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FEDERAL EMPLOYEES' COMPENSATION BASED ON
CORRECTION OF UNJUSTIFIED PERSONNEL ACTIONS



HEARING
BEFORE THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
USE OF REPRESENTATIVES
EIGHTY-EIGHTH CONGRESS
FIRST SESSION

ON
H.R. 4837 and H.R. 4838

BILLS TO PROVIDE FOR THE PAYMENT OF CERTAIN AMOUNTS
AND RESTORATION OF EMPLOYMENT BENEFITS TO CERTAIN
GOVERNMENT OFFICERS AND EMPLOYEES IMPROPERLY
DEPRIVED THEREOF, AND FOR OTHER PURPOSES

MAY 10, 1963

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



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1963

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FEDERAL EMPLOYEE'S COMPENSATION BASED ON CORRECTION OF UNJUSTIFIED PERSONNEL ACTIONS

FRIDAY, MAY 10, 1963

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

The subcommittee met, pursuant to notice, in the committee room, Cannon Building, at 10 a.m., Hon. Arnold Olsen, of Montana (chairman of the subcommittee), presiding.

Mr. OLSEN. The subcommittee will come to order.

This subcommittee, consisting of Mr. Udall, Mr. Nix, Mr. Broyhill, Mr. Wallhauser, and myself as chairman, is meeting this morning to consider H.R. 4837 and H.R. 4838 which have been introduced by Mr. Beckworth and Mr. Corbett, respectively, as a result of an official request of the Civil Service Commission.

Popularly entitled "Back Pay Act of 1963," the legislation would establish a single general and equitable principle of back pay to be followed by all Federal agencies in restoring to any employee pay and other benefits which he may have lost because of an unjustified or unwarranted personnel action which is later corrected by appropriate authority. The bills are the result of extensive consultation with employee groups and agencies extending over a period of several years.

H.R. 4837 is virtually identical, except for minor language changes, to H.R. 11753 which passed the House on the Consent Calendar on June 18, 1962, in the 87th Congress but which was not acted upon by the Senate.

H.R. 4838 differs slightly from H.R. 4837, in that a retroactive provision was added by Mr. Corbett in section 3. As provided in H.R. 4837, the proposed back pay entitlement will apply to unjustified or unwarranted personnel actions taken on or after the date of enactment. As provided in H.R. 4838, back pay entitlement would also cover errors made before enactment if the appropriate authority decided on or after the bill was enacted that an error had been made in some past action. In other words, H.R. 4837 would be prospective, both with regard to the erroneous personnel action and the corrective action, while H.R. 4838 is retroactive as to the erroneous personnel action and prospective as to the corrective action.

(H.R. 4837 and H.R. 4838 follow:)

[H.R. 4837, 88th Cong., 1st sess.]

A BILL To provide for the payment of certain amounts and restoration of employment benefits to certain Government officers and employees improperly deprived thereof, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Back Pay Act of 1963".

SEC. 2. For the purposes of this Act—

(1) "agency" means—

(A) each executive department of the Government of the United States;

(B) each agency or independent establishment in the executive branch of such Government;

(C) each corporation owned or controlled by such Government;

(D) the Administrative Office of the United States Courts;

(E) the Library of Congress;

(F) the General Accounting Office;

(G) the Government Printing Office; and

(H) the municipal government of the District of Columbia.

SEC. 3. Each civilian officer or employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action taken on or after the date of enactment of this Act, which has resulted in the withdrawal or reduction of all or any part of the pay, allowances, or differentials of such officer or employee—

(1) shall be entitled, upon correction of such personnel action, to receive for the period for which such personnel action was in effect an amount commensurate with the amount of all or any part of the pay, allowances, or differentials, as applicable, which such officer or employee normally would have earned during such period if such personnel action had not occurred, less any amounts earned by him through other employment during such period; and

(2) for all purposes, shall be held and considered to have rendered service for such agency during such period, except that such officer or employee shall not be credited, by reason of the enactment of this Act, leave in an amount which would cause any amount of leave to his credit to exceed any maximum amount of such leave authorized for such officer or employee by law or regulation.

SEC. 4. The United States Civil Service Commission shall prescribe regulations to carry out the provisions of this Act. Such regulations shall not be applicable with respect to the Tennessee Valley Authority and its officers and employees.

SEC. 5. (a) There are hereby repealed—

(1) section 6(b) of the Act of August 24, 1912, as amended (5 U.S.C. 652(b)); and

(2) that part of the third proviso of the first section of the Act of August 26, 1950 (5 U.S.C. 22-1), which reads: "and if so reinstated or restored shall be allowed compensation for all or any part of the period of such suspension or termination in an amount not to exceed the difference between the amount such person would normally have earned during the period of such suspension or termination, at the rate he was receiving on the date of suspension or termination, as appropriate, and the interim net earnings of such person".

(b) Notwithstanding the repeal of certain provisions of law made by subsection (a) of this section, such provisions of law so repealed shall continue to have full force and effect with respect to unjustified or unwarranted personnel actions taken prior to the date of enactment of this Act.

[H.R. 4838, 88th Cong., 1st sess.]

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(1) shall be entitled, upon correction of such personnel action, to receive for the period for which such personnel action was in effect an amount commensurate with the amount of all or any part of the pay, allowances, or differentials, as applicable, which such officer or employee normally would have earned during such period if such personnel action had not occurred, less any amounts earned by him through other employment during such period; and

(2) for all purposes, shall be held and considered to have rendered service for such agency during such period, except that such officer or employee shall not be credited, by reason of the enactment of this Act, leave in an amount which would cause any amount of leave to his credit to exceed any maximum amount of such leave authorized for such officer or employee by law or regulation.

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Mr. OLSEN. We are pleased to have with us this morning as our first witness, Chairman John W. Macy, Jr., of the Civil Service Commission. Mr. Macy is accompanied by Mr. Walter R. Hobby of the Program Planning Commission.

STATEMENT OF JOHN W. MACY, JR., CHAIRMAN, ACCOMPANIED BY WALTER R. HOBBY, PROGRAM PLANNING DIVISION, CIVIL SERVICE COMMISSION

Mr. MACY. Thank you very much, Mr. Chairman. I appreciate the opportunity to appear before you and your colleagues to discuss

this legislation. I am particularly grateful to you and to Chariman Murray for scheduling this early hearing on a bill in which the Civil Service Commission has a great deal of interest and in which there is virtually unanimous support.

I recall that in appearing before your subcommittee on May 14 last year we agreed, after my statement, that this was one of the few noncontroversial pieces of legislation that had come before the committee and one on which there was general agreement.

In order to conserve the time of the subcommittee, with your permission, Mr. Chairman, I would like to suggest that three documents might be placed in the record.

First is the submission by the Civil Service Commission to the Speaker of the legislative proposal that became H.R. 4837 and H.R. 4838, letter from the Chairman of the Commission to the Speaker dated March 4, 1963.

Second is a report to Chairman Murray on the two bills dated May 7, 1963.

Third is my prepared statement for this hearing, which you have before you at the present time.

Mr. OLSEN. Without objection, it is ordered that the three documents be placed in the record at this point.

(The letters referred to and Mr. Macy's prepared statement follow:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 4, 1963.

HON. JOHN W. McCORMACK,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: We are submitting for the consideration of Congress proposed legislation to establish one general and equitable principle to be followed by all Federal agencies in restoring to their employees pay and other benefits of employment which are lost by reason of an unjustified or unwarranted personnel action subsequently corrected by appropriate authority. There are enclosed: (1) A draft bill; (2) a section analysis of the proposed bill; and (3) a statement of purpose and justification. The proposed bill is substantially the same as a proposal submitted to the 87th Congress, 1st session, on September 8, 1961. It is virtually identical to H.R. 11753 as passed in the House on June 18, 1962, except that subsection 2(1)(C) has been clarified and 2(1)(H) has been deleted.

The proposed bill presents one comprehensive and uniform authority for back pay entitlement and computation to replace the three current authorities, because these authorities are neither comprehensive nor uniform in their application. Specifically the bill is intended to supersede the pay provisions of Public Law 80-623 and Public Law 81-733. In addition this bill provides a more specific legislative foundation for the Civil Service Commission's authority in this area now exercised under section 19 of the Veterans' Preference Act.

In brief, the proposed bill enables appropriate authority following an administrative determination or timely appeal to pay an employee who has had his compensation terminated or reduced because of an unjustified or unwarranted personnel action the difference between what he earned and what he should have earned for the period. No entitlement is created, however, without a finding by appropriate authority that the action was indeed unjustified or unwarranted and a determination by such authority to take corrective action.

As amplified in the enclosed statement of purpose and justification, the proposed bill extends back pay protection to certain employees and situations not covered by present authorities. Significantly the proposed bill does not extend to any employee any rights of tenure, review, or appeal to which he is not otherwise entitled. It does require, however, that where an employee has a right to seek corrective action through administrative proceedings, and is successful in doing so, he will for pay, employment benefit, and other purposes be deemed to have rendered service at his proper grade during the period. Moreover, the proposal would strengthen the powers of agencies in making equitable pay and benefit adjustments following the correction of unjustified or unwarranted personnel actions which they decide to correct on their own initiative.

Timely processing of appeals should minimize individual retroactive payments. The cases which would be covered should continue to be largely those which are already covered by one of the other of the present authorities covering back pay. While it is not anticipated that the additional costs involved would be great, however, the principle which this bill would establish is an important one. For this reason it is hoped that the Congress will be able to act favorably on this legislation as soon as circumstances permit.

The Bureau of the Budget advises that from the standpoint of the administration's program there would be no objection to the submission of this proposal.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

A BILL To provide for the payment of certain amounts and restoration of employment benefits to certain Government officers and employees improperly deprived thereof, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Back Pay Act of 1963."

SEC. 2. For the purposes of this Act—

(1) "agency" means—

(A) each executive department of the Government of the United States;

(B) each agency or independent establishment in the executive branch of such Government;

(C) each corporation owned or controlled by such Government;

(D) the Administrative Office of the United States Courts;

(E) the Library of Congress;

(F) the General Accounting Office;

(G) the Government Printing Office;

(H) the Botanic Garden; and

(I) the municipal government of the District of Columbia.

SEC. 3. Each civilian officer or employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action taken on or after the date of enactment of this Act, which has resulted in the withdrawal or reduction of all or any part of the pay, allowances, or differentials of such officer or employee—

(1) shall be entitled, upon correction of such personnel action, to receive for the period for which such personnel action was in effect an amount commensurate with the amount of all or any part of the pay, allowances, or differentials, as applicable, which such officer or employee normally would have earned during such period if such personnel action had not occurred, less any amounts earned by him through other employment during such period; and

(2) for all purposes, shall be held and considered to have rendered service for such agency during such period, except that such officer or employee shall not be credited, by reason of the enactment of this Act, leave in an amount which would cause any amount of leave to his credit to exceed any maximum amount of such leave authorized for such officer or employee by law or regulation.

SEC. 4. The United States Civil Service Commission shall prescribe regulations to carry out the provisions of this Act. Such regulations shall not be applicable with respect to the Tennessee Valley Authority and its officers and employees.

SEC. 5. (a) There are hereby repealed—

(1) section 6(b) of the Act of August 24, 1912, as amended (5 U.S.C. 652(b)); and

(2) that part of the third proviso of the first section of the Act of August 26, 1950 (5 U.S.C. 22-1), which reads: "and if so reinstated or restored shall be allowed compensation for all or any part of the period of such suspension or termination in an amount not to exceed the difference between the amount such person would normally have earned during the period of such suspension or termination, at the rate he was receiving on the date of suspension or termination, as appropriate, and the interim net earnings of such person."

(b) Notwithstanding the repeal of certain provisions of law made by subsection (a) of this section, such provisions of law so repealed shall continue to have full force and effect with respect to unjustified or unwarranted personnel actions taken prior to the date of enactment of this Act.

SECTION ANALYSIS

Most of the situations which could give rise to the retroactive payment of compensation or employment benefits under the provisions of this draft bill are already covered by the backpay provisions of Public Law 623, 80th Congress, Public Law 733, 81st Congress, the powers of the Civil Service Commission under the Veterans' Preference Act, and a number of decisions of the Comptroller General interpreting these authorities. The backpay provisions of this draft bill, however, would be more uniform and in some cases more equitable than those now available. In addition, the coverage of the draft bill is designed to encompass all employees of the executive branch and certain other agencies. Significantly, the draft bill neither requires any agency to review any kind of personnel action, nor defines or restricts the nature of corrective actions themselves. Moreover, the draft bill does not modify the procedural requirements of any formal system of appeals. All the draft bill requires is that where a right of appeal has been specifically granted by law or regulation, or where management on its own initiative has discovered a personnel action which in all equity should be reviewed, any corrective action as a consequence extended to a Federal officer or employee with respect to adjustment of compensation or employment benefits must be retroactive in its effect, complete in its remedies, and consistent in its application.

Section 1 of this draft bill authorizes the use of a short or popular title in citing this legislation.

Section 2 of the draft bill defines "agency" in sufficiently broad terms to include all parts of the executive branch, the government of the District of Columbia, and other establishments of the Federal Government which look to the executive branch for personnel management leadership.

Section 3 defines the coverage of the bill as to persons and the terms under which such persons shall be entitled to backpay. All officers and employees of the agencies encompassed by the definition of "agency" in section 2 are covered. This includes persons in both the competitive and excepted services in these agencies.

"Administrative determination," as used in this section, means a decision made by appropriate authority on its own initiative as opposed to a decision which it has been required to make in order to dispose of a formal appeal. The purpose of this provision is to grant agencies the right at their own option to correct injustices which they identify themselves, especially where no avenue of appeal may be open to the individual involved.

"Timely appeal," as used in this section means a request for reconsideration of an official personnel action adversely affecting an employee, which request: (1) is initiated by the employee or his representative; (2) is properly made to an agency or to the Civil Service Commission under an appeals system or procedure established by law or regulation; (3) is accepted by the authority administering the particular appeals system or procedure involved. This provision of itself creates no new concepts of timeliness. On this point it relies entirely on the practices established in such other laws and regulations dealing with employee appeals as may now exist or later come into being. The purpose of this provision is to prevent employees from pressing stale claims for backpay when they themselves have slept on their rights.

The phrase, "unjustified or unwarranted personnel action," follows the language of Public Law 623, 80th Congress, the primary backpay authority at the time this proposal was drafted. All personnel actions in the administration of the Federal personnel systems are taken under some authority. Each such personnel action should be intended to be a proper exercise of the powers established by the particular law or regulation under which the action is taken. Nevertheless, occasionally errors are made in the exercise of these powers. Personnel actions which are found to reflect such errors may be defective on equitable or procedural grounds or both. The ruling interpretation of the phrase, "unjustified or unwarranted" with reference to adverse actions in the current administration of Public Law 623, 80th Congress, encompasses both equitable and procedural considerations following the decisions of the Court of Claims in *Stringer v. U.S.*, 117 C. Cl. 30, and *Garcia v. U.S.*, 123 C. Cl. 722, and of the Comptroller General in 34 C.G. 568.

"Appropriate authority" means that agency, office, or official empowered under applicable law or regulation to correct or direct the correction of the unjustified or unwarranted action. In some cases this could be the Civil Service Commission as established, for example, in the Veterans' Preference Act. In many instances,

such authority would be found at some level of agency management as defined in applicable regulations and delegations of authority thereunder.

The phrase, "applicable law or regulation," refers to the laws and regulations which provide the bases for operations under the Federal personnel systems. The draft bill looks to these laws and regulations which exist now or may later come into effect—

(1) To provide avenues and procedures for the reconsideration of unjustified or unwarranted personnel actions.

(2) To provide the legal basis for taking proper personnel actions and for correcting unjustified or unwarranted ones.

(3) To establish the locus of the authority to correct improper actions.

Section 3(1) establishes an entitlement to back pay in any situation where a personnel action which has terminated or decreased the compensation of a Federal officer or employee is subsequently found unjustified or unwarranted and corrected by appropriate authority. For clarity the four essentials for an entitlement to backpay under this act are set out below:

1. An official personnel action must have been taken which reduced or diminished some part of an individual's usual salary, wages, or other compensation from Federal employment. In other words, in effect, something must have been taken away.

2. The personnel action in question must have been made the subject of review by appropriate authority either because of a timely appeal or because appropriate authority on its own initiative decided to review that action. In other words, the specific action which precipitated the employee's loss must have been re-examined.

3. The personnel action in question must have been found by appropriate authority to be unjustified or unwarranted.

4. A corrective action consistent with applicable laws or regulations must have been authorized by appropriate authority as a consequence of its decision.

Section 3(1), therefore, establishes for pay purposes the principle that an employee should be made whole following the correction of an unjustified or unwarranted personnel action which reduced his compensation in some way. As would be defined in detail in the regulations, the adjustment in compensation would cover everything to which the employee normally would have been entitled. The regulations necessarily would require that the adjustment in compensation recognize any obvious things in the normal course of events which would have affected the amount of compensation. With respect to reducing that amount, these would include situations, such as: death before final adjudication of an appeal, separation or furlough as a result of reduction in force, transfer to another agency, and imprisonment for crime. With respect to increasing the amount of compensation, the draft bill assures credit for increments such as periodic within-grade increases and general pay raises to which the employee would have been entitled had he not been subject to the unjustified or unwarranted action. Public Law 623, 80th Congress, and Public Law 733, 81st Congress, unfortunately prevent crediting these increments in computing the amount of backpay. On the other hand, both Public Law 623, 80th Congress, and Public Law 733, 81st Congress, are currently interpreted as including in a backpay computation the premium pay which an employee normally would have earned. To preserve this interpretation the phrase "would normally have earned," which appears in Public Law 733, 81st Congress, and which was discussed by the Comptroller General in 34 Comp. Gen. 382, has been repeated in the draft bill.

Section 3(1), following the historical precedents in this area, provides that the amount of backpay to which an employee would be entitled would be reduced by whatever amount he earned through "other employment" during the period the action was in effect. The term "other employment" is taken from Public Law 623, 80th Congress, in order to assure a continuity of interpretation on this point. Both the Court of Claims and the Comptroller General view "other employment" as encompassing only that employment engaged in to take the place of the employment the employee had prior to the action against him. This interpretation was discussed by the court in *Jackson v. U.S.*, 121 C. Cl. 405, and by the Comptroller General in 32 Comp. Gen. 408. Therefore, if an employee had been separated from his position, this amount would be the difference between what his Government income should have been and what he actually earned in an employment obtained to take the place of his Government job. If he had been demoted, the amount to which he would be entitled would be the difference between what his income should have been in the proper grade and what it actually was at the lower grade.

Section 3(2) by stating, "For all purposes shall be held and considered to have rendered service for such agency during such period," provides for the complete restoration to the employee of seniority, service credit toward retirement, life insurance, health insurance, and all other benefits of employment which may have been affected by the action. This is consistent with the current administration of these matters following a court or Civil Service Commission restoration order. In addition, leave accumulation, excluded specifically from the backpay provisions of Public Law 623, 80th Congress, would be authorized uniformly by this draft bill following the precedent of the more recent Public Law 733, 81st Congress. The excepting clause of section 3(2) assures that the usual ceilings on leave accumulation would be observed, as prescribed by the law or regulation covering the particular leave system to which the employee is subject.

Section 4 authorizes the Civil Service Commission to make such regulations as may be necessary to carry out the provisions of this proposal much as the Commission regulates in certain other pay areas, except that the Tennessee Valley Authority is authorized to make its own regulations. Day-to-day application of these regulations to individual cases would be the responsibility of the agencies concerned. The General Accounting Office would resolve specific questions in individual cases as it does other matters involving claims and demands against the Government of the United States.

Section 5 repeals the backpay provisions of Public Law 623, 80th Congress, and Public Law 733, 81st Congress, except as to unjustified or unwarranted personnel actions taken before enactment of this proposed act.

STATEMENT OF PURPOSE AND JUSTIFICATION OF A DRAFT BILL TO PROVIDE FOR THE PAYMENT OF CERTAIN AMOUNTS AND RESTORATION OF EMPLOYMENT BENEFITS TO CERTAIN GOVERNMENT OFFICERS AND EMPLOYEES IMPROPERLY DEPRIVED THEREOF, AND FOR OTHER PURPOSES

PURPOSE

To assure that all classes of Federal officers and employees can be treated equitably and uniformly with respect to compensation and employment benefits as a consequence of actions taken to correct unjustified or unwarranted personnel actions.

JUSTIFICATION

This legislative proposal consolidates what is generally referred to as "backpay" authority into one logical, equitable, and comprehensive statement of entitlement with respect to compensation and employment benefits. It is more than a codification of current backpay authorities because these authorities, while adequate in many respects, may not be applied uniformly to all similar situations and do not afford completely consistent remedies. The proposal is not entirely new, however, because it has largely selected the best elements from these familiar authorities, welded them into one principle, and proposed the use of that principle in every instance where a question of backpay can be raised. Briefly this principle holds that an employee is entitled to be made whole whenever an erroneous personnel action which has terminated or reduced his compensation is corrected by appropriate authority. Significantly this proposal is not concerned with the substance of appeal rights, the structure of the appeals process, or the precise nature of corrective actions.

This proposal could justify itself with principles of fair play or philosophical concepts of equity and justice. Fortunately for purposes of brevity, this is not necessary. It is also unnecessary to recount how the concept of backpay has been widely accepted in industry. The simple fact is that the trend in law, regulation, and interpretation demonstrates clearly that the Congress, the courts, the agencies, and the Comptroller General have been thinking along these lines for a long time with particular emphasis on the past 15 years.

Background of current authorities

In 1947 it was pointed out in Congress, according to the legislative history, that a "glaring loophole in the present law" existed if an employee in the competitive service who successfully availed himself of a right of appeal could not always be reimbursed for the compensation he lost while his appeal was pending. In 1948, after consulting the Civil Service Commission and others, Congress responded to this need by enacting Public Law 623, 80th Congress, as an amendment to the Lloyd-LaFollette Act.

Public Law 623, 80th Congress, authorizes backpay in nonsecurity cases involving improper separations and suspensions of nonveterans with civil service status in the competitive service and all veterans who have completed their trial or probationary period. The amount of pay is computed at the rate the employee was receiving at the time of the improper action and covers the entire period the action was in effect. Leave accumulation covering the same period, however, was excluded from the other remedies to which an employee was entitled under the act.

In 1950, with the passage of Public Law 733, 81st Congress, Congress acted again in the backpay area, this time protecting executive branch employees suspended or terminated in erroneous security actions. The amount of backpay is computed as under Public Law 623, 80th Congress; however, agency heads are authorized to determine whether the employee will be paid for all or part of the period of erroneous suspension or removal. Interestingly, agency practice under this law has been to authorize payment for the entire period almost without exception. More complete as to benefits, Public Law 733, 81st Congress, has been interpreted to permit leave accumulation covering the period of the erroneous action.

The third major source of backpay authority is the Veterans' Preference Act of 1944, as amended. This act has been interpreted as authorizing back pay in cases involving improper demotions of veterans who have completed a trial or probationary period and in cases arising as a result of erroneous reduction-in-force actions whether or not the employees concerned are veterans.

In recent years the trend of Comptroller General's decisions interpreting these authorities has been toward greater flexibility. This trend notwithstanding, however, it is apparent that these authorities, as now stated, provide an inadequate basis for a full solution to the backpay problem. If the problem is to be corrected, new legislation must be the answer.

The need for change

Most backpay situations in the Federal Service are already covered in some way by current authorities. This factor itself tends to demonstrate that the principle of backpay as a part of corrective action is well established. It suggests further that the reason the backpay picture is not complete today is more a matter of oversight than intentional arrangement. It is apparent that whenever Congress has faced the problem of backpay, it has never intended its action to discriminate against any employee who could build an equitable claim. Circumstances, unfortunately, have led to a piecemeal approach to the back pay problem.

As a consequence, veterans are now afforded broader backpay benefits than non-veterans and at any given moment there are still many veterans and nonveterans alike who could not be awarded backpay at all except in the correction of erroneous reduction-in-force actions. This number would include all employees serving probationary or trial periods, and many nonveterans who are employed by their Government outside the competitive civil service.

Private relief legislation in individual cases cannot answer the problem, because it tends to discriminate against the person who does not seek special consideration beyond the remedies available to all. In the interests of both uniformity and equity, therefore, there is a strong case for improving the present backpay authorities. The case is particularly strong when it is recognized that the step toward a better backpay authority is a small one in terms of costs and administrative adjustments. No great number of cases should add appreciably to current costs and the handling of all backpay cases would be little different from current procedures.

Impact of the current proposal

There are four features of this legislative proposal which should be kept in mind in order to understand what it is designed to accomplish and, just as important, what it is not designed to do:

1. *The comprehensive nature of this authority.*—The proposal assures that backpay protection would be available to a Federal employee whenever an unjustified or unwarranted personnel action which diminished his pay is corrected in his favor. The proposal does not attempt, however, to specify the precise nature of corrective actions. It requires only that the unjustified or unwarranted action be corrected before an entitlement is created. It is inherent in the use of the term "correction" that the administrative action referred to must be one which is consistent with applicable laws and regulations. The protection does not hinge on the operation of any particular systems of appeals, but would be available as a consequence of the operation of any system of appeals. In addition, where no avenue of appeal is available, an agency itself may award backpay to an employee merely by acknowl-

edging that its action affecting the employee adversely was unjustified or unwarranted and correcting it.

2. *The test of diminished income.*—Many things may happen to the disadvantage of the employee on the job which may have a real or potential effect on his finances—a hoped-for promotion or job classification upgrading may be denied or delayed, a transfer to a new location may be more expensive than anticipated, a free official parking space may be lost, etc. This proposal does not deal with situations of this sort. The purpose of this proposal is only to permit an agency to make an employee whole from a pay and benefits point of view following its decision to correct an unjustified or unwarranted personnel action against him.

To accomplish its purpose this proposal used the “test of diminished income” which must be applied in every potential backpay situation before an entitlement is established under this authority. The unjustified or unwarranted personnel action, in effect, must have taken away some part of the normal salary, wages, or other compensation of the employee affected. In other words, if no part of the employee’s salary, wages, or other compensation as a Government employee was actually diminished by the improper action, there can be no claim to backpay when that action is corrected.

3. *The requirement for timely action.*—In order to preserve his right to backpay, the employee under this proposal would be required to exercise the rights of appeal open to him in a timely manner. For example, an employee whose position was downgraded would lose his right to demand backpay unless he made a timely and successful effort to appeal the downgrading action. Should that employee be promoted sometime later in a routine reallocation of his position, such reallocation would have no back pay implications.

4. *The advantages of agency initiative.*—By permitting an agency to authorize back pay on its own determination in correcting an unjustified or unwarranted personnel action, this authority introduces two new elements of flexibility which strengthen the corrective powers of management. First, when an agency discovers it has inadvertently taken an unjustified or unwarranted action, it would be free to correct the action immediately on its own initiative with an appropriate pay adjustment. This avoids the loss of time and resources involved in an appeal over a matter which the agency may feel in advance should be settled in the employee’s favor. Second, when an agency desires to extend backpay adjustments uniformly to all persons in the same circumstances when an appeal is won by any one of the persons involved, it would be free to do so on its own initiative.

In a recent case, for example, a group of veterans in wage board jobs successfully appealed to the Civil Service Commission their demotions as a result of job classification downgradings and were awarded backpay. A nonveteran worker in the same group, who had no right to appeal to the Commission, benefited by the subsequent reinstatement to grade but was denied the backpay adjustment his associates received, because the agency had no authority to pay him. This proposed authority would have permitted the agency, had it desired, to authorize the same kind of adjustment to all of the employees involved.

Cost estimate

It is very difficult to assess the cost involved in this proposed bill. This is not because these costs would constitute a major expenditure. Instead it is because “added” cost is the information needed while readily available information unfortunately reveals little about current cost. Today agencies generally absorb the costs of compensating employees entitled to backpay. Under the proposed bill, no change in this is envisioned.

Potentially some agencies may have a somewhat larger number of cases involving backpay entitlement than they have at present. On the other hand with such clear-cut and comprehensive entitlement established, agencies would have an added incentive to conduct their appeal and review activities in a timely and expeditious manner in order to minimize the cost of such entitlements. Moreover, the draft bill would tend to limit the size of retroactive payments because employees who neglect to use their appeal rights, if any, in a timely manner would lose their right to demand backpay.

In the benefits area it would be virtually impossible to “cost” the accumulation of leave covering periods of improper separation or suspension as authorized by the draft bill. Taken at different times, leave has different values. In addition, while terminal lump-sum annual leave payments can represent a cash expense, sick leave should have no actual value unless the employee is ill. It would seem reasonable to assume, therefore, that this legislative proposal would create no new costs or inconveniences in the leave area more burdensome than those agencies are adjusting to now.

Those benefits to which employees are entitled on a contributory basis, such as retirement, life insurance, and health insurance, would not constitute added costs under the draft bill. The employee would continue to be required to make up his back contributions, along with his taxes, for any period during which they were not withheld. This requirement stems from the fact that where an employee is granted the benefits of the administrative fiction of having "rendered service" he also assumes a responsibility for the obligations which that service would have imposed.

It is about as difficult to estimate the number of new backpay entitlements which would arise under this proposal as it is to assess the value of these entitlements. The size of the new groups covered in some instances is large. Nevertheless, the potential number of backpay cases likely to arise from these groups, experience tells us, is surprisingly small. For example, the new proposal would give added protection to career nonveterans (there are about 1 million nonveterans in the competitive service). However, in the first 6 months after July 1962, when appeal rights of nonveterans in the competitive service were made the same as those of veterans, the Commission received fewer than 100 appeals, which, if decided in favor of the employee, could have resulted in entitlement to backpay under this proposal. We do not know how many such cases were handled at agency levels under circumstances which would have involved backpay. We assume the number is also small. The number of appeals of nonveterans is expected to increase with time but will still be a small proportion of the total number of nonveterans in the competitive service.

Nonveteran employees in excepted positions for the first time would be entitled to backpay if they lost compensation as a consequence of unjustified or unwarranted suspensions, separations, or demotions for cause. At present, these employees, and there are about 100,000 of them, have no appeal to the Civil Service Commission in such actions, and agencies have considerable flexibility in actions affecting their tenure. Under this proposal, therefore, there would be only as many new backpay entitlement cases involving these employees as procedures under agency control would generate.

This proposal would also cover, for the first time, employees serving probationary or trial periods. At any one time, there are probably between 100,000 and 175,000 such persons throughout the service. The proposal requires, however, that there can be no entitlement to backpay without a finding that the adverse action involved was unjustified or unwarranted. Compared to persons who have completed their trial period, the appeal rights of probationary employees are very limited. Naturally this would tend to keep down the number of entitlement cases.

Under section 2.301(c)(2) of the Commission's regulations, the Commission considers appeals to termination based on conditions arising prior to the appointment of probationers in the competitive service. In less than 100 cases last year were Commission determinations such that an employee would have been entitled to backpay. A probationary or trial period employee who is terminated for reasons occurring after employment generally does not have a right to appeal to the Commission.

In conclusion, the Commission is unable to estimate the costs of this proposal precisely without an expensive and detailed study going into the experience of each Federal agency. With the facts which are available, however, it seems safe to estimate that less than \$500,000 per year in additional costs would be involved Governmentwide and that most of these costs would be of the type which agencies customarily absorb in the normal course of operations. The proposed legislation will not involve additional expenditures for personnel services to administer its provisions.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., May 7, 1963.

HON. TOM MURRAY,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, House Office Building.*

DEAR MR. CHAIRMAN: This is in reply to your telephone request of April 25, 1963, for the views of the Civil Service Commission on H.R. 4838, a bill "to provide for the payment of certain amounts and restoration of employment benefits to certain Government officers and employees improperly deprived thereof, and for other purposes."

In most respects this bill is the same as the Commission's legislative proposal on backpay as passed in the House on June 18, 1962 (H.R. 11753, 87th Cong.). H.R. 4838 differs slightly in coverage, the Botanic Garden and the Office of the Architect of the Capitol having been deleted. The Commission does not object to this change. H.R. 4838 also differs in that a retroactive provision has been added in section 3.

As provided in H.R. 11753, the proposed back pay entitlement would have applied to unjustified or unwarranted personnel actions taken on or after the date of enactment. As provided in H.R. 4838, backpay entitlement would also cover errors made before enactment if the appropriate authority decided on or after the bill was enacted that an error had been made in some past action. We take this to mean that timely appeals in process but not decided at the time of enactment would come under the law, as would past actions an agency decides on its own initiative to review, finds on or after the date of enactment to have been in error, and proceeds to correct.

Generally the Commission is reluctant to endorse retroactive provisions. Such provisions often create as many problems as they solve. Wherever the line is drawn in these matters there seems always to be someone just on the other side of it whose claim in all other respects is as good as those who fall within the limits set. The further back the line is drawn the harder it is to determine the facts and equities involved and the greater become the administrative and financial burdens on agencies. For these reasons we prefer to have legislation apply to cases arising after the remedy is authorized.

However, the retroactive provision of H.R. 4838 is limited to current cases involving past actions and thus is not as likely to cause undue difficulties. It would eliminate as a source of private relief bills a class of cases which might have particularly strong claims for relief, i.e., those cases in which the error is acknowledged or corrected after the bill becomes law but in which the remedy might be denied or might be less than complete because the erroneous personnel action took place before the effective date of the law.

The back pay principle we seek to establish, that is, to make employees "whole" financially for losses suffered through unwarranted or unjustified personnel actions, remains the same irrespective of the starting date. Therefore, if the committee prefers H.R. 4838, with its retroactive provision, to H.R. 4837, which does not have a retroactive provision, we would favor enactment of H.R. 4838.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

PREPARED STATEMENT OF HON. JOHN W. MACY, JR., CHAIRMAN, U.S. CIVIL SERVICE COMMISSION

Mr. Chairman and members of the subcommittee, I am pleased to be here today to urge your support of backpay legislation. The two bills before the committee, H.R. 4837 and H.R. 4838, are similar bills "To provide for the payment of certain amounts and restoration of employment benefits to certain Government officers and employees improperly deprived thereof, and for other purposes."

These two bills differ from each other only in that H.R. 4838 would extend backpay entitlement to personnel actions taken prior to the date of enactment (if it is determined on or after the date of enactment that the personnel action was unjustified or unwarranted). I will come back to the difference between them later. Meanwhile, for the sake of convenience, I will refer to both bills as the bill."

The purpose of the bill is to establish a single, comprehensive backpay authority to be applied after an unjustified or unwarranted personnel action is corrected. The employee involved would be "made whole" financially for pay or employment benefits lost or diminished because of the improper action. The object is to put the employee back to where he would be if nothing untoward had happened to him. We believe that simple equity requires this and that a single authority as proposed in the bill would accomplish it.

Substantially the same proposal was presented by the Civil Service Commission to the 87th Congress. Employee groups and veterans' organizations were consulted during the drafting stage and were favorable to our proposal. I had the privilege of appearing before this subcommittee on May 14, 1962, in support of it.

After some language changes of a clarifying nature it was reported out as H.R. 11753 and was passed in the House on June 18, 1962.

The bill under consideration here is virtually the same as H.R. 11753 of the 87th Congress except for a change in agency coverage, the Botanic Garden and the Office of the Architect of the Capitol having been deleted. (Of course, H.R. 4838 has the additional feature of retroactivity.)

The need for the proposed legislation remains the same. Current authorities to grant back pay, while they are adequate in many respects, are not uniformly applicable either to all situations or to all employees. This has left gaps in coverage and has necessitated the application of somewhat different principles of reimbursement depending on the circumstances. The bill would supersede the back pay provisions of Public Laws 80-623 and 81-733 and would provide a specific legislative foundation for the Civil Service Commission's authority in this area under the Veterans' Preference Act. But the bill is more than a codification of current authorities. It extends protection to employees in certain situations who do not now have it. Specifically it extends coverage to—

1. Employees serving probationary or trial periods (not now authorized to receive back pay unless an erroneous reduction-in-force action is involved, or unless the erroneous action was handled as a security case under the provisions of Public Law 733.)

2. Nonveterans in the excepted service who have been improperly removed, suspended, or demoted (not now authorized to receive backpay unless the erroneous adverse action was taken as a result of reduction in force).

3. Nonveterans in the competitive service who have been improperly demoted (not now authorized to receive backpay unless the erroneous demotion was taken as a result of reduction in force).

The bill also extends coverage to include:

1. Credit for leave accumulation (not authorized under Public Law 623).

2. Credit for pay increments such as within-grade increases and general pay raises (not authorized under either Public Law 623 or 733).

3. All of the period of suspension or termination resulting from erroneous actions in security cases (under Public Law 733 agency heads may now pay for all or any part of the period).

The bill refers to unwarranted personnel actions which have withdrawn or reduced any part of the employees' "pay, allowance, or differential * * *". Both Public Laws 623 and 733 are currently interpreted as including in a backpay computation the premium pay, including overtime pay, which an employee normally would have earned, and such allowances and differentials as—

1. Differentials for hardship oversea posts;

2. Cost-of-living allowances paid in certain nonforeign areas, for example, Alaska; and

3. Living quarters allowance authorized for foreign areas if free Government quarters are not provided.

To preserve this interpretation, the phrase "normally would have earned" which appears in Public Law 733 has been repeated in our proposal.

While the bill closes gaps in current coverage and is somewhat more generous than the least liberal of existing authorities it is basically perfecting legislation. It does not create any new rights of tenure, review, or appeal—I want to emphasize that fact. It is concerned only with the backpay consequences of correcting personnel actions.

The bill does not affect the substance of appeal rights, the procedures for conducting appeals, or the precise nature of corrective actions. However, when it has been officially determined, by whatever means are now authorized or may be in the future, that a wrong has been done that should be set right, and the corrective action is taken, then this bill comes into the picture. It would permit backpay and the restoration of benefits regardless of the type of action, or whether or not the employee was a veteran, or was in the competitive service, or had status when it occurred. Of course, to preserve his right to backpay the employee would be required to exercise any appeal rights available to him within the prescribed time limits. But where no appeal channel is available, the agency could award backpay upon acknowledging and correcting the erroneous action on its own initiative.

By permitting an agency to authorize backpay on its own decision to correct an erroneous personnel action, the proposed authority introduces two new elements of flexibility which strengthen management's corrective powers. First, upon discovering an erroneous personnel action, the agency would be free to correct it immediately with an appropriate pay adjustment. It would not be necessary for the employee to initiate a time-consuming and costly appeal to the Civil

Service Commission. Second, when it wishes to extend backpay adjustments uniformly to all employees in the same circumstances when an appeal is won by any one of the persons involved, the agency would be free to do so. This type of agency discretion should lead to a reduction in the number of private relief bills, a trend we would all like to see.

Private relief legislation in individual cases not covered by current authorities is not a satisfactory solution to the problem. While this remedy is open to all who seek to pursue it—and a fair number do—it must be admitted that this process tends to discriminate in favor of those who are unusually knowledgeable, persistent, and patient. Moreover, reliance on relief bills is burdensome to the committees of the Congress, their staffs, and the agencies involved in preparing recommendations. While no one balks at the work that justice requires or intends to demean the importance of each bill to the individual concerned, the work required tends to be disproportionate to the good that is done. It is entirely possible that the total cost to the Government of granting relief can equal or exceed the dollar amount of the relief itself. Therefore, a significant justification for this bill is that it should reduce requests for private bills and the work of processing them. We are not able to produce cost estimates of savings in an area such as this but we do suggest that the savings will be a major offset against the costs of more extensive coverage.

The problem of private relief bills also must be considered in examining the difference between H.R. 4837 and H.R. 4838. H.R. 4837 would apply to erroneous actions taken on or after the date of enactment but not to errors made before enactment. H.R. 4838 would apply to errors made before enactment if the appropriate authority decided, on or after the bill was enacted, that an error had been made. This means that timely appeals in process but not decided at the time of enactment would come under the law as would any past actions an agency decided to review and correct.

Generally speaking, the Commission is reluctant to endorse retroactive provisions. We have found that most of the time such provisions create as many problems as they solve. Wherever the line is drawn there seems to be someone just on the other side of it whose claim is otherwise as good as the one on the right side. The further back one goes the harder it is to determine the facts and equities involved and the greater becomes the administrative and financial burden on agencies. This is why we prefer to have legislation apply to cases arising after the remedy is authorized.

However, the retroactive provision of H.R. 4838 is limited to current cases involving past actions and thus is not so likely to cause undue difficulties. At the same time it would prevent private relief bills in a class of cases that might well have particularly strong claims to relief; that is, actions in process of correction at the time of enactment or past errors discovered and corrected after enactment. Therefore, if the committee prefers to include the retroactive provision of H.R. 4838, we believe it would be consistent with the basic objectives of the bill.

Thus, either of these bills would establish the backpay principle we are seeking. We believe there is a very strong case for it especially when it is considered that this step is a small one in terms of cost and administrative adjustments. Costs in this area are difficult to predict but it seems safe to estimate that there would be less than \$500,000 annually in additional costs governmentwide, most of these of the type normally absorbed by agencies in their regular operations.

I will be glad to answer any questions you may have.

Mr. MACY. I will briefly summarize the position of the Commission with respect to this legislation and then be available to you for questioning.

Mr. OLSEN. Please proceed.

Mr. MACY. These two bills represent a fulfillment of an objective of the Civil Service Commission to provide equity and fairness in the provision of backpay in personnel actions that were unjustified or unwarranted. In many ways this legislation is of a perfecting nature in order to bring about a uniformity of treatment for all actions of this kind. The basic purpose of the bill is to establish a single comprehensive backpay authority in the statute to be applied when unjustified or unwarranted personnel actions are corrected.

To express it another way, this is a means for providing that the employee involved in an incorrect action be made whole financially in terms of his compensation and in terms of employee benefits. It would put the employee back where he would have been if the incorrect action had not taken place.

As you pointed out in your opening statement, Mr. Chairman, the two bills before you are almost identical to H.R. 11753 of the previous Congress, a bill passed on the Consent Calendar June 18 last year. The two changes are changes in agency coverage. The coverage has been reduced with respect to the employees of the Botanic Gardens and the Office of the Architect of the Capitol. These two have been deleted as a result of suggestions made by the Congress and in that respect the bills are changed.

The second feature of change relates to retroactivity. This is the feature, which is different, that makes the distinction between the two bills. In H.R. 4837 there is no provision for retroactivity, whereas in H.R. 4838 there is a provision.

Ordinarily the Commission takes a somewhat skeptical position with respect to retroactivity because of the difficulties of administration, the difficulties in being completely fair when going back and dealing with an action in the past.

However, our view in this instance would be that the language in H.R. 4838 is such that it would not afford excessive difficulty, and if the Congress wishes to incorporate that language in the bill, it will be entirely acceptable. This is language in section 3 of the bill.

Mr. OLSEN. On this point, it would seem to be more fair to me—I would like your comment on it—to grant backpay where the corrective action is taken subsequent to the passage of this act, so that everybody who is fortunate enough to reverse erroneous action will be treated the same after passage of the bill. I wondered if you folks think that would be the way it should be.

Mr. MACY. This would be our position, and we believe this would be fair.

I pointed out that the bill does provide for perfecting action on a number of authorities that already exist. This is an extension of authority that exists in Public Law 623 and Public Law 733 and through interpretation of the Veterans' Preference Act. It does, however, extend coverage in three areas which I believe I should point out to you.

First is to employees serving a probationary or trial period. At the present time employees in that category are not covered by provisions of law.

Second, it covers nonveterans in the excepted service who are improperly removed, suspended, or demoted. It would extend the benefits to that particular group.

Third, it would extend to nonveterans in the competitive service who have been improperly demoted. At the present time there is authority to make correction where there are improper reductions in force, but not on demotion action. So that is an extension of coverage.

Mr. OLSEN. We are giving the same rights to everybody now that veterans already have?

Mr. MACY. That is correct. This is an equalization of rights so that all Federal employees will be treated the same way with respect

to the rights for backpay where backpay is called for in correcting an unjustified or unwarranted action.

Extension of coverage is also involved in certain program areas. It is an extension of coverage to include credit for leave accumulation. After all, leave accumulation constitutes, insofar as annual leave is concerned, additional rights to compensation. We feel this should be included.

Second, it covers credit for pay increments such as within-grade advancements and general pay raises where that is not covered now by the statute.

Third, all periods of suspension or termination resulting from erroneous action in security cases—these are cases that are taken under Public Law 733. So that beyond being a codification of the statutes already on the books, it does extend coverage in the interest of equal treatment for all employees to these other areas. I think it is important to point this out.

The bill does not affect existing appeal rights of employees. Those appeal rights remain as they presently exist under statute and administrative action. The employee in order to secure correction pursues the appeal route. But this bill also makes it possible for the agency to make corrective action on its own motion without the employee going through the appeal route if the erroneous action is discovered and identified.

I think this bill is important because it should reduce the number of requests that come to you gentlemen and your colleagues for private bills, private bills designed to provide the employee with back pay, because he is unable to secure it under existing procedure. I do not have any estimate as to how much time or how much money this will save in eliminating private bills.

It seems to me to be very important if we can have legislative authority that will relieve the employee of the necessity of following the route of the private bill because the private bill is a long process and frequently is only possible for use for those who have a great deal of knowledge, time, and persistence.

Mr. OLSEN. As a matter of fact, do you not think this method in the proposed bills is probably cheaper than all the private bills?

Mr. MACY. In my judgment, there should be a net saving as a result of this legislation. We have estimated that this legislation would cost a maximum of \$500,000 a year, making these back payments. I think frequently on some of the private bills the amount recovered as a result of the passage of the bill is actually less than the cost of processing the bill, if you take the time of the Members, the time of those who draft the legislation, all of the necessary handling that is called for in completing the action. I agree with you that this actually should result in a net saving.

Mr. Chairman, I would also like to invite the attention of the committee to another bill that relates to this same general area which you may wish to incorporate in your consideration. This is H.R. 5875, introduced by Congressman Rogers of Colorado. This bill would add demotions in reduction in force to the back pay authority in Public Law 623. It would be an extension of the coverage of the existing statutory authority. It is our judgment that the Commission and the agencies already have authority in this area. They have authority through the interpretation of the Comptroller General of

the provisions of the Veterans Preference Act which permit back pay in reduction in force demotions.

Mr. OLSEN. Would you spell that one out a little bit, please?

Mr. MACY. Yes. I am sorry my explanation is not clear.

Mr. OLSEN. It is actually new to my mind.

Mr. MACY. Under Public Law 623, there are certain provisions for back pay with respect to reductions in force. Congressman Rogers has introduced a bill that would include demotions, incorrect demotions, in reductions in force as covered by the back pay authority.

My response is that this would make explicit in statute what is already implicit in the interpretation of the Comptroller General of the Veterans Preference Act. Under the provisions of the Veterans Preference Act that relate to reductions in force the Comptroller General has determined that back pay in the case of improper demotion is provided by that provision.

It is clear that the two bills that are before you would completely cover the condition dealt with in H.R. 5875. So that there is no need for that as an extension of the bills you have before you. I felt you would want to know that this is another bill in this area in the event you wished to respond on that.

Mr. BROYHILL. You say the bills pending before us embrace the problem that this—

Mr. MACY. Correct; the bills before you completely deal with the substance of H.R. 5875.

Mr. OLSEN. This extends this to nonveterans?

Mr. MACY. The bills before you extend this authority to nonveterans, so that this would be adequately covered.

In conclusion, Mr. Chairman, let me urge, as I did last year, your favorable consideration of these bills. It is the judgment of the Civil Service Commission that the provisions of these bills would improve the Federal personnel system, would represent an example of equity toward employees on the part of the Federal Government as an employer.

I am ready for your questions.

Mr. OLSEN. Thank you very much, Mr. Chairman. Are there any questions?

Mr. BROYHILL. I was going to ask you how many actions would be involved by this legislation, but you stated the legislation itself would involve a cost of approximately \$500,000 a year.

Mr. MACY. Yes, sir. It is our estimate that that would be the maximum amount involved.

Mr. BROYHILL. Of course, some of that cost is being involved anyway, is it not, through the private bill procedure you referred to?

Mr. MACY. Yes, sir.

Mr. BROYHILL. How about court procedures and things of that sort? Are there other ways of employees recovering this back pay without this legislation?

Mr. MACY. They can secure back pay under the authorities that already exist as a result of the appeals procedure or through private bills. Under this law we would cover all types of appointees, employees, and the conditions that relate to compensation.

Mr. BROYHILL. I am trying to reduce the estimated cost of this. Actually, it would not cost \$500,000 a year over what it is costing right now because you are using other methods right now.

Mr. MACY. That is correct. The \$500,000 estimate would be in addition to the back pay presently being provided by administrative means under existing authorities, but as I responded to the chairman, I believe the moneys expended as a result of private bills would more than offset the increased money that would stem from the bills that are before you.

Mr. BROYHILL. Mr. Chairman, I want to digress just one moment. I know we want to move this right along.

I communicate a lot with Mr. Macy, and unfortunately sometimes our communications have a tendency to leak to the press; I do not know whose fault that is.

I want to ask you a brief question concerning what I read in the paper this morning about its being proposed that the District of Columbia Government give preference to District of Columbia residents for employment. Would that not be a violation of civil service procedure?

Mr. MACY. This would be for District of Columbia employees. At the present time the civil service nationwide coverage is afforded for all positions in the District of Columbia. There is no residential limitation. I am unaware of a plan such as the one of which you speak.

Mr. BROYHILL. It might be an unfair question except I saw it in the paper this morning. Someone had suggested it. They were going to refer it to the Civil Service Commission to get a ruling as to whether or not they could give preference to District of Columbia residents.

Mr. MACY. There are a number of proposals under consideration. Perhaps more of them are in the newspapers than in administrative discussion. I am not aware of any submission to the Civil Service Commission along the lines you describe.

Mr. BROYHILL. I understand from what you have said that it would be a violation of the civil service regulations.

Mr. OLSEN. I do not think he said that.

Mr. BROYHILL. Maybe we could suggest if they want to give preference to District of Columbia residents that they can give first preference to some of the juvenile delinquents and work from there.

Mr. OLSEN. I thought perhaps the District of Columbia Committee could sponsor this preference for District of Columbia residents.

Mr. BROYHILL. I do not think it would get through the District of Columbia Committee. The question has not matured enough. I saw it in the paper this morning. I questioned whether or not it would meet with the approval of the Civil Service Commission.

Mr. MACY. We have a provision for what we call local zone certification within the Federal service when in administrative judgment it appears desirable to limit the area of recruitment to a particular geographical location in the interest of not spreading the circle of competition so broadly that many people have to travel great distances.

However, in most of the examinations, such as the police and fire and other positions of an enforcement nature in the District, there is a very widespread recruiting and a very widespread application receipt. I would have to look at the specific jobs they had in mind and determine whether this was one where we were justified in limiting the zone of certification.

Mr. OLSEN. Are there any further questions?

Mr. WALLHAUSER. I would like to have the Chairman, if he would or could—I am sure he can—give me some type of examples of unjustified and unwarranted actions.

Mr. MACY. Yes. This would be in the reduction-in-force area, for example, where an agency had not properly worked out the order of retention in accordance with the law and regulation, and this was discovered either upon audit or as a result of an employee's appeal.

Say it was found the employee had been demoted as a result. It would then be a matter of providing that the employee be made whole financially for the action that was incorrect.

Mr. WALLHAUSER. This is the major area in which these cases occur?

Mr. MACY. It also would involve separations that were improper. We have instances under the appeals program where an employee contests either the procedure that was followed in removal or the reasons for removal. After pursuing either the appeal route within the agency or to the Civil Service Commission, it is judged that this was an improper action, restoration is ordered. This would assure—

Mr. WALLHAUSER. Do you have a count as to the number, for instance, in the past year that would be affected, number of persons, by this legislation?

Mr. MACY. I do not have that figure. I fear the answer is we do not have any information. The number in relation to the total population of the Federal service and the number of actions taken is very small, but the mere fact that the number is relatively small we feel does not preclude our giving attention to them and assuring that there is equality of treatment among all Federal employees.

Mr. WALLHAUSER. In the last session this bill was passed on the Consent Calendar in June and went over to the other body. Do you know of any opposition to the bill and, if so, what it was?

Mr. MACY. No; I do not. The only comment Mr. Hobby and I had heard was there was some reluctance over there to include the employees of the Architect of the Capitol and the Botanic Gardens. In view of the fact that both those groups are now excluded, perhaps this roadblock has been removed. But we are decidedly interested in seeing the advance of this legislation, and we will certainly confer with those in the Senate who will act on it.

Mr. WALLHAUSER. What will the employees of the two departments you just mentioned do as regards their problems?

Mr. MACY. They have a separate personnel system. It would be necessary to enact legislation that would relate to their particular personnel system. That is my understanding as to why there was some reluctance on this point.

Mr. OLSEN. The Architect of the Capitol, his crew is not covered by civil service?

Mr. MACY. No. They are part of the legislative branch and I believe they have a system of their own.

Mr. BROYHILL. I think we have legislation pending now to bring employees of the Architect of the Capitol under our legislative employee retirement system; is that correct, Mr. Johnson?

Mr. JOHNSON. Yes, sir; a hearing is scheduled for next Tuesday morning on that bill.

Mr. OLSEN. If there are no further questions of Mr. Macy, thank you for your time and your very splendid description of this legislation.

Mr. MACY. Thank you, sir.

Mr. OLSEN. I am told the airlines do not run convenient schedules for this committee, and for that reason Mr. MacKay has to be called early out of order. We will have John MacKay testify at this time if there is no objection.

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

Mr. MacKAY. I appreciate your giving me this opportunity to testify early. I ask the indulgence of the other witnesses while we submit a very brief statement for the record. If there is no objection, I would like to have our statement entered in the record and that I be permitted to make one or two comments thereon.

Mr. OLSEN. Thank you very much. It is admitted for the record at this point.

(Mr. MacKay's prepared statement follows:)

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

Mr. Chairman and members of the subcommittee, my name is John W. MacKay. As president of the National Postal Union, 509 14th Street NW., Washington, D.C. I am privileged to represent approximately 43,000 postal workers affiliated in over 375 local unions in 45 States, the Island of Puerto Rico, and the District of Columbia.

We are grateful, Mr. Chairman and members of this subcommittee, for these hearings on H.R. 4837, as introduced by Hon. Lindley Beckworth, and H.R. 4838, by Hon. Robert J. Corbett. These identical measures, which we hope will become the "Back Pay Act of 1963," are designed to provide a long overdue benefit to postal and Federal employees.

During the many years of our experience, in representing postal workers charged with violations of law and/or regulations, we have become familiar with the many complications that prevail. Often times the accused employee is subjected to long and frustrating delay in the existing appeal procedures and it is not unusual for such appeals to be considered by two and sometimes three different governmental agencies. The Post Office Department, the Civil Service Commission, the General Accounting Office, and even the Department of Justice all may become involved in a proposed dismissal or termination from Federal service. After undergoing long and protracted consideration, and having been subsequently declared "not guilty," we believe the accused should be entitled not only to payment of lost compensation but also restitution of sick and annual leave as well as credits for advancement and/or retirement that would otherwise have accrued to his credit had the unjust accusations never been made.

We have long advocated an employee, accused of wrongdoing or issued a letter of charges, should retain employment until the appeals procedure has been fully utilized and a final decision rendered. Obviously, it would not be practicable to retain an employee unquestionably guilty of a major offense involving theft, destruction of Government property, or some criminal or injurious act detrimental to the safety or welfare of his fellow employees. However, in all too many instances, disciplinary actions are threatened, charges issued with resultant appeals and hearings over minor irregularities that should have no validity in determining an employee's retention in the service.

We realize the intent of the proposals under consideration to correct a deficiency prevailing after a final determination of unwarranted charges. However, we believe it appropriate to suggest to the committee consideration be given a further amendment to the act of August 24, 1912, as amended (5 U.S.C. 652(a)), to provide that an employee shall be retained on active duty status pending a final decision on the charges unless positive evidence exists the employee was responsible for damage to Government property or loss of funds or action detrimental to the interests of the Government and/or injurious to fellow workers, to the extent such retention on active duty could result in further damage and/or injurious action.

We wish to convey our gratitude to the authors of these measures and to the members of this subcommittee for their efforts to correct this inequity. We hope the committee will recommend prompt action and passage of these proposals. We thank you for this opportunity to testify thereon.

Mr. MacKAY. I would like to introduce our secretary-treasurer, Mr. David Silvergleid.

Mr. OLSEN. We are glad to have you here, Mr. Silvergleid.

Mr. MacKAY. Mr. Chairman, we are very much in favor of this legislation. We believe the accused employee should be entitled not only to payment of lost compensation but also restitution of sick and annual leave as well as credit for advancement or retirement that would otherwise have accrued to his credit had the unjust accusations never been made.

As we did last year at our hearings, we mentioned then we have long advocated that an employee accused of wrongdoing or issued a letter of charges should retain employment until the appeals procedure has been fully utilized and a final decision rendered.

Obviously, it would not be practicable to retain an employee that was guilty of a major offense involving theft or destruction of Government property or some criminal or injurious act that was detrimental to safety or the welfare of his fellow employees.

However, in all too many instances disciplinary actions are threatened, charges issued, with resultant appeals in hearings over minor irregularities that should not have any validity in determining an employee's retention in the service.

We realize the intent of the proposals under consideration is to correct a deficiency prevailing after a final determination of unwarranted charges. However, we believe it appropriate to suggest to the committee that consideration be given to further amendment to the act of August 24, 1912, as amended, 5 U.S.C. 652(a), to provide that an employee shall be retained on active duty status pending a final decision on the charges unless positive evidence exists that the employee was responsible for damage to Government property or loss of funds or action detrimental to the interests of the Government and/or injurious to fellow workers, to the extent such retention on active duty could result in further damage and/or injurious action.

We want to thank you, Mr. Chairman, and the other members of the committee, for permitting us to have this opportunity to testify on this legislation. We hope it will soon be approved and ultimately become the Back Pay Act of 1963.

Mr. WALLHAUSER. Mr. Chairman.

Mr. OLSEN. Mr. Wallhauser.

Mr. WALLHAUSER. You also favor the retroactive feature?

Mr. MacKAY. Yes, sir.

Mr. OLSEN. Thank you very much, Mr. MacKay and Mr. Silvergleid. We are always glad to have you folks representing your organization before this committee.

Now we return to the regular order. Our next witness is Mr. John McCart, operations director, Government Employees, Council. Mr. McCart.

STATEMENT OF JOHN McCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYEES' COUNCIL

Mr. McCART. My name is John A. McCart, and I am operations director, Government Employees' Council. With your permission, I would like to file my statement for the record and proceed extemporaneously with a few general comments on the legislation.

Mr. OLSEN. Thank you very much. Your statement is admitted to the record at this point. You may proceed.
(Mr. McCart's prepared statement follows:)

STATEMENT OF THE GOVERNMENT EMPLOYEES' COUNCIL, AFL-CIO

Mr. Chairman and members of the subcommittee, the Government Employees' Council, representing 25 unions, whose membership consists in total or in part of Federal Government employees, desires to endorse the two measures under consideration today.

We wish to extend our appreciation to you, your colleagues on the subcommittee, and the authors of the bills, Representatives Lindley Beckworth and Robert Corbett, for their sponsorship of the legislation.

You will recall that this committee and the House approved similar legislation in the 87th Congress. House Report No. 1748 of the 87th Congress outlines the purpose of the bill. It is designed primarily to achieve a uniform method of restoring to Federal workers subjected to unjust personnel actions the financial and other losses incurred as a result of these actions. The legislation restores the individual to the same status he held prior to the unwarranted action.

In presenting this basic purpose, we do not desire to convey the impression that there are no existing statutes on this subject. Public Law 623, approved June 10, 1948, and Public Law 733, dated August 26, 1950, govern the conditions under which employees may receive retroactive pay when their suspension or removal is later found unwarranted. However, these laws do not cover certain vital elements of pay, and are generally inadequate.

It should be emphasized at this point that neither of the bills before the subcommittee bestows on employees any additional rights to tenure or appeal.

What are some of the present defects the proposed legislation will remedy?

It will permit crediting any periodic step increases or general pay increases which would have accrued to the employee during the interim.

It will permit crediting overtime and night differential pay to which an individual would have been entitled if the adverse personnel action had not been taken.

It will permit extension of the retroactive pay principle to all Federal workers, regardless of status.

It will permit restoration of an individual to his former status either upon his appeal or the voluntary action of the agency in recognizing the injustice of the original action.

It will clarify the present provision on restoring accumulated annual and sick leave by specifically authorizing such restoration within the maximum amounts permitted by other laws.

The bills you are now considering will correct the inequities noted above and will mold into one statute the previous diverse enactments on this subject.

There is one minor point on which the two bills differ. Representative Corbett's bill, H.R. 4838, applies the benefits to cases in process of review at the time of enactment. The language can be found on page 2, line 15. Congressman Beckworth's measure, H.R. 4837, makes the legislation applicable only on a prospective basis. We urge that the measure approved by the subcommittee contain language applying it to situations undergoing review when the legislation is approved.

Mr. Chairman, the council is happy to announce its support of this meritorious legislation and to urge early, favorable action by the subcommittee.

Mr. McCART. We wish to express our appreciation to you and the members of the subcommittee and certainly to the authors of the bills, Representatives Beckworth and Corbett, for their interest in this rather important matter. The 25 unions affiliated with the Government Employees' Council appear today in support of the legislation under consideration. As you are well aware, both this committee and the House approved similar legislation in the 87th Congress.

We feel that the basic intent of Public Law 623, the original statute governing retroactive benefits for employees who are unjustly removed or suspended, was to restore them fully to the positions and status they had prior to the unjustified action. However, the language of

the statute does not permit that. The bills presented by Representatives Beckworth and Corbett represent an attempt to accomplish that objective that we feel was intended under Public Law 623.

H.R. 4837 and H.R. 4838, Mr. Chairman, in our opinion, will do at least these things: they will permit an employee who is restored to have the benefit of any general pay increase or any within grade increase to which he would have been entitled had he not been removed, suspended, or demoted.

It will permit him restoration of any overtime or night differential or other premium benefits to which he would have been entitled had the action not taken place.

It will cover all types of Federal employees and will not be restricted to classes of employees as is now the case under the existing law.

Mr. BROYHILL. If the gentleman will yield, this does not apply to employees of the Architect of the Capitol or the Botanic Gardens, does it?

Mr. McCART. I did not understand.

Mr. BROYHILL. Mr. Macy just pointed out that we would exclude the Architect of the Capitol employees from the previous bills.

Mr. OLSEN. Worse than that, it would be the legislative employees who are excluded, too, as are the employees of the Architect of the Capitol and the Botanic Gardens. Thus the Botanic Gardens and Architect of the Capitol employees are treated the same as our legislative employees.

Mr. McCART. I was thinking, for example, of probationary employees not now covered. But with respect to the employees of the Architect of the Capitol, while I recognize they are legislative employees, I think in similar circumstances they should be entitled to the same kind of treatment as any other Federal employees.

Mr. OLSEN. I think everyone has to recognize there is a degree of patronage in these legislative jobs. That is carried along with being part of the Congress. We do not get any kind of pay for demotion, there is no way to correct a mistake when we are let go. The legislative employees that are here with us have to go when we go.

Mr. McCART. Mr. Chairman, I was thinking actually of another group of legislative employees about whom I know. For example, the maintenance employees of the Capitol are in effect career employees despite the fact that they are not hired under the normal civil service procedures. In my opinion, there is no question about patronage in those jobs. Many of those employees have worked here 25 and 30 years and occupy basically the same kind of position as do employees in the executive branch.

Mr. OLSEN. I do not know any of these people specifically, but I am acquainted with people in the folding room who have been here 20 and 25 years, but they are all here as patronage employees. Some Congressman is their patron.

Mr. McCART. I would certainly defer to the judgment of the full committee on a matter affecting employees of the legislative branch.

Mr. OLSEN. Including those employees would gather some resistance from some of the Representatives and some of the Senators who view everything on Capitol Hill as part of the patronage of the legislative branch.

Mr. BROYHILL. The employees of the Architect of the Capitol, by and large, I do not think would necessarily include the people in the

folding room. We do not speak of the people in the folding room and Capitol policemen when we generally refer to employees of the Architect of the Capitol; although a reference from a Member of Congress would be helpful in securing a job, he is not there under the patronage of the particular Member. Yet he is not a civil service career employee either. He is neither a patronage employee nor a civil service employee. So he is in a very difficult category.

It is something that comes up when we have legislation like this, whether we will include him or not. It is a problem.

Mr. WALLHAUSER. To be realistic about it, I guess we have to recognize that previous legislation did not move, and we want to try to do something and to move forward and not be on a treadmill. Perhaps we had better continue the way we are going.

Mr. OLSEN. Thank you, Mr. Wallhauser. You may continue.

Mr. McCART. The legislation will also permit an employee to regain his previous status either upon his own appeal or where an agency restores him as a result of their own voluntary action, which is not the case under present law.

Finally, the legislation clarifies the entitlement of the employee to sick leave and annual leave benefits which he would have accrued had he not been demoted, removed, or suspended. These bills do at least these things. For that reason we urge the enactment of this legislation.

As has been indicated, Mr. Chairman, there is a slight difference between H.R. 4837 and H.R. 4838. H.R. 4838 would permit the application of this legislation to cases in process of appeal at the time the legislation becomes law. We support this language in H.R. 4838 and recommend that any legislation approved by the subcommittee and the full committee contain that kind of language.

Actually, Mr. Chairman, as a matter of principle we would recommend that the legislation be made totally retroactive because this is the fundamental philosophy of the bills. However, there are certain serious administrative difficulties involved with that, we understand. But if the legislation were applied to the cases under consideration at the time it is enacted, we do not feel that that would present any grave administrative difficulty, and we urge that that particular language be included in any legislation enacted.

Mr. WALLHAUSER. Would you have any idea as to the number in process now?

Mr. McCART. No, sir.

Mr. OLSEN. Are there any more questions?

Thank you, Mr. McCart, for being here with us.

The next witness is our friend, Mr. James Rademacher, vice president, National Association of Letter Carriers.

STATEMENT OF JAMES RADEMACHER, VICE PRESIDENT, NATIONAL ASSOCIATION OF LETTER CARRIERS

Mr. RADEMACHER. Mr. Chairman and gentlemen, I represent the 165,000 letter carriers and other Federal employees that are within our organization. We do not have a prepared statement today because we feel that the committee is very much aware of the legislation, but we do want to point out to you a couple of matters that we think should be called to your attention.

No. 1 is what are we talking about, the type of person, that is, who is going to be benefited from this legislation. I think there has been a misconception perhaps and a lack of understanding along the line, and I would like to give a specific example.

In the postal service today there is constant hiring of temporary employees. We take a specific State of Florida, where there is growth and the postmaster does select employees from a civil service register. He is not permitted under authorized complement to make that person a career employee. He is in a temporary status. Then as he does secure a vacancy, the employee who was appointed finds there have been disabled veterans and others in the open examination, go to the top, he is constantly relegated to a lower position and never is reached, but meantime he remains a temporary employee.

Then this temporary employee finds himself involved in difficulty. Because of the very nature of his employment, supervision, and management are apt to look upon him as though he is not a human being, he is only a figure; in fact, he is only a temporary employee. We would like to point out this is actually a person and not just a figure and not just a temporary worker. He is a human being who has selected the postal service for his employment.

Because of the nature of that employment, management looks down upon him and finds that perhaps it is easier to rid the service of him rather than allow him to be retained.

We have a situation in Hollywood, Fla., where a letter carrier on a temporary basis was removed after a year of service. After his appeal went as far as the Post Office Department and the highest level of appeal, the Department felt he should never have been removed. They told the postmaster to put him back to work.

Meantime, this procedure took 8 months. That man could not find other employment. He is now back to work like a checker, moving around on a checker board, told to report back to work tomorrow morning, your job is restored, no other benefits.

I believe this is cruel, it is archaic, and certainly against policies of good government. That is a specific example.

In conclusion, I would like to point out there are ways that we can also resolve this matter and one has already been referred to by Mr. MacKay. That is, do not allow people to be suspended or removed until they have had the last trial. Do not sentence people and have them serve that sentence until they have had every opportunity to be heard. It will save the Department money.

If the Department restored this employee, who had been off 8 months, and he was a career employee, it would cost the Department 8 months' salary and I believe you agree it is not economical to be paying people that much money for not working. Meantime, you are going to have to pay other people to replace him, you are going to give other people the annual and sick leave and other benefits. It is costly.

I believe we should get to the root of the problem. That is one of the problems that exists here today, the very nature of the suspension and removal, the fact that it can take place before the final appeal has been made.

The second alternative you have would be to have immediate hearings on Congressman Olsen's bill, H.R. 5995, which would restrict employment of temporary workers to no more than 90 days at any one

time so they could not accumulate rights of the career employees. That bill also would permit those temporary workers who have 3 years of service to secure career status if they are off a civil service register.

I think all these things should be considered and we should try to get at the root or the source of our problem rather than go around it.

In regard to the cost of this legislation and disagreement with the reports that have been made about a half million dollars, I do not know how there could be any cost involved when the Commission themselves admit they only put 1 man back to work out of 88 appeals. I believe the committee investigating this is going to find some very interesting facts, and when you put 1 man back out of 88 appeals, you are not going to have to charge the Government of the United States a half million dollars.

I thank the committee for holding these hearings.

Mr. OLSEN. Over what period of time are you speaking about in regard to the 88 appeals?

Mr. RADEMACHER. Averages reported by the Civil Service Commission indicate that out of 88 appeals that reached that level, only 1 person is restored to his position. In other words, you would only have to give retroactive benefits to 1 person who appeals out of 88.

Mr. OLSEN. This is over a considerable period of time that this average has been struck?

Mr. RADEMACHER. I doubt that the Civil Service Commission could hold 88 appeals may in 6 months, depending on the staff, and so on. I think it is of great concern.

Mr. WALLHAUSER. I am amazed at the figure of \$500,000. I think we should try to clear that record a little bit.

Mr. OLSEN. I thought even if it was a half million dollars, or whatever figure he would say it cost, that this would be a cheaper method than the private bill method that is presently being the remedy. A private bill, in addition to granting back pay, is an expensive bill to pass. This method would be cheaper.

Mr. WALLHAUSER. I agree. My thought, as you probably well know, is to try to expedite the legislation and not run into problems along the way. If we could reduce that figure actually from \$500,000 to whatever it really is, it would be very helpful.

Mr. OLSEN. We could have our counsel go to the Civil Service Commission and get this average figure Mr. Rademacher quotes and find out the number of appeals per year for the last 10 years and how many appeals have been successful.

Mr. RADEMACHER. The passage of this legislation would probably mean two important things would occur:

No. 1, the employee would have the same rights that other people have, which is nothing more than simple justice.

No. 2, passage of this legislation would mean that agencies and the Commission would expedite these appeals and not make people wait months on end to determine whether or not they are going to be restored to their job. I say that in a constructively critical way.

Mr. WALLHAUSER. It is a good point.

Mr. OLSEN. I can say for the committee that I believe that we can check and review language, possible language, for this legislation that would discourage the dismissal until a hearing or final hearing has been had and retention on the payroll in the active employment until

some hearing at least had been had. I think this is a little difficult at this point. We want to get some remedy started. I assure you, Mr. Rademacher, we will give serious consideration to your suggestions. Thank you very much.

Our next witness is Mr. Joseph F. Thomas, director of organization, United Federation of Postal Clerks. We are glad to have you with us, Mr. Thomas.

**STATEMENT OF JOSEPH F. THOMAS, DIRECTOR OF ORGANIZATION,
UNITED FEDERATION OF POSTAL CLERKS**

Mr. THOMAS. I am Joseph F. Thomas, director of organization, United Federation of Postal Clerks. I am pinch-hitting to day for Legislative Director John O'Connor, who is ill. With your permission, I would like to submit Mr. O'Connor's statement for the record and point out one portion of the language of the bill which we believe needs clarification.

Mr. OLSEN. Without objection, the statement of Mr. John O'Connor will be entered in the record at this point.

(The prepared statement of Mr. O'Connor follows:)

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

Mr. Chairman and members of the committee, for the record, and for the purposes of identification, 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 federation has a membership of over 160,000, and under the provisions of Executive Order 10988, is the "exclusive" representative of every post office clerk in the United States.

As a representative of the postal clerks, I take this opportunity to express our appreciation to Representative Corbett and to others for introducing H.R. 4838 and related bills. And, I thank you, Mr. Chairman, for allowing me to present the views of our members with reference to these important bills.

In testifying today, I realize that Public Laws 623 and 733 do provide for retroactive reimbursement in the event of unwarranted removal from the Federal service.

Unfortunately, these public laws do not go far enough and do not make provisions for the crediting of periodic step increases, overtime, or night differential. Mr. Corbett's bill does make such provisions and also clarifies the present regulation on restoring accumulated sick and annual leave to an employee's account.

There is one point in these backpay bills which I would like to call to your attention. All of these bills provide that when an employee's separation from Federal Service is found to be unwarranted, and he is reinstated, he shall be paid lost salary minus any amount he may have earned while separated from Federal employment. It is my feeling that employees improperly separated from the Federal Service should be paid in full all amounts forfeited as a result of improper separation.

Then there is the employee who has a part-time job, or a part-time business outside of his Federal employment prior to separation. There is no reason why normal earnings from such activities should be used as an offset against that salary legitimately due an employee. When an employee is separated legitimately he suffers the full penalty. When separated improperly the same standards should be applied to his employer; even though that employer may be the U.S. Government.

I again thank you for the opportunity of presenting our views, and I urge you to take prompt and favorable action.

Mr. THOMAS. The bills which I have read state that when an employee is separated from the service and it is found that his separation is unwarranted, the pay he would have received, had he remained on

the rolls, will be paid back to him minus that portion of a salary which he may have earned while being off the rolls.

In other words, if a postal employee makes \$5,000 a year and he is off the rolls for an entire year, if, on the outside he makes \$3,000, when final settlement is made, he will not be paid the full \$5,000 that he would be entitled to, but simply paid \$2,000.

I think the language of the bill is somewhat fuzzy in this respect. We have many people in the postal service who have outside employment on a part-time basis. We have others who have part-time businesses which they run either at night or with the help of their wives and in some of these businesses that \$5,000 which he may make in the postal service would be augmented by another \$3,000 or \$4,000.

As I read the bill, and I stand to be corrected on this, but as I read the bill, if the man is reinstated he will receive his salary minus anything that he may have made on the outside.

It does not say anything about paying him—let me see if I can explain this to you clearly.

Mr. WALLHAUSER. Where does it say that?

Mr. THOMAS. It is in the bill that provides for the retroactive payment, that portion of it on the second page.

Mr. OLSEN. Section 3.

Mr. THOMAS. Section 3.

Mr. OLSEN. Down about lines 19 and 20 of the page on H.R. 4838.

Mr. THOMAS. As you will notice, there is nothing which states there that a man's total salary, while employed in the Federal service, will be reduced by the additional amount he makes after separation.

Am I getting my point across to you?

Mr. OLSEN. Let me interrupt you there; it is suggested to me by counsel that a civil service regulation would clarify this point, that the income the employee has been receiving during his employment in the classified service would not be considered as outside employment earnings during his suspension. I think we can make that clear by some correspondence between counsel and Chairman of the Civil Service Commission, Mr. Macy, and then in our history of this legislation we can make that clear. That is a factual thing we cannot quite write legislation about. It would have to be established as a fact that the employee had some reliable income, reliable and continuous income, outside of this Federal employment during the course of his active employment. Then he continued with that same activity during suspension.

If he increased that income during suspension, that increase certainly would have to be deducted from whatever he gained as a—

Mr. BROYHILL. Would the chairman yield?

Mr. THOMAS. That is correct. Our particular worry is that the interpretation after the bill is passed will not favor the employee and for that reason we would certainly like to see something written into the bill which would protect the employee in the event that he now has a double income. That is actually all we are interested in.

Mr. BROYHILL. I do not want the fellow who has to move in order to support his family to be penalized by this language.

Mr. THOMAS. That is correct.

Mr. BROYHILL. By the same token, you are not suggesting that an employee can profit by this legislation by virtue of getting much more

income as a result of an erroneous suspension that he would have had if he had not been suspended?

Mr. THOMAS. I think our basic thinking is that the man should be repaid in full, just as he is penalized in full. However, we are certainly willing to compromise on that point and I believe that as long as he suffers no actual financial loss, we would certainly be happy to see the bill enacted with clarifying language.

Mr. OLSEN. The point is that we want to be sure that the employee is restored whole.

Mr. THOMAS. That is right.

Mr. OLSEN. The other point is, if, because when he is off on suspension he increases his income, we cannot hardly make him more than whole.

Mr. THOMAS. No; that is true.

Mr. OLSEN. All right.

Mr. THOMAS. I have made my point, I hope.

Mr. OLSEN. You have. Thank you very much, Mr. Thomas.

Mr. THOMAS. Thank you.

Mr. OLSEN. We will now hear from Mr. Max Jordan, president, National Rural Letter Carriers Association. He is accompanied by Mr. John Emeigh, secretary, National Rural Letter Carriers Association, and Mr. Floyd Huffman, the vice president.

STATEMENT OF MAX JORDAN, PRESIDENT, NATIONAL RURAL LETTER CARRIERS ASSOCIATION; ACCOMPANIED BY JOHN EMEIGH, SECRETARY, NATIONAL RURAL LETTER CARRIERS ASSOCIATION; AND FLOYD HUFFMAN, VICE PRESIDENT, NATIONAL RURAL LETTER CARRIERS ASSOCIATION

Mr. JORDAN. Mr. Chairman and members of the committee, it is a pleasure for us to testify in favor of this bill.

I am Max H. Jordan, president of the National Rural Letter Carriers' Association, an organization which represents almost 40,000 regular, substitute, and retired rural carriers in all 50 States. I wish to express appreciation to Chairman Arnold Olsen and members of this subcommittee for the opportunity of appearing in behalf of this important proposed legislation. Also, I wish to express appreciation to Representative Lindley Beckworth and to Representative Robert J. Corbett for introducing H.R. 4837 and H.R. 4838 and for their sponsorship of the "Back Pay Act of 1963."

The provisions of these bills would allow for an equitable, uniform manner of correcting an administrative action which resulted in an unjustified adverse decision and penalty against an employee. Although the number of our members against which adverse actions are applied annually is very small, the National Rural Letter Carriers' Association heartily endorses this proposed legislation. It is our opinion that no loss of benefits, including pay, annual or sick leave, seniority and retirement credit, should occur when an employee is unjustly separated or suspended from his or her employment.

It is our sincere hope that the committee will report favorably this meritorious legislation. Thank you again for the opportunity of appearing.

Provisions of these bills will allow for an equitable and uniform manner of correcting an administrative action which resulted in an

adverse, unjustified decision and penalty against an employee. Although the number of our members against which adverse actions are applied annually is very small, the National Rural Letter Carriers Association heartily endorses this proposed legislation.

Mr. OLSEN. Do you have any figure on the number involved?

Mr. JORDAN. It is very insignificant, Congressman, as far as our group is concerned.

Mr. OLSEN. As a matter of history in your organization, there are just very few instances?

Mr. JORDAN. I would say one-tenth of 1 percent or less perhaps.

Mr. OLSEN. You cannot hardly remember any then?

Mr. JORDAN. That is right. At the moment I do not remember any cases.

Mr. OLSEN. That would not mean any cost insofar as the Rural Letter Carriers are concerned?

Mr. JORDAN. That is exactly right. It is our opinion that no loss of benefits, including pay, annual or sick leave, seniority, and retirement credit should occur when an employee is unjustifiably separated or suspended from his employment.

We endorse the principle of these bills and also we endorse the retroactive feature as set forth in H.R. 4838.

We thank you very much for the opportunity of appearing.

Mr. OLSEN. We certainly appreciate your brevity and the fact that you got to the point so quickly and so well.

Any questions, gentlemen?

If there are no questions, thank you very much.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. OLSEN. Our next witness is Mr. George Meagher, legislative director of the American Federation of Government Employees. We are very happy to have you with us, Mr. Meagher.

STATEMENT OF GEORGE MEAGHER, LEGISLATIVE DIRECTOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. MEAGHER. My name is George Meagher.

Mr. Chairman, with your permission, I would like to submit our statement for the record and just read one or two paragraphs, if I may.

Mr. OLSEN. Very well.

Without objection, the statement of Mr. Meagher will be admitted in the record as though read in full.

Proceed with whatever you have to add.

PREPARED STATEMENT OF GEORGE MEAGHER, LEGISLATIVE DIRECTOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Correction of inequities in three laws providing backpay is the objective of the bills which are the subject of today's hearing, H.R. 4837, sponsored by Representative Beckworth, and H.R. 4838 by Representative Corbett. The American Federation of Government Employees supports these bills and commends their sponsors.

The two bills, differing only in minor respects, seek to close loopholes in the three laws they would modify, defects which, at the time of enactment, were not realized. Those earlier statutes were designed to provide payment of compensation and restoration of employment benefits to Government officers and employees improperly deprived thereof.

They failed to enable the employee who had been the object of an improper or erroneous personnel action to be made whole. It is to correct that failure that the provisions of H.R. 4837 or 4838 are acutely needed.

The Senate Report in 1947 on the bill which became Public Law 623, 80th Congress, stated that even though the Civil Service Commission desired to reimburse the employee for the period in which he had lost compensation through no fault of his own, "the Commission is powerless to act." Public Law 623 which amended the Lloyd-La Follette Act of 1912, authorized backpay in non-security cases involving improper separations and suspensions of nonveterans having civil service status in the competitive service. The law also benefited all veterans who had completed a trial or probationary period.

It appeared that the new law had supplied the authority which would restore the benefits which an employee had lost through his erroneous or wrongful suspension or separation. Such was not the case. It became apparent that it had restored the compensation which had been lost but did not restore accumulated leave to the credit of the employee at the time the erroneous action took place.

There was congressional action in the backpay area again in 1950, 2 years after Public Law 623 was approved. The next statute was Public Law 733, 81st Congress, approved August 26, 1950. Again it fell short of the objective of something approaching complete equity. The preceding statute had excluded restoration of annual leave. Public Law 733 provided for recrediting the employee with his annual leave, but it did not make entirely certain that the employee would be paid for the entire period following erroneous suspension or removal.

The law authorized agency heads to determine whether an employee would be paid for all or part of the time in question. He thus could be paid, for example, for all of a 90-day period or for only 1 of those 90 days. However, agencies have generally paid for entire periods. The fact still remains that full payment is not required by law and this is one of the loopholes still to be closed by legislation.

Neither Public Law 623 nor Public Law 733 authorized credit for periodic within-grade salary increases or for pay raises which became available during the time an employee is off the active-duty payroll. This is a serious defect which needs to be remedied.

The third statute which has been interpreted as authorizing backpay is the Veterans' Preference Act of 1944, as amended. The authority provided in the act applied to improper demotions of veterans who had completed a trial or probationary period. It was also interpreted as authorizing backpay in cases involving erroneous reduction in force action affecting both veterans and nonveterans.

Unfortunately, the solution to the backpay problem has developed on a piecemeal basis and there is still need for further legislative action. The two bills which are the subject of today's hearing would do much to remedy the remaining deficiencies in existing law. Both bills would restore pay, allowances, or differentials resulting from an unjustified or unwarranted personnel action taken on or after the date of enactment. H.R. 4838 is more liberal than H.R. 4837 in that it would cover the same adverse situation occurring prior to date of enactment.

When compared with H.R. 11753, the bill reported favorably to the House last year, it will be noted that both H.R. 4837 and H.R. 4838 omit the Office of the Architect of the Capitol and the Botanic Garden in listing agencies included in their coverage. Last year's bill referred to corporations wholly owned or controlled by the Government, whereas this year's bills omit the word "wholly." The word appears to add nothing to the definition of coverage in that respect.

Both bills provide that payment would be made "in an amount commensurate with the amount of all or any part of the pay, allowances, or differentials, as applicable which such officer or employee normally would have earned," if the adverse personnel action had not been taken. This provision is important for it would compensate an employee for overtime or night differential or other differential which he would have ordinarily earned if he had not been erroneously suspended or separated.

The number of employees affected by this legislation within 1 year probably would be small. A Civil Service Commission estimate of cost this year is not more than \$500,000 on a Government-wide basis. There is no indication that the estimate should be increased or that it is not a maximum figure.

These are measures which not only deserve serious consideration but represent correction which should be made by legislation during the present session of Congress. Only by prompt action will further injustice be prevented.

We appreciate, Mr. Chairman, the opportunity to comment on these bills.

Mr. MEAGHER. Unfortunately, the solution to the backpay problem has developed on a piecemeal basis and there is still need for further

legislative action. The two bills which are the subject of today's hearing would do much to remedy the remaining deficiencies in existing law. Both bills would restore pay, allowances, or differentials resulting from an unjustified or unwarranted personnel action taken on or after the date of enactment. H.R. 4838 is more liberal than H.R. 4837 in that it would cover the same adverse situation occurring prior to date of enactment.

Both bills provide that payment would be made in an amount commensurate with the amount of all or any part of the pay, allowances, or differentials, as applicable which such officer or employee normally would have earned, if the adverse personnel action had not been taken. This provision is important for it would compensate an employee for overtime or night differential or other differential which he would have ordinarily earned if he had not been erroneously suspended or separated.

These are measures which not only deserve serious consideration but represent correction which should be made by legislation during the present session of Congress. Only by prompt action will further injustice be prevented.

Thank you, Mr. Chairman.

Mr. OLSEN. Thank you very much, Mr. Meagher. We are always glad to have you here.

Mr. OLSEN. Our next witness is Mr. Vaux Owen, president of the National Federation of Federal Employees.

STATEMENT OF VAUX OWEN, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. OWEN. My name is Vaux Owen. I am president of the National Federation of Federal Employees. Our national office is located at 1737 H Street NW., Washington, D.C.

We are happy to support this proposed legislation and appreciate the action of the subcommittee in holding prompt hearings on it. If the legislation is enacted, it is to be cited as the "Back Pay Act of 1963".

Essentially, the legislation is a simplification and clarification of existing legislation regarding backpay. It should promote a better understanding and a more equitable administration of backpay in cases to which it is applicable.

It sometimes happens in the Federal service that an employee will suffer a loss or reduction of all or part of his pay because of a personnel action which is found later by appropriate authority to have been unjustified or unwarranted. Such an employee, under the bills being considered by this subcommittee, would be entitled, upon correction of such personnel action, to an amount commensurate with the amount of all or any part of the pay, allowances, or differentials which the employee normally would have earned during the period subsequent to the effective date of personnel action, if such personnel action had not occurred, less any amounts he may have earned during the period through other employment. This is simple justice. If an employee is wrongfully deprived of pay, that which was wrongfully taken from him should be restored. This is the reasoning under the old legislation but the bills now before the subcommittee permit restoration on

the basis of an administrative determination upon a decision that an unjustified or unwarranted personnel action has been taken. An agency, on its own motion, can correct the wrong that has been done, and can also mete out a similar measure of justice to other employees who were similarly wronged. The wrong can also be righted on a timely appeal by the employee himself.

The proposed legislation also provides that the time during which the employee was wrongfully deprived of his pay allowances, and so forth, shall be held and considered for all purposes to have been service for the agency except that the employee may not receive credit for leave which would exceed any maximum amount authorized by law or regulation.

There is a question in connection with this legislation as to whether it would permit the payment of a within-grade increase if the date for such a within-grade increase occurred during the period the employee was in a nonpay status. The "acceptable level of competence" provision of the present law might have some bearing on this question. If there should be any doubt in the minds of the members of the subcommittee regarding this feature of the legislation, it is recommended that the legislation be amended to include any within-grade increase to which the employee might have been entitled on the assumption an "acceptable level of competence" certification would have been made in his case.

I want to call the attention of the chairman and the members of the subcommittee to a suggestion on the last page of my statement.

Before I do that, however, I would say that our organization certainly thanks the chairman and the committee for this opportunity to appear and also appreciates the action that is being taken on this back-pay legislation.

Mr. Macy testified that within-grade increases would be included, and this suggestion relates to that question.

There is a question in connection with this legislation as to whether it would permit the payment of a within-grade increase if the date for such within-grade increase occurred during the period the employee was in a nonpay status.

The acceptable level of competence provision of the Federal Employees Reform Act might have some bearing on this question. If there should be any doubt in the minds of the members of the subcommittee regarding this feature of the legislation, it is recommended that the legislation be amended to include any within-grade increase to which the employee might have been entitled on the assumption an acceptable level of competence certification would have been made in this case.

I know that Mr. Macy testified that would include within-grade increases.

There is still some question in my mind, however, as to whether it would be so construed if it should be as the bill now reads.

Mr. OLSEN. I must say it is my view that within-grade increases that might have occurred during the period of suspension are included in the legislation and, as a matter of legislative history, I am going to see, with my colleagues here, if we cannot be very sure.

Mr. OWEN. Thank you.

Mr. OLSEN. Thank you for particularly pointing that out.

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

Mr. McAvoy.

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

Mr. McAVOY. Mr. Chairman and members of the subcommittee, my name is Harold McAvoy, national president of the National Association of Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders. Our office is located at 900 F Street, NW., room 916. We are members of the AFL-CIO and the Government Employees' Council.

The bills before your committee for consideration, H.R. 4837 and H.R. 4838, have the full endorsement of our national organization. These bills, if enacted into law would provide for payment of certain amounts and restoration of employment benefits, such as sick leave, annual leave, and retirement for employees improperly deprived thereof, as the result of unjustified or personnel action.

I urge you, Mr. Chairman, and members of this subcommittee to give speedy and favorable consideration to the bills before you whereas they can be enacted into law in this session of Congress.

Thank you, Mr. Chairman, and members of the committee for the opportunity of appearing before you.

Mr. OLSEN. Thank you, Mr. McAvoy.

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

Mr. Messer.

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

Mr. MESSER. Mr. Chairman, my name is Ross A. Messer and I am the legislative representative for the National Association of Post Office and General Services Maintenance Employees.

We would like to endorse the provisions of H.R. 4837 and H.R. 4838, and the retroactive features contained in H.R. 4838.

We would also like to suggest that the subcommittee give consideration to employees continuing on the rolls until the final appeal has been made which would eliminate the entire situation.

If this is not done, we would like to suggest that the employees do get full pay for the time they are off.

Mr. OLSEN. Mr. Messer, on this question we are trying to retain people on their jobs and I am sure that there will have to be some other separate legislation than this.

I personally appreciate the position you have taken and at first glance I favor it but I think we will have to take that up another day.

Mr. MESSER. Yes, sir.

On the backpay situation we had a case recently in which a man had a part-time job of selling insurance after his work at the post

office. He was fired and it took 7 months for his appeal to be processed and during this 7 months he sold insurance on a full-time basis.

The entire proceeds from his selling insurance were deducted from the backpay that he received even though he had been doing this prior to his separation and continued to do it after his separation.

So, we feel that something should be put in there that any outside income they have prior to their separation and that continues after they have been reinstated should be taken into consideration in making pay adjustments. Thank you very much.

Mr. OLSEN. Thank you.

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

Mr. Warfel.

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

Mr. WARFEL. Mr. Chairman and members of the subcommittee, for the record, and purpose of identification, my name is George L. Warfel, president of the National Association of Special Delivery Messengers in the U.S. Postal Service, which association holds national exclusive recognition for representation of all special delivery messengers under the President's Executive Order No. 10988. It is a pleasure to appear before you in support of these two bills by Congressmen Beckworth and Corbett. Both of these bills seek to amend present laws 623 and 733 which provide retroactive reimbursement in event of unwarranted removal from Government employment. Unfortunately these laws do not go far enough. The proposed legislation now being considered would credit periodic step increases, overtime, and night differential. It is our feeling that those employees who have been improperly separated should be paid in full for all amounts forfeited by reason of such improper separation.

I trust the committee will take favorable action and report a bill to the full committee. Again I thank you.

STATEMENT OF EVERETT G. GIBSON, PRESIDENT, NATIONAL FEDERATION POST OFFICE MOTOR VEHICLE EMPLOYEES

Mr. GIBSON. Mr. Chairman, I would like to take this opportunity to go on record in support of this legislation.

Thank you, Mr. Chairman.

Mr. OLSEN. Thank you very much.

At this point in the record we will insert a statement submitted by Daniel Jaspán of the National Association of Postal Supervisors, as well as a statement submitted by Mr. John S. Mears, assistant director, legislative committee, the American Legion.

(The statements follow:)

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

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 more than 26,000 postal supervisors, including those in the motor vehicle and maintenance services. We have members in each of the 50 States and in Puerto Rico.

We thank Mr. Beckworth and Mr. Corbett for introducing H.R. 4837 and H.R. 4838, respectively. It is our opinion that such legislation has been long due and we are hopeful that one of these bills will finally be enacted into law.

Since the provisions of this proposed legislation apply only to those who "have undergone an unjustified or unwarranted personnel action taken on or after the date of enactment of this act, which has resulted in the withdrawal or reduction of all or any part of the pay, allowances, or differentials of such officer or employee" it is only just and proper that these employees should not be penalized for what is basically an administrative error.

The employee who has been removed under these circumstances has had a severe penalty imposed upon him already. His morale, in most cases, has been lowered, if not shattered. He is often subject to derogatory remarks made by his fellow employees and his neighbors. His standing in his community is at a low ebb. This is a severe penalty to bear for an administrative error. It is simple justice that, in restoring the person involved to duty, payments be made for lost earnings and employment benefits be restored.

There have been cases in the past where employees have been adversely affected by improper removal. We would like to see section 3 amended so that the provisions of this bill would be retroactive and give recognition to those to whom unwarranted personnel action has been taken in the past. Of course, if this would complicate the enactment of this bill into law, we can agree to the prospective date rather than a retroactive one in the interest of having H.R. 4837 or H.R. 4838 enacted into law as quickly as possible. At least this would afford protection to those who may be unjustly deprived of their livelihood after the enactment of one of these bills into law.

I thank the committee for the opportunity of expressing the views of the National Association of Postal Supervisors on the proposed bills, and hope that prompt action will be taken so that employees will receive protection as soon as possible under the provisions of the proposed legislation.

THE AMERICAN LEGION,
Washington, D.C., May 9, 1963.

HON. ARNOLD OLSEN,

Chairman, Subcommittee of the House Post Office and Civil Service Committee, House Office Building, Washington, D.C.

DEAR CHAIRMAN OLSEN: The American Legion supports H.R. 4837 and H.R. 4838, the two bills presently under consideration by your subcommittee. This legislation would provide for the payment of certain amounts of back pay and the restoration of employment benefits to Federal employees who have been improperly deprived of same.

The American Legion has had long experience with this problem in connection with its efforts to assist veterans with their appeals to the U.S. Civil Service Commission under the Veterans' Preference Act of 1944.

It is inconceivable that Congress would provide for a system of appeals from adverse actions on the part of the employing agency without intending, once an appeal is won by the individual, that he not only be restored to his position, but that he be made whole, so to speak, by an award of back pay and restoration of benefits lost by reason of the unjustified or unwarranted personnel action. It has always been the opinion of the American Legion that to do less falls far short of our concepts of equity and fairplay.

To the best of our knowledge, the courts have been unanimous in awarding judgments for retroactive pay in these situations. But this seems to us to force a hardship on an individual and this legislation would eliminate such recourse in the courts which should have been unnecessary in the past.

We would like to suggest that the language of the bill be amended to make it crystal clear that the agency concerned must restore the individual to the position (or one of like stature and pay) from which he was removed. In our experience, agencies have refused to restore a person, even though section 14 of the Veterans' Preference Act, in the next to last provision, states that: "It shall be mandatory for such administrative officer (who has improperly discharged the veteran) to take such corrective action as the (Civil Service) Commission finally recommends" (5 U.S.C. 863). See also section 19 which states: "Any recommendation by the Civil Service Commission * * * shall be complied with by such agency" (5 U.S.C. 868). In the face of this clear language, agencies have refused to restore veterans to their positions and the Civil Service Commission has felt it has no power to enforce its recommendations. As an example, see the decision of the U.S. Court

of Appeals for the District of Columbia in the case of *Born v Allen*, No. 15450, decided November 28, 1960.

Since agencies have refused to abide by such clear language, we suggest this legislation be amended to specifically include the requirement that an individual be restored to his job, as well as being compensated for the period he was illegally or unjustifiably separated and having other benefits restored.

It may be well to consider what further power the Civil Service Commission needs to enforce its recommendations. The American Legion has always been of the opinion that the clear intent of Congress, as expressed in the Veterans' Preference Act, was sufficient, but evidently we are in error. We have brought this to your attention so that this legislation, which covers all employees, will not suffer the same flagrant rebuffs. Naturally, it will strengthen our position under the Veterans' Preference Act.

We appreciate this opportunity to express our views and, if there is no objection, we would appreciate it if this letter is incorporated in the printed record of the hearings.

Sincerely yours,

JOHN S. MEARS, *Assistant Director*.

Mr. OLSEN. Gentlemen, the subcommittee will adjourn its public session and resolve itself into an executive session, without objection.

(Thereupon, the subcommittee proceeded to go into executive session at 11:20 a.m.)





