sir.

Mr. DANIELS. Per annum?

Mr. BLOCK. Yes, sir.

Mr. DANIELS. And that the amount of rebates involved was \$1 million?

Mr. BLOCK. About \$1½ million.

Mr. DANIELS. Is it the intention of the Comptroller General, if this law were not enacted, to seek rebates from all persons who were unjustly paid under his interpretation?

Mr. BLOCK. I would suggest you might ask the Comptroller General's representatives. They are present here.

Mr. DANIELS. What is the attitude of the Department on this legislation?

Mr. BLOCK. We are entirely in favor of it. We are very much interested in having it passed.

Mr. DANIELS. Thank you.

Mr. HENDERSON. I might ask the counsel a question.

Is it your opinion that if the Comptroller says that it must be re-collected, that burden will be on the Postmaster General and the Department?

Mr. WENCHEL. Yes, sir.

Mr. JOHANSEN. One further question.

Mr. HENDERSON. Yes.

Mr. JOHANSEN. Under existing law, is it optional with respect to the first 30-day waiting period? Is any discretion involved?

Mr. BLOCK. It was our interpretation that it was optional on management's part to waive it or require it. The Comptroller General said we had no such option.

Mr. JOHANSEN. Will it be optional for the first 30 days' waiting period now?

Mr. BLOCK. Under the proposed law; yes, sir.

Mr. JOHANSEN. Would you think there might be any possibility of discrimination or favoritism in the exercise of that option?

Mr. BLOCK. I do not think so because what we are trying to do is set up broad principles and regulations.

I have copies of our regulations that have been declared improper by the Comptroller General. These regulations I would like to submit for the record. They indicate what we are trying to do on a broad principle basis.

As an illustration, the stationary clerk going aboard an RPO car; it would be automatic under that kind of a situation and not a matter of some administrator's discretion.

Mr. JOHANSEN. It would be automatic that the pay started immediately?

Mr. BLOCK. If our regulations so provided.

In other words, it would be the Postmaster General who would decide how this would be applied and not a regional director, or not a postmaster. This would be the regulation and this is how it would have to be applied.

Mr. JOHANSEN. In other words, it would have to come to the Postmaster General for approval?

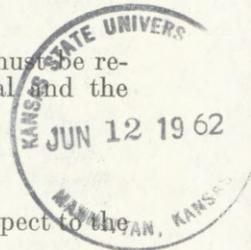
Mr. BLOCK. Not on an individual basis, but the Postmaster General would set a broad rule.

Mr. JOHANSEN. He would set up the guidelines as to those categories of situations in which it became effective immediately?

Mr. BLOCK. That is right, sir.

Mr. JOHANSEN. Thank you.

(The documents referred to follow:)



756.5 ASSIGNMENTS TO EXTRA DUTIES**.51 GENERAL ASSIGNMENT CONDITIONS**

As the needs of the service require, an employee may be assigned from time to time to perform duties and responsibilities other than the duties and responsibilities specifically set forth in his position description. Such assignments may be made under conditions set forth in part 714.

.52 SAME OR LOWER LEVEL POSITION

An employee may be assigned to a position in the same level or in a lower level, without change in compensation. If the detail extends beyond 90 days, a POD Form 50, reflecting the detail from regular duties, must be processed.

.53 POSITION UNDER ANOTHER SCHEDULE

Assignment of an employee to a position under another schedule may be made without change in compensation. See 756.52 for procedure if the detail extends beyond 90 days.

.54 HIGHER LEVEL POSITION**.541 Rate of Compensation**

When an employee performs the duties of a higher level position, except when he relieves a supervisor on compensatory time, he must receive higher level pay for all time spent in such work in excess of 30 days in a calendar year.

.542 Creditable Service**a. Qualifying Period****(1) In a Calendar Year**

Calendar year means January 1 to December 31. Eligible service in any level or levels above the salary level of the employee's position shall be included in accumulating the credit for 30 days of service in a higher level. Thus, a level PFS-6 employee who serves for 10 days in a position in PFS-8 and 20 days in a position in PFS-7 in a calendar year will have completed the required 30 days of service in a higher level. After completion of the 30 days of qualifying service in a calendar year, the employee is eligible to receive pay for services performed during the remainder of that calendar year in any higher level position.

(2) On a Day

Days mean working days. They need not be consecutive. Performance at a higher level for 4 hours or more on any one day shall count as a day for purposes of establishing credit toward the qualifying 30 days of service in a higher level. A holiday occurring during a period of assignment to a position in a higher level shall not count as a qualifying day unless service is actually performed at the higher level on the holiday.

(3) On a Trip

For employees in PTS assigned to road duty, trip value shall be used in computing the number of days creditable toward 30 days service in a higher level.

(4) In a Previous Calendar Year

(a) An annual rate employee, regularly scheduled on intermittent workdays or runs to perform the work of two separate positions in different salary levels, who has been assigned to the lower level position in accordance with the provisions of 757.162 shall not be required to requalify for higher level compensation if he received pay at the higher level during the preceding calendar year; if the qualifying period of 30 days was not completed in the preceding calendar year, the service credited in the higher level position shall be carried forward and combined with creditable service in any higher level position in the succeeding calendar year.

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- (b) An employee who has once established eligibility for higher level compensation is not required to requalify year after year. So long as he received compensation in the preceding calendar year for service in a level above the current level of his position, he shall be paid for all higher level service performed in the then current calendar year.

(5) Upon Promotion

When an employee who has been performing service in a higher level position or positions is promoted to a higher level position, all time creditable toward the 30 days of qualifying service in a calendar year in positions in levels above the level of the position to which he is promoted shall be applied toward the new period of 30 days of qualifying service in a calendar year required by reason of such promotion.

(6) Without Prior Qualifying Service

- (a) An employee in a third-class post office, who is designated to take charge of the post office while the postmaster is absent on approved leave or without leave or when there is a vacancy, shall be eligible immediately for higher level compensation upon assumption of the duties of the postmaster.
- (b) A post office employee who is detailed to road duty in an RPO or an HPO in a higher level position shall be eligible immediately for higher level compensation. Pay for service as a distribution clerk, RPO or HPO, PFS-5, shall be at the appropriate substitute rate. Pay for road duty in positions in PFS-6 or above shall be computed as if rendered in a surplus capacity.
- (c) An employee demoted to a lower level position shall, upon detail to a position in or at an intermediate level below the level from which demoted, be eligible immediately for higher level compensation.
- (d) An employee who is temporarily assigned to an authorized auxiliary supervisory position during the Christmas mailing period shall be eligible for higher level compensation.
- (e) An employee in a second-class office, other than an assistant postmaster, who is designated to take charge of the post office while the postmaster is absent on approved leave or without leave or when there is a vacancy, shall be eligible immediately for higher level compensation upon assumption of the duties of the postmaster.

b. Qualifying Position

- (1) An employee will receive credit toward the qualifying 30 days and resulting compensation thereafter for the performance of higher level duties if the duties are not a part of his defined position and, therefore, were not considered in the assignment of his salary level. For example, an assistant postmaster would not be paid at the postmaster's salary level while serving in the absence of the postmaster, because his defined position of assistant postmaster includes the duty of assuming complete responsibility and authority for the post office in the postmaster's absence.
- (2) Service at the higher level shall be in one or more positions which have been authorized, defined, and assigned to a salary level in the usual manner. To be credited with service at the higher level, the employee must perform all essential duties of the higher level position. Performance of a segment of the duties of another position does not necessarily mean that the employee is performing at the higher level.

stitutes and other employees who perform occasional service or who are called in only for short emergencies should not be counted in ordinary circumstances. When it is necessary to establish full-time equivalents from substitute man-hours used, the work-hours for the period under consideration should be counted on the basis of an 8-hour workday. When the work force varies as to numbers during a tour, the count should be determined from the largest number of persons supervised for at least 4 hours.

.153 Supervisory Responsibilities. Elements in supervision include responsibility for laying out the work for employees, training them in their assignments, reviewing their work, and effectively recommending personnel actions. Responsibilities limited to technical guidance and review, audit of work performance, or examining employees or functions are not supervisory responsibilities for purposes of position evaluation. The number of employees supervised is not a yardstick in evaluating supervisory positions to be used to the exclusion of other elements which bear on the level of supervisory responsibilities.

.16 EVALUATING MIXED ASSIGNMENTS

.161 Regularly Scheduled Every Day. When an annual rate employee is scheduled every workday (in PTS, every run) to perform the work of two separately defined positions in two different levels, he is placed in the position of the higher level. The duties of the position in the lower level, while included in his work assignment, represent extra duties in relation to his official position, and they do not affect the pay level of the employee.

.162 Regularly Scheduled on Intermittent Days in Two Positions. When an annual rate employee is regularly scheduled on intermittent workdays or runs to perform the work of two separate positions in different salary levels, he is placed in the position in which more than 50 percent of his time is spent. If he is placed in the lower level position, he will be paid in accordance with 756.544 for time served in excess of 30 days in a calendar year in the high level position. If the time is equally divided, he will be placed in the position in the higher level.

.163 Regularly Scheduled on Intermittent Days to More Than Two Positions. When an annual rate employee is regularly scheduled on intermittent workdays or runs to perform the work of more than two positions in different salary levels, and less than 50 percent of his time is spent in a single position, the total work assignment of the employee will be separately defined as a position and ranked in its appropriate salary level.

.164 Regularly Scheduled To Perform Work in Two Positions in the Same Level. When an annual rate employee is regularly scheduled to perform the work of two or more positions in the same salary level, he will be assigned to the position in which more than 50 percent of his time is spent. If the work is evenly divided between two positions, or if less than 50 percent of his time is spent in a single position, the work assignment of the employee will be separately defined and an appropriate title will be assigned.

.165 Relief Assignments. Where relief assignments are predicated on availability and not on a specialized background of experience in the particular positions in which the relief work will be performed, general rules on the evaluation of mixed assignments may not be applicable. Where actual differences in difficulty of duties and weight of responsibilities are not distinguishable as to level among the various positions in which the relief work is being performed, the relief assignments should be evaluated without regard to the fact that the assignments pertain to relieving incumbents of positions in different levels.

Mr. HENDERSON. Let me ask you a further question along that line. Suppose you had a clerk in level 4 who was assigned to a higher administrative position, let us say a level 6. At the time of that assignment, you could not determine that it would be necessary for him to work a full 30 days. It might be estimated that his working period would be 15 or 20 days and at that time, under the bill as proposed, you would have discretion as to whether to pay him or not.

If, in the same case, it was a certainty he would be working for 90 days, or 4 months, would you also have the discretion to begin the higher pay immediately on the first day of work?

Mr. BLOCK. Yes, sir. If we knew that the absent supervisor was going to be gone 90 days, under this bill we could issue a rule to start higher pay immediately.

What we do now, for each man who works higher level duty, a record is maintained. He might perform 2 days in February, 3 days in March, and 1 day in April, and so forth. We have a record maintained in each post office as to the higher level so that on his 31st day he starts receiving higher level pay.

It could be on a scattered basis.

Mr. JOHANSEN. It would have to be in the same calendar year, or the process starts all over again?

Mr. BLOCK. Correct, sir.

Mr. HENDERSON. That is under present law.

Mr. JOHANSEN. That is what I mean, yes.

Mr. HENDERSON. Mr. Daniels?

Mr. DANIELS. Would he be entitled to receive compensation for services performed in the higher level if he had worked less than 30 days?

Mr. BLOCK. Under present law?

Mr. DANIELS. Under present law, and what would it be under the proposed law?

Mr. BLOCK. Under the present law he would not be entitled to it until 30 days in 1 calendar year. Under the proposed bill, it would be based on the situation as outlined in our regulations. The Postmaster General would issue regulations indicating those situations in which 30 days would not be required.

Mr. DANIELS. Thank you.

Mr. HENDERSON. Thank you very much, gentlemen.

We appreciate the fine statement you have made and the brevity of it.

The next witness is Raymond H. Dixon, attorney-adviser for the Office of the General Counsel, General Accounting Office. He is accompanied by Mr. Charles E. Eckert and Mr. Max Hirschhorn.

STATEMENT OF RAYMOND DIXON, ATTORNEY-ADVISER, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY CHARLES E. ECKERT, LEGISLATIVE ATTORNEY, AND MAX HIRSCHHORN, ASSISTANT DIRECTOR OF AUDITS FOR THE POST OFFICE DEPARTMENT

Mr. DIXON. Mr. Chairman, I have a prepared statement. It is very short and I think it covers our position with respect to this matter and I would like to read it, if I may.

Mr. HENDERSON. Yes, sir.

Mr. DIXON. Mr. Chairman and members of the subcommittee. I am Raymond H. Dixon an attorney-adviser in the Office of the General Counsel, General Accounting Office. Accompanying me are Mr. Charles E. Eckert, legislative attorney from our Office of Legislative Liaison and Mr. Max Hirschhorn, Assistant Director from our Civil Accounting and Auditing Division.

We appreciate the opportunity of appearing before your committee during its consideration of H.R. 10265, proposing to amend 39 U.S.C. 3335(b).

That section provides, in pertinent part, that:

If an employee is assigned for more than 30 days in a calendar year to duties and responsibilities of a salary level which is higher than the salary level to which his position is assigned, except to perform service in a relief capacity for a supervisor granted compensatory time pursuant to section 3573 of this title, the Postmaster General shall pay for the period of his assignment in excess of 30 days, a basic salary computed in accordance with the provisions of section 3559 of this title.

In our decision B-138999, dated February 1, 1962, we considered the validity of section 756.542a.(4)(b) of the Postal Manual. That section then read, in pertinent part, as follows:

An employee who has once established eligibility for higher level compensation is not required to requalify year after year. So long as he received compensation in the preceding calendar year for service in a level above the current level of his position, he shall be paid for all higher level service performed in the then current calendar year.

We concluded in that decision that the foregoing postal regulation was invalid because it did not require the employee to perform 30 days of higher level service each calendar year in order to qualify for higher level pay, which, in our opinion, is required by the statutory provision. While other parts of section 756.542 were not involved in our decision any part thereof not meeting the 30-day qualifying period in the statute as interpreted in our decision would also be covered thereby and considered invalid.

As a result of our decision the Post Office Department seeks legislation permitting the exceptions represented by the foregoing regulations and in addition the validation of the overpayments resulting from the statute and our decision.

On March 15, 1962, we reported on H.R. 10265 to the committee. We pointed out therein that we understood that section 1, which proposes to add a sentence at the end of 39 U.S.C. 3335(b) granting the Postmaster General authority to waive the 30-day requirement of that section as he deems advisable, has for its purpose the reinstatement by the Postmaster General, effective on or after the date of enactment of H.R. 10265, of the regulations of the Postal Manual referred to above without a change in the existing language of that statutory provision. We believe that section 1 will accomplish that purpose. In addition it will permit the Postmaster General to make other exceptions as he deems advisable.

Section 2 of the bill has for its purpose the validation of payments made under the regulations in section 756.542 of the Postal Manual. We believe that section will accomplish the purpose.

The granting or denying of such discretionary authority to the Postmaster General as proposed in the bill is a matter of policy for consideration of the Congress. We do not oppose favorable consideration of the bill.

If there are any questions concerning this matter we shall try to answer them.

Mr. HENDERSON. Mr. Daniels?

Mr. DANIELS. No questions.

Mr. HENDERSON. Mr. Johansen?

Mr. JOHANSEN. Just one question.

I still want to get my own mind straightened out on this thing. As it is now, the first time an employee goes into a mandatory 30-day waiting period, the first time an employee goes into a higher level duty, the most objectionable feature of that is that it has to be repeated every calendar year; is that correct?

Mr. DIXON. That is right, sir. In the law it says, "in a calendar year."

Mr. JOHANSEN. Under the Henderson bill, there would not be the mandatory 30-day period for the first time, would there?

Mr. DIXON. The 30-day requirement still remains. The language in the existing statute is not changed at all.

Mr. JOHANSEN. The first 30-day waiting period is still in the statute?

Mr. DIXON. But the Henderson bill, H.R. 10265, will create an exception to the existing statutory language and allow the Postmaster General to issue regulations where he deems it advisable, that certain groups will not have to wait 30 days. They do not want to change the existing language regarding the 30-day requirement in the statute. That will stay, but it puts all the discretion in the Postmaster General to make these exceptions where he deems it advisable.

Mr. JOHANSEN. I am sure that the witness is not contradicting himself. I am sure it is the member up here who misses the point.

You say the 30-day requirement is still in the statute, but it may be waived by the Postmaster General?

Mr. DIXON. It may be waived if H.R. 10265 is enacted.

Mr. JOHANSEN. As it now stands, it may not be waived?

Mr. DIXON. That is right.

Mr. JOHANSEN. It is a transfer of discretionary power to the Postmaster General?

Mr. DIXON. In Public Law 68, Congress set up this 30-day requirement. That is in the Postal Service Compensation Act of 1955. Congress set up this 30 days and the Henderson bill will permit exceptions to the 30-day requirement required by the existing statute; yes, sir.

Mr. JOHANSEN. I was looking for a middleground, Mr. Chairman, between waiving the first 30-day waiting period, or making it discretionary.

Mr. DIXON. This legislation will do that; yes, sir.

Mr. JOHANSEN. That makes it discretionary?

Mr. DIXON. It makes it discretionary.

Mr. JOHANSEN. Would it be possible to have a provision that made it mandatory in the first instance and thereafter either discretionary or spell out specifically that once the initial 30-day waiting period has occurred, thereafter it shall not be required?

Mr. DIXON. It could be written that way but, as we understand this bill, it was desired not to touch the existing statutory provision. The Department may want to use it sometime and there will be instances, as I understand it, where people will be required, lots of them, to do 30 days of higher level service.

Mr. JOHANSEN. Now all of them are required?

Mr. DIXON. That is right, sir.

Mr. HENDERSON. May I clarify my own thinking on this as well as the record.

The procedure that has been followed in the past under the postal regulations has, in certain instances, not required the first 30 days' waiting period?

Mr. DIXON. Under their regulations; yes, sir.

Mr. HENDERSON. This has been going on, so to speak, in the Department for sometime?

Mr. DIXON. That is right.

Mr. HENDERSON. As well as the point that there have been some payments not made under the calendar-year requirement.

Mr. DIXON. That is right, sir.

Mr. HENDERSON. Does this clear that up?

Mr. JOHANSEN. It certainly explains why the Comptroller General ruled as he did, I would say.

Mr. DIXON. The statute requires 30 days in a calendar year. There is no discretion existing in the present language.

Mr. JOHANSEN. I am not criticizing the Comptroller General.

Mr. DIXON. I am just trying to explain our situation.

Mr. JOHANSEN. It is one more basis for my respect and admiration for the General Accounting Office.

Mr. HENDERSON. If we do not give discretion with regard to the first 30-day waiting period, would it be the position of the Comptroller General that those persons who had been paid under the former regulations and procedures of the Department would have to repay such amounts, such remuneration as they had received under those circumstances?

Mr. DIXON. It would, sir, because it is a violation of a statutory provision and none of us in the Comptroller General's office would have any authority to waive such overpayments.

Mr. JOHANSEN. Off the record.

(Discussion off the record.)

Mr. HENDERSON. The million and one-third dollars estimated includes both the overpayments that have been made for the first 30-day waiting period, and those payments that were made in violation of the law for the calendar period requirements?

Mr. DIXON. I presume it covers all cases.

Mr. HENDERSON. Covers all cases?

Mr. DIXON. Yes, Mr. Chairman.

Mr. HENDERSON. If we did not enact the bill as introduced, did not change the law and require the mandatory 30-day waiting period, we would have the additional problem of segregating out those payments which were paid in the first 30-day waiting period?

Mr. DIXON. I imagine it would be a big job.

Mr. HENDERSON. Further, would it be the position of the Comptroller General that these repayments would have to be made by the employees if the law is not amended?

Mr. DIXON. I think that we would have to exert every effort that is required of us by law to secure them, yes, sir.

Mr. HENDERSON. This requirement would be placed on the Postmaster General?

Mr. DIXON. Excuse me. There would be many instances where you would not be able to collect; employees will have died or have left the service, and in those cases probably you would never get the money.

Mr. HENDERSON. Employees still in the service, the burden would be on the Postmaster General to collect it back?

Mr. DIXON. Yes, sir.

Mr. DANIELS. Mr. Chairman?

Mr. HENDERSON. Mr. Daniels?

Mr. DANIELS. I have a couple of thoughts on this.

In the case of collection of overpayments, is it your opinion that it would create undue hardship in a good many cases by insisting upon them?

Mr. DIXON. I would not know that, but I imagine that you would get that argument immediately from the persons involved. That would be the first thing they would say.

Mr. DANIELS. Under the proposed legislation, where a man performs the services of a higher level grade and works for, let us say, 10 days or 15 days, does the proposed law permit the payment of the salary in the higher grade?

Mr. DIXON. If it is covered by these regulations. Right in the statute itself there is an exception that you cannot pay higher level compensation if a person is substituting for someone on compensatory time. It varies according to what their regulations provide.

Mr. DANIELS. It would depend on the regulations promulgated by the Postmaster General?

Mr. DIXON. Yes, sir; by the Postmaster General.

Mr. HENDERSON. Any further questions?

If not, thank you very much, Mr. Dixon.

The next witness is Mr. James H. Rademacher, assistant secretary-treasurer of the National Association of Letter Carriers.

Mr. Rademacher, we will be very glad to hear from you at this time.

STATEMENT OF JAMES H. RADEMACHER, ASSISTANT SECRETARY-TREASURER, NATIONAL ASSOCIATION OF LETTER CARRIERS

Mr. JOHANSEN. Mr. Chairman, I am not clear as to the status of Mr. Rademacher's legal residence at the present time but he was formerly from the State of Michigan, and we take considerable pride in that.

Mr. RADEMACHER. We both do.

Mr. HENDERSON. You may proceed, Mr. Rademacher.

Mr. RADEMACHER. Mr. Chairman, my statement, like the previous one, is brief and I would like to have the opportunity of reading it.

Mr. HENDERSON. Certainly.

Mr. RADEMACHER. Mr. Chairman and members of this subcommittee, my name is James H. Rademacher. I am assistant secretary-treasurer of the National Association of Letter Carriers, which is located in Washington, D.C., and which represents 155,000 letter carriers and other Federal workers.

I appear here today for the purpose of endorsing H.R. 10265, legislation sponsored by Congressman David N. Henderson, which would validate the long-standing opinion of the Post Office Department concerning certain provisions of Public Law 68, 84th Congress.

There are two principal reasons why our organization wholeheartedly endorses this legislation—(1) the serious effect on morale if employees were to be requested to reimburse the Post Office Department for salaries received which have been indicated by the Comptroller General to be invalid, and (2) the simple justice of employees receiving salaries commensurate with their increased responsibilities.

We have no means of knowing the amount of money which will be reimbursed by dedicated postal workers who were assuming higher level duties and being paid for same until such time as the Comptroller General ruled on February 1, 1962. Regardless of the amount of reimbursement to the Department, the very fact of requesting these same employees to now reimburse the Department would cause definite lowering of morale; in addition would cause employees to lose respect for those officials who administer the laws and policies of the Post Office Department.

Mr. JOHANSEN. Would the witness agree that maybe there is the same lack of respect where it happens to be an error on the Department's part with respect to income taxes which results in the citizen having to pay a little more?

Mr. RADEMACHER. I decline to agree with the gentleman from Michigan.

Certainly it is the responsibility of the Comptroller General to rule fairly and impartially on all matters submitted for his attention. However, when an interpretation of enacted legislation causes such a morale-shattering action, it behooves the Congress to make the necessary corrections if their original intent was to pay an employee detailed to a higher level position at the rate of that position prior to 30 days of eligibility in a calendar year.

The Department undoubtedly acted in good faith and it appears that it is now the responsibility of this committee to take corrective action and we are indeed pleased that Congressman Henderson has seen fit to introduce this legislation, and further that this subcommittee is making a determined effort to establish the important factors surrounding this problem.

The second reason for this organization wholeheartedly endorsing the Henderson measure is our keen desire to have our members, who serve in a supervisory capacity, paid for their increased responsibility. It is not as often as we would like to have it that a letter carrier receives recognition by being placed in a position of higher responsibility either on a temporary or permanent basis. In some instances if a letter carrier is selected for performance of duties in the higher level, this is the only recognition that he receives through his career and although his appointment may be on a temporary basis, he is appreciative of the recognition that he has received. It is possible because of the length of service and age of a letter carrier that his recognition in such appointments be only temporary, and, for that reason and others, it is important that he be paid a pay equal to the responsibilities which he has undertaken.

The President of the United States in his many appeals to the Congress relative to the passage of pay reforms has stated "too many Federal employees are underpaid with proportion to their responsibilities." Further, in his recommendations urging pay reforms, the President has said "there should be equal pay for substantially equal work and pay distinctions shall be maintained in keeping with work and performance distinctions."

Our organization feels that an employee in a lower level who has been asked to assume the responsibilities of the employee in the level of management should be paid commensurate wages from the onset of such appointment and not after a certain period of time. Not only would failure to provide commensurate wages be degrading to the higher level official, but it would not encourage incentive, enthusiasm, or initiative on the part of the appointee.

We trust that this subcommittee will find it possible to render a favorable report on H.R. 10265 in order to prevent the necessity of requesting reimbursement of alleged invalid payments from already underpaid postal workers. In making this plea we want to also commend those responsible for not placing an effective date on the Comptroller General's Decision B-138999 until such time as Congress reevaluates this entire matter. We want to thank the committee for providing us with this opportunity to appear on behalf of his meritorious legislation.

Mr. HENDERSON. Are there any questions?

Mr. JOHANSEN. I would like to ask a question of counsel if he can throw some light because of the qualifying clause in the last sentence which our witness read. Is there any question it was the intent with respect to the first instance that they should not be paid prior to the 30-day period? Was that not clearly the intent of the earlier law?

Mr. MARTINY. As far as I can ascertain I believe it was the intent not to pay them during that first 30 days.

Mr. JOHANSEN. So that what is under consideration here, so that we can understand it, is that that intent is going to be changed in this law?

Mr. MARTINY. I might add that the existing regulations do require in most cases that they perform the first 30 days before they get any higher level pay. It is the very minor exception where they get the higher level pay without performing the higher level service for 30 days.

Mr. JOHANSEN. Would not the reverse be true under this legislation and would it not be the minor exception that they did not get paid at the higher level for the first 30 days?

Mr. MARTINY. The Department has stated in their report that they intend to follow the regulations that were in effect before the decision of the Comptroller General was rendered.

Mr. JOHANSEN. Then the enactment of this bill would not be construed as making mandatory the payment at the higher level for the first 30 days? I wonder if somebody from the Department would comment on that?

Mr. BLOCK. Our intention is to apply the regulations as we have now written them, and in many, many instances 30 days will still be required. In a few instances 30 days will not be required.

Mr. HENDERSON. You would not interpret the enactment of this bill as meaning that you would have to pay anyone in the past for services they had not been paid for?

Mr. BLOCK. No; this would be on a prospective basis.

I might also add that the way we viewed the law before the Comptroller General's decision, it meant to us that after 30 days a mandatory requirement set in and a man must be paid for the 31st and 32d and so day of performance. The law only prescribed the length of time after which it must be paid.

Mr. JOHANSEN. It also prohibited the time in which it could not be paid, the first 30 days?

Mr. BLOCK. That was the opinion of the Comptroller General. It was our thought that the law only set the time in which it must be paid and any time prior to that was discretionary.

Mr. JOHANSEN. You would still regard it as discretionary?

Mr. BLOCK. If Mr. Henderson's bill is passed; yes.

Mr. JOHANSEN. But you will not construe it as being mandatory to pay it during the initial 30 days?

Mr. BLOCK. In some situations we would make it mandatory that we pay it and in some it will not be. It will be spelled out in our regulations.

Mr. WENCHEL. I think it would be our interpretation it would not be mandatory. We will exercise our discretion to pay it in some instances but it will not be mandatory.

Mr. JOHANSEN. If you are placed under pressures to pay it, will you have any leg to stand on in refusing it?

Mr. BLOCK. Yes. We will spell out in our regulations clearly, we hope, the situations in which payment will be made immediately. Other situations will require 30 days. For instance, we may have a distribution clerk, level 4, who has never previously covered for an absent foreman. Normally we would expect him to put in 30 days, both for his own help to become acquainted with the work and to give us an opportunity to observe him at the work. We would require 30 days.

There are other situations in which a man immediately does the full scale of the job and he undertakes it under all conditions of the job. There is no question that he is performing the job at level 5.

Mr. JOHANSEN. And he assumes all the hazards of the job?

Mr. BLOCK. Yes.

Mr. HENDERSON. Is that Mr. Rademacher's position?

Mr. RADEMACHER. Yes. I agree with Mr. Johansen's statement that when you allow a policy to be discretionary there is some element of suspicion. Here we have a policy set by the Comptroller General that if the supervisor has a compensatory day off a level-4 man cannot receive the pay of level 5 while performing those duties. That is an exception. And there is the other exception Mr. Block gave that if the man is not qualified he should not receive the higher pay. We disagree with that. We feel in order to have incentive you should pay a man promptly when he is a supervisor. But that is for you to determine.

Mr. JOHANSEN. I am trying to establish the legislative intent. This member, at least, does not believe this proposed legislation makes mandatory the immediate increase in pay.

Mr. RADEMACHER. That is our sentiment.

Mr. HENDERSON. I would like to ask Dr. Block if he can advise the committee if the Postmaster General has any plans at the present time to change the rules and regulations from what you have been operating under?

Mr. BLOCK. No; we have no plans to change the regulations at all. We feel they adequately cover the situation. We would like to have the 30-day waiver apply.

Mr. HENDERSON. Go right ahead, Mr. Rademacher.

Mr. RADEMACHER. I would like to call your attention to the closing paragraph of my statement, which I think should be emphasized. We want to commend those responsible for not placing an effective date on the Comptroller General's decision until such time as Congress evaluates this entire matter.

Mr. HENDERSON. I can say the Comptroller General very promptly, at my request, advised he would withhold this matter until we could have hearings and determine what we would do on this.

One further question to clarify your statement on page 2, where you say, the Congress can make the necessary corrections if their original intent was to pay an employee detailed to a higher level position at the rate of that position prior to 30 days of eligibility in a calendar year.

I would like to add as author of the bill that without concluding that it was Congress' original intent, in the light of what has actually been done and the inequities or hardships that would be inevitable in carrying out the Comptroller General's decision, it was my thinking the Congress should enact this legislation whether or not it was the original intent of Congress, so long as we keep it within the strict bounds that I think the testimony this morning has shown it would be kept.

Mr. JOHANSEN. My feeling is we should make clear the present intent if we amend this, and I agree with all the witnesses there should not be an enforced collection of any of these alleged overpayments.

Mr. HENDERSON. Thank you very much, Mr. Rademacher.

The next witness is Mr. John F. O'Connor, legislative director of the United Federation of Postal Clerks.

STATEMENT OF JOHN F. O'CONNOR, LEGISLATIVE DIRECTOR OF THE UNITED FEDERATION OF POSTAL CLERKS

Mr. O'CONNOR. Mr. Chairman and members of the subcommittee. For identification purposes and the record I am John F. O'Connor, legislative director of the United Federation of Postal Clerks with offices at 817 14th Street, NW., Washington, D.C.

The name of our organization is a new name that came about as a result of recent mergers of the National Federation of Post Office Clerks, the United National Association of Post Office Craftsmen, the National Postal Transport Association and several locals of the United Postal Workers. At this time we represent approximately 145,000 post office clerks throughout the country.

We desire to express our appreciation to Congressman Henderson for the introduction of H.R. 10265 and to the chairman for scheduling early hearings.

We are wholeheartedly in favor of the objective of H.R. 10265 to provide that employees who are called upon to perform higher level duties and responsibilities shall be compensated at the salary level of that higher level position without undue delay. Many hundreds of our members are called upon to perform this type of duty during the year and we have always felt that they were being penalized when called upon to qualify for 30 days prior to the time that they might receive the higher level salary.

We have nothing but commendation for the action of the Post Office Department in paying these employees after the expiration of

the first 30 days, rather than forcing them to qualify each calendar year.

H.R. 10265, under its present provisions, permits the Postmaster General, if he feels it advisable, to have an employee's salary computed at the higher rate of pay without the necessity of qualifying each calendar year.

We have nothing but the highest regard for the integrity of the present Postmaster General. However, the authority that would be granted to him under this bill would in the course of events be transmitted to other postal officials. We have found that in altogether too many instances some postal officials do not use authority granted to them in what might be considered a just and kindly manner.

We would, therefore, suggest that an amendment be made to the bill to provide that an employee assuming higher level duties and responsibilities as a supervisor or otherwise be paid immediately for those higher level duties and responsibilities on the basis of the salary of the position he is occupying temporarily. We feel this would accomplish the same purpose. We feel that an employee who is called upon to perform these duties and responsibilities is a well-qualified employee, otherwise the officials in charge of that particular post office would not select said employee.

Supervisors when appointed to their positions immediately receive the salary of that position, although they may serve a probationary period. We feel that the same would be true under section 204(b) of Public Law 68 which H.R. 10265 is designed to amend.

Another problem which our membership has continuously drawn to our attention is that of clerks in small offices replacing postmasters. In so doing they are paid at an hourly rate which is less than their usual hourly rate of pay due to the fact that a postmaster is on a 48-hour week and the clerk is on a 40-hour week. We believe that this should be remedied to the effect that a clerk so replacing a postmaster shall not receive less than his hourly rate of pay of his clerical job.

We appreciate very much the opportunity to present our viewpoint to the committee.

Mr. HENDERSON. Mr. O'Connor, is there any brief statement you would like to make?

Mr. O'CONNOR. Yes, Mr. Chairman.

In my statement I do draw attention to one or two amendments we feel might be helpful.

First, we feel that the payment to employees performing higher level employment should be paid the same as in the case of supervisors, who are paid immediately at the higher rate of pay.

I also draw attention to the situation in small offices where employees are replacing postmasters and in some cases receiving less pay due to the number of hours. The postmaster is on a 48-hour week and the clerk is on a 40-hour week.

Mr. HENDERSON. Mr. O'Connor, I certainly would like to assure you that the committee will consider your proposed amendment to the bill and at the proper time may we assume that if we did not put that amendment in we would still have your support for the enactment of the bill?

Mr. O'CONNOR. We do support the bill enthusiastically. It is an excellent bill. However, we have some problems we wanted call to the committee's attention.

Mr. HENDERSON. Do you have any estimate of the amounts that would have to be repaid by postal employees if we do not enact the bill?

Mr. O'CONNOR. No. The information we have is isolated. The Post Office Department is in better position to know the exact amounts. We do hear of them, however.

Mr. HENDERSON. You do know it would be a hardship for them to have to repay the amounts?

Mr. O'CONNOR. Yes. Some have written to us and expressed alarm at the Comptroller General's decision.

Mr. HENDERSON. Any questions?

Mr. JOHANSEN. No questions.

Mr. HENDERSON. Thank you very much, Mr. O'Connor.

Mr. O'CONNOR. Thank you.

Mr. HENDERSON. The next witness is Mr. Everett G. Gibson, legislative director and secretary of the National Federation of Post Office Motor Vehicle Employees.

**STATEMENT OF EVERETT G. GIBSON, LEGISLATIVE DIRECTOR
AND SECRETARY OF THE NATIONAL FEDERATION OF POST
OFFICE MOTOR VEHICLE EMPLOYEES**

Mr. GIBSON. Mr. Chairman and members of the subcommittee, my name is Everett G. Gibson. I am the legislative director and secretary for the National Federation of Post Office Motor Vehicle Employees, affiliated with the American Federation of Labor and Congress of Industrial Organizations. Our national office is located at 412 Fifth Street NW., Washington, D.C.

On behalf of our membership, we want to thank you, Mr. Chairman and the members of this committee, for scheduling hearings on H.R. 10265, providing that our members will be paid the higher salary level pay after completing 30 days in the higher salary level.

We endorse H.R. 10265 and sincerely hope that your committee will report H.R. 10265 favorably to the full committee and that this legislation will be enacted during this session of Congress.

Mr. Chairman and members of the committee, I want to thank you for allowing me this opportunity to appear before you and give the approval of this legislation in behalf of our organization.

Mr. HENDERSON. Are there any comments you would like to make, Mr. Gibson?

Mr. GIBSON. We hope the committee will report it to the full committee and that it will be enacted.

Mr. HENDERSON. Any questions?

Mr. JOHANSEN. No questions.

Mr. HENDERSON. The next witness is Mr. Daniel Jaspán, legislative representative of the National Association of Postal Supervisors.

**STATEMENT OF DANIEL JASPAN, LEGISLATIVE REPRESENTATIVE
NATIONAL ASSOCIATION OF POSTAL SUPERVISORS**

Mr. JASPAN. Mr. Chairman and members of the subcommittee. My name is Daniel Jaspán. I am the legislative representative of the National Association of Postal Supervisors, composed of 26,000 supervisors in the postal field service. Our association has members

in each of the 50 States and in Puerto Rico and the Virgin Islands, including supervisors in the motor vehicle and maintenance service.

We are grateful to Congressman Henderson for introducing this bill to correct an inequity caused by an adverse ruling of the Comptroller General. The passage of legislation on this subject will be most helpful to postal employees in many salary levels.

It has been our contention that the original interpretation of section 3335(b) of title 39, or section 204(b) of Public Law 84-68, was not in accordance with the intent of the Congress. The part of this paragraph which begins "If an employee is assigned for more than 30 days in a calendar year to duties and responsibilities, etc." could be interpreted in more than one way. We feel that the meaning intended was, that if an employee completed his 30 days in any calendar year, rather than in every calendar year, he was to receive the higher level pay for the time after 30 days necessary to qualify. It certainly does not make sense, if an employee is detailed to higher level duties—such as from clerk's duties to foreman's duties for 30 days ending December 31—that he should not receive the higher level pay beginning the 1st day of January.

We also feel that the 30 days mentioned in the law was intended to be calendar days rather than working days, inasmuch as it takes at least 6 weeks to qualify for higher level pay under "working days."

We would like to suggest an amendment to this bill to strike out "may" and substitute "shall" on line 5 of page 1 of H.R. 10265, and to strike out the words "as he deems advisable" on lines 5 and 6. There are several reasons for this request.

First, if we keep in mind that, upon promotion to a higher level, the employee is paid the higher level salary from the first day, it does not seem reasonable to waive this method of payment in the case of employees detailed to higher level positions. Inasmuch as these employees, too, are performing the higher level duties, and Public Law 68 of the 84th Congress states in section 201(b), or section 3501(b) of title 39, that "in ranking positions, the Postmaster General shall apply the principle of equal pay for substantially equal work" we feel that the higher level pay should commence from the first day. Since they are performing the higher level duties, they should receive the higher level pay.

We realize that this bill grants the Postmaster General authority to pay at the higher level from the first day, but we are afraid of administrative difficulties. Since there are 15 regions, it is possible that the higher level pay will be permitted in some regions and denied in others. In addition, it is possible that the present Postmaster General will grant the higher level pay and a future Postmaster General will decide that the 30-day qualifying period in each calendar year must be observed. A definite stand by the present Congress would eliminate the possibility of confusion and inequities.

In more than one instance, we have found that employees were detailed to higher level duties for almost 30 days and then returned to their regular positions. These employees could be used indefinitely in higher level positions for periods of less than 30 days in each calendar year and never qualify for the higher level pay. Payment at the higher rate from the first day of detail to higher level duties would prevent this inequity.

Section 2 is extremely important to all employees who have received the higher level pay without qualifying for 30 days in each calendar year, since it would relieve them from paying back what the Comptroller General has ruled is, in effect, an overpayment. We hope that this section will be a part of the bill enacted into law.

Many thanks on behalf of the members of the National Association of Postal Supervisors for the privilege of appearing before this subcommittee to state our views. We hope that there will be immediate action on this vital legislation.

There are a few points I would like to highlight.

Mr. HENDERSON. Go right ahead.

Mr. JASPAN. There is a difference in interpretation of this law, like many other laws, where it says "if an employee is assigned for more than 30 days in a calendar year" and so on. We do not think that means in every calendar year, as it has been interpreted, but "a" can be one, and that is our idea of it. It does not make any sense if a man works at the end of a year and continues the next year that he would have to start all over again.

Mr. JOHANSEN. Is it your idea that this bill would correct that?

Mr. JASPAN. Yes, if properly interpreted.

We are also asking that it be mandatory because we are afraid we will get 15 regional directors interpreting it 15 different ways unless it is spelled out. We would like to have it mandatory. Mr. O'Connor and I do not always agree but we do in this case. When a man is assuming the duties of a higher level we feel he should be paid from the first day.

Mr. JOHANSEN. There has been considerable testimony here by the Department and others that the effect of this bill, if enacted, would not be to make it mandatory or automatic that there be no 30-day period in any instance. Is that your understanding of the effect of the bill?

Mr. JASPAN. The bill as it reads, that would be the effect of it. It would be up to the Postmaster General.

Mr. HENDERSON. You feel the bill should be amended by striking out "may" and substituting "shall" on line 5 of page 1 of H.R. 10265?

Mr. JASPAN. Yes, and striking out the words "as he deems advisable" on lines 5 and 6.

Also, we feel Congress meant "30 days" to be calendar days rather than working days, but the Post Office Department decided that was 30 working days, which is 6 weeks. The people have had to work 6 weeks rather than 30 calendar days.

As far as paying back the money, you can see what difference that makes. Thirty working days means about 1½ months' pay, and that is a considerable amount of money.

Mr. HENDERSON. As far as paying the money back, the bill would take care of that?

Mr. JASPAN. Yes, and we are very happy about that.

Mr. HENDERSON. It has been the interpretation in the past of the Postmaster General that the 30 days in the law meant 30 working days; is that correct?

Mr. JASPAN. Yes, and that was an interpretation of the Post Office Department with which we did not agree.

Mr. HENDERSON. Has it been uniformly applied in their interpretation?

Mr. JASPAN. Yes, sir.

Mr. HENDERSON. You do not know of any instances where they have paid some employees for 30 calendar days?

Mr. JASPAN. No, sir. We believe the Congress intended it to be a calendar month rather than 30 working days. We also have cases where people have been working 28 or 29 working days in 1 year and had to start all over again the following year, and this practice has been going on.

Mr. JOHANSEN. Sometimes I suspect it is difficult for anyone, including Members of Congress, to know exactly what Congress did intend.

Mr. JASPAN. I agree with you sincerely.

Mr. HENDERSON. Mr. Jaspán, with regard to your statement on the 15 regions, is it your belief that whatever action we take should be uniform throughout the postal service? I am sure that is the intent of the Members of Congress and I believe from the testimony of the Department witnesses that are on record in this regard it is also the intent of the Department, and certainly the committee would be glad to make this clear in our report in regard to uniform application.

Mr. JOHANSEN. I think that is important because otherwise you are unfair to the employees and the Department itself may get into some hot water.

Mr. JASPAN. That is what we are afraid might happen because there is a danger of misinterpretation.

Mr. HENDERSON. Any further comments?

Mr. JASPAN. Not except we would like to thank you for your interest in this because this is a very beneficial bit of legislation and we hope it will be passed very quickly.

Mr. HENDERSON. I assure you at least in the executive session the committee will fully discuss your suggestion that we amend the bill to make it mandatory, but in the event we do not do that, will the record show you would still support the bill?

Mr. JASPAN. Yes, because this is a humanitarian bill, particularly section 2, and this would clarify it.

Mr. HENDERSON. Thank you, Mr. Jaspán.

Mr. JASPAN. Thank you.

Mr. HENDERSON. The next witness is Mr. John MacKay, president of the National Postal Union.

STATEMENT OF JOHN W. MacKAY, PRESIDENT, NATIONAL POSTAL UNION

Mr. MacKAY. Mr. Chairman and members of the subcommittee, my name is John W. MacKay. As president of the National Postal Union, I am privileged to represent approximately 40,000 postal workers affiliated in over 400 local unions in 46 States, the island of Puerto Rico, and the District of Columbia.

We are grateful, Mr. Chairman and members of this subcommittee, for these speedy hearings on H.R. 10265, a bill to authorize the Postmaster General in his discretion to pay increased basic salary to postal field service employees for services performed before the expiration of 30 days following their assignments to duties and responsibilities of higher salary levels, and for other purposes. We particularly appreciate your understanding of this situation, Mr. Chairman, and

your immediate intercession to prevent recovery of funds from postal employees who could ill afford it.

The Postmaster General in applying the stated basic principle of Public Law 68, 84th Congress, to wit: "equal pay for equal work," promulgated regulations permitting payment for higher level service to employees who had already qualified by the completion of 30 days in such service during a prior calendar year. Unfortunately, the Comptroller General of the United States disagreed with this interpretation and application. On February 1, 1962, the Postmaster General was advised that part 756.542a(4)(b), which provided for such payment was invalid, and he was instructed to take immediate steps to revise the section in accordance with the decision of the Comptroller General.

At your request, Mr. Chairman, the Comptroller General has agreed to withhold any action seeking recovery of funds paid under part 756.543a(4)(b) prior to his decision of February 1, 1962, until the close of the current session of Congress. However, the Comptroller General further stated that he does not have the authority to authorize the continuation of payments under part 756.542a(4)(b).

H.R. 10265 proposes to confer upon the Postmaster General discretion to pay increased basic salary to postal field service employees under the conditions hereinabove described in part 756.542a(4)(b) and to validate such payments already made. We are in complete accord with this measure and urge its enactment into law during the 87th Congress.

However, we would like to call to the attention of this subcommittee the fact that higher basic salary payment for services performed in higher levels has not been paid to employees engaged therein since the Comptroller General's directive. We would suggest consideration by this subcommittee on a provision in H.R. 10265 to compensate postal field service employees who have rendered such services since February 1, 1962.

May we again express our sincere appreciation for your understanding of and speedy action in seeking the enactment of this emergency legislation. Thank you.

Mr. JOHANSEN. I would like to ask if the representatives of the Department have any comment to make on this last suggestion of the witness?

Mr. BLOCK. As a result of the Comptroller General's decision no payments were made after the date of that decision, and if the amendment proposed by Mr. MacKay were to be enacted we would have to undertake the job of determining just what employees were entitled to the higher level pay.

On the question of the fairness or propriety of it, I could not comment on that.

Mr. JOHANSEN. Could you comment on whether the process of acquiring that information would be feasible?

Mr. BLOCK. It would not be difficult.

Mr. HENDERSON. It might be well at this point to insert in the record the Department's order with regard to suspension of payments of February 17, 1962. Without objection, it will be placed in the record at this point.

(The order follows:)

HIGH LEVEL COMPENSATION

Pending further notice, payment of additional compensation for performance of higher level service will be suspended, except in cases where employees have completed 30 days of higher level service during calendar year 1962. This instruction is applicable to all higher level service performed on and after February 17, 1962.

Time served in higher level positions, with or without higher level compensation, on or after January 1, 1962, shall be creditable toward satisfaction of the 30-day requirement in calendar year 1962. Such service shall be appropriately recorded on form 1322 for each employee affected by this ruling. Postal Manual instructions to the contrary are suspended.—Bureau of Personnel, March 8, 1962.

Mr. JOHANSEN. I am sure that there is no implication of criticism of the Department for having suspended payments after the decision of the Comptroller General.

Mr. WENCHEL. If I may say so, we had no alternative.

Mr. JOHANSEN. Absolutely none.

Mr. HENDERSON. Certainly there could be no criticism of the Department having suspended payments after the Comptroller General's decision.

Thank you very much, Mr. MacKay. The subcommittee will certainly consider your recommendations.

Mr. MACKAY. Thank you.

Mr. HENDERSON. The next witness is Mr. Ross A. Messer, legislative representative of the National Association of Post Office and General Services Maintenance Employees.

STATEMENT OF ROSS A. MESSER, LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF POST OFFICE AND GENERAL SERVICES MAINTENANCE EMPLOYEES

Mr. MESSER. Thank you, Mr. Chairman and members of the committee, for the opportunity to appear before you this morning.

I would like to place our organization on record as endorsing the provisions of H.R. 10265. It is badly needed to correct the ruling of the Comptroller General over the interpretation of section 204(b) of Public Law 68.

We would also like to endorse the proposed amendment to make it retroactive to the date that the payments were stopped. Many of those men have continued performing the same duties they were performing the day their pay was reduced back to their original salary status.

Mr. JOHANSEN. The witness, I believe, wants the law corrected rather than the ruling?

Mr. MESSER. That is right, so that it will take care of the adverse ruling. We would also like it retroactive to the date it was discontinued.

Mr. HENDERSON. Thank you very much, Mr. Messer. Did you have a prepared statement?

Mr. MESSER. No, sir.

Mr. HENDERSON. Thank you very much.

Mr. MESSER. Thank you.

Mr. HENDERSON. The next witness was to be Mr. Ashby Smith, president of the National Alliance of Postal Employees.

Mr. Smith could not be with us but at this point in the record his statement will be inserted.

(The statement follows:)

STATEMENT OF ASHBY G. SMITH, PRESIDENT, NATIONAL ALLIANCE OF POSTAL EMPLOYEES

Mr. Chairman and members of the subcommittee. Thank you for the privilege of bringing to you and the honored members of this committee the views of the National Alliance of Postal Employees on the legislative proposals before you.

My name is Ashby G. Smith. I am the president of the National Alliance of Postal Employees. We maintain offices at 1644 11th Street, NW.

Enrolled in our membership are more than 25,000 postal employees, situated in 113 branches in 46 States.

Mr. Chairman, members of this august committee, I wish to communicate to you the endorsement of H.R. 10265 as introduced by the Honorable David Henderson.

The purpose of this legislative proposal is to provide for the payment of basic salary of higher level positions computed in accordance with section 3559(b) of title 39, United States Code, at the discretion of the Postmaster General to postal field service employees assigned to such higher level responsibility.

It is our view that the proposed legislation is directed to an efficient and productive postal service. The proposal is in keeping with sound operating procedures and proven personnel practices. No single factor could be more disruptive, more demoralizing, and more frustrating to postal management and postal employees than to embrace the detail to a higher level in a vacuum or to deny the validity of its worth by blurring the subject of higher level pay.

Section (2) of H.R. 10256, in effect, provides for retroactive protection for higher level pay received prior to the enactment of the instant proposal. This, too, we endorse. Otherwise, the present ruling by the Comptroller General will apply to such payments. Certainly, such action, legality notwithstanding, would reduce postal operations to shambles. We can well foresee the response of an unwilling employee assigned to increased responsibility but denied the increased remuneration.

It is well to note the original basis for the granting of higher level pay. Postal management, confronted with the unwillingness of employees to assume additional responsibility, the unwillingness to take the risk of abuse or ridicule, the unwillingness to stand among men as equals paywise and simultaneously exercise managerial authority in name only, felt moved to remedy a serious difficulty. These were the factors which motivated the approval to pay higher level salaries for higher level responsibilities.

As the image of the so assigned employee was enhanced, so the image of management obligation was enhanced. As the recognition to the assigned employee was heightened, so the desirability for such assignments heightened.

This, then, resulted in a reversal of the managerial experience. Under the prior system, the responsibility evolved not upon the best qualified, but upon those either arbitrarily assigned or those lacking the seniority or aptitude.

In supporting H.R. 10265, we recommend one change which treats with the discretionary power of the Postmaster General. While we are tremendously pleased with the present administration in the Post Office Department, we are mindful of the permanency of statutory authority. Therefore, we recommend that in line (5), page 1, the word "may" be changed to "shall" and that the clause "as he deems advisable" be stricken.

Assuming that the postal laws and regulations are sufficient to govern the utilization of the proposed authority, we feel it unnecessary to further circumscribe, or to render more dubious, the compensation for such assignment through further reiteration of powers presently inherent in administrative authority.

Mr. HENDERSON. The next witness is Mr. James K. Langan, operations director, Government Employees' Council, AFL-CIO.

STATEMENT OF JAMES K. LANGAN, OPERATIONS DIRECTOR,
GOVERNMENT EMPLOYEES' COUNCIL, AFL-CIO

Mr. LANGAN. My name is James K. Langan, operations director, Government Employees' Council, AFL-CIO, representing 23 affiliated unions of the AFL-CIO, with 650,000 members.

We wish to acknowledge our thanks to the chairman of this subcommittee, Mr. Henderson, for introducing H.R. 10265. This bill would validate and reinstate a former practice in the Post Office Department which had to be suspended through a Comptroller General's ruling of February 1, 1962, identified as B-138999, in the Federal service.

Before this ruling of the Comptroller General the Post Office Department, acting under the presumed authority of Public Law 68, 84th Congress, section 204(b), would compensate an employee at a higher rate of pay when assigned temporarily to a higher classification, if the employee had first served 30 days in 1 calendar year in the higher paid position as a prerequisite. It is quite evident that the intent of Congress was to pay these employees at the prescribed rate for the duties performed after the qualifying period, or 30 days.

This bill under consideration would clarify the congressional intent and provide that the Government could pay properly for higher level services and not be required to assign employees at less remuneration than is called for in the position classification. This bill has the endorsement of the Government Employees' Council, AFL-CIO.

Again I want to thank the sponsor of the bill, Representative Henderson, and the members of the subcommittee for early consideration of this bill, and I trust that it will receive a favorable recommendation for its enactment.

I think this area has been pretty well developed. All the questions I could think of have come out and as far as I am concerned I am perfectly satisfied with them as throwing the proper light on the subject.

We of the Government Employees' Council are interested in this bill and would like to see it passed. I learned many years ago you do not quarrel with success, so thank you very much.

Mr. HENDERSON. Thank you, Mr. Langan.

The next witness is Mr. George Warfel, president, National Association of Special Delivery Messengers.

STATEMENT OF GEORGE WARFEL, PRESIDENT, NATIONAL ASSOCIATION OF SPECIAL DELIVERY MESSENGERS

Mr. WARFEL. I have no prepared statement. I do want, on behalf of our association, to endorse this bill and we want to thank you for your interest in trying to correct the matter, and we are very appreciative of the Department's going along with this correction, which is in line with their previous administration.

Thank you very much.

Mr. HENDERSON. Thank you, Mr. Warfel.

The next witness is Mr. Harold McAvoy, national president of the Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders.

STATEMENT OF HAROLD McAVOY, NATIONAL PRESIDENT, POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS, AND GROUP LEADERS

Mr. McAVOY. Mr. Chairman and members of the subcommittee, my name is Harold McAvoy. I am national president of the Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders. We are part of the AFL-CIO and Government Employees' Council.

At the start I would like to go on record in favor of H.R. 10265, the bill which you and your committee are holding public hearings on, H.R. 10265, which will amend section 204(A) of Public Law 68, and provide that any postal employee assigned to a higher pay level may be paid the higher pay level prior to the expiration of 30 days following his assignment. I am informed that the administration is favoring this worthy piece of legislation, which in my opinion is the way it should be.

In closing my brief, I wish to say thank you for the privilege of appearing before you and sincerely urge you and your committee to give favorable and speedy consideration to H.R. 10265, so that same will be enacted into law in this session of Congress.

Mr. HENDERSON. The subcommittee will go into executive session at this time. We would like to ask Dr. Block and Mr. Wenchel to remain and assist us.

(Thereupon, at 10:50 a.m., the subcommittee went into executive session.)

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REPORT OF THE AMERICAN MEDICAL ASSOCIATION
ON THE PROGRESS OF MEDICAL SCIENCE
AND PRACTICE IN 1917

The American Medical Association has the honor to announce that the report of the American Medical Association on the progress of medical science and practice in 1917, which was prepared by the Council on Medical Education and Research, is now available. The report is published in the form of a book, and is also available in the form of a pamphlet. The book is published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill., U.S.A. The price of the book is \$1.00, and the price of the pamphlet is 50 cents. The report is a valuable contribution to the knowledge of the progress of medical science and practice in 1917, and is a must for every physician and medical student.

