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# EMPLOYMENT PROBLEMS OF OLDER WORKERS

## (THE AIRLINE STEWARDESSES CASE)

# HEARINGS

BEFORE THE

## SELECT SUBCOMMITTEE ON LABOR

OF THE

## COMMITTEE ON EDUCATION AND LABOR

## HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 10634 and Similar Bills

TO ESTABLISH A NATIONAL COMMISSION ON OLDER WORKERS

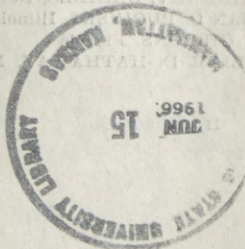
### PART 2

HEARINGS HELD IN WASHINGTON, D.C.

SEPTEMBER 2 AND 29, 1965

Printed for the use of the Committee on Education and Labor

ADAM C. POWELL, *Chairman*



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## CONTENTS

|                                                                                                                                                                                                                                                                          |      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Hearings held in Washington, D.C.:                                                                                                                                                                                                                                       | Page |
| September 2, 1965.....                                                                                                                                                                                                                                                   | 389  |
| September 29, 1965.....                                                                                                                                                                                                                                                  | 443  |
| Statement of—                                                                                                                                                                                                                                                            |      |
| Boland, Mrs. Colleen, president, Airlines Stewardesses Local 550, Transport Workers Union, AFL-CIO, accompanied by Frank O'Connell, legislative representative, Air Transport Division, Transport Division, Transport Workers Union.....                                 | 397  |
| Conway, Commissioner J. Edward, New York State Commission for Human Rights, accompanied by Milton Roseburg, director, Division of Employment, New York State Commission for Human Rights.....                                                                            | 421  |
| Gasque, Charles W., Jr., Deputy General Counsel, General Services Administration; accompanied by Robert T. Bain, Director, Contracts Administration Division, Transportation and Communications Service, General Services Administration.....                            | 447  |
| Racusin, A. J., Deputy Assistant Secretary for Procurement Management, Department of the Air Force; accompanied by John W. Perry, Deputy for Transportation; and Col. Charles Holland, Chief, Contract Administration Division, Office, Deputy Chief of Staff, USAF..... | 444  |
| Sheppard, Dr. Harold L., W. E. Upjohn Institute for Employment Research.....                                                                                                                                                                                             | 437  |
| Shirk, Elliott M., executive director, Pennsylvania Human Relations Commission.....                                                                                                                                                                                      | 426  |
| Wanner, John H., General Counsel, Civil Aeronautics Board.....                                                                                                                                                                                                           | 446  |
| Wenckel, Adam, Associate General Counsel, Post Office Department.....                                                                                                                                                                                                    | 450  |
| Statements, letters, supplemental material, etc.:                                                                                                                                                                                                                        |      |
| Baum, Miss Nita, Minneapolis, Minn.:                                                                                                                                                                                                                                     |      |
| Letter from Congressman O'Hara, dated November 24, 1965.....                                                                                                                                                                                                             | 475  |
| Letter to Colleen Boland, president, ALSSA, Local 550, TWU, dated November 3, 1965.....                                                                                                                                                                                  | 474  |
| Letter to Congressman O'Hara, dated November 15, 1965.....                                                                                                                                                                                                               | 474  |
| Letter to Congressman O'Hara, dated December 1, 1965.....                                                                                                                                                                                                                | 475  |
| Letter to Congressman Scheuer, dated November 15, 1965.....                                                                                                                                                                                                              | 475  |
| Boland, Colleen, president, Air Line Stewards and Stewardesses, Local 550; Transport Workers Union, AFL-CIO:                                                                                                                                                             |      |
| Exhibit 1.—Appendix D: Memorandum of agreement between American Airlines, Inc., and the airline stewardesses in the service of American Airlines, Inc., as represented by the Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL-CIO.....               | 391  |
| Exhibit 2.—Letter of understanding.....                                                                                                                                                                                                                                  | 392  |
| Exhibit 3.—Trans World Airlines, Inc., International Flight Service Manual.....                                                                                                                                                                                          | 392  |
| Letter to Mr. James F. Horst, Transport Workers of America, from D. J. Crombie, vice president, industrial relations.....                                                                                                                                                | 393  |
| Exhibit 4.—Nondiscrimination in employment—Transport Workers Union of America.....                                                                                                                                                                                       | 393  |
| Exhibit 5.—Nondiscrimination in Employment—James Horst, director, Air Transport Division, TWA.....                                                                                                                                                                       | 394  |
| Exhibit 6.—Nondiscrimination in employment—Transport Union of American (airline navigators).....                                                                                                                                                                         | 394  |
| Exhibit 7.—Executive Order 11141.....                                                                                                                                                                                                                                    | 395  |
| Exhibit 8.—Aviation Daily, July 1, 1965: CAB lists airlines getting authorization for MATS contract service.....                                                                                                                                                         | 396  |
| Statement before the New York State Commission for Human Rights.....                                                                                                                                                                                                     | 481  |
| Statement of.....                                                                                                                                                                                                                                                        | 389  |
| Stewardess supplemental employment conditions form.....                                                                                                                                                                                                                  | 396  |



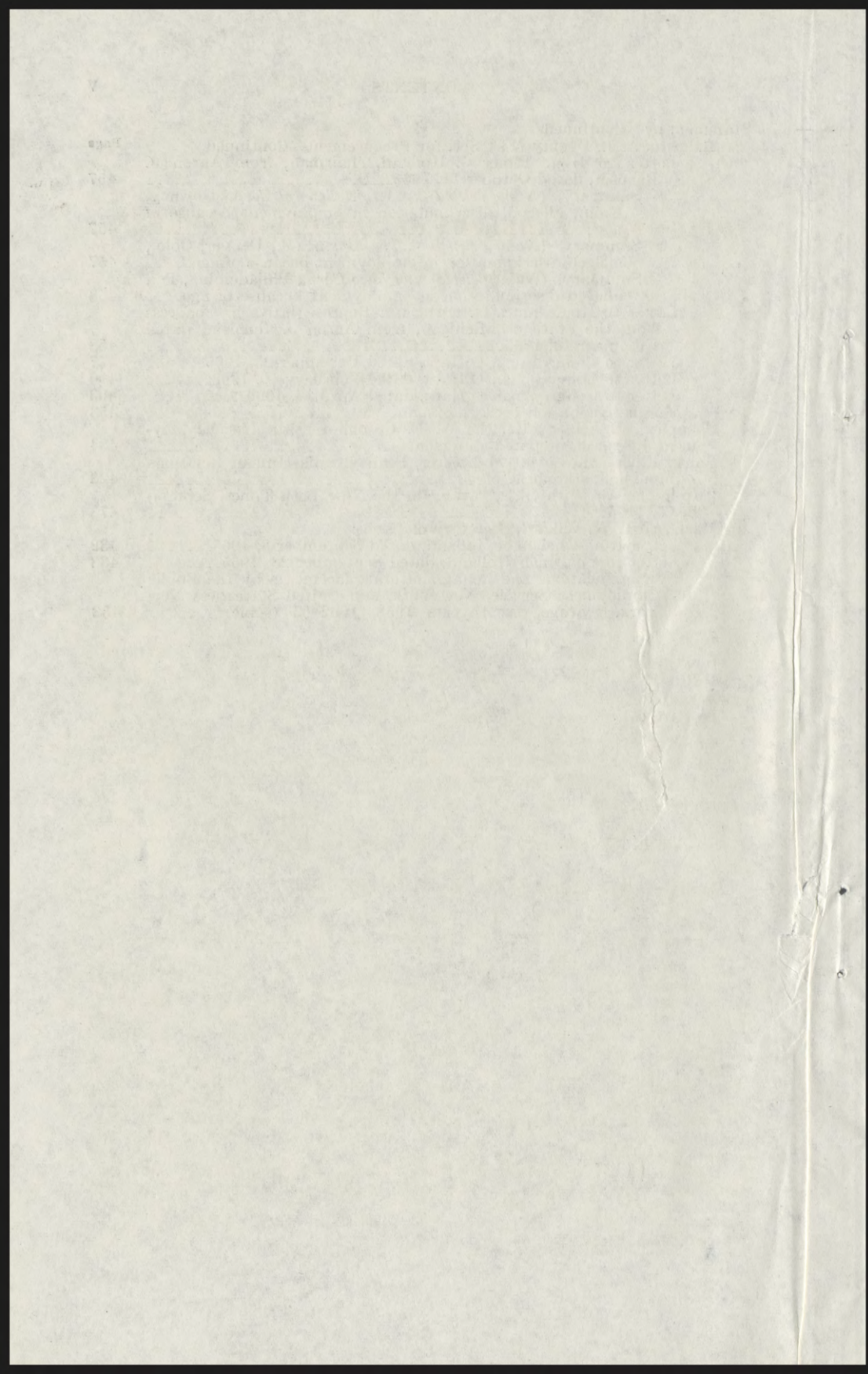
|                                                                                                                                                                                                                                                 |          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Statement before the New York State Commission, etc.—Continued                                                                                                                                                                                  |          |
| Conques, Col. L., U.S. Air Force, Chief, Congressional Inquiry Division, Office of Legislative Liaison, letter to Congressman O'Hara dated July 28, 1965                                                                                        | Page 471 |
| Conway, J. Edward, commissioner, New York Commission for Human Rights:                                                                                                                                                                          |          |
| Commissioner decision—Case No. 5-10-2153, <i>Evenson, Judith W. v. Northwest Airlines, Inc.</i> , St. Paul, Minn.                                                                                                                               | 489      |
| Equal employment opportunities for the older worker                                                                                                                                                                                             | 413      |
| Placements of applicants over 40 years of age and placements of applicants in the 40- to 44-year age group, January-December 1964 (table)                                                                                                       | 416      |
| Opening statement at informational hearing into maximum age requirements for stewardesses for initial employment and continuing employment in flight service, at Commission's offices, December 7, 1965                                         | 478      |
| Press release of State Commission for Human Rights, New York, N.Y.                                                                                                                                                                              | 477      |
| Report of findings after investigation                                                                                                                                                                                                          | 486      |
| Seven-year study of "age" complaints, July 1, 1958-June 30, 1965                                                                                                                                                                                | 412      |
| Statement by                                                                                                                                                                                                                                    | 410      |
| "The older worker" pamphlet                                                                                                                                                                                                                     | 416      |
| Covell, Dwight W., colonel, U.S. Air Force, Congressional Inquiry Division, Office of Legislative Liaison, Department of the Air Force, letter to Congressman O'Hara, dated September 22, 1965                                                  | 472      |
| Gasque, Charles W., Jr., Deputy General Counsel, GSA:                                                                                                                                                                                           |          |
| Public policy against discrimination on the basis of age                                                                                                                                                                                        | 454      |
| Statement by                                                                                                                                                                                                                                    | 448      |
| Subpart 1-12-10—Nondiscrimination because of age                                                                                                                                                                                                | 454      |
| Gregg, Charles N., Jr., Special Assistant to the Assistant to the Secretary, Legislative Affairs, Office of the Secretary of Defense, letter to Congressman O'Hara, dated July 13, 1965                                                         | 471      |
| Goodrich, Nathaniel H., General Counsel, Federal Aviation Agency, letter to Congressman O'Hara, dated September 10, 1965                                                                                                                        | 470      |
| Gronouski, Hon. John A., Postmaster General, letter from Congressman O'Hara, dated July 9, 1965                                                                                                                                                 | 468      |
| Hannah, Harvey H., Acting General Counsel, Post Office Department, letter to Congressman O'Hara, dated July 23, 1965                                                                                                                            | 468      |
| McKee, William F., Administrator, Federal Aviation Agency, letter from Congressman O'Hara, dated July 30, 1965                                                                                                                                  | 469      |
| McNamara, Hon. Robert S., Secretary of Defense, letter from Congressman O'Hara, dated July 9, 1965                                                                                                                                              | 470      |
| Moskowitz, Jack, Deputy Assistant Secretary, Civil Rights and Industrial Relations, Department of Defense:                                                                                                                                      |          |
| Letter from Congressman O'Hara, dated March 25, 1966                                                                                                                                                                                            | 491      |
| Letter to Congressman O'Hara, dated March 28, 1966, enclosing correspondence from Stanley Ruttenberg, Administrator, Manpower Administration, Department of Defense                                                                             | 491      |
| Letter to Jim Harrison, director, Select Subcommittee on Labor, dated December 28, 1965                                                                                                                                                         | 490      |
| Nagle, Paul A., deputy contracts compliance officer, Post Office Department:                                                                                                                                                                    |          |
| Letter from Congressman O'Hara, dated August 23, 1965                                                                                                                                                                                           | 469      |
| Letter to Congressman O'Hara, dated August 27, 1965                                                                                                                                                                                             | 469      |
| O'Connell, Francis A., legislative director, Transport Workers Union of America, AFL-CIO, statement before the State of New York State Commission for Human Rights on airline industry—Maximum age requirements (stewardesses) December 7, 1965 | 479      |
| Racusin, A. J., Deputy Assistant Secretary for Procurement, Department of the Air Force:                                                                                                                                                        |          |
| A new policy against discrimination in employment on the basis of age by Federal contractors and subcontractors, under the President's Executive Order No. 11141, a pamphlet published by the Department of Labor                               | 462      |
| Letter from Congressman O'Hara, dated December 10, 1965                                                                                                                                                                                         | 477      |
| Letter from Congressman O'Hara, dated March 28, 1966                                                                                                                                                                                            | 491      |



## Statement by—Continued

|                                                                                                                                                                              |      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Racusin, A. J., Deputy Ass't Sec. for Procurement—Continued                                                                                                                  | Page |
| Letter to Hon. Elmer J. Holland, chairman, from Aaron J. Racusin, dated October 11, 1965-----                                                                                | 457  |
| Summary: ( <i>Name deleted</i> ) v. <i>Aerojet General Corp.</i> , Downey, Calif., alleged, discrimination in employment because of age-----                                 | 457  |
| Summary: ( <i>Name deleted</i> ) v. <i>The Martin Co.</i> , Denver, Colo., alleged discrimination in employment because of age-----                                          | 457  |
| Summary: ( <i>Name deleted</i> ) v. <i>Philco Corp.</i> , Philadelphia, Pa., alleged discrimination in employment because of age-----                                        | 458  |
| Letter to Hon. James G. O'Hara, a Representative in Congress from the State of Michigan, from Aaron J. Racusin, dated December 13, 1965-----                                 | 458  |
| Letter to Congressman O'Hara, dated December 23, 1965-----                                                                                                                   | 477  |
| Letter to Congressman O'Hara, dated February 10, 1966-----                                                                                                                   | 490  |
| Letter to Congressman O'Hara, dated April 14, 1966-----                                                                                                                      | 493  |
| Nondiscrimination because of age-----                                                                                                                                        | 453  |
| Sheppard, Dr. Harold L., the W. E. Upjohn Institute for Employment Research, prepared statement-----                                                                         | 434  |
| Shirk, Elliott M., executive director, Pennsylvania Human Relations Commission, statement of-----                                                                            | 423  |
| "Up in the Air With Girls," article in the New York Times, September 5, 1965-----                                                                                            | 473  |
| Wirtz, Hon. W. Willard, Secretary of Labor:                                                                                                                                  |      |
| Letter from Chairman Holland, dated September 8, 1965-----                                                                                                                   | 432  |
| Letter to Chairman Holland, dated September 23, 1965-----                                                                                                                    | 433  |
| New applications and nonagricultural placements by the Public Employment Service, New York, and United States less New York, by age, fiscal years 1958, 1962-65 (table)----- | 433  |







## EMPLOYMENT PROBLEMS OF THE OLDER WORKER

### (The Airline Stewardesses Case)

THURSDAY, SEPTEMBER 2, 1965

HOUSE OF REPRESENTATIVES,  
SELECT SUBCOMMITTEE ON LABOR OF THE  
COMMITTEE ON EDUCATION AND LABOR,  
*Washington, D.C.*

The subcommittee met at 9:45 a.m., pursuant to recess, in room 2261, Rayburn House Office Building, Hon. James G. O'Hara presiding.  
Present: Representatives O'Hara and Hathaway.

Also present: Representative Scheuer.

Staff members present: Dr. R. E. L. Knight, director, Susan Parry, clerk, Select Subcommittee on Labor; and Michael Bernstein, minority labor counsel, Committee on Education and Labor.

(Previous testimony for this date is printed in part 1 of these hearings.)

Mr. O'HARA. Our next witness is Mrs. Colleen Boland, president of the Air Line Stewards and Stewardesses, Local 550, Transport Workers Union.

Mrs. Boland, if you could please step forward.

There has been some previous reference to the problem which members of your local have experienced regarding age discrimination and employment. Rather than take the time of the committee with my trying to talk about this any more, I think that it would be best to have you present your statement. I am sure that all those members of the committee would like to comment on it and have questions for you.

(Mrs. Boland's prepared statement follows:)

STATEMENT OF COLLEEN BOLAND, PRESIDENT, AIR LINE STEWARDS AND STEWARDESSES, LOCAL 550, TRANSPORT WORKERS UNION, AFL-CIO

Mr. Chairman and members of the committee, my name is Colleen Boland. I am president of the Air Line Stewards and Stewardesses, Local 550, of the Transport Workers Union, AFL-CIO, representing 6,000 airline flight attendants. This is a labor organization with offices at 205 West Wacker Drive, Chicago, Ill. With me this morning is Mr. Frank O'Connell, legislative representative of the air transport division, Transport Workers Union, AFL-CIO.

Many of the stewardesses whom we represent have been and are presently being terminated because of age. There is no specific reason given except that they have reached the arbitrary age as specified by the employer. On American Airlines and Northwest Airlines, the age chosen is 32, while on Trans World Airlines and Southern Airways, it is 35.<sup>1</sup> Of all the airlines whose flight attendants are represented by my union, only these four employers have such an age ruling. There are one or two other employers, such as Braniff Airways, who have a similar policy but the facts of their particular circumstances are not familiar to me.

<sup>1</sup> See exhibits 1, 2, and 3.



Should this practice of terminating stewardesses because of age be allowed to continue—we are speaking of a potential of 10,000 unemployed, unskilled women seeking employment in their middle to late thirties. While many stewardesses have education as teachers, nurses, or secretarial service, those qualifications or skills have lapsed after 10 or 12 years as a stewardess.

If they retrain or refresh their skills they will, of course, be required to compete with those already unemployed from all walks of life, who are over 40. This is not their desire. They prefer to continue to fly, to continue in their chosen profession. Statistics received from the members and employers bear this out. There is no bonafide occupational reason they cannot continue. There is not, to my knowledge, a single instance where a stewardess in this age bracket has failed to meet the most trying emergency, rather they have, in fact, given of their lives. Each stewardess is required to pass a rigid yearly physical by her employer. She must maintain a trim figure and meet above average personal appearance standards which are set by her employer. She must perform her job to the satisfaction of her hundreds of passengers as well as her employer and fellow employees.

The stewardess who is terminated at 32 or 35 has consistently met these requirements for no less than 10 or 12 consecutive years. There are many stewardesses to whom the age rule does not apply, who are approaching or exceeding age 50. They continue to qualify and to perform their duties admirably in all respects.

Another most important facet is, I believe, the fact that two of these same employers, NWA and TWA, employ men as pursers, the male counterpart to stewardesses. There has never been any attempt to impose such an age restriction to the men and there are, in fact, male stewards who have continued to qualify far in excess of age 35, are not even employed under this age.

The stewarding profession is young—only 30 years old—so I do not have a great many examples, but one purser retired 2 years ago upon reaching age 60. He would have preferred to continue to age 65 but his company retirement plan specified age 60. There are many men who are in their fifties currently flying as male stewards.

There are presently some alternatives offered by the companies to the stewardesses affected. They are not, in my opinion, or in the opinion of those stewardesses who face termination, satisfactory, adequate, or reasonable. Primarily, the affected girl is offered a job in reservations which has no contact with the public, as she has been used to, and involves rotating the three shifts of the day. In many cases this is the department she transferred from years before, a job she voluntarily left. Sometimes it is a clerk or typist or agent, but in all cases she is required to submit to extensive interviews, aptitude test, and psychiatric test. In many cases she is required to move to a distant city and in some cases she is told they just do not have anything she is qualified for.

If she leaves the employment of the company she forfeits a unique employee benefit, one very important to her—free airline transportation. Needless to say, she likewise is forced to sacrifice many other benefits which have been negotiated for her as well as her years of accrued seniority on the job. Seniority to stewardesses really does mean something—length of vacations, pick of vacation dates, pick of airline routes, flights, and hours as well as periodic step increases in salary.

If she seeks employment with a new employer in a field more to her liking, the airline denies, and indeed appears to fight, her claim for unemployment compensation while seeking this new profession on the basis that she has voluntarily resigned and is therefore ineligible for unemployment compensation.

Mr. Chairman, we know of no other industry or group whose employees are so little thought of that their services are dispensed with at age 32. This practice is to me diametrically opposed to what we believe and expound as the principles and benefits of a free society.

All of these employers who have instituted arbitrary termination of their stewardesses because of age either hold or benefit from Government contracts, such as MATS or for the transportation of U.S. mail. As such, the employers have pledged compliance with Executive Order 10925, dated March 6, 1961, which includes a pledge of nondiscrimination in employment because of race, color, creed, or national origin, copies of which are forwarded to the union.<sup>2</sup>

There is also Executive Order 11141, dated February 12, 1964,<sup>3</sup> of which the

<sup>2</sup> See exhibits 4, 5 and 6.

<sup>3</sup> See exhibit 7.



distinguished chairman, Mr. O'Hara, has intimate knowledge, wherein President Johnson has declared that " \* \* it is the policy of the executive branch of the Government that contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of age \* \* \*." American has specific contracts with the Federal Aviation Agency as do TWA, NWA, and Southern. Of the \$155 million worth of MATS contract service awarded in fiscal 1966<sup>4</sup> Northwest share is \$14 million; TWA, \$6.2 million; and, Southern, \$5.2 million. Yet these three air carriers choose to ignore this Executive order from the President of the United States while they sit back, smugly secure in their armchairs, reaping the profits. This is because Executive Order 11141 is absent any enforcement powers to force either compliance or contract termination by the Department of Defense or other governmental agencies.

I hope I have proved our case, that here clearly exists a discriminatory practice, based solely on age, which, if allowed to continue, can only aggravate the overall employment problems of the older worker. I ask your immediate support to correct this problem.

My answer would be to allow stewardesses to continue flying so long as they pass the physical and personal requirements of the employer as they are now in existence.

My solution would be to incorporate age into title VII of the Civil Rights Act of 1964 and into H.R. 9222 as ordered favorably reported by this committee.

Only in this manner where Congress has already established the machinery to deal with discrimination and equal employment opportunity will we as airline stewardesses truly have equal opportunity.

Mr. Chairman, we seek no more nor no less than to be recipients of the philosophy of the President of the United States as decreed in Executive Order 11141, nondiscrimination in employment because of age.

Thank you, Mr. Chairman.

[Exhibit 1]

APPENDIX D: MEMORANDUM OF AGREEMENT BETWEEN AMERICAN AIRLINES, INC. AND THE AIRLINE STEWARDESSES IN THE SERVICE OF AMERICAN AIRLINES, INC. AS REPRESENTED BY THE AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION LOCAL 550, TWU, AFL-CIO

This memorandum of agreement is made and entered into in accordance with the provisions of title II of the Railway Labor Act, as amended, by and between American Airlines, Inc. (hereinafter known as the "company") and the airline stewardesses in the service of American Airlines, Inc., as represented by the Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL-CIO (hereinafter known as the "association").

It is hereby mutually agreed:

1. A stewardess employed by the company as a stewardess on or after December 1, 1953, shall be transferred to other employment within the company effective with the first day of the month following the month in which her 32d birthday falls unless she elects one of the alternatives provided in paragraphs 7 and 8 below.

2. In the month in which her 31st birthday falls, and again in the sixth month following the month in which her 31st birthday falls, a stewardess shall be interviewed by her supervisor and informed of her rights and obligations under the provisions of this memorandum of agreement. On the occasion of the latter interview, she shall elect in writing her choice of other employment as provided in paragraph 3 below, or one of the alternatives provided in paragraph 7 and 8 below.

3. (a) A stewardess who elects to transfer to other employment within the company under the provisions of this agreement shall be interviewed by her supervisor not later than 2 months prior to her 32d birthday, at which time she shall be informed as to the job vacancies that are open and the location of each. She shall have the option of selecting from the available job vacancies any one for which she has the minimum qualifications. The selected job shall be reserved for her and the appropriate management member shall be so notified.

(b) In the event that no job vacancies exist at the time of the interview provided under 2(a) above, the stewardess shall be so informed. As soon as possible

<sup>4</sup> See exhibit 8.



thereafter, but in any event not later than the first day of the month in which her 32d birthday falls, the company shall make available a job to be effective on the first day of the month following. The stewardess and the appropriate member of management shall be so notified.

4. When a stewardess, under the provisions of this memorandum of agreement, selects and is awarded a job in a city other than the city in which she is based at the time of 32d birthday, the following shall apply:

(a) If she had declined an available job in the city in which she is based, the Company shall pay one-half ( $\frac{1}{2}$ ) her travel and moving expenses (in accordance with AA regulations) to the city where the job selected is located.

---

[Exhibit 2]

LETTER OF UNDERSTANDING

It is agreed and understood by and between Southern Airways, Inc., and stewardesses in the employ of Southern Airways, Inc., as represented by the Air Line Stewards and Stewardesses Association, Local 550, TWU-AFL-CIO, as follows:

1. Employees other than stewardesses may be utilized to perform the duties of a stewardess when a stewardess is not available and one cannot be dead-headed to cover the trip in question 1 hour prior to anticipated departure time.

2. A stewardess who reaches the age of 35 will be offered a retraining program in another position with the company, providing, however, that she meets the basic requirements for such a position. During the retraining period, the stewardess will receive her current average rate of pay, at the time of her transfer from the stewardess department. Upon successful completion of the retraining program, the stewardess will assume the duties and responsibilities of the position for which she was retrained, at the time-in-grade current pay scale for that position. Company seniority rights and privileges will continue to accrue from the date of employment as a stewardess. Departmental seniority will be based on the date of employment in that department.

Stewardesses who reach the age of 35 and who do not wish to take advantage of or who do not qualify for a retraining program shall be terminated from the employment of the company and shall receive 2 months severance pay.

This paragraph two shall cease to be effective in the event that legislation is enacted by the Federal Government which would make said paragraph unlawful. Southern Airways, Inc., recognizes that agreement on this paragraph 2 has been reached at its insistence over objectives of ALSSA.

This letter of understanding shall run concurrently with the employment agreement between the parties dated July 28, 1965.

SOUTHERN AIRWAYS, INC.,  
By W. A. MAGILL, JR.  
AIR LINE STEWARDS AND STEWARDESSES  
ASSOCIATION, LOCAL 550.  
By COLLEEN BOLAND.

---

[Exhibit 3]

TRANS WORLD AIRLINES, INC., INTERNATIONAL FLIGHT SERVICE MANUAL

GENERAL CABIN ATTENDANT INSTRUCTIONS

Regulations covering vacations, transfers, leave of absence, sick leave, exchange of trips, insurance, moving expenses, etc., shall be in accordance with the current working agreement and/or the Management Policy and Procedure Manual.

A. *Maximum age regulations (hostesses)*

A hostess who reported for employment as a student hostess after January 3, 1957, must resign or transfer to another position with the company effective the last day of the month in which she reaches 35 years of age. If she indicates in writing to her supervisor at least 6 months prior to her 35th birthday that she desires another job with the company, she will be considered for openings occurring thereafter for which she is deemed qualified.



*B. Married hostesses*

1. *Transfers.*—Any hostess who marries and wishes to continue flying should be sure her name is not on the transfer list, unless she is still willing to transfer according to procedures set forth in the current working agreement.

2. *Change of name.*—When a hostess marries and continues working for TWA, her name will be changed on all company records. The exact name change, information for tax deduction, social security, insurance, etc., must be given to hostess' supervisor as quickly as possible.

3. *Health.*—If a hostess becomes pregnant, she will be required to immediately resign, or transfer to a ground position if she desires and one is available for which she is deemed qualified. In such cases, it will not be necessary to give 2 weeks' notice. Hostesses resigning due to pregnancy will be credited with all accumulated vacation time for pay purposes.

*C. Illness or injury to crew members*

1. *General.*—In the interpretation of the following, "crew member" shall be understood to include cabin attendants.

(a) An illness sustained en route to the crew member's domicile shall be reported to the crew member's supervisor by the crew member concerned. If the crew member is physically unable to give such notification, the captain shall assume this responsibility.

FEBRUARY 27, 1965.

Mr. JAMES F. HORST,  
Transport Workers Union of America,  
80-07 Broadway,  
Elmhurst, N.Y.

DEAR MR. HORST: The following named hostesses, Janice Austin Lamer, Marjorie E. Soltis, Anna R. Frazekas, and Anayat Taha El Shall, upon reaching age 35, will, if requested, be granted a leave of absence for a period concurrent with the basic agreement signed this date. During the period of this leave, it is agreed that they shall retain their relative position on the hostess seniority list.

It is understood that the above-mentioned hostesses may accept other employment, but if such employment is obtained in the air transportation industry without prior permission from the company, or should they become pregnant, their names shall thereupon be removed from the hostess seniority list.

It is further understood that during such leave the company will offer employment in a position other than one covered under the basic agreement at a rate of pay equal to the hostess' most recent base rate. Hostesses who accept such a position with the company retain their company seniority.

Sincerely,

(S) D. J. Crombie,  
D. J. CROMBIE,

Vice President, Industrial Relations.

[Exhibit 4]

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS

NONDISCRIMINATION IN EMPLOYMENT

To: Transport Workers Union of America.

The undersigned currently holds contract(s) numbered FA 65 AC-678-2 with Federal Aviation Agency of the U.S. Government or (a) subcontract(s) with a prime contractor of the U.S. Government.

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Executive Order 10925, section 301, dated March 6, 1961, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

Hiring, placement, upgrading, transfer, or demotion.

Recruitment, advertising, or solicitation for employment.

Training during employment.

Rates of pay or other forms of compensation.

Selection for training including apprenticeship.

Layoff or termination.



## EMPLOYMENT PROBLEMS OF OLDER WORKERS

This notice is furnished you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order 10925.

AMERICAN AIRLINES, INC.,

C. DiPasquale,

Assistant Vice President, Labor Contract Administration.

OCTOBER 6, 1964.

Copies of this notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

[Exhibit 5]

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS

NONDISCRIMINATION IN EMPLOYMENT

To: Mr. James Horst, Director, Air Transport Division—TWU.

The undersigned currently holds contract(s) numbered AF 11(626)-115 and AF 11(626)-299 with MATS-USAF of the U.S. Government or (a) subcontract(s) with a prime contractor of the U.S. Government.

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Executive Order 10925, section 301, dated March 6, 1961, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

Hiring, placement, upgrading, transfer, or demotion.

Recruitment, advertising, or solicitation for employment.

Training during employment.

Rates of pay or other forms of compensation.

Selection for training including apprenticeship.

Layoff or termination.

This notice is furnished you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order 10925.

NORTHWEST AIRLINES, INC.

Minneapolis-St. Paul International Airport, St. Paul, Minn.

MARCH 30, 1962.

Copies of this notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

[Exhibit 6]

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS

NONDISCRIMINATION IN EMPLOYMENT

To: Transport Workers Union of America (Airline Navigators).

The undersigned currently holds contract(s) numbered AF 11(626)646, and AF 11(626)598, and NAS-10-1242 with U.S. Air Force of the U.S. Government or (a) subcontract(s) with a prime contractor of the U.S. Government.

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Executive Order 10925, section 301, dated March 6, 1961, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

Hiring, placement, upgrading, transfer, or demotion.

Recruitment, advertising, or solicitation for employment.

Training during employment.

Rates of pay or other forms of compensation.

Selection for training including apprenticeship.

Layoff or termination.



This notice is furnished you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order 10925.

TRANS WORLD AIRLINES, INC.,

JULY 21, 1964.

Copies of this notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

[Exhibit 7]

#### EXECUTIVE ORDER 11141

The President on February 12, 1964, issued an Executive order establishing a policy against discrimination in employment on the basis of age by Federal contractors and subcontractors.

This was the first time that the Federal Government had enunciated a clear-cut policy respecting age discrimination in private employment. The President's Council on Aging, in its report to the President in December 1963, had recommended that such an order be issued.

The policy provides that contractors and subcontractors shall not discriminate on account of age in—

- Hiring,
- Advancement,
- Discharge,
- Terms, conditions or privileges of employment.

Proscribed also are maximum age limits in—

- Advertising or other solicitations for employment.

Exceptions to this policy are—

- Bona fide occupational qualifications,
- Retirement plans,
- Statutory requirements.

The text of the order follows:

#### "EXECUTIVE ORDER 11141

##### "DECLARING A PUBLIC POLICY AGAINST DISCRIMINATION ON THE BASIS OF AGE

"Whereas the principle of equal employment opportunity is now an established policy of our Government and applies equally to all who wish to work and are capable of doing so; and

"Whereas discrimination in employment because of age, except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement is inconsistent with that principle and with the social and economic objectives of our society; and

"Whereas older workers are an indispensable source of productivity and experience which our Nation can ill afford to lose; and

"Whereas President Kennedy, mindful that maximum national growth depends on the utilization of all manpower resources, issued a memorandum on March 14, 1963, reaffirming the policy of the executive branch of the Government of hiring and promoting employees on the basis of merit alone and emphasizing the need to assure that older people are not discriminated against because of their age and receive fair and full consideration for employment and advancement in Federal employment; and

"Whereas, to encourage and hasten the acceptance of the principle of equal employment opportunity for older persons by all sectors of the economy, private and public, the Federal Government can and should provide maximum leadership in this regard by adopting that principle as an express policy of the Federal Government not only with respect to Federal employees but also with respect to persons employed by contractors and subcontractors engaged in the performance of Federal contracts:

"Now, therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States and as President of the United States, I hereby declare that it is the policy of the executive branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges



of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement, and (2) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement. The head of each department and agency shall take appropriate action to enunciate this policy, and to this end the Federal Procurement Regulations and the Armed Services Procurement Regulation shall be amended by the insertion therein of a statement giving continuous notice of the existence of the policy declared by this order.

LYNDON B. JOHNSON.

"THE WHITE HOUSE, February 12, 1964."

This order establishes a policy. It makes no special provision for administration and contains no penalties. However, it requires that Federal departments and agencies "take appropriate action to enunciate the policy."

[Exhibit 8]

[Aviation Daily, July 1, 1965]

#### CAB LISTS AIRLINES GETTING AUTHORIZATION FOR MATS CONTRACT SERVICE

Twenty-one airlines have received CAB authorization to perform \$154,854,000 worth of MATS contract service in fiscal 1966.

Carrying out foreign and overseas service are Airlift International, \$6,050,000; Alaska, \$1,405,000; Braniff, \$194,000; Capitol, \$4,327,000; Continental, \$7,551,000; Flying Tiger, \$14,539,000; Northwest, \$13,904,000; Pan American World, \$23,520,000; Seaborad World, \$11,435,000; Slick, \$6,185,000; Southern, \$5,203,000; Trans Caribbean, \$7,538,000; Trans International, \$3,981,000; Trans World, \$6,194,000; and World, \$7,268,000.

Performing Logair service are AAXICO, \$9,617,000; World \$4,656,000; and Zantop, \$11,032,000. Quicktrans carriers are Flying Tiger, \$2,172,000; Zantop, \$6,270,000. And providing intra-Alaska service are Alaska, \$338,000; Northern Consolidated, \$240,000; Cordova (NCA subcontract), \$238,000; Reeve, \$575,000; Wien, \$368,000.

#### STEWARDESS SUPPLEMENTAL EMPLOYMENT CONDITIONS FORM

I understand that among the qualifications and requirements of a stewardess position are an attractive appearance (including, but not limited to, weight in proportion to height, nonuse of removable bridges or dentures, eyeglasses and other corrective appliances), a pleasant personality, an even temperament, neatness, and the ability and desire to meet and serve passengers; and that failure to maintain such qualifications or to meet other standards required of Northwest Airlines employees will be cause for termination of my employment.

I understand and agree that in the event I qualify for the position of stewardess, I will remain in the employ of the company for a period of at least 1 year from the date of my assignment as a stewardess and that I will give at least 2 weeks' notice of my intention to terminate employment as a stewardess.

I understand and agree that if I intend to marry during the course of my employment, I will give the company at least 2 weeks' notice prior to the date of marriage. I understand that if I marry either during the stewardess training period or after actual assignment as a stewardess, my employment relationship with Northwest Airlines will be terminated immediately.

I understand and further agree that in accordance with the policy of Northwest Airlines, Inc., my employment as a stewardess will not be continued beyond the end of the month during which my 32d birthday falls.

-----  
Applicant's signature

-----, 19-----

NORTHWEST AIRLINES, INC.,

By-----



**STATEMENT OF COLLEEN BOLAND, PRESIDENT, AIRLINE STEWARDS AND STEWARDESSES, LOCAL 550, TRANSPORT WORKERS UNION, AFL-CIO, ACCOMPANIED BY FRANK O'CONNELL, LEGISLATIVE REPRESENTATIVE, AIR TRANSPORT DIVISION, TRANSPORT WORKERS UNION**

Mrs. BOLAND. Thank you, Mr. Chairman.

I believe you have identified my purpose for being here and who I am.

With me this morning is Mr. Frank O'Connell, our legislative representative of the Air Transport Division of the Transport Workers Union.

There are many of our stewardess members present here today. Many of them, I am sorry to say, face termination because of a policy that we are here to present to you today.

We wish to apologize for the disruption of your committee room, however.

Mr. O'HARA. We are delighted. We don't usually have so many pretty spectators in the audience.

Mr. SCHEUER. Would the chairman yield?

Mr. O'HARA. Yes.

Mr. SCHEUER. Would you be good enough to have the members of your group stand so we can visualize the dimensions of the problem? [Laughter.]

Mrs. BOLAND. I am sure they would be most happy to.

A great many of these girls will be terminated because they will be "too old" within months.

Mr. SCHEUER. Would the airlines tell us that these pretty young ladies are ready for the slag heap?

Mrs. BOLAND. Apparently so.

We feel, justifiably so, I am sure, that this is not the case, that here is discrimination purely because of age. People who are qualified and capable of performing a job should not be deprived of that job solely because there is a magic figure on the calendar.

There is no specific reason given by the employers—Trans World, American, Southern, and Northwest in particular—only that a magic figure, a birth date, has been reached on the calendar and for this reason you are too old.

If you happened to be employed before this policy was adopted, somehow or other you manage to struggle through.

On American and Northwest the age that they chose was 32. On Trans World and Southern they chose 35. These four are the only employers represented by our union who choose to have such an age ruling. There are a few other employers such as Braniff who have such a ruling but their particular circumstances or policy is not familiar to me.

I would like to point out to you our Exhibits 1, 2, and 3. Exhibit 1 is the memorandum which establishes the policy of American Airlines.

Exhibit 2 is the letter of understanding which we were forced, as I am sure that you will recognize, to set down in writing. I think this particular exhibit will show the only way that that airline management has indicated they will listen—only if there is such a thing as Federal legislation, passed by the Federal Government, will they consider a revision of this arbitrary ruling.



Exhibit 3 sets out the regulation as adopted by Trans World Airlines in their policy. As you will note, it simply says that when she reaches 35 she is through.

We have with us this morning also the policy of Northwest which I would like to submit to you which is primarily the same basic type of policy, that at 32 the girl must quit flying. It is rather interesting that in this same letter she must sign, as a condition of employment, that she also promises her servitude for a minimum of 1 year. She also promises that when she gets married she will immediately terminate her services, plus she has to promise before she has that job that she will not wear false teeth or false eyelashes or any of the other things that might distort her natural beauty.

We feel very strongly that if this policy of terminating stewardesses because of age is allowed to continue it can and will affect eventually—and we are speaking not of a few stewardesses—a potential of 10,000 unemployed, unskilled women in the United States who will be seeking new employment in their middle thirties. They will be competing with the people who already have had a great deal of trouble finding work, those over 40 and over 50.

Many of our girls have had training and skills in the past—nurses, teaching, secretarial skills, and many who have college educations. These skills have lapsed in 10 or 12 years of service on the airlines. They must go back to school; they must retrain or they must redevelop those skills before they are qualified to compete in any job that is other than a demotion. They prefer to continue to fly. This is the profession that they chose, the one that they wanted, the one for which they have been judged adequate, capable of, and have served well.

We have some statistics of those who have been affected who under the company policies have had a choice of taking other employment with that employer or seeking new employment.

Far more than the majority of these have chosen to go out and seek new employment. Whether this reason was because the opportunities offered by their employer were jobs that they disliked or did not feel capable of, or for whatever reasons they had, the majority, if they have been forced from this profession, chose to seek a new and entirely different field.

There is no bona fide occupational qualification or basis for their termination as stewardesses. There is not to my knowledge a single instance where a girl at any age who has been called upon to serve the public in an emergency, in a crash, or accident who has not met that emergency and met it admirably.

I would like here to add some of the things that have been a matter of record with the Civil Aeronautics Board in air crash investigations. Not long ago there were newspaper headlines of the airplane that crashed with one wing missing and 143 passengers evacuated. Those flight attendants, stewardesses, and pursers were commended by Mr. Halaby, Administrator of the FAA, as follows:

The exemplary efficiency and speed with which the entire flight crew evacuated 143 passengers warrants the admiration and gratitude of civil aviation and the American public.

I would like to point out that Harry Green, the purser on board that flight, was 51 years old. We have reports, although we don't have too many, to show you of what the girls have done. Mostly they lose their



lives in these accidents, as the girl did in the crash of May 1964, where the captain and copilot apparently were shot in flight.

We have another in our other files, the Flying Tiger that ditched in the Atlantic which caused a great deal of problems. The captain stated in his testimony before the CAB investigation that he alerted the senior stewardess of the potential possibility of ditching in the North Atlantic. He noted that he had monitored what she was doing in the cabin and saw no need to interfere in any way because she was doing such an admirable job. Forty-eight of the 76 people on that ditching in the middle of the Atlantic survived. One stewardess lived, three of them died, among them a girl that apparently was nearly over the hill. I believe she was 29 years old.

Canadian Pacific in July of 1962 crashed and burned just after a takeoff from where they had to return to the field. There were 13 of the 40 who survived. The four flight attendants survived, the pursers aged 36, and stewardesses 29 and 28 years old. Those passengers lived because our people were there to help them and did their job.

We have other articles that have been noted in the New York World Telegram recently, a Constellation that crashed in Byrd Field, Va. The stewardess died attempting to get the door open, she and 74 Army recruits. The captain and the copilot walked out alive.

There was a girl seriously injured in a crash in February of 1959, an American Airlines Electra, in the East River attempting to land in LaGuardia. There were eight passengers and three crew members who lived. The survivors testified to the Civil Aeronautics Board that the skill and courage of Stewardess Joan Zeller saved their lives.

Clearly these people are capable and physically fit to perform the job for which they have been employed. Each stewardess regardless of her ability is required to pass a rigid company-required physical every year. She is to maintain a trim figure, she is required to meet above average personal appearance standards. She not only must answer to the job performance of the employer but to her fellow employees and to the hundreds of passengers that she carries.

Again in one of these newspaper articles you will note she has been reported by an employer for as simple a reason as not saying goodbye to a passenger.

These people who are facing termination because of age have consistently met these rigid standards and requirements for from 10 to 12 years. As to those who were hired prior to such policies which do not come under the rule, we have stewardesses flying on the various airlines that are exceeding or approaching 50 years of age. They have continued throughout their years of service to meet all company standards. We would like to point out definitely, too, as I have touched on lightly here, the fact that Northwest and TWA in particular hire the male counterpart, the purser or steward or flight service attendant, whatever the name they may be called. These people fly side by side on the same flight, on the same trips, performing the same duties. The man qualifies from 35 to 60 or 65. We have pursers who have retired and pursers who are well beyond 55, and there is no question of their ability to handle the job.

I have previously stated that it is difficult to bring examples. This is a profession that is just some 30 years old. There are very few who have reached the maximum age.



There are some alternatives in employment offered by the various airlines. They are not in my opinion or in the opinion of the people that we represent and who face this termination, satisfactory, adequate, or reasonable. Primarily the job that is offered is in reservations. Very often this is the job that the girl left 10 or 12 years ago. Sometimes it is as typists or agents. In each one she is judged as to whether or not she is qualified for the job. She has to submit to interviews, sometimes four or five, six, or seven interviews.

She has to pass aptitude tests and psychiatric tests. In many cases if she is going to be given a job she must move to a distant city. Sometimes she is told that "we just don't have anything you qualify for."

If she leaves the company, she forfeits that unique company benefit, free airline transportation. She is forced to sacrifice the other benefits of her job and her seniority, and at this point in time she has accumulated seniority that is of great value. It determines what she does in almost every phase of her job; the routes that she is able to fly, the type of equipment that she is able to fly on. It even establishes the city in which she can live, that as well as her vacations and ability to schedule her worktime, and, of course, her salary.

We have cases on record in various States where, if the girl has chosen then to leave the employment of the company because she had to either leave or take another job, that company has fought her claim for unemployment on the basis that she voluntarily terminated.

Mr. Chairman, we know of no one else who thinks so little of employees who have served them well for 10 or 12 years. If we applied these standards to your office, a Member of Congress would be limited to no more than 5 or 10 years of service. All of these employers who have instituted arbitrary termination because of age and are sitting here reaping benefits from Government contracts. Northwest has almost doubled their routes and their traffic because of the MATS charters across the Pacific. Yet these same employers have pledged compliance with Executive Order 10925 of 1961 which includes the pledge of "nondiscrimination in employment because of race, color, creed, or national origin."

We have attached this Executive order to our exhibit. In it, President Johnson has declared that it is the policy of the executive branch of the Government that contractors and subcontractors who engage in the performance of Federal contracts shall not in connection with the employment, advancement, or discharge of employees or in connection with terms, conditions, or privileges of their employment, discriminate against persons because of age.

American Airlines has a specific contract with the Federal Aviation Agency as do TWA, Northwest, and Southern. Of this some \$155 million worth of MATS contracts awarded in the fiscal year 1966, Northwest's share of that is \$14 million, TWA \$6.2 million, Southern \$5.2 million. Yet these carriers choose and apparently are allowed to ignore the Executive order of the President of the United States while they sit back and reap the benefits and the profits of those orders.

This is because there are no enforcement powers either to force compliance or allow contract termination by the Department of Defense or the other governmental agencies.



I hope that I have proved our case—that here is a very discriminatory practice based solely on age. If it is allowed to continue, it can only aggravate the overall problem of employment.

I would ask your aid and immediate support to correct this problem.

Mr. O'HARA. Thank you very much, Mrs. Boland, for bringing to our attention what I believe to be the most obvious case of age discrimination in employment that any of us probably have ever come across.

Just to nail down the basic facts and to repeat a bit of your statement, as I understand the policies of the airlines that you have mentioned, there is an arbitrary termination date. It does not matter if that particular stewardess may be the most intelligent, the most athletic, the most beautiful, the most able, the most experienced, the best stewardess on the whole airline, when she reaches that birthday she is out; is that correct?

Mrs. BOLAND. That is right.

Mr. O'HARA. And it is 32 or 35?

Mrs. BOLAND. Yes.

Mr. O'HARA. Depending on the airline.

Mrs. BOLAND. In fact, on American Airlines they are instructed to contact this girl in the month of her 31st birthday and remind her that in 1 more year she is going to be 32. There is no other stipulation or consideration.

Mr. O'HARA. Just to make sure that this is not purely a question of occupational qualification, I believe you mentioned that stewardesses are required to pass vigorous physical examinations at stated intervals throughout the time they are working. Is that correct?

Mrs. BOLAND. That is very true. In fact, those physicals follow the lines of the physicals that are given to the pilots who must be certified under Federal regulations.

Mr. O'HARA. And if a girl were not to pass that physical or for some other reason would be unable to give satisfactory service in her employment, she would be let out no matter what her age. Isn't that correct?

Mrs. BOLAND. That is right.

Mr. O'HARA. So what we are facing is a situation of airline stewardesses who in spite of the fact that by the company's own tests are giving satisfactory service and are qualified and able to do so, can be let go simply because they have reached a birthday.

Mrs. BOLAND. That is right. There is no clearer way to put it, and the airlines have not stated any argument for it. In fact, as quoted by Mr. Prail in the New York World-Telegram recently, a quote regarding this problem from one of the executives of the company—and we think this is very impressive. He states:

It is the sex thing, pure and simple. Put a dog on an airplane and 20 businessmen are mad for a month.

Mr. O'HARA. Well, they don't seem to think as much of their lady customers, do they? Do those airlines that have stewards or pursers have any requirement the stewards retire at age 32 or 35?

Mrs. BOLAND. It has never been mentioned. I know of many men who are flying into their 50's, to 55. I know of only one time that a company has challenged a man's ability to perform as the male counterpart and that was one who suffered a severe heart attack.



Mr. O'HARA. And their duties are substantially the same, are they not?

Mrs. BOLAND. They are identical in every respect. In fact the procedures, the training that is given specifically outlines and requires the stewardesses to learn all of the duties of the purser or steward because these duties may be during the course of the flight delegated to her to perform. They have various stations aboard the airplane in the event of emergencies. The stations or the particular duties that are given them are identical duties but at different exits.

Mr. O'HARA. I don't think you could find anyone who would take the position that males burn out less quickly than females. I know when I have had the opportunity to take care of my household a couple of times when my wife has been away that I have discovered she can accomplish a lot more than I can and she is in a lot better physical condition than I am.

Mrs. BOLAND. I am very happy to hear you say that, Mr. O'Hara, and it recalls another article I found recently that was carried under a byline from Washington by Charles Bartlett in commending the women's role in the Peace Corps. The results of that durability has been that they recall Florence Nightingale, "I can stand out the war with any man."

These women who are participating in the Peace Corps have proven their physical ability.

Mr. SCHEUER. Mr. Chairman.

Mr. O'HARA. If I could just continue for a second here, then I am going to give you a chance, Mr. Scheuer.

I have a copy of that article from which you quoted, quoting an unnamed airline executive as saying:

It is the sex thing pure and simple. Put a dog on a plane and 20 businessmen are sore for a month.

I have had the occasion to do quite a bit of flying on commercial airlines, and it never occurred to me in observing the work of the stewardess on those lines that the primary function of the stewardess was to stand or sit around looking beautiful. Is that your concept of the job of an airline stewardess?

Mrs. BOLAND. From my years of experience I know it is not.

Mr. O'HARA. I am convinced of that. I see the girls who are stewardesses working awfully hard; as a matter of fact, I don't think I would suggest that job opportunity to anybody. I think those who enjoy it ought to have the opportunity to pursue it. With the faster planes that we have today, when I see stewardesses aboard flights they seem to be going at breakneck speed continually. All I have to say is if anyone is going to take the position that stewardesses are burned out at age 32, if it is that kind of a job that a worker is burned out at age 32, I think some more attention ought to be given to the qualifications and the duties of the stewardess by the airline management.

Now this business of shifting you to another job when you reach the arbitrary termination age: You have pointed out that, as a matter of fact, the girls don't like these jobs, that the majority of them end up leaving the employment rather than take one of these alternative jobs; is that right?

Mrs. BOLAND. That is right. As you have so clearly pointed out, the job is a demanding and a challenging one. To match this in other



employment is difficult indeed. When you have spent 10 and 12 years of your life working with the public, facing immediate decisions and challenges day to day, working 8-, 10-, 16-hour days, to suddenly shift to a 9 to 5 job in which you sit in front of a machine or sit behind a counter, you have lost the very thing that you have geared your life to, the challenge and the speed and the efficiency that is necessary to perform your job. These girls have worked at it, have adapted to it, love it, and want to continue that challenge and they want to serve not only their employer but the American public as well.

Mr. O'HARA. I think that is a very good summation of it. As a matter of fact, if a girl had wanted to be a reservation clerk that is the job she would have applied for in the first place, isn't it?

Mrs. BOLAND. That is right.

Mr. O'HARA. Now with respect to this Executive order, I have been in contact with the Federal agencies with whom airlines hold contracts, and I have discovered that neither of the two or three that I have contacted have taken any action whatsoever to obtain compliance of the air carriers with the Executive order having to do with discrimination in employment on the basis of age.

Mrs. BOLAND. I am aware you have, and we appreciate your efforts.

Mr. O'HARA. I want to assure you that I am going to continue to pursue that matter because it is just a scrap of paper if it does not apply to this situation.

I would say that if this is not discrimination on the basis of age in employment, what is? How could anyone conceive of a more obvious case? I don't think you could. If the order is not effective with respect to this problem, I can't imagine that it is anything but material for the incinerator. It just does not mean a thing if it does not mean anything here.

Would you not say that is a fair statement of the situation?

Mrs. BOLAND. I would, very much. If you have done the job today and can be considered unqualified for it tomorrow, then there is no hope for any senior citizen to ever qualify for a job that they have not proven themselves in.

Mr. O'HARA. I wonder how Members of Congress would like it if they were offered jobs as a postal clerk when they reach the age 32?

Mr. SCHEUER. Many of us could not qualify.

Mr. O'HARA. I think we ought to be careful about that, we are facing retirement every 2 years.

I thank you Mrs. Boland. I think you have been a real asset to these hearings.

I am going to give Mr. Hathaway an opportunity to discuss this problem with you for a minute.

Mr. HATHAWAY. Mrs. Boland, thank you very much for your statement which I agree with wholeheartedly. I take it there is nothing in the nature of the work a healthy woman of 60 or even 70 couldn't do, or do you have an age limit to suggest?

Mrs. BOLAND. I would have to refer again to the fact that only 30 years ago the first stewardess was put on board an airplane. If she were hired at 21 or 22 or 23, she has only reached 50 now. In fact, I believe Ellen Church, the first and original stewardess, just fell off a horse yesterday and was hurt. I suppose, according to this, she is much too old to get up and down the steps of a airplane but neverthe-



less, she had a problem horseback riding yesterday. We do not have people in their sixties or seventies because this profession is not that old. I cannot find or know of a case where a girl has been disqualified because of her inability to perform the job as such, a physical qualification that could be related in any way to her age.

We have girls, as I say, who have been injured in flight, or injured in the routine turbulence that is encountered, injured in crashes and have been disqualified physically or perhaps injured because of terminal illnesses.

I do not know of one where you could say this girl simply is over-age and she can't get up and down the steps and she can't serve the meals. This I cannot say I know exists.

Mr. HATHAWAY. The gist of this problem seems to be to eradicate from the minds of employers and perhaps a large segment of the public the notion that airplanes are flying bunny clubs. They are comparable to other modes of transportation and the services in question can be performed by people who are 40, 50, and perhaps 60 years old.

Mrs. BOLAND. We have the example of some 2,000 girls represented in other locals who are members of the Transport Workers Union on Pan American. These girls are not terminated at 32 or 35, they have been flying in commercial service since 1946. They have some very senior girls who are performing admirably.

Mr. HATHAWAY. Up to what age?

Mrs. BOLAND. I believe where they are in the late forties or early fifties.

TWA has some very senior girls, girls who were hired in 1935, 1936, 1937 who are still flying Atlantic covering those flights. In fact they took the first polar flights and for the first publicity flights up a pedometer count of 23 miles per flight and were well past 40 at the time.

Eastern has some very senior girls and does not have a limitation.

The American girls who were hired prior to the company policy are in their forties, approaching or past 50. They are performing that job; there are no problems as to the physical capabilities.

Mr. HATHAWAY. Thank you.

Mr. O'HARA. I might just interpose at that point, with what I understand are the airline policies with respect to age determination of stewardesses. These policies were instituted some time after the airlines began hiring stewardesses, and those who had been employed prior to the enunciation of the policy are not subject to the age limitation covered under what might be classified as a "grandmother clause."

Mrs. BOLAND. I believe it has been referred to as that but that is the way the company has put the policy in effect.

Mr. O'HARA. These girls have to pass their annual physicals, but they go on being employed, they go on performing the same duties, they get no special preference, they are not given easier jobs although they do have priority of selection of flights under the rules you have worked out with the airlines?

Mrs. BOLAND. They must maintain all of the qualifications that I have pointed out, but they were hired prior to the date the company put the policy in effect. Some of them are sitting here today who are the "grandmother clause" people.



Mr. O'HARA. And their continued performance of their duties is evidence of the fact that the age conditions applying to those hired since the date of the policy is arbitrary?

Mrs. BOLAND. Very much so, sir.

Mr. O'HARA. Or they would not be able to perform their duties?

Mrs. BOLAND. That is right. There is one exception. Southern Airways put their rule into blanket effect, that is, it was applied retroactively to anyone who was on the payroll or those hired in the future will be terminated at age 35.

Mr. O'HARA. Mr. Scheuer.

Mr. SCHEUER. I happen to be a commercial pilot and a member of the AOPA. Isn't it true that pilots themselves are not subject to automatic retirement at any age but continue flying as long as they pass their physical and perform their flying duties properly?

Mrs. BOLAND. The rules that apply to AOPA are slightly different from those that apply to commercial pilots.

The pilot retirement age was specified at 65, the company retirement.

Mr. SCHEUER. How recent was that?

Mrs. BOLAND. This was changed in the late fifties. There is a retirement age for pilots at 60, one that was bitterly opposed by the commercial pilots.

Mr. SCHEUER. For many years there was no retirement age whatsoever, and I don't think they ever had a casualty or fatality because of pilot disability.

Mr. O'CONNELL. It is an FAA regulation that all pilots retire at 60 automatically.

Mr. O'HARA. We many have to talk to the FAA about that, too.

Mr. SCHEUER. Let me ask this question: I recall Benjamin Franklin's famous letter to his son where he advised his son to court middle-aged women on the grounds that their feminine allure and attraction was enhanced with the years as vintage wine is enhanced in its mellowness. Perhaps we could distribute this letter as an educational device to the airline executives.

Mrs. BOLAND. I would be most happy to undertake that project.

Mr. SCHEUER. I for one would oppose to my dying breath the principle that a woman is less attractive, less alluring, and less charming after age 29 or 32 or 35. I think my colleagues on this committee will agree.

Mr. O'HARA. Especially if we want to be reelected. [Laughter.]

Mrs. BOLAND. From our membership who are extremely interested in this project I am forwarded from time to time various newspaper clippings, as you can tell. One girl in particular has followed this age question and forwarded to me from time to time articles of interest in the papers relating to it, pictures of Marlene Dietrich, Gypsy Rose Lee, and the comment is, "Way, way over 32." [Laughter.]

Mr. SCHEUER. I think you have made that clear. Thank you very much.

Mr. O'HARA. Thank you very much.

Mrs. BOLAND. I have only one other comment, Mr. Chairman. I would like to point out to you American's brochure bringing to the attention the qualifications in the openings or vacancies available with this major air carrier, "An equal opportunity employer."



Mr. SCHEUER. In connection with that, can you tell me how many minority group members there are in your union who are flying today with all the airlines and what percentage that would be of all of the hostesses?

Mrs. BOLAND. We keep no records whatsoever as far as groups, race, or color. There are to the best of my knowledge some 40 or so Negro girls flying on commercial airlines today. The first of those were hired no more than 5 or 6 years ago.

Mr. SCHEUER. Yes.

Mrs. BOLAND. There was to my knowledge one Jewish girl that I was aware of who flew.

Mr. SCHEUER. Nationally?

Mrs. BOLAND. Yes.

Mr. SCHEUER. How many stewardesses are there in the entire country?

Mrs. BOLAND. There are roughly 14,000.

Mr. SCHEUER. So only a fraction of 1 percent would be minority group members?

Mrs. BOLAND. I believe that would be a very close estimate.

Mr. SCHEUER. Could I ask you as a matter of record whether your union has ever made a protest to a committee of the Congress or to the airlines of the existence of discrimination, not on grounds of age but on grounds of race, color, creed, ancestry, or national origin?

Mrs. BOLAND. As far back as 1945 the Transport Workers have written into their contracts a nondiscrimination clause. In our current contracts as they are negotiated with the companies we have written a nondiscrimination clause.

Mr. SCHEUER. Have you ever carried on an active program of education or protest against discrimination because of race, religion, or color, comparable to the fashion in which you are carrying on this very worthwhile and laudable program?

Mrs. BOLAND. To answer you directly, no, but in the same degree that our job and our place in representing these people is the conditions and terms of their employment rather than the terms and conditions of their being hired. We cannot tell an airline nor do we have jurisdiction of governing the policy that they adopt as to the type of girl that they hire, but once she is employed and comes under our bargaining unit we negotiate for the terms of the conditions of her employment.

Mr. O'HARA. Let me ask, do you discriminate in any way in your membership?

Mrs. BOLAND. No, we do not.

Mr. SCHEUER. I was active in the New York State Commission Against Discrimination as chairman of their Housing Advisory Council. At that time our chairman, Charles Abrams, carried on a very heated and extended contest with several airlines, and I believe it was as a result, was it not, Mr. Chairman, of his efforts a number of years back that the first Negro stewardess was hired by an American airline. One of the motivating factors with the airlines at this time against hiring Negro girls was pressure, they reported, informally from their white stewardesses against the idea of taking in minority group members because this would downgrade the social status, or the "chic" attached to working on an airline. They felt that it



would be less attractive for a white girl to become an airline hostess if Negro girls were hired. There was considerable pressure from the hostesses, or so the airline executives reported to us, against hiring Negro girls.

Now that was some years ago. Do you know of anything in recent history that would corroborate that, or is that not a factor today in the apparent nonemployment of Negro or Jewish girls in the airline industry as hostesses?

Mr. O'CONNELL. They have had rules for years on race or color or creed.

Mr. SCHEUER. They did as a formal matter, but informally we were told this was a real problem. Could you tell me what percentage of your flying airline hostesses today would be nonwhite?

Mr. O'CONNELL. Would be nonwhite? I have no idea.

Mr. SCHEUER. We have just heard that nationally, of the 14,000 hostesses, there are only 40 Negroes and only one Jewish girl.

Mrs. BOLAND. It has only been in the last couple of years since the formation of the President's Committee on Equal Employment Opportunity have the airlines considered hiring a Negro; they are not hiring them voluntarily, but under pressure. They are being forced to hire them. There is no discrimination on the part of the Transport Workers Union or the airline stewardesses to take them in and accept them as members.

Mr. SCHEUER. You think the real problem is with the carriers themselves?

Mrs. BOLAND. Yes.

Mr. SCHEUER. And there is no negative influence from the union?

Mrs. BOLAND. No, sir.

Mr. SCHEUER. Thank you very much.

Mrs. BOLAND. I can only add to that that I was around at the time that this particular incident came up in New York.

Mr. SCHEUER. Your appearance belies your words.

Mrs. BOLAND. Thank you. The comments that were distributed, not as a flat statement to girls, were that the problem in hiring Negro girls was that they could not physically qualify for the job. As I recall, the first one who was hired from the State of New York was disqualified on a physical condition prior to completing school.

Mr. SCHEUER. I don't remember that, but, as a matter of principle, it is so obviously absurd that I hesitate to see how an intelligent person could accept it.

Mr. O'CONNELL. One case that remains vivid in my mind is that the first Negro girl who was hired by Northwest Airline was hired by Northwest after the FEPC forced them to hire her. This girl went through training and when she came on the payroll—they are probationary employees when they pass a certain period, 6 months. This girl passed her 6 months and was told she did not pass, so she was on temporary probation. They gave this girl 13 exams and they finally disqualified her because she failed the 13th exam. This girl was a graduate of the University of Chicago.

Mr. O'HARA. Another thought has occurred to me while this has been going on. I was thinking about the duties of a stewardess and the effect of those duties of the shorter flight time, for instance, between here and Detroit. To serve a meal between here and Detroit on an



Electra is a real job, and the girls have to run every minute to do it.

Their work is complicated even more by the fact that, a few years ago, the airlines began the practice of serving drinks aboard planes, which they had never done before, and that gives them even more work to do. This brought me to another thought. At what age do they hire stewardesses?

Mrs. BOLAND. As a general rule, from 20 to 27. Ninety-nine percent of those girls are hired between their 19th and 21st birthdays. Some airlines do hire at 18 but, primarily, these particular lines in question attempt to hire at 20 and 21.

Mr. O'HARA. When you have a stewardess who is under 21 aboard a flight, does she serve drinks?

Mrs. BOLAND. Yes, she does.

Mr. O'HARA. I think most of the States over which she flies have laws that say no one under 21 may be employed in serving alcoholic beverages.

Mrs. BOLAND. We challenged and questioned these procedures at the time they were instituted, which was about 1954, I believe. The answers that we were given, among others, were that you can do an hour's work in an hour's time and "don't worry about the procedures, we will take care of it; you serve what is put on for you to serve."

Mr. SCHEUER. Why do the girls not want to serve drinks?

Mrs. BOLAND. We could be here all day.

Mr. O'HARA. I think the answers to that are fairly obvious.

Mrs. BOLAND. Prior to serving liquor on the airplanes—I am sure you realize that there were very stringent rules as far as the carrying of passengers on commercial flights. There was a time that a stewardess could reject a passenger because of his—

Mr. O'HARA. Lack of sobriety?

Mr. SCHEUER. Can't they do that today? Isn't there a limit on drinks, and can't they refuse to serve a passenger who appears to be excessively lubricated?

Mrs. BOLAND. Prior to serving alcoholic beverages on board, there was a strict and enforced rule: A person with a bottle, obviously drinking, could be removed, and the crew had jurisdiction over this; they made the determination. We had people deplaned. I had a passenger one time who was going to walk out the back door of a Martin after he had had about four drinks. These things happened in flight, and they were of concern.

We opposed very much the instituting of the liquor, because it not only meant that it increased his degree of intoxication, but we knew from experience that these people were a cause for concern for the safety of the airplane and the other passengers.

We knew, too, as you say, prior to the liquor service it was not any too easy a job to serve that meal between here and Detroit, without the liquor; but, when you put jets, two drinks, and a hot dinner on board, that makes about 28 seconds per passenger to get the job done. This has caused another serious concern to us: that these girls, in order to finish, are required to ignore the safety precautions that have been built into that airplane—sitting down and fastening their seat belts. They work right through this. As a result, many of them are seriously injured. One of these exhibits will show a girl who was



blown out that back door to her death because she was not sitting down, fastened in. What was she doing? She was in the galley.

Mr. O'HARA. Working. I think that is one of the changes I have noticed in airline services: that it was not so long ago that, when the seatbelt light went on as you were approaching the landing, the girls took their places and fastened their belts as well as all the passengers. Now they are up and working in the galley right up to the time the wheels touch the ground.

Mr. O'CONNELL. The only time a girl has to sit down now is when the "No Smoking" sign is on.

Mr. O'HARA. Then I find, in addition, that we have 19- and 20-year-old girls serving drinks in jurisdictions where it is against the law.

The jurisdiction extends upward to the sky, the liquor jurisdictions do.

Mrs. BOLAND. There is a degree of difference, to the best of my knowledge, such as the State of Florida, which has stringent rules—as far as the serving of liquor—which are complied with. In fact, the airlines must carry a license from the State of Florida. I believe the bar is closed over the State of Idaho. In some places—as St. Louis to Kansas City—liquor cannot be served because of State laws, and a few others who have extended this jurisdiction. These rules which have been extended specifically, I know are complied with over those States by the carriers.

Mr. O'HARA. Do you know of any airline that limits its underaged stewardesses in the service of alcoholic beverages?

Mrs. BOLAND. No, I do not.

Mr. O'HARA. But, by the same token, a lot of those States have laws limiting that. I know the State of Michigan does.

Mrs. BOLAND. That is true.

Mr. O'HARA. I am sure that many other do. Well, thank you very much, Mrs. Boland.

Mrs. BOLAND. Thank you, Mr. Chairman, and the committee.

Mr. O'HARA. I hope your appearance here will not have been in vain. Thank you for adding some beauty and grace to our hearing through your presence, and that of your colleagues.

Mr. O'CONNELL. Thank you, Mr. Chairman.

Mr. O'HARA. Without objection, the prepared statement of Mrs. Boland will be entered in the record preceding her remarks, and the Northwest policy statement will be inserted in the record at the conclusion of the exhibits contained in her statement.

Mrs. BOLAND. Thank you.

Mr. O'HARA. Our next witness will be Commissioner J. Edward Conway, of the New York State Commission for Human Rights, and Mr. Elliot K. Shirk, executive director of the Pennsylvania State Human Relations Commission.

Mr. Conway and Mr. Shirk, if you could please take your places at the witness table, along with any others that you might wish to have join you there.

Mr. Conway and Mr. Shirk have been invited to appear before the committee as persons charged with responsibility for administration of State laws dealing with discrimination on the basis of age. We felt that their testimony would be helpful in our assessment of the



effectiveness of the statutory prohibitions against discrimination on the grounds of age.

"I don't know if you have arranged between you who will testify first. Please identify yourselves and testify."

(Mr. Conway's prepared statement follows:)

STATEMENT BY COMMISSIONER J. EDWARD CONWAY OF THE NEW YORK STATE  
COMMISSION FOR HUMAN RIGHTS

I am Commissioner J. Edward Conway, of the New York State Commission for Human Rights. I was appointed as a commissioner in 1954 and have been twice reappointed for successive 5-year terms. I am appearing here today in response to the invitation to the New York commission to assist in your consideration of the problem of discrimination in employment based on age. I am accompanied by Mr. Milton Rosenberg, the director of the commission's division of employment.

Under the commission's general plan of operation, each commissioner participates in all areas of the commission's jurisdiction, including the direction of investigation of complaints, the conduct of hearings, the formulation of policy, and the supervision and direction of program activities. In addition, however, individual commissioners are sometimes concerned with special areas of the commission's jurisdiction and maintain direct and continuing attention to the total problem presented in the particular field. I have been so designated in connection with the commission's jurisdiction over discrimination in employment because of age.

The age provisions of the New York law against discrimination have been in effect since July 1, 1958. My own interest in and administrative experience with this subject, however, antedates the age provisions of the New York law against discrimination. I was appointed to the civil service commission of the State of New York in 1943, was reappointed in 1949 and served throughout as president of the commission. In this capacity I was required to interpret and administer the prohibitions against age discrimination in the New York civil service law (formerly sec. 25(a) and presently sec. 54).

The State commission for human rights began and has continued the administration of its governing statute under two plain principles:

1. That no employer can be compelled to hire or keep anyone who cannot do the job.

2. That no worker may be barred when he can do that job simply because he is too old.

In its 7 years of experience with the age provisions of the law, the commission has encountered and dealt with a variety of special situations. Its experience has also confirmed, however, the basic concept initially expressed by the above principles that there are many older workers who are ready, willing, and able to give full and complete work performance and seek only to have the employer consider them on their merits and without any arbitrary assumptions as to work ability based on chronological age.

THE AGE GROUP COVERED BY THE NEW YORK LAW

The age provisions of the New York law originally referred to the age group of 45-65. In 1961 these provisions were amended by the New York State Legislature to broaden the range of the age bracket to 40-65.

In signing this 1961 bill, Governor Rockefeller noted that the New York State Employment Service had put New York in the forefront of the Nation in its placement of workers over 45 years of age, and then declared: "More remains to be done, however, to meet the manpower challenges of this decade. Recent studies show that \* \* \* more than two out of every five working men and women will be over the age of 40. \* \* \* It is imperative, therefore, that the age barrier be lifted so that all working men and women over 40 years of age can continue their productive lives. We cannot afford the waste of valuable human resources."

It is to be noted that the upper limit of the age bracket, namely age 65, does not reflect any view by either the legislature or the commission that the State of New York is without interest in the employment problems of persons who have reached or passed age 65. The exact contrary is the fact as demonstrated by the cooperation, support, and interrelationships between the New York State



Joint Legislative Committee, the State commission for human rights, the New York State Employment Service and such other coordinative groups as the State's interdepartmental committee on problems of the aging and the State's office for the aging, created by the 1965 legislature.

Age 65 is simply the statutory cutoff date for the filing of complaints under the regulatory provisions of the law. It is also to be noted that by referring to the 40-65 age range, the legislature emphasized this group as the primary one to which the commission should direct its regulatory programs.

One further interpretation may appropriately be mentioned at this point: Discrimination because of age as used in the commission's governing statute and in its rulings is construed to mean discrimination based only on overage, i.e., barring a person because he is too old, not because he is too young.

#### SUMMARY OF REGULATORY PROVISIONS

Article 15 of the executive law of the State of New York, known as the law against discrimination, authorizes and directs the State commission for human rights to receive, investigate, and pass upon complaints by persons up to age 65 alleging discrimination in employment because of age pursuant to the procedures outlined in the statute. The law defines the particular actions which constitute unlawful discriminatory practices. The three principal points so detailed are that an employer may not, solely because of age: refuse to hire, or discharge, or discriminate in promotion, compensation, or conditions of employment.

The law covers four general groups:

1. employers;
2. employment agencies;
3. labor organizations;
4. licensing agencies.

Inquiries or specifications as to age or age limits are also subject to control under the statute in connection with the use of employment application forms or advertisements.

The law includes a number of exceptions and provisos; those most directly related to the age provisions refer to physical inability to perform duties, bona fide requirements of retirement systems, and the varying of insurance coverage according to an employee's age.

#### GENERAL PROCEDURE

A primary responsibility of the commission continues to be the disposition of individual complaints. Briefly, the procedure involves the filing of a complaint in the form of a sworn statement by a person claiming to be aggrieved, setting forth a charge and the particulars in support of the charge; the assignment of the complaint by the chairman to one of the commissioners, who is designated the "investigating commissioner"; the making of an investigation by the commissioner with the assistance of the commission's staff; and a determination by the investigating commissioner as to whether there is probable cause to credit the complaint.

If the investigating commissioner determines that the evidence will not support such a determination, he dismisses the complaint. If he finds that the evidence is sufficient, he then proceeds further and attempts to eliminate the alleged unlawful discriminatory practice by conference, conciliation and persuasion. If a satisfactory conciliation agreement is achieved, this disposes of the case. Failure of the conciliation procedure empowers the investigating commissioner to notice the case for public hearing before three hearing commissioners, excluding himself. The procedure which follows is in the form of the usual quasi-judicial hearing with all attending safeguards to all parties. The commission order or dismissal which terminates such proceeding is then subject to review and enforcement procedures in the courts.

In no instance to date has it been necessary to go further than the conciliation agreement procedure in connection with age cases.

#### COMMISSION INITIATED ACTION

Particular reference may be made to the fact that under legislation enacted during 1965, the commission now has the right to initiate complaints on its own motion. The commission has repeatedly noted its belief that there are substantial areas in the field of employment in which equal opportunity cannot be assured by sole or even major reliance upon the individual complaint case process. The



flow of individual complaints may or may not reflect those employment situations which present the more pressing needs and concerns of the State and all its people in the prevention and elimination of employment discrimination. The commission, therefore, has been giving increasing emphasis and attention to regulatory work with broader aspects than the individual complaint case in order to make possible that combination of regulatory and educational techniques which provides the best chance for success. For example, in connection with claims for bona fide occupational qualifications for specified job categories in particular industries the commission is now moving into the field of developing techniques for standard setting which will include an opportunity for all interested parties to present data and argument for evaluation by the commission.

#### COMPLAINT CASES—TOTALS AND TRENDS

I am attaching to this report for your information a copy of a recently completed analysis of the 649 age complaints which have been presented to the commission from July 1, 1958 (the effective date of the law's age provisions), through June 30, 1965.

One of the interesting findings of this analysis to which I particularly direct your attention is that through these complaints the commission found and adjusted some unlawful practice or pattern relating to age discrimination in 37 percent of the age cases which had been settled through the end of June of this year.

Some of the provisions contained in the conciliation agreements with respondents included the following: An opportunity to demonstrate qualifications through a reinterview and physical examination to be followed by immediate employment upon successful completion; a reinterview and consideration of the complainant for the next available employment opportunity in the same job category; the award of back pay; abandonment of screening of applicants based on a specification as to chronological age and substitution of individual evaluation of all applicants including strict physical examination; display of the commission poster; correction of an employment application form; deletion of age specifications from help-wanted advertisements; issuance of a directive to all personnel in charge of hiring stating the company's nondiscriminatory policy; maintenance by an employment agency of job order records which were received with age specifications; and amendment of a union constitution and bylaws to eliminate age restrictions in membership.

#### PROGRAMS

I have already referred to the commission view that it can best achieve the purposes of the law by a combination of regulatory and educational activities. To provide additional content and detail I am appending to these comments the commission's current statement of its ongoing and projected programs in the area of age. These relate particularly to State and local civil service, employers, public and private employment agencies, newspaper advertising, and bona fide occupational qualifications.

#### EVALUATION OF THE NEW YORK EXPERIENCE

It is the judgment of the commission after 7 years of experience with the age provisions of the law against discrimination that the administration of a statute with enforcement provisions is entirely feasible and does expedite and make more effective the public policy of the State to eliminate automatic and mechanical assumptions as to job ability based solely on chronological age. It is also our judgment that, affirmatively, the very presence of the law brings about a readiness to consider each applicant on his individual merits with reference to actual ability to do the job.

The law recognizes the possibility of age as a bona fide occupational qualification in special circumstances. At the same time, the bona fide occupational qualification provision is, in context, an exception to the law's general coverage.

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#### SEVEN YEAR SUMMARY OF "AGE" COMPLAINTS JULY 1, 1958—JUNE 30, 1965— NEW YORK STATE COMMISSION FOR HUMAN RIGHTS

The age provisions of the New York law against discrimination have been in effect since July 1, 1958. Basically, they prohibit discriminatory employment practices based arbitrarily on chronological age. Under its enforcement juris-



diction, the commission receives, investigates, and passes upon verified complaints by persons up to age 65 alleging age discrimination. The following summary is based on a recent analysis of the commission's experience over the 7 years during which the commission has had jurisdiction over the subject of age discrimination.

*Number.*—During the 7-year period from July 1, 1958, through June 30, 1965, the commission has received 649 age complaints. This represents about 13 percent of the total number of employment cases presented to the commission throughout those 7 years.

*Geographic location.*—New York City has been the site of 63 percent of all age complaints. The region with the next highest proportion is Buffalo, where 10 percent of the complaints have been registered.

*Occupation of complaints.*—About three out of five complaints (59 percent) were submitted by people seeking employment in professional, clerical, and sales positions. Approximately 10 percent were craftsmen or persons in the skilled trades and 31 percent represented semiskilled, unskilled, and service positions.

*Age and sex of complaints.*—Almost three out of four complainants in age cases (73 percent) have been men. The median age of all complainants is 53 and the largest number of complaints (one-quarter of the total) has been filed by persons between 51 and 55 years of age.

*Respondents.*—For the entire 7-year period, 80 percent of all complaints involved employers while labor unions and employment agencies were the respondents in 5 percent and 15 percent of the complaints, respectively. With respect to all employers, the three leading industries were manufacturing, durable goods (20 percent); manufacturing, nondurable goods (16 percent); transportation, communication, and public utilities (12 percent); finance, insurance, and real estate (11 percent); and retail trade (10 percent).

*Acts of alleged discrimination: Findings.*—The distribution of age complaints, from July 1, 1958, to June 30, 1965, by act of alleged discrimination is as follows: Refusal to hire, 53 percent; dismissal, 20 percent; employment agency refusal to refer, 15 percent; labor union action, 6 percent; terms and conditions of employment, 5 percent; other, 1 percent. The commission found and adjusted some unlawful practice or pattern relating to age discrimination in 37 percent of the age cases settled since July 1, 1958.

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### EQUAL EMPLOYMENT OPPORTUNITIES FOR THE OLDER WORKER

#### STATEMENT OF COMMISSION PROGRAMS, NEW YORK STATE COMMISSION FOR HUMAN RIGHTS

The opportunity to continue to work at his full potential and in accordance with his individual merit is of particular importance to the middle-aged and older worker. It is important not only for self-support and independence, but also for healthful living and self-respect during these middle years. It has the further significance that the maintenance of income during the middle years obviously relates directly and most immediately to the economic base which will determine how the aging will, upon partial or total retirement, be able to spend the added years of their lives.

An important step toward achieving the goal of such employment opportunities for the older worker was provided in 1958, upon the recommendation of the joint legislative committee on problems of the aging, by the enactment of amendments to the law against discrimination. These amendments prohibited discriminatory employment practices based, arbitrarily, on chronological age. In approving strengthening amendments to this law in 1961, Governor Rockefeller noted that employers and employment agencies have become aware through the educational and enforcement efforts of the State commission for human rights "that merit and fitness for the job, instead of chronological age, are the only legally accepted standards for the hiring, promotion, and compensation of workers," and the Governor called for intensification and broadening of the commission's programs, emphasizing that "we cannot afford the waste of valuable human resources."

In carrying out the State's programs under the strengthened statute, Chairman Gorge H. Fowler of the State commission for human rights, has repeatedly called attention to the fact that the commission's experience and research have shown that "one of the central problems is to get industry to reexamine the



various policies and assumptions with which it has been operating in regard to the employment of older workers," and that "Too often older people have more trouble finding jobs than younger ones only because of an automatic negative reaction to a particular chronological age range." On the positive side, however, Chairman Fowler has been able to report that the commission is also convinced that "There has been very real and very substantial progress in overcoming this reflex; further, that the commission has demonstrated the constructive role of the law to set a standard and provide one of the working tools for progress in this field."

The particular functions and programs by which the commission has achieved these results may be summarized as follows:

#### REGULATION

The commission is charged with the power and duty to enforce a group of specific statutory provisions which form part of the New York law against discrimination. Under these provisions, the commission is authorized and directed to receive, investigate, and pass upon complaints by persons up to age 65 which allege discrimination in employment because of age. Under the procedure provided by the statute, any person claiming to be aggrieved may file such a complaint within 90 days of its occurrence. The commission has regional offices throughout the State (Albany, Bronx, Buffalo, Brooklyn, Long Island, Queens, Rochester, Syracuse, upper Manhattan, White Plains), and its staff is available to answer inquiries and to provide assistance to persons who believe they may have the basis for such a complaint.

The main points detailed by the law are that an employer may not refuse to hire and may not discharge a person solely because of age. Also prohibited are discrimination in promotion, compensation, or conditions of employment. The law covers not only employers but employment agencies, labor organizations, and licensing agencies. In addition, there are limitations in the use of application forms, statements, or advertisements that inquire as to age or specify age limits. The statute empowers the commission to prevent as well as to eliminate employment discrimination. The regulatory procedure may culminate in a commission order which is enforceable in the courts. Such an order may include provisions for affirmative action such as employment of the complainant or an award of pay or both.

#### PROGRAMS

In addition to the handling of formal verified complaints and informal investigations and inquiries the commission carries out a series of general programs relating to the statute and concerned primarily with persons in the age bracket 40-65. These are based on the judgment that initial priority goals have been and shall continue to be (1) to provide a firm administrative and legal foundation for the purposes of the law, (2) gain acceptance of the concept that a law is a useful tool in this field, and (3) provide some leadership models. The commission, accordingly, continues to emphasize four general programs:

1. *State and local civil service.*—With the cooperation of the State department of civil service, the State's employment practices have provided a leadership example in connection with maximum age specifications for initial hiring. The city of New York has similarly cooperated with the commission in reviewing and evaluating maximum age specifications. Finally, the commission is completing its program with local municipal commissions—of which there are more than a hundred—with jurisdiction over employment by villages, towns, and counties as well as cities.

2. *Public and private employment agencies.*—The commission has established a procedure and a program under which an employment agency, public or private, but only if acting in good faith, may accept and work on a job order with an age specification on an employer's responsibility under the bona fide occupational qualifications provisions of the law. As part of this program the commission maintains a continuing study of the operations of the New York State Employment Service and of private fee-charging employment agencies to determine the degree of progress in referral and placement of older workers. This includes periodic field visits to public and private employment service offices, regional conferences with local groups and associations of employment agencies, and liaison with the agencies having supervision over the licensing and regulation of private agencies.



3. *Employers.*—The focus of the commission's general program with employers is to have employers (particularly large entities with well-organized personnel systems) make a self-evaluating initial review followed by voluntary elimination of maximum age qualifications for employment. This is also a leadership and model program. It includes the undertaking of experimental procedures by particular employers in cooperation with the commission to test particular assumptions with respect to maximum age specifications.

The law does take account of the fact that there are in some cases valid and substantial objective grounds for age specifications used in good faith. For example, there are jobs in which extraordinary physical effort is required and others which involve a period of apprenticeship training. What the commission's program seeks to identify are those areas in which industry will itself find it possible, upon review of past practices, to narrow and limit its concepts of what are reasonable bona fide occupational qualification situations and thus permit abandonment of traditional standard operating procedures which continue simply because of habit and, without discriminatory intent, bar the employment of older workers.

4. *Newspaper advertising.*—The commission's essential program with respect to newspaper advertising has been to obtain the cooperation of newspapers throughout the State to eliminate the use of age specifications (i.e., specific age limitations such as "wanted—man under 40" and such usage as "young woman") in order to assure to applicants the opportunity for presenting their individual qualifications to the hiring officer and avoiding threshold disqualifications without interview. Further, the commission maintains a continuing inquiry over usages which may be intended to have the secondary meaning of expressing, indirectly, an unlawful maximum age specification.

These four programs and a fifth, ancillary to employers, which concerns admissions to labor unions, are present programs. Two additional programs are now coming into operation:

#### PROJECTED PROGRAMS

1. *Bona fide occupational qualifications.*—The law authorizes and directs the commission to give consideration to age as "a bona fide occupational qualification" where the circumstances may so warrant. The commission has established a procedure by which employers may claim such warrant for "exceptions" under the bona fide occupational qualification clause of the law. Claims are presently being filed thereunder which permit employers to act upon the claims, subject to review in practice. A major program projected by the commission and now in partial operation is to set standards for and take action upon these claims and, similarly, on claims which arise in the course of complaint cases.

2. *Relationship between fringe benefits and maximum-age specifications for initial hiring by private employers.*—The law includes a proviso that there may be "a varying of insurance coverages according to an employee's age." There may, therefore, be what amounts to lawful discrimination in the terms, conditions, and privileges of employment with respect to what are sometimes referred to as "fringe benefits," such as life insurance plans. The setting of standards and guides for this type of situation is one of the programs which the commission is now beginning as specific instances are presented.

An important consideration in this program is to avoid the possibility that a prospective employee will be denied employment, even though he can do the job, simply because his chronological age has a particular effect upon some ancillary benefit such as participation in a pension system. For example, the commission has noted that the existence of a provision in a retirement plan stating a maximum eligibility age for entrance into the plan cannot in itself authorize the employer to reject an applicant simply because he is over that maximum eligibility age. In such a case the rules provide that the employer hire the applicant, if he is qualified to do the job, and take care of the pension plan problem by making some adjustment such as a form of reduced benefits upon retirement, based on entrance age.

The State of New York is not only proud of the contribution which its middle-aged and older workers make to the economy but it recognizes the State's need for full utilization of the productive capacity of this group. In the present article we have emphasized the protection which the New York law against discrimination affords to those within the coverage of the law's enforcement and program provisions. The State also recognizes the existence of a special set of problems for those who are capable and desirous of continuing employment



beyond age 65. In these instances the commission's sister agency, the New York State Employment Service, provides an effective range of counseling and placement services through its local employment offices.

#### PLACEMENTS OF PERSONS IN THE AGE GROUP 40-65

As noted in prior reports, the Johnson-Conklin amendments to the age provisions of the law in 1962 emphasized the legislature's particular concern with the age group 40-65 and directed the commission's attention to such 40-65 group in the formulation of commission programs relating to the older worker.

As part of the cooperative arrangement between the commission and the New York State Employment Service, a special study of placements of applicants over 40 years of age was initiated during 1962.

The attached table summarizes the results for 1964, the first full year for which such data were maintained.

*Placements of applicants over 40 years of age and placements of applicants in the 40-44 years age group, January-December 1964*

|                                           | Total non-agricultural placements, 40-plus applicants | Nonagricultural placements, 40 plus as percent of total non-agricultural placements | Nonagricultural placements, 40-44 years | Nonagricultural placements, 40-44, as percent of total non-agricultural placements |
|-------------------------------------------|-------------------------------------------------------|-------------------------------------------------------------------------------------|-----------------------------------------|------------------------------------------------------------------------------------|
| State total.....                          | 339,159                                               | 41.0                                                                                | 97,641                                  | 11.8                                                                               |
| New York City.....                        | 260,414                                               | 45.6                                                                                | 72,067                                  | 12.6                                                                               |
| Remainder of State.....                   | 78,745                                                | 30.8                                                                                | 25,574                                  | 10.0                                                                               |
| Upstate districts:                        |                                                       |                                                                                     |                                         |                                                                                    |
| Albany.....                               | 6,971                                                 | 27.6                                                                                | 2,051                                   | 8.1                                                                                |
| Utica.....                                | 3,239                                                 | 31.0                                                                                | 1,165                                   | 11.1                                                                               |
| Syracuse.....                             | 6,144                                                 | 33.4                                                                                | 1,685                                   | 9.2                                                                                |
| Rochester.....                            | 13,266                                                | 37.1                                                                                | 4,950                                   | 13.8                                                                               |
| Buffalo.....                              | 13,541                                                | 37.4                                                                                | 4,540                                   | 12.5                                                                               |
| Binghamton.....                           | 7,062                                                 | 32.2                                                                                | 2,393                                   | 10.9                                                                               |
| Long Island.....                          | 16,246                                                | 28.2                                                                                | 5,581                                   | 9.7                                                                                |
| Suburban.....                             | 12,276                                                | 24.6                                                                                | 3,209                                   | 6.4                                                                                |
| New York City offices:                    |                                                       |                                                                                     |                                         |                                                                                    |
| Professional.....                         | 32,300                                                | 45.1                                                                                | 9,237                                   | 12.9                                                                               |
| Office personnel:                         |                                                       |                                                                                     |                                         |                                                                                    |
| Manhattan.....                            | 9,611                                                 | 34.0                                                                                | 2,232                                   | 7.9                                                                                |
| Brooklyn.....                             | 1,154                                                 | 29.3                                                                                | 367                                     | 9.3                                                                                |
| Sales and merchandising.....              | 1,984                                                 | 20.1                                                                                | 538                                     | 5.5                                                                                |
| Manhattan, Bronx, and Queens service..... | 40,744                                                | 56.8                                                                                | 10,004                                  | 13.9                                                                               |
| Brooklyn service.....                     | 8,930                                                 | 55.8                                                                                | 2,967                                   | 18.6                                                                               |
| Manhattan and Bronx industrial.....       | 5,736                                                 | 14.6                                                                                | 2,500                                   | 6.4                                                                                |
| Brooklyn industrial.....                  | 3,842                                                 | 14.5                                                                                | 1,615                                   | 6.1                                                                                |
| Queens industrial.....                    | 3,206                                                 | 18.9                                                                                | 1,266                                   | 7.5                                                                                |
| Manhattan, Bronx, and Queens apparel..... | 23,833                                                | 50.2                                                                                | 4,715                                   | 9.9                                                                                |
| Brooklyn apparel.....                     | 4,004                                                 | 30.4                                                                                | 1,229                                   | 9.3                                                                                |
| Household.....                            | 123,616                                               | 59.9                                                                                | 34,841                                  | 16.9                                                                               |
| Staten Island.....                        | 1,210                                                 | 35.9                                                                                | 432                                     | 12.8                                                                               |

#### UNDER 65—THE OLDER WORKER—OVER 40

#### RULINGS INTERPRETIVE OF THE AGE PROVISIONS OF THE LAW AGAINST DISCRIMINATION

##### § 296. Unlawful discriminatory practices

##### 1. It shall be an unlawful discriminatory practice:

(a) For an employer, because of the age, race, creed, color, or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, condition, or privileges of employment.

(b) For a labor organization, because of the age, race, creed, color, or national origin of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.



(c) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination as to age, race, creed, color, or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(d) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

\* \* \* \* \*

3-a. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because an individual is between the ages of 40 and 65, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions, or privileges of employment.

(b) For an employer, licensing agency, or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination respecting individuals between the ages of 40 and 65, or any intent to make such limitation, specification, or discrimination.

(c) For any employer, licensing agency, or employment agency to discharge or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

But nothing contained in this subdivision or in subdivision 1 of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this subdivision, nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverage according to an employee's age.

The commission has formulated the following rulings as guides to interpretation of the age provisions of the New York State law against discrimination to assist those seeking opportunities to work, employers, employment agencies, labor organizations, licensing agencies, and others affected by the law.

These guides are intended as "working presumptions" in carrying out the purposes of the law. A commission order enforceable by court proceedings can be made only after a hearing upon a complaint, as provided by the statute. In such proceedings, both the commission and the courts must be governed by the facts in each case.

The commission will, from time to time, review the guides to interpretation as experience indicates.

GEORGE H. FOWLER, *Chairman*.

#### A. PERSONS WHO MAY FILE COMPLAINTS

Any person claiming to be aggrieved by an act of discrimination because of age in connection with employment, membership in a labor organization, or in obtaining a license affecting opportunities for work, may file a verified complaint with the commission. Discrimination because of age, as used herein, shall mean discrimination based on overage.

#### *Examples*

1. An employer specifies that he wants a bookkeeper under 35 years of age. Since the age specification necessarily bars all applicants over 35 years of age, including those between 40 and 65, it is unlawful, under subdivision 1 and under subdivision 3-a of section 296 of the law, unless the employer comes within one of the statutory exceptions. Any applicant who is refused employment because of such an age specification may file a complaint with the commission as an aggrieved person.

2. An employer specifies that he wants a bookkeeper over 35 years of age. A 29-year-old applicant refused employment because he is under 35 is not an "aggrieved person" within the meaning of the law.



3. An employer specifies "15 years of experience required." A 25-year-old applicant refused employment is not an "aggrieved person" within the meaning of the law, although the specification would bar him from employment.

#### B. PREEMPLOYMENT INQUIRIES: APPLICATION FORMS

The law states that any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to age shall be unlawful unless based upon a bona fide occupational qualification.

A preemployment inquiry as to age on an application form shall be unlawful when made for the purpose of barring any individual or otherwise discriminating against him in employment.

##### *Example*

An employer has a policy of not hiring persons over 35 years of age as file clerks regardless of individual abilities. The employer's application form asks the applicant's date of birth to fulfill this policy.

This is unlawful

A preemployment inquiry as to age on an application form will not be deemed to express a "limitation or specification" and will not be in violation of the law when (1) the inquiry is made in good faith for a nondiscriminatory purpose, and (2) the application form states that the New York law against discrimination prohibits discrimination because of age.

Examples of the lawful use of an application form with inquiry "state age" or "state date of birth" accompanied by the statement, "The New York law against discrimination prohibits discrimination because of age.":

(a) An employer requires age information in order to check upon an applicant's personal history, educational background, or prior work record.

(b) An applicant is required to give his age to a medical examiner in connection with a preemployment medical examination.

(c) An employer requires age information in order to carry out a policy of advising prospective employees of their potential rights under the employer's pension plan and insurance systems.

#### C. PREEMPLOYMENT SPECIFICATIONS AND ADVERTISEMENTS

The general test as to whether an advertisement placed in a newspaper is lawful or unlawful is whether the advertisement states an age barrier excluding applicants over an indicated age.

1. The use of an age specification or limitation which bars workers over a maximum age is unlawful.

##### *Example*

"Wanted—Handyman between 30 and 40."

"Wanted—Stenographers, under 35."

2. The use of the word "young" in describing an applicant is unlawful.

##### *Example*

"Wanted—Young man."

"Wanted—Young woman."

#### D. BONA FIDE OCCUPATIONAL QUALIFICATIONS

The law provides for "a bona fide occupational qualification" in certain cases.

1. Consideration may be given to age as a bona fide occupational qualification in such circumstances, among others, as the following:

(a) Where age is a bona fide factor in connection with job performance.

(b) Where age is a bona fide factor in an apprentice training or on-the-job training program of long duration.

(c) Where age is a bona fide factor in fulfilling the provisions of other statutes (e.g., laws regulating employment of minors and females).

2. The commission recognizes the necessity for giving employers a reasonable time in which to review their employment standards to determine those instances in which they believe that age constitutes a bona fide occupational qualification.



At the same time, the rights of persons claiming to be aggrieved came into being upon the effective date of the law, July 1, 1958.

Accordingly, the commission has established the following procedure:

An employer may, at his option, file with the commission a statement supported by the facts claiming the existence of a bona fide occupational qualification. When such statement is filed in good faith, the employer may put such bona fide occupational qualification into effect, with the understanding that if, upon review of the employer's operation in practice, the commission disagrees with the employer, it will offer the employer an opportunity to correct his practices.

#### E. EMPLOYMENT AGENCIES

An employment agency undertaking to fill a job order containing an age specification will share responsibility with the employer placing the job order if it is determined upon complaint or otherwise that the age specification was not based upon a bona fide occupational qualification. The employment agency, however, will not be deemed by the commission to be in violation of the law, regardless of the determination as to the employer, if the employment agency acts in good faith to comply with the law and does the following:

Makes and maintains a written record, available to the commission, of each job order which it seeks to fill upon the basis of a claim of bona fide occupational qualification. Such record shall include the name of the employer, the description of the job, and the basis of the claim for bona fide occupational qualification.

An employment agency may use an application form containing the inquiry "state age" or "state date of birth" provided that (1) such inquiry is accompanied by the statement, "The New York law against discrimination prohibits discrimination because of age," and (2) the information obtained is used to fill job orders with age specifications only under the above procedure.

#### F. PREEMPLOYMENT PHYSICAL EXAMINATIONS

Preemployment physical examinations relating to minimum physical standards for employment are lawful, provided the minimum physical standards are reasonably necessary for the work to be performed and are uniformly applied to all applicants for the particular job category.

#### G. TERMINATION OF EMPLOYMENT BECAUSE OF INABILITY TO PERFORM DUTIES

An employer may terminate the employment of any person who is physically unable to perform his duties.

##### *Examples*

1. An employer has prescribed minimum physical standards as a condition for continuance in employment. Such minimum standards are reasonably necessary for the work to be performed and are uniformly applied to all employees in the particular job category. An employee is found, upon medical examination, to be unable to meet such minimum standards and his employment is terminated.

This is lawful

2. As a result of a physical or mental condition, an employee is found, upon due examination of his work performance, to be unable to perform his duties. Such disability is not temporary and is substantial. The employer terminates the employee's employment.

This is lawful

3. An employer establishes the policy of terminating the employment of every employee in a routine job category upon such employee's reaching the age of 60. The employer asserts that such policy is based upon his general belief that persons over the age of 60 usually become physically unable to perform the duties required in the job category in question.

This is unlawful unless the employer can establish (a) that his general belief has a substantial basis in fact and (b) that it is not practicable to pass upon each individual employee's qualifications

4. An employer establishes the policy of terminating at age 60 the employment of every employee in a highly specialized occupational category demanding



a high level of physical qualification, without reference to the actual physical condition at terminal age of the particular employee in such job category.

This is lawful if the employer can establish the specialized character of the job category and the reasonableness of the compulsory termination age (e.g., an airline which requires the automatic termination of the employment of all pilots at age 60, without reference to the individual's physical condition at terminal age)

#### H. RETIREMENT POLICY OR SYSTEM

(a) A compulsory retirement age specification shall not be deemed unlawful where it is part of a bona fide retirement policy, plan, or system which was established before July 1, 1958 and provides for retirement benefits.

##### *Examples*

1. An employer has a funded retirement plan which provides for compulsory retirement and the receipt of retirement benefits at age 60. The plan was established before July 1, 1958, has been filed and found qualified under the Internal Revenue Code and has been uniformly applied to those under its coverage. A qualified employee reaches 60 years of age and his employment is terminated pursuant to the retirement plan.

This is lawful

2. An employer has a retirement policy which provides for compulsory retirement at age 60. The employer does not have a funded pension plan, but does have a policy of paying pension benefits on a nonfunded, pay-as-you-go basis. The policy as to compulsory retirement and the payment of retirement benefits on a nonfunded, pay-as-you-go basis has governed the employer's operations for a substantial period prior to July 1, 1958, the effective date of the age amendment to the law against discrimination, and such policy has been communicated to and uniformly applied to all employees. A qualified employee reaches age 60 and his employment is terminated pursuant to the retirement policy.

This is lawful

(b) Where a compulsory retirement age, below age 65, is part of a retirement policy, plan, or system, which provides for retirement benefits but was established after June 30, 1958, the employer will be called upon to justify the reasonableness of the specified compulsory retirement age in relation to (1) the employer's overall employment policy and (2) the particular occupational category to which it applies.

(c) Where a compulsory retirement age, below age 65, is part of a retirement policy which is not coupled with retirement benefits provided by the employer, the bona fides of the policy will be determined in each case by the following and any other relevant criteria:

1. The date of the establishment of the policy;
2. The history of the administration of the policy;
3. Whether and when the policy was reduced to writing and made known to existing employees and applicants for employment;
4. The reasonableness of the specified compulsory retirement age in relation to (1) the employer's overall employment policy and (2) the particular occupational categories to which it applies.

#### I. MAXIMUM ENTRANCE AGE

The existence of a provision in a retirement plan stating a maximum eligibility age for entrance into a retirement plan shall not in itself authorize rejection of an applicant who is over the maximum eligibility age for the retirement plan, provided, however, that the compulsory retirement age provision set forth in the retirement plan may be made applicable to such employee.

##### *Examples*

1. An employer has a bona fide retirement plan or system which provides for a maximum entrance age of 40 and a compulsory retirement age of 65. A qualified applicant for employment, age 41, is rejected for employment on the basis that he is ineligible for the employee's retirement plan. The employer asserts that he does not choose to employ anyone who is not eligible for such plan, although the employer could do so without causing the plan to become disqualified under the Internal Revenue Code.

This is unlawful



2. An employer has a bona fide retirement plan or system which provides for a maximum entrance age of 40 and a compulsory retirement age of 65. A qualified applicant for employment, age 41, applies for employment. The employer advises such applicant that he will be accepted for employment but that the terms of his employment must provide for exclusion from the retirement plan and compulsory retirement at 65 (or that the employee will receive some form of reduced benefits upon retirement at age 65 based on his entrance age).

This is lawful

#### J. COSTS

The claim that the employment of persons after a specified age will affect a retirement policy or system, in the sense that it will increase the costs of the retirement policy or system of the employer, will be accepted only if the employer can demonstrate that the increase in costs will be so substantial as to materially affect the terms and provisions of the plan. Each case in which such a claim is asserted will be determined upon its own facts and circumstances existing at the time the claim is made; and each determination will be subject to review from time to time to determine if there has been any change in circumstances.

#### K. INSURANCE COVERAGES

An employer may vary insurance coverages according to an employee's age, and such varying of insurance coverages may apply to persons between the ages of 40 and 65, or any age.

##### *Example*

An employer establishes a life insurance plan under which the benefits are an amount equal to 2 years' straight-time earnings up to age 60 with a gradual reduction thereafter to an ultimate of 1 year's straight-time earnings at age 65.

This is lawful

### **STATEMENT OF COMMISSIONER J. EDWARD CONWAY, NEW YORK STATE COMMISSION FOR HUMAN RIGHTS, ACCOMPANIED BY MILTON ROSENBERG, DIRECTOR, DIVISION OF EMPLOYMENT, NEW YORK STATE COMMISSION FOR HUMAN RIGHTS**

Mr. CONWAY. Thank you, Mr. Chairman.

I am Commissioner J. Edward Conway of the New York State Commission for Human Rights. I was appointed to this commission in 1954 and have been twice reappointed for successive 5-year terms.

I am appearing today in response to the invitation to the New York Commission to assist in your consideration of the problem of discrimination in employment because of age. I am accompanied by Mr. Milton Rosenberg, the director of our commission's division of employment.

Under the commission's general plan of operation, each commissioner participates in all areas of the commission's jurisdiction, including the direction of investigation of complaints, the conduct of hearings, the formulation of policy, and the supervision and direction of program activities.

In addition, however, individual commissioners are sometimes concerned with special areas of the commission's jurisdiction and maintain direct and continuing attention to the total problems presented in that particular field.

I have been so designated in connection with the commission's jurisdiction over discrimination in employment because of age.



The age provisions of the New York law against discrimination have been in effect since July 1, 1958. My own interest in and administrative experience with this subject, however, antedates the age provisions of the New York law against discrimination.

I was appointed to the Civil Service Commission of the State of New York in 1943, was reappointed in 1949, and served throughout as president of that commission. In this capacity I was required to interpret and administer the prohibitions against age discrimination in the New York State civil service law. The State commission for human rights began and has continued the administration of its governing statute under two main principles.

One, that no employer can be compelled to hire or keep anyone who cannot do the job; and, two, that no worker may be barred when he can do that job simply because he is "too old."

In its 7 years of experience with the age provisions of the law, the commission has encountered and dealt with a variety of special situations. Its experience has also confirmed, however, the basic concept initially expressed by the above principles that there are many older workers who are ready, willing and able to give full and complete work performance and seek only to have the employer consider them on their merits and without any arbitrary assumptions as to work ability based on chronological age.

The age provisions of the New York law originally referred to the age group 45 to 65. In 1961 these provisions were amended by the New York State Legislature, to broaden the range from 40 to 65.

In signing this bill Governor Rockefeller noted that the New York State Employment Service had put New York in the forefront of the Nation in its placement of workers over 45 years of age. He then declared:

More remains to be done, however, to meet the manpower challenges of this decade. Recent studies show that \* \* \* more than two out of every three different working men and women will be over the age of 40 \* \* \*. It is imperative, therefore, that the age barrier be lifted so that all working men and women over 40 years of age can continue their productive lives. We cannot afford the waste of valuable man resources.

It is noted that the upper limit of the age bracket—namely, age 65—does not reflect any view by either the legislature or the commission that the State of New York is without any interest in the employment of problems of persons who have reached or passed age 65. The exact contrary is the fact as demonstrated by the cooperation, support, and interrelationships between the State commission for human rights, and the New York State Joint Legislative Committee, the New York State Employment Service, and such other coordinative groups as the State's interdepartmental committee on problems of the aging and the State's office for the aging created by this 1965 legislature.

Age 65 is simply a statutory cutoff date for the filing of complaints under the regulatory provisions of the law. It is also to be noted that by referring to the age 45 to 65 range the legislature emphasized this group as the primary one to which the commission should direct its regulatory programs.

One further interpretation may appropriately be mentioned at this point. Discrimination because of age as used in the commission's governing statute and in its rulings is construed to mean discrimination



based only on overage; that is, barring a person because he is too old and not because he too young.

I recognize that we have taken some time here this morning and I appreciate too the patience, Mr. Chairman, of you and your committee. For that reason I want to abbreviate the written statement.

I have filed with your committee this statement in full and certain supporting data. I should like also to file a pamphlet here containing our rulings interpretative of the age provisions of the law against discrimination.

Mr. O'HARA. We would appreciate having them. Without objection the statement and the material to which you have referred will be entered into the record preceding your remarks.

Mr. CONWAY. Thank you.

May I continue by saying in the remainder of the statement I am submitting to you I have summarized the regulatory provisions in New York of the coverage of employers, employment agencies, labor organizations and licensing agencies. I have described in general the procedure followed by the commission in the disposition of individual complaints. I have also called your attention to various terms of the conciliation that are used by the commission in the determination of cases before it and the totals and trends set forth in the analysis of the commission's complaint cases over a 7-year period in which the commission has had jurisdiction over discrimination because of age.

An additional attachment to our statement describes the commission's ongoing and projected programs in the area of age.

In the interest of allowing the maximum amount of time for answering specific questions that you may have, I am abbreviating the oral presentation of my statement and will conclude with an evaluation of the New York experience as follows:

It is the judgment of the commission after 7 years of experience with the age provisions of the law against discrimination that the administration of a statute with enforcement provision is entirely feasible and does expedite and make more effective the public policy of the State to eliminate automatic and mechanical assumptions to job ability based solely on chronological age.

It is also our judgment that, affirmatively, the very presence of the law brings about a readiness to consider each applicant on his individual merits with reference to actual ability to do the job.

The law recognizes the possibility of age as a bona fide occupational qualification in special circumstances. At the same time, the bona fide occupational qualification provision is, in context, an exception to the law's general coverage.

Thank you very much, Mr. Chairman.

Mr. O'HARA. Thank you. We will reserve our questions until Mr. Shirk has completed his testimony.

(Mr. Shirk's prepared statement follows:)

STATEMENT OF ELLIOTT M. SHIRK, EXECUTIVE DIRECTOR OF THE PENNSYLVANIA  
HUMAN RELATIONS COMMISSION

I should like to point out that we have very pressing reasons for concern in our State as far as the unemployment problem of the older worker is concerned. The latest statistics, May 1965, reveal the fact that 32 percent of the unemployed, registered as available for work with the Pennsylvania State Employment Serv-



ice, are in the age bracket 45 and over. This is 7 percent higher than the national average of 25 percent. Automation and technological changes in business and industry continue to have an increasing impact, especially in our chronic depressed areas which are still classified by the Federal Government as definite distress areas. For the first time in Pennsylvania, our four major veterans' organizations have expressed concern regarding the age problem in employment and have urged that action be taken to improve the plight of the unemployed older worker.

Pennsylvania was one of the earliest States to enact laws forbidding discrimination in employment. The Pennsylvania Human Relations Commission administers the antidiscrimination laws on fair employment practices, including age along with race, religion, and ancestry in the provisions of the law. The act itself confines discrimination in age to persons between the ages of 40 and 62, a provision which is purely arbitrary and is open to discussion for a variety of reasons. Our cases on age make up only a small fraction of our total caseload—about 21 percent—since racial discrimination complaints make up by far the largest group of our charges. To be specific, from 1956 through August 19, 1965, the total number of cases dealing with age violations was 652; 213 of these were based on commission-sponsored charges of violations in employment advertising by newspapers and advertisers. This type of violation is comparatively simple to remedy. In 178 instances the charge was found and adjusted; in 5 the charge was not established; in 4 the charge was withdrawn; and 24 are still under investigation. Prompt commission action has practically eliminated the problem, since it has now become increasingly rare to find discrimination in employment advertising in any Pennsylvania newspaper or advertising media.

The balance of our age cases totaled 439 from individual complainants alleging such acts as failure to hire or promote, dismissal, refusal to refer, and unlawful recruitment. These were filed, in most cases, against employers, and in some, against employment agencies. The charge was found and adjusted in 152 instances (111 against employers, 41 against employment agencies). The charge was not established in 121 cases, in 38 the charge was withdrawn, and 128 are still under investigation.

We know that this small number of cases over the past 9 years does not begin to reflect all the actual instances of discrimination based on age, just as our experience with racial and other discriminatory practices reflects only a fraction of the widespread problem. Nevertheless, the fact that the law is on the books has had a very salutary effect in that we have had intelligent cooperation from employers and employment agencies in adjusting cases. In these instances we have had compliance with both the intent and the spirit of the law. In our expanded educational efforts throughout the State, the backing of the law is equally important, since proper accountability and enforcement definitely go far toward breaking up the adverse patterns of discrimination which affect older workers.

There are two other agencies in Pennsylvania which are concerned with problems of the older worker. The Pennsylvania State Employment Service has 100 offices located in every part of the Commonwealth, providing both counseling and placement services to the older worker. The older worker representative in these offices is responsible for making certain that equal consideration is given qualified older workers in competition for jobs he can perform. During the year ending May 31, 1965, new applications for work were taken from 101,952 individuals 45 and over. The active file during this period was 61,172, of whom 9,708 were given specialized counseling service. As far as placements are concerned, 54,517 were placed in suitable jobs, and of these, 3,455 were actually 65 years of age and over.

The other agency—the advisory board on problems of older workers—is a bipartisan group appointed by the Governor, and acts as an arm of the employment service in helping it perform in its counseling and placement program. Through its employer panels established in selected areas of the State, it aids considerably in the occupational rehabilitation and counseling of the older worker. It conducts research with a view to reducing age barriers in hiring and retaining older workers, and sponsors educational and informational programs to aid in this objective. Its basic objective, however, is to create an awareness on the part of the employer and the general public that arbitrary age limits, based solely on chronology, should not be the principal, or even an important determinant as far as the hiring, promotion, transfer, retention, or dismissal of the individual is concerned.



I have described, briefly, the functions of three of our Pennsylvania agencies which are concerned with this problem of age discrimination and employment. With respect to our own human relations commission how can we improve the effectiveness of our age discrimination law? We feel that some changes should be made without resorting to too much discussion or evaluation.

First of all, although our experience with the age clause has been limited in extent, even over the 9 years it has been on the books, we definitely feel that there should be no minimum or maximum age limits specified in the law. We feel that discrimination because of chronological age should be unlawful since it does not take into account individual differences as far as being able to perform on the job are concerned.

Secondly, our law as it is now operating, states that all employers with 12 or more employees, including the State and local governments, are subject to its provisions. We feel that all employers, whether they hire one, or more employees, should be subject to the law. Although we do not have statistics of any kind to back up this statement, we are sure there must be thousands of employers in Pennsylvania who hire 11 or fewer employees. Why should these employers be exempt from the provisions of the law?

Thirdly, our Fair Employment Practice Act provides that the age provisions shall not apply to the operations of the terms or conditions of any bona fide retirement or pension plans which have the effect of a minimum service requirement. A bona fide pension plan in Pennsylvania is one which qualifies for Federal income tax purposes under section 401 of the Internal Revenue Code of 1954.

We realize we are courting trouble in suggesting any change in this provision. Although there have been many excellent studies on pension costs for older workers, the Pennsylvania employer is not at all convinced of their validity. We, therefore, feel, and are suggesting here, that studies might be undertaken by the Federal Government, or by private agencies in conjunction with the actuarial divisions of insurance companies to design pension plans involving costs which would not be prohibitive for the older worker and the employer. If solutions can be found which will be satisfactory to both the employer and the older worker, perhaps the elimination of the bona fide pension provision can be realized. High costs of pension plans, coupled with work performance are two principal reasons why employers are reluctant to hire older workers. At the present time the reduced benefit plan is not widely used by employers in Pennsylvania.

Fourth, with respect to exemptions, we definitely feel that there is need for the Federal Government to step in and offer assistance. We think that exemptions from the age provisions of the FEP Act should be granted only when at least one of the following conditions is true:

1. The job is one where disastrous consequences would result from a sudden decrease in the physical or mental ability of the worker, which might not be readily predictable from routine physical examinations or supervision (an example of this is airline pilot); or
2. The job is one where the effects of a sudden decline in physical or mental ability would not be apparent until too late (example, certain law enforcement officers); or
3. The job is one where the applicant is expected to be capable of filling another job at some point in the future, and there is serious reason to believe he will be too old when the time comes; or
4. The job is one where there are consistently heavy expectations of physical strength, agility, and dexterity, and it is too expensive or impractical for the employer to administer tests and physical examinations to all applicants.

In our experience with exemptions in Pennsylvania, there is danger of depending upon the varying attitudes of commission members, at the time of making a decision, regarding exemptions. We would like to see some standardized exemption procedures established by the Federal Government and adapted by the States to fit their own legislation.

We in Pennsylvania hope that the Federal Government will assess the combined experience of all the States and will evaluate this experience in order to come up with sound, practical legislative recommendations. We have progressed, we think, from the ordinary concept of legislation which stresses police power and enforcement to the modern concept wherein education of the employer and the general public are of paramount importance.



STATEMENT OF ELLIOTT M. SHIRK, EXECUTIVE DIRECTOR,  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Mr. SHIRK. Thank you, Mr. Chairman.

When Mr. Knight called me, suggesting I come down here, I indicated to him that the experience of the Pennsylvania Human Relations Committee and Commission in respect to the problem of older workers was confined to a very narrow aspect of the problem and therefore there might be a just question as to what good purpose my testimony might serve. But I was not about to say "No" to the invitation of Elmer Holland for the simple reason that 10 years ago when we in Pennsylvania were attempting to get a fair employment practices act on the books Elmer Holland was one of the most assiduous, hard-hitting, consistent pluggers for civil rights legislation that we had in Harrisburg.

Mr. O'HARA. I just want to interrupt at that point to say that he has not changed his characteristics since he has come down here. He is a very effective Member of Congress who, when he gets a goal in mind, goes after it and accomplishes it.

Now I would say that the manpower development and training program, with which you are familiar, is attributable to Mr. Holland's unabated devotion to that cause over a period of years. He just kept plugging when nobody was paying any attention to it, and he finally succeeded in getting it on the books. So we can understand that it can certainly be true that he had a good deal to do with that Pennsylvania statute.

Mr. SHIRK. Some of his feats were a delight to behold. He is certainly commendable and out of respect for that history I agreed to come with some reservations as to the real contribution I might make before your hearing.

Nevertheless, we have real reasons in Pennsylvania to be apprehensive insofar as the problem of older workers is concerned because over 32 percent of the individuals listed as unemployed in our Commonwealth are 45 years and over and this is 7 percent above the average for the States of our Nation.

Obviously automation and technological changes have made the plight of the older worker that much more difficult than it was before.

Now we have had an experience that may throw some light on the direction that should be taken in the future in dealing with this, and I would be less than honest if I were to say that it has been a satisfactory one. We have been limiting our efforts in the enforcement field and our accomplishments are less than satisfactory.

For example, since 1956 when we became operable of all the complaints of discrimination filed with our commission, and they go into the thousands, only in that 10-year period have we received 652 charges of discrimination on the ground of age on the part of workers in our State; 213 of those complaints had to do with improper newspaper advertising which excluded from consideration any individual who had reached a certain maximum number of years. I will say that our enforcement provisions have been singularly successful in eradicating this malpractice in advertising open positions in that the newspapers and press have cooperated almost 100 percent in eliminating discriminatory ads which would discourage older applicants from making a bid for a job in which they were interested.



I doubt that this would have occurred if the enforcement provisions of our law had not been contained therein in relation to age. However, there have been only 439 individual complaints on the part of persons, flesh and blood individuals, on the score that they were refused positions or were dismissed simply because of their chronological attainment. The grand total of individuals who have secured positions as a result of the requirements of law who were otherwise excluded because of their age was 152 in 10 years, perhaps 10 individuals who achieved jobs closed to them otherwise by virtue of the enforcement provisions of the Pennsylvania State law.

What I am trying to say is that if this is indicative of anything there is serious danger in placing too great dependence upon the enforcement procedure as an ultimate solution to the problem of discrimination against the older worker. However, there are extenuating factors that I think ought to be mentioned. For instance, our law includes too many exemptions from the applicability of the age requirement. If there were remedies of law to reduce the number of exemptions that are permissible, perhaps our effectiveness would be increased.

As a matter of fact, I stand here today feeling almost before the bar of retribution because it was not too long ago that Trans World Airlines sent a contingent of high officers before our commission asking that they be permitted to exclude applicants for the position of stewardesses beyond the age of 35 and that they be exempted from the requirement of our law that no age limitations be drawn.

They brought with them photographs, motion pictures, the climax of which showed the stewardesses helping passengers down the escape chute and argued that this represented a type of responsibility, a strenuous physical feat that only the agile young ladies of the force could properly consummate.

To my dismay the commission approved the exemption, and in Pennsylvania today it is permissible for the airlines to exclude the feminine gender who are over that age and to hire new applicants only within the bracket I believe 18 to 35.

Mr. O'HARA. I think we better try to smuggle you out of here by a back door.

Mr. SHIRK. Well, I am saying this not in any way to reflect upon the integrity of our commission but to point up that there are so many variations possible in what can be interpreted as a valid job qualification as to age that certainly any law that is drawn in the future should either list at National level, Federal level. Those jobs because of age should not admit anyone beyond a certain chronological point in order that there will not be injustice done to older applicants in one State as against another.

We also have in Pennsylvania jurisdiction in this matter only where an employer hires 12 or more of the workers so that as an individual comes to us from a small concern saying that he has been excluded because of his age we are defenseless to do anything for him. It is ridiculous to think that a man's needs in a company of 11 employees are any less than in a company of 500,000 employees. So this is an arbitrary exemption that should be eliminated.

Mr. SCHEUER. Is there any minimum of employees that would exclude a firm that you think would be reasonable?

Mr. SHIRK. Well, in our State—



Mr. SCHEUER. From the point of view of enforcement if for nothing else, would you include every business enterprise down to the momma and poppa store down on the corner?

Mr. SHIRK. Yes. We, as a matter of fact, have placed a request before the General Assembly of Pennsylvania that this act be remedied and that all employers be responsible under the act if they employ one or more. Of course an employer would not be an employer if there was not at least one worker under his jurisdiction. You can see the importance of this when you realize 196,847 employers operate in Pennsylvania and of those 162,113 employ less than 12 individuals.

Mr. SCHEUER. What percentage of the total labor force is employed by those firms?

Mr. SHIRK. Well, let me see if I can recollect those figures; 34,734 employers hire more than 12 as against 162,000 that hire less, and the total labor force involved there is 3 million, as I recall.

Mr. SCHEUER. What percentage of the 3 million are employed by covered firms and what percent are not?

Mr. SHIRK. These are all covered firms that I am talking about. I am talking only about covered firms.

I should have made that clear at the outset. Naturally there are more than 3 million workers in Pennsylvania but I am now talking of those firms that are covered under the unemployment compensation privileges of the State.

Mr. SCHEUER. What I am trying to get at is, with this cut-off of 12 employees, of the total labor force, how many of the employees are not covered?

Mr. SHIRK. Oh, yes. Well, I would hesitate—

Mr. SCHEUER. Roughly.

Mr. SHIRK. I can answer it this way: Unquestionably the 34,000 who employ more than 12 constitute at least 80 percent of the employees functioning in our State, the other 20 percent—

Mr. SCHEUER. Would be not covered?

Mr. SHIRK. Would not be covered within our present jurisdiction, but this is an important segment of our working population, 20 percent.

I know that I am courting trouble in suggesting that our law be improved by eliminating the exemption which permits an employer who has a bona fide retirement or pension plan to proceed as he wills. I do feel that as has been mentioned here before today the assiduous programs on behalf of unemployed youth that it would be appropriate for our Nation somehow to provide subsidies to employers so that the extra costs of a pension plan so a company that is hiring an older worker belatedly in his career would not be a penalty upon the company but could be shared under a Federal plan that would make the inducement to the company to hire older workers more attractive.

I think if it has been feasible to do this type of thing for youth it certainly should be feasible to do this type of thing for men and women who face the predicament of being chronologically older but remain equally able to belong in the work force.

I would say a great deal more but I would like just to conclude in respect for the time with this comment, that although I seem to insinuate that enforcement is a very weak and inadequate approach to a



solution of the problem before us, I do not mean to suggest that we in Pennsylvania are advocating the elimination of this as a part of any national act involving age discrimination.

For this reason, although the greatest accomplishments in serving the needs of older people occur in the area of job counseling, of employer panels, of educational services, this is where the real performance in behalf of the older worker occurs. Nonetheless our experience in Pennsylvania is conclusive to the effect that unless there is an accountability feature in such a law that the ordinary employer who has so many priorities upon his attention will not attempt these constructive, positive, voluntary systematic programs on behalf of the older worker unless he knows he has to show cause under law for not involving himself in programs that will benefit the older worker.

Mr. SCHEUER. He is less easily "educable."

Mr. SHIRK. That is right, he is less easily "educable." This applies less to age than as to race. Excepting for the fact that there is an accountability even well-meaning employers would avoid the issue of placing the minority worker in a new unprecedented job.

Mr. SCHEUER. If there is not the ultimate sanction of a law with teeth in it to back up the educational effort.

Mr. SHIRK. That is what I am trying to say and you are so uniquely underscoring. I would want to register here, therefore, that we would certainly support a national law covering the problem of age discrimination.

Thank you, very much.

Mr. O'HARA. Thank you, Mr. Shirk.

Without objection, your statement will be entered preceding your remarks to the committee.

You have taken the position that while a prohibition on discrimination in employment on account of age is not a cure-all to this problem that it is an essential element in the alleviation of the problem of the older workers.

Mr. Conway, would your experience lead you to a similar conclusion that if the Government were to tackle effectively the problem of discrimination on account of age in employment, that an essential element would be an outright prohibition on arbitrary discrimination on account of age?

Mr. CONWAY. I believe this is absolutely essential. If there is a valid statute which gives power of enforcement, then the prohibition becomes effective.

I might say that, in the main, comments that are filed with this committee, Mr. Chairman, I emphasize that our duties are under the New York State law against discrimination both educational and enforcement. I am very certain that in the State of New York we have accomplished much more by way of education; that is to say, conference with employers and this sort of thing, because we had the big stick behind us. Absent that, I think they would have listened to us very politely and gone on about their merry way, and because traditionally they had fixed age limits they would remain at that point.

So I think that a statute with enforcement powers is an effective tool and has proven to be so in the State of New York. I would like, if I may, to make one comment.



It is interesting to me that your 652 cases in 10 years matches our 649 in 7 years, but these are 649 actual individual cases filed with us.

Mr. O'HARA. And New York is a bigger place.

Mr. CONWAY. Of course. Yet these cases are not difficult to conciliate because there is no emotionalism about it.

Mr. O'HARA. I think it would be fair to conclude from what you gentlemen have said that it is not that you can't assess the effect of such a law in terms of a number of complaints. It may be and probably is that the existence of such a law has the effect of changing employer practices and attitudes so that less occasions for formal complaints would arise than had previously. In other words, there would be less discrimination merely because the law is on the books.

After all, most employers want to abide by the laws. They may not enjoy it, but they want to abide by the laws.

Mr. CONWAY. Yes. However, reluctantly. Yes. I think this is very effective and it is true. However, one thing that may be overlooked, the processing of a single case will throw open the door if it is successfully conciliated. Of course in New York if we cannot succeed by way of conciliation we proceed with a public hearing and ultimately the full effectiveness of the law is supported by the courts.

Mr. O'HARA. In other words, when you have a case in Pennsylvania against United States Steel or in New York against Olin Mathieson or someone, it is one complaint; but if it is successfully prosecuted, it means it is not just that one older worker that is affected, it is all others.

Mr. CONWAY. In the future.

Mr. SCHEUER. Not only in that company but in many other companies, Mr. Chairman.

Mr. O'HARA. I am just using examples. In Michigan, one could say Chrysler Corp. or General Motors. They employ a lot of people.

Mr. SHIRK. That is right.

Mr. O'HARA. And the policies affect them very much.

Mr. SHIRK. Apropos that I say that if we can only find a technique or the means to approach companies in terms of pattern discrimination, either because of race or age, rather than wait upon an individual to stick his neck out and make himself a fall guy, we will be that much further ahead. I hope that a new age law will provide the administrative agency with the authority to go into a company without benefit of a docketed individual complaint to review the recruitment, the hiring, promotion, dismissal practices and procedures of that company and to require an audience when the proper suggestions that will be remedial have been patterned. This can be done and I hope that the educational portion of such a law when it is written will list such a responsibility and make it a mandatory duty of said agency because I believe it is in this area and this context that you are going to really accomplish the greatest results.

Mr. SCHEUER. I think Commissioner Conway could tell us about the experience in New York after we had that change in the law.

Mr. CONWAY. We have had for many years in relation to the administration of the entire law and prior to and subsequent to the age amendment the power to initiate complaints informally.

Now we did not have the enforcement power but we had the right and the power to walk in and to issue subpoenas if necessary to review the policy, the pattern of employment and the like. Most recently in



1965 this past legislature vested in us the power to initiate complaints so that now we have begun to use it and we can become complainants as well as an investigative agency and administrative agency.

I am fascinated by the decision of your Commission granting an exception to TWA in the case of airline stewardesses. Did they seek or did they obtain a similar exception with respect to male stewards performing the same duty as stewardesses?

Mr. SHIRK. The answer is they did not. There was no reference to the male steward in this.

Mr. O'HARA. But TWA is one of the lines that employs pursers or stewards, and keeps them on indefinitely even though they would not need agility and physical strength and so forth to perform the same duties.

Well, I guess the Commission members are lucky they don't have to run for election.

Mr. SHIRK. You are right.

Well, now, in fairness to them, reexamining their policy in respect to this whole matter, they are having to pass off just arbitrarily granting exceptions to the apprenticeship training program permitting such programs to limit applicants to such small age brackets as 18 to 23 or 18 to 25 whether or not the particular apprenticeship program involved the type of strenuous physical situation that would justify such prerequisites, specifications. We had hoped that the Federal Government would after its research in this field be able to compile standards and criteria which would make for uniformity across the country. I believe this is where the responsibility lies because Pennsylvania might decide that the apprenticeship limitation should be raised to 30 but maybe that is not even realistic. So I think that there is a great opportunity for the Federal Government at this juncture to straighten us out on some of these moot points.

Mr. O'HARA. Mr. Conway, I assume your law would not take you into, or your jurisdictional practices would not take you into, cases of discrimination on account of age at the age of 32, or would they?

Mr. CONWAY. On the contrary, Mr. Chairman. I have had the uneasy feeling that perhaps I should have excluded myself from most of the testimony that preceded us here because there are pending before me now as investigation Commissioner a number of verified complaints charging discrimination because of age. I am not content, however, to limit this to these individual complaints that touch certain of the airlines but have expanded it to an industrywide study which is now an ongoing process. Staff is now working in reference to this, and at this point I contemplate the presentation of evidence publicly on both sides of the issue before I come to any conclusion whatever.

Mr. O'HARA. Well, on behalf of the committee, I would like to request that when that study is completed and becomes a matter of public record if you would be so kind as to send a few copies of your study and its conclusions to the committee. I know that we would appreciate having it.

Mr. CONWAY. I would be delighted to do so, Mr. Chairman. I might say this is more than a study; it is a study as far as the industry is concerned, but it will be a final determination so far as the individual complaints are concerned. If I reach no conciliation in the event that conciliation should be indicated, then it would be pursued



further by a public hearing. However, I will be most happy to see that you are kept in contact with the situation.

Mr. O'HARA. We would appreciate that very much.

Mr. HATHAWAY?

Mr. HATHAWAY. Well, in view of the fact we have another witness to be heard and the time is short, I will forgo any questions.

Mr. O'HARA. Mr. Scheuer.

Mr. SCHEUER. I would like to thank my friend and colleague of over a decade for his most stimulating and interesting testimony.

Mr. CONWAY. Thank you.

Mr. O'HARA. Thank you very much, gentlemen. I know we will be helped by your statements and comments on those statements.

(The following communications were submitted for the record:)

SEPTEMBER 8, 1965.

HON. W. WILLARD WIRTZ,  
*Secretary, Department of Labor,*  
*Washington, D.C.*

DEAR MR. SECRETARY: During the course of our hearings on the employment problems of the older American worker, the subcommittee received testimony from representatives of the New York State Commission on Human Rights concerning the anti-age-discrimination provisions, in effect since 1958, of the New York law against discrimination in employment.

Since these provisions have now been in effect for 7 years, and since New York has evidently been a leader among the States in pursuing a policy of enforcing its ban upon arbitrary age discrimination in employment, the subcommittee would be interested in learning whether the record of placement of older job-seekers through the public employment service offices in New York State appears to have become more favorable than the employment service's placement record for older workers in the Nation as a whole.

It is recognized, of course, that a comparison of the New York employment service's record in placing older job applicants with that of the remainder of the States cannot, in itself, demonstrate either that the New York law has been effective or that it has been ineffective. Nevertheless, the subcommittee wishes to learn whether the statistical record of older worker placements in New York appears significantly different from the record in other States.

Accordingly, I am requesting that the Department of Labor submit, for incorporation in our printed hearings record, a reasonably succinct presentation of the available data that you consider would best answer the question outlined above. I would suggest that the data include statistics for a period such as 1962 through 1964 on the numbers of workers, 45 and over, filing job applications with public employment service offices in New York State, and the numbers of job placements of workers in this older age bracket. As a basis of comparison, the same set of statistics could be presented either for the Nation as a whole, for the remaining States, or for the group of States which do not have anti-age-discrimination legislation in effect. It might also be helpful to compare the New York State Employment Service's record in placing workers 45 and over with its record in placing those below 45, and then to develop a similar comparison for one or more of the groupings of States just suggested. This additional set of comparisons may be appropriate, since there undoubtedly are systematic differences, among States, in the overall relationship between number of job applicants and number of placements. A State's placement record for older workers, therefore, may appear more favorable than the national record essentially as a reflection of the fact that the State's public employment service has achieved an above-average ratio of placements to applicants for the entire spectrum of age groups.

No closing date has yet been established for our record, since the subcommittee may schedule additional hearings later this fall. However, I will request that the Department submit its answer to the general question raised in this letter by October 1. I assume this date will provide adequate time for preparation of the relatively brief statement called for.

With best regards, I am,

Sincerely,

ELMER J. HOLLAND,  
*Member of Congress, Chairman.*



U.S. DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY,  
Washington, September 23, 1965.

HON. ELMER J. HOLLAND,  
House of Representatives,  
Washington, D.C.

DEAR CONGRESSMAN HOLLAND: In accordance with your request of September 8, I am enclosing data regarding services to older workers who filed applications for work with the public employment offices in New York State and in the United States less the State of New York. I have also included data for fiscal year 1958 which is the year prior to the effective date of the age amendment to the New York law against discrimination.

If I can be of any further service, please call on me.

Sincerely,

W. WILLARD WIRTZ, *Secretary of Labor.*

*New applications and nonagricultural placements by the Public Employment Service—New York and United States less New York, by age, fiscal years 1958, 1962-65*

|                   | New York         |                            | United States less New York |                            |
|-------------------|------------------|----------------------------|-----------------------------|----------------------------|
|                   | New applications | Nonagricultural placements | New applications            | Nonagricultural placements |
| Fiscal year 1958: |                  |                            |                             |                            |
| Total.....        | 1,033,320        | 781,901                    | 9,379,559                   | 4,454,009                  |
| 45 and over.....  | 228,464          | 220,535                    | 1,785,772                   | 799,012                    |
| Under 45.....     | 804,856          | 561,366                    | 7,593,787                   | 3,654,997                  |
| Fiscal year 1962: |                  |                            |                             |                            |
| Total.....        | 842,528          | 839,094                    | 9,571,004                   | 5,666,914                  |
| 45 and over.....  | 180,683          | 230,680                    | 1,676,747                   | 1,039,216                  |
| Under 45.....     | 661,845          | 608,414                    | 7,894,257                   | 4,627,698                  |
| Fiscal year 1963: |                  |                            |                             |                            |
| Total.....        | 940,232          | 836,877                    | 10,105,464                  | 5,795,375                  |
| 45 and over.....  | 205,035          | 232,940                    | 1,721,290                   | 1,079,490                  |
| Under 45.....     | 735,197          | 603,937                    | 8,384,174                   | 4,715,885                  |
| Fiscal year 1964: |                  |                            |                             |                            |
| Total.....        | 920,233          | 834,508                    | 10,003,838                  | 5,619,350                  |
| 45 and over.....  | 194,830          | 248,634                    | 1,671,997                   | 1,057,709                  |
| Under 45.....     | 725,403          | 585,874                    | 8,331,841                   | 4,561,641                  |
| Fiscal year 1965: |                  |                            |                             |                            |
| Total.....        | 903,106          | 817,907                    | 10,041,149                  | 5,511,771                  |
| 45 and over.....  | 183,590          | 236,309                    | 1,518,575                   | 1,011,037                  |
| Under 45.....     | 719,516          | 581,598                    | 8,522,574                   | 4,500,734                  |

Mr. O'HARA. Our final witness is Dr. Harold L. Sheppard, of the W. E. Upjohn Institute for Employment Research.

I would ordinarily be constrained to ask Dr. Sheppard to forgo his appearance today and appear tomorrow, but I know Dr. Sheppard personally and I have become aware that he is a very rapid talker.

Dr. SHEPPARD. Did you say rabid or rapid?

Mr. O'HARA. I think either would be all right.

Dr. SHEPPARD. I will try to summarize what I have to say.

Mr. O'HARA. Without objection your statement will be entered at this point in the record, and we would appreciate if you could summarize your statement or just informally give us some of your observations and conclusions.



(Dr. Sheppard's prepared statement follows:)

TESTIMONY OF DR. HAROLD L. SHEPPARD, THE W. E. UPJOHN INSTITUTE FOR  
EMPLOYMENT RESEARCH

I appreciate in a very special way this opportunity to testify in your series of hearings about the problems of employment for the older American worker. While I have written and spoken a lot on a wide spectrum of matters relating to the field of aging, there is actually only one specific aspect that I have dug into on my own part—and that happens to be the problem of older workers. For example, in mid-1956 I participated in a Department of Labor seven-city study of the use of older workers in industry, which showed in part that if special efforts are made by the public employment service, older workers (45 and older) could be placed in jobs.

In 1957-58—during a major recession in the auto industry—I conducted a study on the impact of the Packard Motor Co.'s permanent shutdown on the lives of its workers. More than 85 percent of these workers were aged 45 or more—85 percent. This study, incidentally, was published by Senator Eugene McCarthy's Special Committee on Unemployment Problems as a separate committee print in late 1959. Its title was "Too Old To Work—Too Young To Retire." I won't quote directly from all the statistics showing how important the age factor was in the reemployment experiences of these workers. I would rather use the brief paraphrase of part of that story, written by Michael Harrington in his "Other America," a book which, as you know, has done so much to publicize the problem of poverty in our otherwise affluent society:

"In 1956 Packard closed out a Detroit factory and destroyed some 4,000 jobs. What happened to the men and women involved has been carefully described in a special study of the Senate Committee on Unemployment Problems. The report is entitled 'Too Old To Work—Too Young to Retire.'

"When the Packard plant closed, the world fell in on some of the men. There were those who cried. They had worked in the shop for years, and they had developed a personal identification with the car they built. Some of them were particularly bitter because they felt the company had blundered by lowering standards and turning out an inferior product. They were laid off in 1956, but many of them had still not found regular work when the recession hit in 1958 and again in 1960.

"The workers in the best position were those who were both young and skilled. Their unemployment averaged 'only' a little better than 5½ months. The young and semiskilled were out on the street for an average of 7½ months, the old, skilled workers for 8½ months. Finally, the 'old' semiskilled workers (say, machine operators over 45) averaged better than a year of unemployment. The old and unskilled were out for 14 months.

"For almost every one of these human beings, there was a horrible sinking experience. Of those who were able to find jobs, almost 40 percent took a position inferior to the one they had held. Skilled workers took semiskilled or even common-laborer jobs. Most of these did not become poor. They were humiliated and downgraded, but not dragged below the subsistence level. But some of the old, the unskilled, and the Negroes entered the other America in the late fifties. They came from a well-organized and relatively high-paying industry. They ended by becoming impoverished."

There are three important generalizations or implications from this case study and others that I would like to call to the attention of the subcommittee today. The first relates to the fact that, at the time the Packard plant closed down, the State of Michigan had an FEPC law, prohibiting discrimination in employment on the basis of race, religion, or national origin. On the basis of the findings in the Packard study, there was very strong evidence to the effect that the Big Three auto companies in Detroit (General Motors, Ford, and Chrysler) did not discriminate against Negroes laid off at Packard. In fact, even on the type of job obtained in the Big Three (as measured by hourly wage rates), there was no discrimination. Negroes, along with whites, obtained jobs in the other auto factories at hourly wage rates equal to or above their old job rates at Packard.

But, if you take those same Big Three companies, and ask how did the older workers make out with them, as compared to the younger workers, you get a totally different picture: 58 percent of the under 45 workers obtained jobs in the auto industry, in sharp contrast to 30 percent of the 45 to 54 group, and only 15 percent of the 55 to 64 group.

The question arises, therefore: if antirace discrimination legislation can be made to work, why not in the case of age?



By some stroke of ironic coincidence, in late 1963 and early 1964, I was called in by the Federal Government to help in the problems created by the shutdown of the Studebaker plant in South Bend—the company with which Packard had merged. Here again was the same type of situation—an old plant of a small company with deep roots in the local community, and this always spells a heavy proportion of older workers. However, in contrast to the Packard shutdown, the crisis of the Studebaker older workers (the average age was about 55) took place at a more fortunate time. For one thing, these workers did not have to enter a surplus labor market and the general national economy was about to pick up. Second, and equally if not more important, the Studebaker shutdown occurred at a time when new programs such as MDTA were in operation, including the possibilities of experimental and demonstration projects that could be tailor made to fit the particular problems of specific groups in our labor force—in this case the problems of older workers. Reliance on general policies that increase the general demand for labor in situations like this is never enough. If it were enough, then why bother passing legislation prohibiting job discrimination against minority groups and women? Why not just wait for the expected increased labor demands of employers to result in the hiring of Negroes and women?

In a more recent study of unemployed blue-collar workers in Erie, Pa., we discovered that "old" could mean as young as 39: 83 percent of the workers under that age found new jobs, in contrast to 68 percent of the 39 to 47 age group, and 54 percent of workers 48 and older.

My second generalization, or conclusion, therefore, is that workers—especially in mass layoff situations—can and do benefit from extra and concerted community and governmental efforts to get them over the shock of separation, to encourage them to use all the resources of the community, including the public employment service, to assist them in their financial and employment problems, and also from efforts on the part of the community and the Government to bring all these community resources—including employers in a very direct fashion—together for the purpose of dispelling the fears of the older jobseeker or training seeker and of dispelling the attitudes of employers and other groups concerning the employability of older workers. These are the types of activities carried out in South Bend, thanks to the existence and imagination of the new programs in the Department of Labor, and of the Area Redevelopment Administration, in pulling together and financing the separate thrusts designed to help South Bend and its older Studebaker workers. And this also included a massive retraining program.

I often wonder how the Packard workers in Detroit would have fared if there had been, in 1956 and 1957, such facilities and resources at their disposal.

The third generalization I want to make has to do with the current national concern with poverty. It is my impression that, until recently at least, the program and project development in the war against poverty has worked almost exclusively under the theory that all the poor were born poor. Very little attention—if any—has been given to the possibility that during the course of one's life as an adult one can become poor and move into the ranks of the aged poor which, incidentally, have been increasing in number while other segments are decreasing. I am convinced that a significant portion of our aged poor today became poor as a result of unemployment problems that they encountered while they were as young as 40 or 50.

We all know that older workers—once they become unemployed—remain unemployed longer than younger workers, and long-term unemployment can create a vicious circle of cumulative obstacles, including personal psychological problems and not just dwindling financial resources, a vicious circle that ends in permanent poverty. I cannot overestimate the role of psychological maladjustments to long-term unemployment among older workers, in hearings such as these in which we typically concentrate only on the economic and public administration facets of national problems.

The fact that the longer a worker remains unemployed the greater his feelings of hopelessness, and the more these feelings increase the greater the tendency to give up the search for a job; the fact that if a worker psychologically feels he is old—even if he is younger than other workers who feel they are young—the greater his chances for remaining unemployed<sup>1</sup>—these and other kinds of evidence strongly suggest that one way to prevent or to mitigate much of the prob-

<sup>1</sup> In the study just completed in Erie, Pa., we found that, among workers aged 38 or under, only 63 percent of those calling themselves old found jobs, but among laidoff workers aged 39 or older, 81 percent of those calling themselves young found jobs.



lem of poverty is to find and help such laidoff workers immediately at the time they are laid off—instead of waiting to help them, and then only meagerly, when they show up on the relief rolls already committed to and resigned to behavior patterns that reinforce their deprivation.

The small number of older worker projects sponsored by the Office of Manpower, Automation, and Training are only demonstration projects. They are not part of the regularized, normal operations of the Department of Labor, including the public employment services offered by the separate States using Federal funds. A strong case could be made for having a special staff or bureau exclusively devoted to services for the older worker which would (1) assure equal consideration of them by employment service personnel; (2) work directly with older workers in their employment problems; (3) work directly in and with the community, especially employers and unions, sensitizing such groups to the problems of older workers (look at our accomplishments in the field of the handicapped); and (4) possibly administer and monitor any State or Federal laws prohibiting age discrimination.

Even if there were a Federal statute, or in those States already with such a statute—even if we overcome the alleged pension and other problems—it is still necessary to consider the degree to which not only employers but also Government personnel such as those in public employment agencies observe the law. We have recently completed a study on the jobseeking behavior of unemployed workers in a local economy, a study partly financed by the Department of Labor's Office of Manpower, Automation, and Training, in which we found that among semiskilled and unskilled workers aged 39 or older, a smaller percentage of them—as compared to the younger semiskilled and unskilled—were referred by the Employment Service to employers for a job interview. The same difference applied in the case of referral to training programs.

Now, a good part of the explanation for this "differential treatment" of older workers lies in the possibility that Employment Service personnel are prevented from referring older workers to employers or to training programs because they know that certain employers will not hire them. Older workers themselves told us that they don't bother going to certain companies because they believe or know that such companies don't hire older people. But we cannot rule out the other possibility; namely, that Employment Service personnel themselves have an unconscious bias against the older worker. I have heard of other situations—not in the community we studied—in which Employment Service personnel have actually discouraged men in their sixties from seeking work and have advised them to apply for social security benefits.

Coming back to the training problem, you have already been told that older unemployed workers in MDTA programs are underrepresented, when compared to how many of the unemployed are older, 45 and over. Again, part of this explanation lies in the hiring policies of employers; part of it lies in the referral patterns of Employment Service personnel, as I suggested before. But there is a third factor; namely, the attitude of older unemployed workers themselves. I am sure that although something like 25 percent of the unemployed are 45 and older, a smaller percentage than that actually apply for training programs, the reason being that they feel discouraged from applying, since they themselves believe they are too old to learn new skills, or would not be hired even if they did learn new skills.

I mention this third factor because I believe we cannot overlook the need to "reach out" and contact such workers in order to persuade them that people never stop learning and that the Government is doing everything in its power to get employers to hire older workers. Of course the latter point will require such governmental action, including perhaps even new legislation. I mention it also in order to highlight the point that even if we were to have laws prohibiting age discrimination in employment, we will still need to change the defeatist attitudes of older workers.

In this connection, I do not believe that there is any necessary conflict between a bill calling for a National Commission on Older Workers and any bill proposing an FEPC for older workers. Suppose Congress does pass such an FEPC law? There will still remain the need to see what are the various obstacles standing in the way of its effective implementation. We will still need some imaginative explorations into the solution of the alleged pension factor, to name just one of the possible obstacles. This could become one of the major functions of a national commission. Incidentally, I have the feeling that everybody talks about the pension problem, but nobody seems to be doing anything about it. For



example, there are over 1,200 institutions—most of them universities and non-profit organizations such as my own, the Upjohn Institute—that have just one pension fund in common, the Teachers Insurance & Annuity Association (TIAA). It was originated many years ago by the Carnegie Foundation. There is nothing to stop one university or similar organization from hiring a 55- or 60-year-old person who has worked elsewhere, with or without previous participation in the plan. Many individuals join the plan at an older age, and merely get a smaller pension when they retire.

Why can't we encourage similar multiemployer groups to do the same, either within one industry or even within a group of several industries? If it is true that the average employee shifts to five jobs in his work life, as Secretary Wirtz testified last week, there is all the more reason for such a proposal.

As for the details and the precise conditions of such a proposal, or how this might be brought about, including the role of tax incentives, I cannot comment on these. The proposed national commission could look into the proposal. But the main point is that if the "cost factor" is a major reason currently cited by employers for not hiring older workers, here is one way to eliminate the barrier to hiring them.

One more point on this subject of the need to have an "open-end" inquiry on the pension factor. Has anyone ever asked an unemployed worker, say, over 40, would he prefer to remain unemployed because employers can't afford to hire him, or would he prefer to get a job that carries no pension, or at best a reduced one? The implied answer to this question is just one reason why I continue to consider the pension factor as an "alleged" problem.

To summarize, my three major points are that (1) if legislation designed to eliminate racial discrimination in employment is effective, there are good grounds for believing the same would be true for the particular problem of age discrimination under discussion by this subcommittee; (2) special programs aimed at special problem groups are required, over and above the general policies designed to achieve "full employment"; (3) failure to launch concerted attacks on the employment problems of older workers contribute to the conditions making for poverty in our aged population.

#### STATEMENT OF DR. HAROLD L. SHEPPARD, THE W. E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH

Dr. SHEPPARD. Thank you.

Let me give the usual caveat that I am here as an independent social scientist and not representing necessarily the viewpoints of the institute.

I started out my statement explaining why I think I know something about this particular matter. I have written a lot about problems of aging in general, but the one area I think I do know something about is in the field of problems of older workers.

Mr. O'HARA. The research that you did that most interested me was how labor votes.

Dr. SHEPPARD. When labor votes.

Mr. O'HARA. Yes.

Dr. SHEPPARD. But the one that should interest the committee—thanks a lot for that plug—is one done on the Packard Motor Co. shut-down which the Senate Special Committee on Unemployment Problems published in late 1959 and which drew some attention also in Michael Harrington's "Other America."

There are three important generalizations or conclusions from these several studies and actual cases that I have been involved in that I would like to call to the attention of the committee today. The first relates to the fact that when the Packard plant shut down the State of Michigan had an FEPC law prohibiting discrimination on the basis of race, religion, or national origin.



On the basis of the findings in that Packard study there was very strong evidence to the effect that the three big auto companies did not discriminate against Negroes laid off from the Packard plant. In fact, even on the type of job attained in the big three auto companies as measured by job rate there was no discrimination against Negroes along with whites when they obtained jobs in those auto factories. They obtained jobs in other words, at rates equal to those of whites. But if you take the same Big Three companies and ask how do the older workers make out with them as compared to the younger ones, you get a totally different picture:

Thirty-eight percent of the under 45 workers obtained jobs in the auto industry in sharp contrast to 30 percent of the 45 to 54 group, and only 15 percent of the 55 to 64 age group, from 58 down to 15.

So the question raises if antirace discrimination legislation can be made to work, why could it not the case of age? As you know, Congressman, Michigan finally has included in their FEPC legislation provisions on the question of age.

Now, by some stroke of ironic coincidence, in late 1963 and early 1964 I was called in on an action basis by the Federal Government to help in the problems created by the shutdown of the Studebaker plant in South Bend. It is ironic and coincidental because Packard had merged with Studebaker. Here again was the same type of situation, an old plant of a small company with deep roots in the local community and this always spells a heavy proportion of older workers. The crucial point is where we will continue to have mergers and reductions in force and shutdowns and so forth, as our economy changes.

I am not against these phenomena. I think we should curb them, though.

In this contrast to the Packard shutdown the crisis of the Studebaker older workers the average age was about 55. This crisis took place at a more fortunate time. For one thing, these workers did not have to enter a surplus labor market and the general national economy was to pick up in early 1963-64.

Second and perhaps more important, the Studebaker shutdown occurred at a time when the new programs such as MDTA were in operation, including the possibilities of experimental and demonstration projects that could be tailor-made to fit the particular problems of specific groups in our labor force—in this case the problems of older workers.

I want to hit the point that Mr. Odell made; namely, that reliance on general policies that increase the general demand for labor in situations like this is never enough. If it were enough, then why bother passing legislation prohibiting job discrimination against minority groups and women? Why not wait for the increased labor demands of employers to result in the hiring of Negroes and women?

My second generalization is therefore that workers, especially in mass layoff situations, can and do benefit from extra and converted efforts by the community and by different Government agencies to get them over the shock of separation, to encourage them to use all the resources of the community, including the public employment service, to assist them in their financial and employment problems. They also benefit from efforts on the part of the community and the Government



to bring all of these community resources together, including employers in a very direct fashion, so that you can for one thing dispel the fears of the older job seeker or older training seeker and also change the attitudes of employers and other groups concerning the employability of older workers. These were the types of things that were carried out at South Bend, thanks to the existence and imagination of the new programs in the Department of Labor and also of the Area Redevelopment Administration in convening all these forces.

I often wonder how the Packard workers in Detroit would have made out if there had been in 1956 and 1957 and 1958 such facilities and programs and resources at their disposal.

The third generalization I want to make has to do with the current national concern with poverty. Very little attention, if any, has been given to the possibility that during the course of one's life as an adult one can become poor and move into the ranks of the aged poor who, incidentally have been increasing in numbers while other segments are decreasing in this poverty population.

I am convinced that a significant portion of our aged poor today became poor as a result of unemployment problems that they encountered while they were young in their forties and fifties. We all know that older workers once they become unemployed remain unemployed longer than younger workers, and long-term unemployment can create a vicious circle of cumulative obstacles, including personal psychological problems, not just dwindling financial resources, a vicious circle that ends in permanent poverty.

I cannot overestimate then the role of psychological maladjustments among older workers, especially in hearings like these in which we typically concentrate only on the economic and public administration facets of national problems.

For example, the longer a worker remains unemployed the greater his feelings of hopelessness, and the more these feelings increase the greater tendency to give up the search for a job.

I have also found that if a worker psychologically feels he is old regardless of his chronological age the greater the chances for his remaining unemployed.

Now let me skip some of the testimony that you will have in toto. Let me point out the third generalization, if I can find it in my testimony here, and that has to do with the need to reach out to these workers, especially in these mass layoff situations, to persuade them that the older workers can learn new skills. This is one of the factors that we face. One of the problems is convincing the older workers themselves that they can be trained and at the same time to convince the Government that there should be the special programs and to convince the worker that there are such programs aimed at him.

Let me indicate one facet of this. We have recently completed a study on the jobseeking behavior of unemployed workers in the local economy. In Pennsylvania, in a study financed partly by the Department of Labor we found that among semiskilled and unskilled workers aged 39 or older a smaller percentage of them as compared to the younger workers were referred by the employment service to employers for a job interview.

The same difference applied in the case of referral to the training programs. A good part of the explanation for this differential treat-



ment of older workers lies in the possibility that employment service personnel are prevented from referring older workers if they know that certain employers will not hire them. Older workers themselves have told us that they don't bother going to certain companies because they believe or know that such companies just won't hire them. But we cannot rule out the other possibility; namely, that employment personnel themselves have perhaps an unconscious bias against older workers. You have already heard that older workers are underrepresented in MDTA programs when compared to how many of them are unemployed.

Again, part of this explanation lies in the hiring policies of employers; part of it lies in the referral of service personnel. There is a third factor; namely, the attitude of the older unemployed workers themselves. They have often felt discouraged from applying for training since they themselves believe they are too old to learn new skills or would not be hired even if they did learn new skills.

Again I want to mention this factor because I don't believe we can overlook the need to reach out and contact the workers and persuade them that the people never stop learning and the Government is doing everything in its power to hire older workers.

Now let me come to another point in my testimony. I don't believe there is any necessary conflict in a bill calling for a National Commission on Older Workers and a bill proposing FEPC for older workers. I remember the discussion that went on between you and Congressman Pucinski during the first day of the hearing.

Suppose Congress does pass an FEPC law. There will still remain the need to see what are the various obstacles standing in the way of its effective implementation. We will still need some imaginative explorations into the solution of the alleged pension factor, to name just one of the possible obstacles. This could become one of the major functions of a National Commission.

One more point on this subject of the need to have imaginative inquiries and the solution of this kind of problem. Has any one ever asked an unemployed worker, say, over the age of 40, would he prefer to remain unemployed because employers can't afford to hire him, or would he prefer to get a job that carries no pension, or a smaller pension? The implied answer to this question is just one reason why I continue to consider the pension factor as an "alleged" problem.

So to summarize my summary, my three major points are:

- (1) If legislation designed to eliminate racial discrimination in employment is effective, there are good grounds for believing the same would be true for the particular problems of age discrimination under discussion by this subcommittee.

- (2) Special programs aimed at special problem groups are required, over and above the general policies designed to achieve "full employment."

- (3) Our failure to launch concerted attacks on the employment problems of older workers contribute to the conditions making for poverty in our aged population.

Thank you.



Mr. O'HARA. Thank you very much, Dr. Sheppard. I am not going to put in any questions because the quorum bells have already rung. I just want to say I myself was very impressed by your testimony, and I think the other members of the committee are. I know of your great work in this area over a period of years. I should have mentioned that you were for some time the counsel to the Senate Select Committee on the Problems of the Aged and Aging, and I know the valuable contribution you made to the programs that are now underway—medicare and the Older Americans Act—at the time you served in that capacity.

I can assure you we are going to give your suggestions very careful study in framing any legislative action we take.

Thank you very much.

Dr. SHEPPARD. Thank you.

Mr. O'HARA. The Select Subcommittee on Labor of the House now stands in adjournment at the call of the Chair.

(Whereupon, at 12:15 p.m., the committee was recessed subject to call.)



It is a fact that the future is not a single point in time, but a process. The future is a process of change, and it is this process that we are trying to understand. The future is not a fixed point, but a moving target. It is a process of change, and it is this process that we are trying to understand. The future is not a fixed point, but a moving target. It is a process of change, and it is this process that we are trying to understand.

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## EMPLOYMENT PROBLEMS OF THE OLDER WORKER (The Airline Stewardesses Case)

WEDNESDAY, SEPTEMBER 29, 1965

HOUSE OF REPRESENTATIVES,  
SELECT SUBCOMMITTEE ON LABOR OF THE  
COMMITTEE ON EDUCATION AND LABOR,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to call, in room 2261, Rayburn House Office Building, Hon. James G. O'Hara, presiding.

Present: Representatives O'Hara and Hathaway.

Also present: Jim Harrison, subcommittee director; Susan Parry, clerk.

Mr. O'HARA. The Select Subcommittee on Labor will come to order.

We are continuing hearings today on H.R. 10634, a bill to establish a National Commission on Older Workers and on related bills on the subject of the employment problem of the older American worker.

At one of the hearings held on this subject heretofore a representative of the Air Line Stewards & Stewardesses Local 550 of the Transport Workers Union testified with respect to discrimination on account of age in the employment policies of certain airlines in the employment of airline stewardesses.

It was brought to the committee's attention at that time that the airlines of which our witness complains held contracts with the Government. At the same time President Johnson's Executive Order 11141 was brought to the attention of the committee.

That Executive order requires that Government contracting agencies take appropriate action to see that those with whom they hold contracts not discriminate on the ground of age in their employment policies.

As a followup to that testimony given by Mrs. Boland, who is president of Local 550 of the Transport Workers Union, we have asked to have appear before us representatives of several agencies who contract with or regulate the airlines in question and representatives of contracting agencies in general to inquire of them just what action their departments and agencies of the Federal Government have taken with respect to the Executive order on discrimination in employment on account of age.

I want to apologize for getting started late. The President is signing the bill creating the Arts and the Humanities Foundation today. Some of our members have been invited to attend the ceremony incident to the signing that has caused some delay in our beginning of the hearings.

I think an expeditious procedure will be served if I ask all the witnesses to come to the witness table and ask each witness to make what-



ever statement he cares to make with respect to this question, and then the members of the committee might question the witnesses as a group if they have any questions.

Does that meet with your approval, Mr. Hathaway?

Mr. HATHAWAY. Yes; it does.

Mr. O'HARA. Representing the Department of the Air Force is the Deputy Assistant Secretary for Procurement Management, Mr. A. J. Racusin. Representing the Civil Aeronautics Board is Mr. John Wanner, General Counsel of the CAB.

Representing the General Services Administration, are Mr. Charles W. Gasque, Deputy General Counsel, and Mr. Robert T. Bain, Director, Contract Administration Division, Transport and Communication Services.

Representing the Post Office Department is Mr. Adam Wenchel, Associate General Counsel.

Mr. Racusin, your name appears first on the mimeographed list of witnesses, so we will ask you if you will please proceed.

**STATEMENT OF A. J. RACUSIN, DEPUTY ASSISTANT SECRETARY FOR PROCUREMENT MANAGEMENT, DEPARTMENT OF THE AIR FORCE; ACCOMPANIED BY JOHN W. PERRY, DEPUTY FOR TRANSPORTATION; AND COL. CHARLES HOLLAND, CHIEF, CONTRACT ADMINISTRATION DIVISION, OFFICE, DEPUTY CHIEF OF STAFF, USAF**

Mr. RACUSIN. Mr. Chairman and members of the subcommittee, I welcome the opportunity to appear before your subcommittee to review Department of the Air Force experience with Executive Order 11141 and its policy against discrimination on account of age.

The policy set forth in this Executive order was implemented in our armed services procurement regulation—a regulation applicable to all purchases and contracts of the Department of Defense for the procurement of supplies and services. The regulation requires that complaints arising under the Executive order be brought to the attention of the contractor with a request that the contractor take appropriate steps to comply with the policy.

To give further impetus to the program, explanatory pamphlets of the Executive order issued by the Department of Labor were distributed to Air Force procurement personnel and offices.

In addition, the then Assistant Secretary of Defense for Installations and Logistics, Mr. Morris, on June 12, 1964, sent a letter to the presidents of some 200 major contractors who received contracts in fiscal year 1963 amounting to some \$20 billion or 70 percent of Defense procurement expenditures. The text of the letter was:

President Johnson, by Executive Order 11141 on February 12, 1964, declared a policy against discrimination on the basis of age by contractors and subcontractors on Federal contracts. This policy is described in the enclosed leaflet.

The Department of Defense is seeking the full cooperation from its contractors and subcontractors in effectuating this policy. The qualifications of older workers like all other workers should be judged on merit.

I urge you to review the practices and procedures of your company and to inform appropriate personnel of this policy in order to assure that its objectives are fulfilled.

The replies indicated that the companies would reexamine their policies or that their policies were already in accord with the Executive order.



Since last June innumerable other Defense contractors have been and are being provided with the explanatory pamphlet by Defense personnel.

In addition, Defense spokesmen at National Association of Manufacturers conferences held during the past year throughout the United States have used the opportunity to publicize Executive Order 11141 and to distribute the pamphlet directly to thousands of officials from industry involved in problems concerning discrimination in employment.

The Department of the Air Force has investigated, during 1964 and 1965, three cases of alleged discrimination against industrial contractors' employees because of their age.

In accordance with our procurement regulation, the complaints we received were brought to the attention of the contractor.

Two cases involved specific allegations of such discrimination during the process of terminating the employee, and the third case involved alleged discrimination during the process of reassigning a worker to other duties.

Generally, the information received in connection with these complaints disclosed reasons other than age for failure to retain a job or promotion—such as lack of suitable qualifications of the individual, better qualified candidates, and higher seniority rights of other employees.

We fully realize that the low number of complaints does not necessarily indicate either the magnitude of the problem or the effectiveness of the program.

The Air Force has also received inquiries including one from you, sir, regarding alleged discrimination by airline contractors in the reassignment or termination of stewardesses when they have reached a certain age.

As a result of the inquiries, letters have been sent to all 22 of our current airline contractors, requesting that they review their existing policies and advise whether the company policy and practice are in consonance with provisions of Executive Order 11141.

To date, we have received replies from 17 airlines. Eleven of these airlines stated that they impose no limitations or restrictions regarding a maximum age at which an employee must be terminated as a stewardess.

The other six airlines state that, although they do have a maximum age requirement for stewardesses based upon a bona fide occupational qualification, they do offer each stewardess, upon reaching the maximum age, other employment in the company at an equal or higher pay. We expect replies from the remaining airlines not later than October 4, 1965.

At this point I would like to digress a moment and refer to your letter of July 9, to Mr. McNamara, in which you draw attention to the airlines.

I should like to point out that the reference to Southern Airways is in error in the sense that Southern Airways does not have MATS contracts. Southern Air Transport does, and the answer we received from them is that they have no limitation on age.

Although the complaints which have come to our attention have not required it, in the event a difficult question were to arise with respect to an occupational qualification, retirement plan, or statutory



requirement, expert advice would be sought from appropriate agencies such as the Department of Labor or Department of Health, Education, and Welfare or from State officials if a State has an antiage discrimination law.

Executive Order 11141 has been in effect a relatively short time. This is too short a time in which to judge its effectiveness. However, we feel that it was a significant step forward in focusing attention of Government contractors on the importance of hiring on the basis of occupations qualification, not age.

Mr. Chairman, I have with me today Mr. John W. Perry, who is the Deputy for Transportation in the Office of the Assistant Secretary and Col. Charles Holland who is Chief of the Contract Administration Division, Office, Deputy Chief of Staff of the Air Force.

Mr. O'HARA. Thank you very much.

We may want to direct several questions to all of you and solicit responses from each, so to save time, we will hear from the other witnesses first before asking any questions.

Mr. John H. Wanner, General Counsel of the CAB, is also with us. Mr. Wanner, would you please identify yourself for the record and proceed with your statement.

**STATEMENT OF JOHN H. WANNER, GENERAL COUNSEL, CIVIL AERONAUTICS BOARD**

Mr. WANNER. Mr. Chairman and members of the committee, my name is John H. Wanner. I am General Counsel of the Civil Aeronautics Board. I have been asked by the Board to present its views on a question involving the airlines which has arisen in the course of the committee's hearings.

Mrs. Boland, a representative of Air Line Stewards & Stewardesses Local 550 of the Air Transport Workers Union, AFL-CIO, testified about age discrimination practices of the airlines in the hiring and retention of stewardesses.

More specifically, she testified that some of the airlines automatically terminate a stewardess' employment when she reaches the age of 32 or 35. Assuming that this is an unreasonable discrimination, it has been suggested that the Board may have some obligation to take corrective action.

The Board agrees wholeheartedly with the policy that there should be no unreasonable discrimination on the basis of age in the hiring and retention of employees. However, it has no power to control the air carriers' practices in this area.

It is true that section 404(b) of the Federal Aviation Act prohibits air carriers from subjecting "any particular person in air transportation to any unjust discrimination," and section 1002(c) empowers the Board to enforce this prohibition.

The Board's view has always been that these provisions authorize it to regulate only the practices of air carriers in the performance of their public services as air carriers, and that they confer no regulatory authority over such internal matters as employment practices and policies of the carriers.

In short, the Board's position is that these provisions are intended for the benefit of the users of the airlines' services and that neither they nor any other provision of the Federal Aviation Act confer any authority over the carrier's employment policies and practices.



I might add that the Interstate Commerce Commission, Mr. Chairman, which has similar powers under its laws, and in fact ours really were taken from their provisions, has the same view of their anti-discrimination provisions.

One area in which the Board does exercise a measure of authority over the carrier-employee relationship is in connection with its statutory power over airline mergers.

When it approves such a merger, the Board usually imposes various so-called protective labor conditions, which are designed to minimize the possible adverse impact of the merger on the employees of the merging carriers. The courts have upheld the Board's power to impose such conditions as an incident to the Board's power over the mergers.

In the Board's opinion, however, this affords no basis for a contention that it has general regulatory power to correct discriminatory employment practices or otherwise to regulate air carrier employment practices.

The Board has also considered whether it has any authority to correct alleged discriminatory employment practices by air carriers by virtue of Executive Order 11141.

That order states a policy against discrimination on the basis of age by contractors and subcontractors engaged in the performance of Federal contracts, and it provides that contractors and subcontractors shall not specify a maximum age limit in solicitations or advertisements for employees to work on Government contracts.

It is the Board's view that this affords no basis for Board regulation of the carriers' employment practices and policies, even in the area of alleged discrimination.

In their day-to-day commercial operations, the airlines are obviously not "contractors or subcontractors engaged in the performance of Federal contracts."

Although they do carry U.S. mail, this is not on a contract basis. Moreover, some of the airlines engaged in contract operations for other departments of the Government, particularly in the Military Establishment, but in the Board's opinion, this affords an insufficient basis for Board regulation of their employment practices.

On the contrary, it would appear that any enforcement requirements would be a matter for the contracting agency.

In conclusion, I should like to say, on behalf of the Board, that the Board appreciates the opportunity of expressing its views on this important subject. If there are any questions, I will be glad to attempt to answer them.

Mr. O'HARA. Thank you very much, Mr. Wanner.

Mr. Gasque?

**STATEMENT OF CHARLES W. GASQUE, JR., DEPUTY GENERAL COUNSEL, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY ROBERT T. BAIN, DIRECTOR, CONTRACTS ADMINISTRATION DIVISION, TRANSPORTATION AND COMMUNICATIONS SERVICE, GENERAL SERVICES ADMINISTRATION**

Mr. GASQUE. Mr. Chairman, I am Charles W. Gasque, Jr., Deputy General Counsel, General Services Administration, and accompanying me is Mr. Robert T. Bain, Director, Contracts Administration Division, Transportation and Communications Service.



We in GSA are appreciative of your invitation to be with your committee again today. As the chairman probably remembers, we were here on September 1, at which time we filed with the committee our formal statement.

In essence our position as we stated in our prepared statement is very similar to that of the Air Force today. We have implemented the Executive order, working jointly with the Department of Defense and the Department of Labor, by publishing the policy in the Federal Procurement Regulations.

We also assisted the Department of Labor in the drafting of the pamphlet explaining the policy enunciated in the Executive order which we in GSA, for a period of 90 days, provided every contractor who received a contract from GSA.

To date we have had no complaints in GSA from any persons, individuals or organizations of discrimination on the basis of old age regarding any GSA contract. If we had received such a complaint, of course, we would have taken the action provided for in the Federal Procurement Regulations by taking the matter up with the offending company in an effort to have the matter settled.

If we had had a difficult question we would have referred the matter to the Department of Labor or another appropriate agency concerned with personnel matters. Fortunately, we have not been faced with that problem.

With respect to the specific question of airlines, we have no contracts in GSA with airlines for the carriage of persons and for that reason, I suppose, we have not had any communication or complaint from any airline with regard to the age limit of stewardesses.

For these reasons, Mr. Chairman, I did not prepare another formal statement today, sir, but Mr. Bain and I will certainly be glad to answer any questions that you may care to put to us.

Mr. O'HARA. Without objection, the statement which you submitted in your earlier visit to the committee at which time you did not have a chance to appear, will be entered in the record at this particular point.

(Statement referred to follows:)

STATEMENT BY CHARLES W. GASQUE, JR., DEPUTY GENERAL COUNSEL,  
GENERAL SERVICES ADMINISTRATION

Mr. Chairman and members of the subcommittee, I am Charles W. Gasque, Jr., Deputy General Counsel of the General Services Administration, and I have with me Mr. Robert T. Davis, Director of Legislation for our agency.

We appreciate this opportunity to appear before your subcommittee on behalf of the Administrator of General Services, Mr. Lawson B. Knott, Jr., who has asked us to inform you of the steps that have been taken by General Services Administration and of our experiences to date in the implementation of Executive Order No. 11141, of February 12, 1964, regarding discrimination in employment on the basis of age by Federal contractors and subcontractors.

By means of the Executive order, the President established a public policy against discrimination on the basis of age in connection with public contracts by providing primarily that contractors and subcontractors engaged in the performance of Federal contracts would not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement. The Executive order also opposed the placement of maximum age limits by Federal contractors in soliciting or advertising for employees to work on Government contracts unless the limitation was also based upon a bona fide occupational qualification, retirement plan, or statutory requirement. Under the Executive order, the head of each department



and agency was required to take appropriate action to enunciate this policy and the Administrator of General Services was required to amend the Federal Procurement Regulations by the insertion of a statement giving continuous notice of the existence of the policy declared by the Executive order. On the other hand, the Executive order includes no enforcement provisions and no special administrative machinery for dealing with complaints.

Following issuance of the Executive order, the Administrator of General Services issued a temporary Federal Procurement Regulations notice (FPR notice No. 9) on April 24, 1964, calling to the attention of all executive agencies the policy enunciated in the Executive order and advising the agencies that the codified Federal Procurement Regulations would be subsequently amended to include a statement of the policy. The FPR notice further advised agencies that in the event letters or other representations were received regarding a concern's compliance with the policy contained in the Executive order, the matter should be handled by the contracting agency concerned by means of a letter or other appropriate communication to the concern involved, setting forth the public policy declared by the President in the Executive order, indicating that the concern's compliance with the policy had been questioned, and requesting the concern to review its compliance and, if necessary, to take appropriate measures to comply with the policy.

Thereafter GSA, in conjunction with the Department of Defense, assisted the Department of Labor in the drafting and development of an attractive brochure containing a reprint of the Executive order and providing appropriate information with respect to its operations in connection with Government contracts. Upon receipt of a supply of the brochures, the Administrator of General Services on June 19, 1964, directed all contracting offices of the General Services Administration, both in Washington and in the field, to include for a period of 90 days a copy of the brochure with each set of contract documents furnished to a contractor upon the award of a contract. In addition the brochure was placed on prominent display in all GSA business service centers located in Washington and nine other cities throughout the continental United States, where it was readily available for issuance to all members of industry seeking Government contract information through the centers.

In the July 1964 revision of the Federal Procurement Regulations, the policy against discrimination on the basis of age, as set forth in Executive Order 11141, was included in the FPR's as a new subpart (sub pt. 1-12.10). This revision of the FPR's was published in the Federal Register on July 24, 1964, and then distributed in looseleaf form to all executive agencies and to over 400 members of industry who purchase the Federal Procurement Regulations by subscription from the Government Printing Office.

From the inception of the policy against discrimination on the basis of age in connection with Government contracts, as enunciated in Executive Order 11141, GSA has worked closely and continuously with the Department of Labor in the implementation and publication of the policy as it affects civilian agencies and their contractors. Such effort was closely coordinated with the Department of Defense in order to assure maximum uniformity with respect to the policy in all Government contracting procedures and to provide for its widest dissemination among all Government contractors. Moreover, it was informally understood and agreed to by the Labor Department and GSA that in the event any complaint was received by the Department against any civilian agency contractor the matter would be referred to the contracting agency concerned in the first instance for appropriate action in accordance with the procedures outlined in the Federal Procurement Regulations, with the Department of Labor standing ready to assist the contracting agency to the extent of its resources in any way consistent with law and established policy, such as the providing of labor statistics, trends and information, the guidance and education of industry members with respect to the merits and benefits of the old-age policy and, if such a situation should arise, advice and guidance with respect to the bona fidence of any claim of justifiable age limitation in the basis of occupational qualifications, retirement plans, or statutory requirements.

Because of this close working relationship with the Department of Labor, GSA was asked by the Department in March 1965 to provide it with a report of our experience under the Executive order and to obtain for it similar reports from all other contracting agencies, including any suggestions for modification of the policy.

With respect to GSA procurement, a careful survey was made of all contracting offices in Washington and in the field and of all GSA business service



centers, and it was reported that no complaint of violation of the policy by any GSA contractor had been received directly from any individual or organization or by referral from the Department of Labor. We understand, also, from the report of the Secretary of Labor to the Congress under section 715 of the Civil Rights Act of 1964, dated June 30, 1965, that, based on reports furnished him by other contracting agencies, only a few complaints have been received to date by procurement agencies. Of these, all were resolved after discussion with the contractors, either by the employer taking corrective action or producing evidence that there was no violation.

The General Services Administration shares the view of the Secretary of Labor, as expressed by him in testifying before this subcommittee on August 25, 1965, that age discrimination bears little resemblance to discrimination based on ethnic or religious grounds. For this reason, we do not believe that a program of nondiscrimination in employment on the basis of age can be administered through Government contracts on the same basis as is administered the program for nondiscrimination in employment on the basis of race, creed, color, or national origin. As pointed out by the Secretary of Labor, the issue of old-age discrimination revolves primarily around judgment regarding the effect of age on ability to work productively.

Although Executive Order 11141 has been in effect only about a year and a half, we believe that it has proved beneficial in drawing the attention of employers to the importance of hiring on the basis of ability, not age. Not only have no complaints of noncompliance with the Federal policy by Government contractors been received by GSA, and noticeably few by other agencies, but it is our understanding that the policy enunciated in the Executive order has indirectly assisted some State governments in the elimination of age discrimination practices in hiring and in supporting related State programs.

In conclusion, Mr. Chairman, we are most pleased to have been given the opportunity to inform you of our experience to date in connection with the policy enunciated in Executive Order 11141. We believe that as the result of the Executive order, substantial progress has been made in a most worthwhile field affecting the Nation's economy and productive ability, as well as the health, happiness, and security of so many of its people. Yet this progress is only a beginning; our effort in this regard must not slacken nor cease. On the contrary, the policy must be further implemented through constant and appropriate indoctrination of the public with the merits and benefits to be derived by employer and employee, alike, in pursuing a policy of no discrimination in employment on the basis of age.

Mr. O'HARA. Our last witness this morning is Mr. Adam Wenchel, Associate General Counsel of the Post Office Department.

#### STATEMENT OF ADAM WENCHEL, ASSOCIATE GENERAL COUNSEL, POST OFFICE DEPARTMENT

Mr. WENCHEL. I have no formal statement this morning, Mr. Chairman. I understand our interest was primarily in connection with the transportation of mail to which Mr. Wanner alluded.

When the Department procures mail transportation services from certificated airlines it procures it exclusively pursuant to terms of the Federal Aviation Act. Various provisions of that act provide a statutory scheme for obtaining mail transportation service. By the act, air carriers which are certificated to carry mail are required to carry it in accordance with regulations promulgated pursuant to the act and under rates of compensation fixed by the Board.

The relationship of the airlines carrying mail under the act and the Post Office Department lacks the consensual elements which are required for a contract. Under the circumstances, the Department does not regard Executive Order 11141 as extending to certificated airlines merely by reason of transportation of the mail pursuant to the Federal Aviation Act.

Mr. O'HARA. Thank you very much, Mr. Wenchel.

As I understand your general practice then, two of the witnesses have referred to meetings with the Department of Labor and so forth. Is



it correct to state that the practice of the contracting agencies, and this would go for the Post Office Department as well, leaving aside the question of whether or not they are in a contractual relationship with the airlines, that you are carrying out the policy of the Executive order by informing your contractors of the existence of Executive Order 11141 and of its purport; that you are doing this by various means—pamphlets, appearances at meetings, so forth and so on; that you have revised your procurement regulations, to express the policy expressed in Executive Order 11141 and that when complaints are made to you with respect to violation of that policy by contractors that you will undertake to investigate the complaints and to discuss these matters with the contractor and take appropriate steps to obtain compliance by the contractor with the provisions of the Executive order. Is that a correct statement?

Mr. GASGUE. Yes, that is a correct statement. Yes, sir.

Mr. O'HARA. I would gather from the testimony of Mr. Racusin that they have not received any complaints as such with respect to the employment practice of the airlines about which Mrs. Boland testified.

Mr. RACUSIN. We received one which was addressed directly to the Military Air Transport Commander by a particular hostess. That was not referred to in my statement. This was from Northwest Airlines. We were informed it was submitted to a Systems Adjustment Board. Determination was made that it was not discriminatory with respect to the establishment of the age and at least as far as I know that is the last we have heard about it.

Mr. O'HARA. I did not gather that from your statement.

Mr. RACUSIN. I referred to the three cases other than this particular one that was made to MATS Headquarters in about January or February of this year.

Mr. O'HARA. Let me review that one with you.

On page 2 of your statement you indicate the Department of the Air Force has investigated, during 1964 and 1965, three cases of alleged discrimination against industrial contractors' employees because of their age.

Further on in the same paragraph you state:

Generally the information received in connection with these complaints disclosed reasons other than age for failure to retain a job or promotion—such as lack of suitable qualifications of the individual, better qualified candidates, and higher seniority rights of other employees.

Mr. RACUSIN. Yes, sir.

Mr. O'HARA. The implication of that statement is that when you received these three complaints, which are mentioned on page 3, you undertook to investigate the merits of the case.

Mr. RACUSIN. I would like to refer that question to Colonel Holland who has intimate knowledge of the facts.

Colonel HOLLAND. The three questions involved concern industrial contractors.

Mr. O'HARA. I am merely interested in what your procedures were after you received the complaint.

Colonel HOLLAND. In each of these cases, the actual complaint was referred to the appropriate official of the corporation. In addition an Air Force employee had consultation and discussions with the complainant and with the corporate official to examine the factors which



went into the corporate decision to reassign or to terminate employees. The answers in each case indicated that there was a lack of a sufficient basis for a conclusion that discrimination because of age was the reason. There were other reasons.

Mr. O'HARA. In making that determination, did you go beyond any statement made to you by the officials of the corporations involved?

Colonel HOLLAND. In one case in particular, Mr. Chairman, there were discussions with complainant to follow up on his written complaint.

Mr. O'HARA. In each of those cases you were satisfied that the loss of employment or loss of an assignment or whatever it was that was involved in the complaint was based upon a factor other than age, is that correct?

Colonel HOLLAND. Yes, sir; and that the explanation offered by the company and corroborated by other details indicated that the actual reason was a bona fide occupational qualification or other standard normal personnel practice.

Mr. O'HARA. Could one of you please describe to us the procedures followed in connection with the complaint received from the stewardess of Northwest Airlines?

Mr. RACUSIN. I believe a letter was sent to Northwest which replied directly to General Estes at MATS explaining that the matter relating to the limitation of age on stewardesses had been referred to this Systems Adjustment Board.

Mr. O'HARA. What is the System Adjustment Board?

Mr. RACUSIN. It is my understanding that that was a board created under the labor-management agreement between Northwest and the stewardesses. I am not certain of that but that is my understanding, and a determination was made pursuant to the arbitration procedures that such an age limit was not discriminatory per se and that is the last, at least that I know that we have heard about it.

Mr. O'HARA. Do you take the position that if labor and management agree on something that that makes it nondiscriminatory?

Mr. RACUSIN. Not necessarily, sir. I am not going to say because there might be that kind of an agreement that that in and of itself does not establish per se a discriminatory basis.

I would say, however, that it is one of the factors, I guess, that we would be examining or inquiring about as having a bearing on the general subject. This is a rather difficult area as you well know and I certainly would not limit ourselves to that; no, sir.

Mr. O'HARA. I think in that case you did though, didn't you?

Mr. RACUSIN. So far as I know in that particular case; yes, sir. Again, there was no further reference made to us on the basis of a formal complaint that it was discriminatory. I guess what happened was that MATS made no further effort so far as I know to seek absolute conformance with the Executive order.

Mr. O'HARA. I much prefer the statement made by you on page 3 of your statement. Evidently you were not at the time you prepared the statement aware of that particular complaint.

Mr. RACUSIN. I know about that.

Mr. O'HARA. You said:

Although the complaints which have come to our attention have not required it, in the event a difficult question were to arise with respect to an occupational qualification, retirement plan, or statutory requirement, expert advice would be



sought from appropriate agencies such as the Department of Labor or Department of Health, Education, and Welfare or from State officials if a State has an antiage discrimination law.

Mr. RACUSIN. With receipt of all of the answers hopefully by the 4th of October we will probably have to take action at least seeking advice from these other agencies described in my statement determining what, if anything, could be done, whether the actions or the policy established by the airlines that do have an age limitation does constitute an arbitrary practice, including what Northwest has.

Mr. O'HARA. Let's take Northwest for a minute. It seems to me if you fellows looked into it at all, you would think their response that this was a "bona fide occupational qualification" should be questioned. Not only do you have the question whether age is a bona fide occupational qualification but in the case of Northwest you have a situation where they employ both male stewards and female stewardesses who perform exactly the same duties and impose an age disqualification upon the female stewardesses and not upon the male steward. It seems to me that on its face and the complaint you did receive would cause you to question whether or not the response of the contractor represented the true facts of the situation.

Mr. RACUSIN. Of course, Mr. Chairman, I cannot at this time make any determination that the fact that you have a steward employed beyond age 35 in and of itself is discriminatory. In all likelihood we are going to have to obtain some expertise outside the Air Force. We could not conceivably unilaterally make such a determination.

Mr. O'HARA. As I read the Executive order, it is your responsibility to make that determination.

Mr. RACUSIN. No, sir; I respectfully disagree. All that we have been asked to do, and I think as Mr. Gasque indicated, we have been asked to promulgate the existence of the policy as a continuing matter and this we have done in publishing it in the Armed Forces Procurement Regulations. There is nothing within the language of the Executive order which gives us authority to implement it in the sense of any kind of a cancellation or termination of a contract. As I read it, it is a policy that requires us to persuade, to educate, to enjoin these contractors to try to adhere to the policy that is published in the Executive order. I would submit that we certainly do have that kind of an obligation.

Mr. O'HARA. It seems to me that you do have an obligation to take appropriate action to enunciate the policy.

Mr. RACUSIN. Incidentally, may I submit for your information a copy of our ASPR-12-1001.

Mr. O'HARA. Without objection, it will be printed in the record at this point.

(The statement referred to follows:)

#### SPR-12-1001 NONDISCRIMINATION BECAUSE OF AGE

##### 12-1001 Policy regarding nondiscrimination because of age

It is the policy of the executive branch of the Government (i) that contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plans or statutory requirement; and (ii) that contractors and subcontractors, or persons acting on their behalf



shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement. This policy is stated in Executive Order No. 11141 dated February 12, 1964. Any complaint regarding a concern's compliance with the foregoing policy should be brought to the attention of the concern by a communication (in writing, if appropriate) which states the policy, indicates that the concern's compliance with the policy has been questioned, and requests that the concern take any appropriate steps which may be necessary to comply with the policy.

Mr. GASQUE. I have a copy of the Federal procurement regulation notice that we issued on the same subject April 26, 1964, which I will submit if the chairman would like to have it.

Mr. O'HARA. Without objection it will be printed in the record at this point.

(The statement referred to follows:)

[From Federal procurement regulations, Apr. 24, 1964]

#### PUBLIC POLICY AGAINST DISCRIMINATION ON THE BASIS OF AGE

The policy of the Government regarding discrimination on the basis of age is set forth in Executive Order No. 11141 of February 12, 1964 (29 F.R. 2477).

1. *Policy.*—The policy stated by the President in Executive Order No. 11141 is as follows: “\* \* \* it is the policy of the executive branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement, and (2) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.”

2. *Implementation.*—This notice constitutes, on an interim basis, the implementation in the Federal Procurement Regulations which is required by the Executive order. Subsequently, the Federal Procurement Regulations will be amended to include the policy in subpart 1-12.10 of the regulations. Additional implementation in the form of contract clauses is not required. However, a brochure setting forth the policy is being developed by the Department of Labor and will be made available to departments and agencies for distribution to bidders and offerors.

3. *Handling of Complaints.*—In the event that letters or other representations are received regarding a concern's compliance with the foregoing public policy against discrimination on the basis of age, the matter should be handled on the basis of a communication directed to the concern involved (letter, if appropriate) which sets forth the policy, indicates that the concern's compliance with the policy has been questioned, and requests that the concern review its compliance and, if necessary, take appropriate measures to comply with the policy.

4. *Effective Date.*—This notice is effective immediately and will remain in effect until superseded by an appropriate FPR circular.

BERNARD L. BOUTIN,  
*Administrator of General Services.*

#### SUBPART 1-12.10—NONDISCRIMINATION BECAUSE OF AGE

##### § 1-12.1000 *Scope of subpart.*

This subpart prescribes the public policy against discrimination on the basis of age as set forth in Executive Order No. 11141, of February 12, 1964 (29 F.R. 2477).

##### § 1-12.1001 *Policy.*

It is the policy of the Executive Branch of the Government that (a) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment,



discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement, and (b) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

§ 1-12.1002 *Implementation of policy.*

Implementation of this policy is to be handled by bringing the policy to the attention of business concerns. Use of contract clauses is not required.

§ 1-12.1003 *Handling of complaints.*

In the event that letters or other representations are received regarding a concern's compliance with the foregoing public policy against discrimination on the basis of age, the matter should be handled on the basis of a communication directed to the concern involved (letter, if appropriate) which sets forth the policy, indicates that the concern's compliance with the policy has been questioned, and requests that the concern review its compliance and, if necessary, take appropriate measures to comply with the policy.

Mr. O'HARA. In other words, if I can paraphrase you, it is your responsibility to "take appropriate action to enunciate the policy" but you do not feel qualified to determine what is and what is not discrimination based on age.

Mr. RACUSIN. That is the heart of the problem.

Mr. O'HARA. Not in just this one particular instance but in any of them.

Mr. RACUSIN. Yes, sir.

Mr. O'HARA. Let's go down the road a little way. Suppose you get a complaint and investigate it, and the employer takes the position that this is a bona fide occupational qualification and the employee takes the position it is not. You then seek expert advice from the Department of Labor and the Department of Health, Education, and Welfare, and you are advised by those agencies that is not a bona fide occupational qualification. You would then feel under an obligation to take certain steps in an attempt to persuade the contractor to abandon this policy, would you not?

Mr. RACUSIN. Yes, sir.

Mr. O'HARA. Is there any reason why you have not further pursued the complaint made to MATS to which you referred in your testimony?

Mr. RACUSIN. I have not pursued it yet.

Mr. O'HARA. Do you not feel it would be appropriate to pursue it further?

Mr. RACUSIN. When we get all of these answers in and find out which ones in toto have such a policy I feel we will be taking additional action and seeking advice from agencies which are better qualified than us to determine the rationale underlying it and determine whether there is any arbitrary discriminatory practice.

Mr. O'HARA. I believe it is in your statement. You inquired of the airlines what their policies were.

Mr. RACUSIN. We sent the 22 letters in the latter part of August, August 27, and we received answers from all except 6 and they are due in by next Monday.

Mr. O'HARA. You indicated that when you receive the rest of the answers you expect to pursue the matter further.

Mr. RACUSIN. Yes, sir.

Mr. O'HARA. If you don't have all of the answers by next Monday you would not feel obligated to wait any longer would you?



Mr. RACUSIN. No, sir; we will move out. As a matter of fact I don't understand why it takes so long to get an answer of company policy.

Mr. O'HARA. I would suspect perhaps it is a lack of enthusiasm for the subject matter.

Mr. RACUSIN. I would not care to characterize it, sir.

Mr. O'HARA. Certainly it would not be difficult for a company to describe what its employment policies were.

Mr. RACUSIN. I would be inclined to agree with you.

Mr. O'HARA. It is not something that requires a lot of research.

I am interested in the situation with respect to noncontracts for the carriage of mail. This is a very interesting situation. When you contact the Post Office Department you are advised, of course, we are not in a contractual relationship with the airlines, why don't you contact the Federal Aviation Agency. When you contact the FAA, they say it is not us, it must be somebody else. As the representative of the Post Office Department describes it, perhaps the relationship between them and the air carriers does not partake of the nature of a contract as we learned what a contract was as freshmen in law school, but I wonder if he might not agree with me that the thrust of the Executive order is not confined to those arrangements that possess all of the legal elements of a contract at law. Would you not concede that in discharging your responsibilities under Executive Order 11141 you might be expected to have dealings with those with whom you have a relationship of the sort that you have with the airlines, whether or not it possesses all of the legal elements of the contract?

Mr. WENCHEL. We have felt that the President, in expressing it in terms of contract, only wanted us to go that far, that he had no intention or desire for us to go further. We may be mistaken but that has been our feeling.

Mr. O'HARA. I notice a similar restrictive interpretation was not placed upon the earlier competitive order with respect to discrimination in employment on the basis of race or color. I recognize that the enforcement provisions of that competitive order were given, then the enforcement provisions of this, but I don't think that the coverage of that competitive order was any different than the coverage of this one.

I call your attention to an exhibit submitted by Mrs. Boland in connection with her testimony, one of which is a notice to her union from American Airlines advising her union that under the provisions of contract No. FA 65AC678-2 with the Federal Aviation Agency and in accordance with Executive Order 10925, "The undersigned is obliged not to discriminate against any employee for race, creed, color," and so forth. In other words, those arrangements, whatever they were, were contractual arrangements under Executive Order 10925.

Similarly, the Transport Workers Union submitted an exhibit in connection with their testimony which consisted of a Northwest Airlines notice to transport workers referring to Air Force MATS contracts and a notice from Trans-World Airlines referring to Air Force contracts.

I do not know what particular contract or arrangement American Airlines was referring to when it said it held contracts No. FA 65AC-678-2 with the Federal Aviation Agency, but they must have been referring to some particular arrangements that they felt had the elements of a contract sufficient to make them subject to the earlier Executive order.



Mr. Hathaway, do you have any questions?

Mr. HATHAWAY. Yes, Mr. Chairman, I do.

I wonder if we could have made available to us, leaving out names if necessary, the investigation reports that were conducted on the complaints to see exactly what reasons were given.

Mr. RACUSIN. Do you mean in the Northwest case?

Mr. HATHAWAY. The three cases mentioned.

Mr. RACUSIN. Of course.

Mr. HATHAWAY. Without objection, Mr. Chairman, could that be made a part of the record?

Mr. O'HARA. Yes; it will be made a part of the record at this point. (The information follows:)

DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE SECRETARY,  
Washington, October 11, 1965.

DEAR MR. CHAIRMAN: During hearings held before your subcommittee on September 29, 1965, relative to H.R. 10634, Hon. James G. O'Hara requested certain information relating to the subject matter.

Attached are summaries of the three complaint cases which the Air Force investigated concerning alleged discrimination by industrial contractors against employees because of their age.

The responses from the airline contractors relative to their policies in implementation of Executive Order 11141 will be evaluated when the information is assembled and your subcommittee will be further advised.

Sincerely,

AARON J. RACUSIN,  
Deputy for Procurement Management.

#### SUMMARY

[Name deleted] v. Aerojet General Corp., Downey, Calif., Alleged Discrimination in Employment Because of Age

1. On May 18, 1965, Congressman Del Clawson sent a letter to the Secretary of Defense requesting investigation of alleged discrimination by Aerojet, General Corp., Downey, Calif., in the reassignment of ———, an employee, because of age.

2. Upon request of the Office of the Secretary of Defense, the Air Force conducted an investigation of this case. The findings revealed that:

(a) On March 31, 1965, Mr. ——— was displaced by reduction in force from his position classified as stationary distribution clerk (\$2.84 per hour) by an employee who had greater seniority in the company.

(b) Mr. ——— filed for displacement of an employee in another position as chemical stores clerk "A" at \$2.84 per hour, but upon interview it was found that he could not meet the physical requirements of lifting heavy barrels, as required on this job. Therefore, he was reassigned to a position of materials stores clerk "B" at \$2.68 per hour for which he qualified.

(c) Mr. ——— is 65 years of age and has been continuously employed since his reassignment.

(d) Aerojet's considerations of Mr. ——— age and physical capabilities in making job assignments was reasonable based on a bona fide occupational qualification in consonance with policy stated in Executive Order 11141.

(e) Aerojet did not discriminate against Mr. ——— because of his age.

3. Headquarters, USAF notified the Director of Industrial Relations, Office of the Assistant Secretary of Defense (Manpower) by letter, July 2, 1965, that the investigation revealed that Aerojet General Corp. did not discriminate against Mr. ——— on the basis of age.

#### SUMMARY

[Name deleted] v. the Martin Co., Denver, Colo. Alleged Discrimination in Employment Because of Age

1. On May 21, 1965, Mr. Walter S. Erwin, attorney for Mr. ——— sent a letter to the Director of Industrial Relations, Office of the Assistant Secretary of Defense (Manpower) (OASD(M)) complaining that the Martin Co., Denver,



Colo., had discharged Mr. — from his position as — because of his age and that by this action, the Martin Co., a Government contractor, had violated Executive Order 11141.

2. On May 28, 1965, the Director of Industrial Relations acknowledged Mr. Erwin's letter and advised that his correspondence had been referred to the Department of the Air Force, as the principal contracting agency.

3. On June 1, 1965 Headquarters, USAF transmitted all correspondence relating to the complaint to Headquarters Air Force Systems Command (AFSC), Andrews Air Force Base, Washington, D.C., for investigation and reply to Mr. Erwin.

4. The Air Force investigation was completed by the Denver Air Force Contract Management Office and the report thereon, submitted to Headquarters, AFSC, on June 25, 1965, reflected several factors and considerations that tended to show that the Martin Co. did not discriminate against Mr. — in his layoff for the following reasons:

(a) The investigation revealed an uncertainty as to the year of Mr. — birth. The Marine Corps records reflected 1901, but social security records reflected 1908.

(b) During the period in which Mr. — layoff took place, the Martin Co. was reducing its employment from about 16,000 to 6,000 employees.

(c) The investigation revealed that among 19 employees laid off due to relocation in Mr. — same department during 1963-65, there were only 2 persons of age 50 or older. Mr. — and one other employee exceeded 50 years of age. The other 17 employees laid off ranged from 29 to 49 years of age.

5. On July 2, 1965, Headquarters, USAF transmitted the investigative report to the Director of Industrial Relations, OASD (M) pointing out the conflicting statements regarding Mr. — age.

6. Since July 2, 1965, Headquarters, AFSC, has provided additional information which clarifies the age of Mr. — (59 years old) and also a copy of the AFSC letter, September 1965, to Mr. Erwin which concluded that the termination of Mr. — employment by the Martin Co. was not motivated by discrimination because of his age.

#### SUMMARY

(Name deleted) v. Philco Corp., Philadelphia, Pa., Alleged Discrimination in Employment Because of Age

1. On August 5, 1964, Mr. — sent a letter to Mr. Noah Minkin, Office of Director of Industrial Relations, Office of the Assistant Secretary of Defense (Manpower), complaining that Philco Corp. had discriminated against him in his termination because of age.

2. The Air Force investigated this complaint. The findings revealed that:

(a) Mr. — employment with Philco Corp. began on April 4, 1961, and ended with layoff upon completion of the project for which he had been employed at age 67. He remained in layoff status until age 68 at which time he was retired in accord with the company's retirement policy.

(b) The investigation revealed no basis for a finding of discrimination by Philco Corp. because of age.

3. Mr. — was notified by Headquarters Air Force Systems Command on November 18, 1964, relative to the Air Force findings in this case.

DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE ASSISTANT SECRETARY,  
Washington, December 13, 1965.

HON. JAMES G. O'HARA,  
House of Representatives.

DEAR CONGRESSMAN O'HARA: This is in response to your request during the hearings on September 29, 1965, for followup information and Air Force comments as to whether the policies of certain airline contractors concerning termination of flight stewardesses upon reaching a certain maximum age are considered to be contrary to the public policy expressed in Executive Order 11141, regarding nondiscrimination because of age.



Of the 22 airline contractors originally contacted by the Air Force, 10 contractors indicated that their employment policies did impose a maximum age restriction for stewardesses and that the prescribed maximum age, usually 32 for that position, is based upon a bona fide occupational qualification and is not considered to be discriminatory.

The Air Force has secured company statements concerning the procedures followed in establishing the occupational requirements, any age restrictions imposed, and justification supporting their position that their employment policies are in compliance with the Executive order. The statements reflect company employment policies which provide either for reassigning stewardesses with continuous employment to a ground position within the company or for terminating them from flight stewardess positions when they reach a certain age. In summary, the reasons given in support of their position that a maximum age limitation is a bona fide and necessary occupational qualification for stewardesses are that younger women are especially needed because of: (a) safety factors requiring a great degree of physical agility, endurance and strength necessary to perform their duties and services in normal flights as well as under any and all emergency conditions; (b) personal appearance requirements; (c) attitude, desire and personality in performing services required of a stewardess; and (d) less absenteeism due to better health. The conclusion reached by the company statements is that the occupational qualification for the stewardess position is unique and merits the establishment of a maximum age limit for effective service at considerably less than the normal employee retirement age.

It should be noted that although some of the company employment policies refer to the terminal age of 32 for employment of their stewardesses, the actual procedures implementing these policies provide for reassignment with uninterrupted employment to an appropriate ground position in the company without loss of salary, seniority, length of service benefits including sick leave, group insurance, and, in some cases, on-the-job training for the new position.

Any determination from within the Department of Defense of whether the companies are in compliance with the policy set forth in Executive Order 11141 should be based not only on a review of the company statements summarized above, but also on consultation with other agencies of the Government which are knowledgeable in matters of this kind. Accordingly, we are forwarding the pertinent data to the Office of the Assistant Secretary of Defense (Manpower) so that appropriate reviews may be had with representatives of the Department of Labor and perhaps other agencies. We will make sure that you are advised of the results.

Sincerely,

(Signed) AARON J. RACUSIN,  
*Deputy for Procurement Management.*

Mr. HATHAWAY. Do I take it that in regard to the other six airlines although which have a maximum age but provide other employment, you are waiting to get in all replies before you refer this matter as well as the other replies to the Department of Labor or the Department of Health, Education, and Welfare?

Mr. RACUSIN. I am merely going to explore that or have it explored.

Mr. HATHAWAY. You don't know if that is a valid reason?

Mr. RACUSIN. We went to investigate the rationale underlying the organization.

Mr. HATHAWAY. That will be done no later than next week.

Mr. RACUSIN. We are going to be starting certainly next week so far as I know.

Mr. HATHAWAY. Mr. Wanner, in your statement on page 2 you state that you do not believe that section 404(b) applies to employees but 404(b) says "any particular person," and it does not limit it to passengers or any other segment of the class of "person." Don't you think that "person" should also include employees?



Mr. WANNER. I think it is limited to persons in air transportation which under our act is defined as being carried in air commerce by aircraft.

Mr. HATHAWAY. There is a definition stating that a person in air transportation is a person being carried?

Mr. WANNER. No; the 404(b) refers to a person in air transportation and then air transportation itself is a defined term meaning being carried on board aircraft in common carriage, and so forth. In other words, we interpret it as applying to the users of aircraft and air transportation rather than to the employees of the air carrier.

Mr. HATHAWAY. It is your interpretation that these are people who are using it for hire?

Mr. WANNER. That is right.

Mr. HATHAWAY. But it does not say they are persons for hire.

Mr. WANNER. When you combine the language in 404(b) with the definition of air transportation, it then, we think, refers only to persons who have been carried in common carriage.

Mr. HATHAWAY. Do you know the section which defines air transportation?

Mr. WANNER. Yes, sir; it is in section 101 of our act, subsection 21. As I mentioned before, actually these are rather ancient provisions, I suppose you might say, in the sense that the discrimination provisions here were really first enunciated in the Interstate Commerce Commission Act. That language was put in the Civil Aeronautics Act when it was passed in 1938 so that the same type of situation, the same precedents in surface transportation, would also be applicable in a general way. There are some variations but they would also be applicable in air transportation.

Mr. HATHAWAY. It just strikes me as odd that they would have written a section with "a person in air transportation" if they meant passengers only.

Mr. WANNER. You also have a ship's crew in that the crew would not have individual contracts with the carrier. You may also have an attendant such as someone caring for animals, something of that sort, who is not a passenger.

Mr. HATHAWAY. In that sense a stewardess would be a custodian.

Mr. WANNER. She is an employee.

Mr. HATHAWAY. As the custodian of the cargo, passengers, wouldn't a stewardess come under that?

Mr. WANNER. I would not think so. On the contrary, she is paid by the air carrier.

Mr. HATHAWAY. It seems to me to be such a close question that especially in view of the Executive order, it would receive a broader interpretation than that which you have given.

Mr. O'HARA. Would the gentleman yield at this point?

With respect to the implementation of the Executive order referred to dealing with discrimination on the basis of race, creed, or color, do you consider your agencies have any responsibility with regard to that other than respecting fare-paying passengers?

Mr. WANNER. It might be the Civil Rights Act or a provision of that sort but it is not an interpretation of the transportation provision of the Civil Aeronautics Regulation which we feel applies only to the users of transportation.



Mr. O'HARA. Does your Agency consider it has any jurisdiction over that question with respect to the practices of air carriers?

Mr. WANNER. Yes; we do in connection with users and even in connection with airport facilities.

About 4 or 5 years ago for example, the Federal Aviation Agency and the Board requested the Department of Justice to begin certain airport segregation actions. I think the first case was in New Orleans. As a result of that, that program, really, and in reliance again on a case interpreting the very similar provisions of the Interstate Commerce Act—

Mr. O'HARA. How about employees?

Mr. WANNER. Not employees, no, sir.

Mr. O'HARA. Do you consider your agency has any jurisdiction over discriminatory practices of air carriers with respect to employment on the basis of race, creed, or color?

Mr. WANNER. No, sir.

Mr. HATHAWAY. On page 2 and 3 you say that you do not believe that it is your obligation to enforce the Executive order with respect to contracts. Since this is a Federal Executive order, I do not understand why you do not feel it is your obligation as well as the contractor's obligation to enforce this.

Mr. WANNER. We, of course, have a general interest in having the laws observed. We are a Federal agency and we would and do refer to other agencies any matters that come to our attention where we think that the laws that they administer are being violated, but what we mean by this is that we have no direct responsibility of our own. Of course, we have a staff which is heavily engaged in carrying out our direct responsibilities. We have no responsibilities of our own since we have no contracts which might make us directly responsible for the enforcement of this order.

Mr. HATHAWAY. But you are supervising the airlines which do have contracts with the Government.

Mr. WANNER. That is correct.

Mr. HATHAWAY. In that capacity, it would seem to me you are as responsible for enforcing the Executive order as they are especially since the policy is a broad policy governing all agencies.

Mr. WANNER. We are interested in the policy. For instance, if we receive complaints we would not just merely write back and say there is nothing we can do about it at all. We would look into it and perhaps refer it. The only complaint that I know of that we have had in the last 2 or 3 years involved a cook on one of the airlines and we wrote back and advised him that although we had no jurisdiction we would be glad to hear more if he wanted to substantiate his case but that was the last we heard of it.

Mr. HATHAWAY. I also share the concern Mr. O'Hara has that such a restrictive interpretation is put on the word "contract." You state although they carry U.S. mail this is not on a contract basis. Don't you think in the larger sense there is a contract; that is, in every consideration of getting a certificate, they carry the mail.

Mr. WANNER. It is an obligation they have as one of the incidents of holding the certificate but we have the same view that the Post Office Department has that it is clearly not a contract.

Of course, in the Federal Aviation Act there are some special provisions for contracts with the Post Office Department in emergency



situations, so you do have a rather clear-cut distinction between the certificate obligation and the fact that in limited and emergency cases you can have actual contracts that are made between the Post Office Department and the air carriers.

Mr. HATHAWAY. So they do have actual contracts?

Mr. WANNER. It is a possibility. As I say, it is an emergency provision and so far as I know there have not been any in recent years.

Mr. O'HARA. Would the gentleman yield?

Mr. HATHAWAY. I yield.

Mr. O'HARA. Suppose there were a contract in the legal sense between FAA and air carriers. Would you feel that you had any obligation with respect to that contract and that contractor?

Mr. WANNER. I would feel certainly the primary responsibility was that of the FAA or the Post Office Department.

Mr. O'HARA. I will ask counsel to determine what contracts are presently in existence with any air carrier which come under the Federal Aviation Act.

Mr. HATHAWAY. You mentioned that the Executive order has been publicized and disseminated. Is there a complaint procedure outlined in whatever is disseminated?

Mr. GASQUE. In our procurement regulations we have a section dealing with the handling of complaints. I can read it to you. [Reading:] "In the event that letters or other representations are received regarding a concern's compliance with the foregoing public policy against discrimination on the basis of age, the matter should be handled on the basis of a communication directed to the concern involved, letter if appropriate, which sets forth the policy, indicates that the concern's compliance with the policy has been questioned and request that the concern review its compliance and if necessary take appropriate measures to comply with the policy."

We publish this notice of the policy and the method of handling complaints in the FPR's which govern all of the civilian agencies of the Government in their contracting procedures. The Department of Defense issued practically the same worded notice in the Armed Services Procurement Regulation applying to the military departments.

In the pamphlet which DOD and GSA jointly worked out with the Department of Labor, there is no specific reference to a complaint procedure. I will be happy to make a copy of the pamphlet available for the record.

Mr. O'HARA. Without objection it will be inserted in the record.

(The document referred to follows:)

#### EXECUTIVE ORDER 11141

##### DECLARING A PUBLIC POLICY AGAINST DISCRIMINATION ON BASIS OF AGE

Whereas the principle of equal employment opportunity is now an established policy of our Government and applies equally to all who wish to work and are capable of doing so; and

Whereas discrimination in employment because of age, except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement, is inconsistent with that principle and with the social and economic objectives of our society; and

Whereas older workers are an indispensable source of productivity and experience which our Nation can ill afford to lose; and

Whereas President Kennedy, mindful that maximum national growth depends on the utilization of all manpower resources, issued a memorandum on March 14,



1963, reaffirming the policy of the executive branch of the Government of hiring and promoting employees on the basis of merit alone and emphasizing the need to assure that older people are not discriminated against because of their age and receive fair and full consideration for employment and advancement in Federal employment; and

Whereas, to encourage and hasten the acceptance of the principle of equal employment opportunity for older persons by all sectors of the economy, private and public, the Federal Government can and should provide maximum leadership in this regard by adopting that principle as an express policy of the Federal Government not only with respect to Federal employees but also with respect to persons employed by contractors and subcontractors engaged in the performance of Federal contracts: Now, therefore

By virtue of the authority vested in me by the Constitution and statutes of the United States and as President of the United States, I hereby declare that it is the policy of the executive branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement, and (2) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement. The head of each department and agency shall take appropriate action to enunciate this policy, and to this end the Federal Procurement Regulations and the Armed Services Procurement Regulation shall be amended by the insertion therein of a statement giving continuous notice of the existence of the policy declared by this order.

LYNDON B. JOHNSON.

The WHITE HOUSE, *February 12, 1964.*

Federal Procurement Regulations and Armed Services Procurement Regulation now include this statement of policy:

Federal departments and agencies will participate in its observance by informing contractors and subcontractors—

Of the provisions of the order;

Of alleged violations which come to their attention; and

Of the importance of compliance with the order.

Public employment offices will continue to help employers find qualified applicants without regard to age.

Merit alone should govern hiring and promotion.

To set an arbitrary age limit is to eliminate many well qualified workers without giving them a chance.

Ability is an individual matter not dependent on age.

Many older workers perform as well or better than young workers in most occupations.

This policy provides that contractors and subcontractors shall not discriminate on account of age in—

Hiring;

Advancement;

Discharge; and

Terms, conditions, or privileges of employment.

Opposed also are maximum age limits in—

Advertising or other solicitations for employment.

Exceptions to this policy are—

Bona fide occupational qualifications;

Retirement plans; and

Statutory requirements.

An example is—

Apprenticeship age requirements.

Mr. GASQUE. The pamphlet recites the Executive order, the fact that the policy is included in the FPR and in ASPR, and then gives certain suggestions as to how it should be interpreted with respect to merit, ability, and exactly what the policy provides. There is nothing



in the pamphlet which refers to the procedure for filing complaints.

We felt that the complaint procedure was internal government. That is why we have included it in the Government contracting regulations. We did not include it in the pamphlet which was designed primarily to give to contractors. In our various military and civilian seminars and schools on procurement procedures, we also talk about the order, the policy, and how to handle a complaint should one come up.

Mr. HATHAWAY. Would an individual employee or prospective employee have the knowledge that he could make a complaint and if so how would he do it?

Mr. GASQUE. The Federal Procurement Regulations are published in the daily Federal Register as issued, codified in the yearend bound volume of the Code of Federal Regulations and are sold by the Government Printing Office in looseleaf form, by subscription, to most of American industry.

I believe as a general statement industry is fully aware of the old-age nondiscrimination regulations both in ASPR and in FPR.

Mr. O'HARA. I might add the typical citizen reads the Federal Register every morning.

Mr. GASQUE. I have only mentioned the extent to which we have gone to publicize it.

Mr. HATHAWAY. It is not posted on bulletin boards.

Mr. GASQUE. No. The pamphlet is displayed in all GSA service centers to aid businessmen in obtaining Government contracts and I am sure the Defense Department has done the same thing.

Mr. HATHAWAY. But an employee would not learn from that how to make a complaint.

Mr. GASQUE. No, he would not.

Mr. HATHAWAY. Do you think it would be well to put in the complaint procedure?

Mr. GASQUE. It certainly could be done. It was not considered necessary at the time the three departments devised the pamphlet. However, it certainly could be done by a very simple reprint of the pamphlet with a statement similar to that which we have in the regulations, if the committee feels that it is desirable.

Mr. HATHAWAY. We have had testimony this morning that there have been very few complaints and we have had previous testimony that there have been very many complaints in other industries. Probably one reason is the people don't know how to make a complaint or don't even know they can make a complaint.

Mr. O'HARA. Mr. Gasque, in your oral statement you indicated that the General Services Administration does not have any contracts with airlines with respect to the carriage of persons.

Mr. GASQUE. That is right.

Mr. O'HARA. And that for this reason you felt that the matters brought to the attention of the committee in Mrs. Boland's testimony were not of direct official interest to you.

Mr. GASQUE. Not in the sense, sir, that we would not be interested in a complaint with regard to a violation of the policy at any point, but only to the extent that since we had no contracts for the carriage of persons in which hostesses were involved, perhaps that was the reason we had not also received a communication from the stewardess' union.



Mr. O'HARA. Let me pursue that question with you. I do not envision that the Executive Order 11141 applies only to employees of contractors engaged in the actual performance of the Federal contract. I believe a careful reading of the language of the Executive order sustains that position.

If you will bear with me the operative paragraph of the Executive order reads:

By virtue of the authority vested in me by the Constitution and statutes of the United States and as President of the United States, I hereby declare that it is the policy of the executive branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age—

and so forth and so on.

The operative language is that they shall not discriminate in connection with the employment, advancement, or discharge of employees—not employees engaged in the performance of the contract held by the contractor with the Federal Government. In other words, if you had a contract for the carriage of freight in which stewardesses were not involved directly, nevertheless, it seems to me that the policy enunciated by the Executive order would apply to all of the employees of that contractor whether or not they were engaged in the Federal employment.

Mr. GASQUE. I share your view with that intention of the order, sir. I did not mean to imply any other meaning. If I did, it was certainly not intended.

The Executive order applies to an employer having a contract with the Federal Government, even if the employee concerned is merely a janitor in the home building and never sees an airplane or a railroad train. I think the policy takes effect on the company. I certainly agree with you, sir, on that. We have entered into 12 charter party contracts with freight airlines since 1962. No hostess was involved, but during the period since the Executive order came into effect, in our opinion, any one of those companies, if they happen to also run passenger ships, or whether they do not run passenger ships, are subject to the policy. I think that is what you are saying, sir.

Mr. O'HARA. With respect to another aspect of this question, Mr. Racusin called to my attention the fact that the Defense Department does not have a contract with Southern Airways?

Mr. RACUSIN. No, sir.

Mr. O'HARA. But it has a contract with—

Mr. RACUSIN. Southern Air Transport, Inc., which does not have any limitations with respect to it.

Mr. O'HARA. Could you advise the committee whether Southern Air Transport, Inc., has any relationship to Southern Airlines or Southern Airways and if so what the relationship is?

Mr. PERRY. They do not have any relationship at all, they are a completely different organization. Mr. Wanner can probably comment better than I.

Mr. WANNER. That is correct, and there is no common ownership.

Mr. O'HARA. No affiliation?

Mr. WANNER. None that I know of.



Mr. O'HARA. There is no common ownership relationship or anything of that nature?

Mr. WANNER. That is right.

Mr. O'HARA. I would like to discuss with you gentlemen for a moment or two the provisions of this Executive order and particularly with respect to this airline stewardess problem. I think there are some things on which we can agree although perhaps expert advice might be sought with respect to other matters. I think we can agree, however, if termination of airline stewardesses at age 32 is discrimination on the basis of age and not dictated by a bona fide occupational qualification that the discrimination or the finding would not be affected by the fact that they might be offered other employment because the order specifically provides the contractors and subcontractors shall not discriminate on account of age, hiring, advancement, discharge or terms, conditions or privileges of employment. Certainly the type of employment offered is a condition of employment, that is to say, you are not saved by the fact that instead of firing somebody or discharging them you transfer to another kind of employment of a different character.

That I think that is clearly within the policy enunciated by the order just as discharged or failure to advance. Does anyone wish to express any question on that point?

Mr. RACUSIN. I will defer to my legal fraternity on my right here for an answer to that.

Mr. O'HARA. Can we have some curbside opinion?

Mr. WANNER. I had not considered it—the question before—and I am a little unprepared to answer. I can well imagine situations in which progression or training for advancement in a company might well require only a certain stated period in a particular type of work.

Mr. O'HARA. That is right, but if we were to hypothesize a situation involving two airlines one of which discharged employees at certain ages and the other of which transferred them to other employment at the same age, I don't think that it would be any of our interpretations that the one was discrimination and that the other was not since clearly if someone wants to be a stewardess—although I stated to Mrs. Boland I don't know why anybody would, but everybody to their own preferences, because I think they work very hard and have a rather difficult employment situation—it seems to me transferring them to ground employment or reservations desk employment or secretarial employment would partake of discrimination on the basis of age just as discharge would.

I think that is pretty clear in this Executive order.

Mr. RACUSIN. Suppose the transfer to a ground job was one to a position that required retraining, which was furnished at the expense of the company, to a higher paying job, let us say to an executive position. Would that constitute discrimination simply because they said we are not going to let you continue in a stewardess position but we are going to offer you a better job on the ground at a higher salary?

This question comes to mind when I read about an alteration in the terms and conditions of employment, but suppose it is beneficial. Does that constitute discrimination? I am not prepared to answer it. I am just raising the question.



Mr. O'HARA. I am sure it does if the salary were more or less or the same. It is a change in the conditions of employment. If we assume there is no bona fide occupational qualification and that question has been determined and it is arbitrary on the basis of age, I don't think that one would escape the thrust of the policy enunciated in Executive Order 11141 by a transfer to a different job rather than out-and-out discharge.

Mr. RACUSIN. It is rather difficult for me to conceive a claim for discrimination when they are offered a better paying job.

Mr. O'HARA. Suppose it only pays a dollar or better?

Mr. RACUSIN. I quite agree, Mr. Chairman, but it is a matter of degree.

Mr. O'HARA. In some industrial situations some of the best paying jobs are not considered desirable jobs, and I think that is so in many cases. I think if I were an employee of a steel company and I worked in the office and then was offered a higher paying job up on the girders in the bridge-building business I might not consider that to be a more attractive job even though it paid a few dollars more.

I think we ought to make clear what we are not talking about, too. The policy enunciated in Executive Order 11141 does not refer to seniority systems although your testimony does. So I would take it that we are agreed that changes in conditions of employment based upon a bona fide seniority system would not constitute discrimination on the basis of age, even though as a consequence of that bona fide seniority system older workers who have been with the company longer might get better jobs than younger workers who had not been with the company as long.

Do we have agreement on that?

Mr. RACUSIN. I would agree with that, Mr. Chairman.

Counsel has just indicated to me that we might put this in terms that would be easier to understand if we hypothesize the arbitrary firing of an Air Force officer and giving him a higher salaried job as a civilian in the Pentagon.

Mr. RACUSIN. I guess it depends upon which end of the receiving end you are.

Mr. O'HARA. Arbitrarily on the basis of age, although I think that is a dangerous illustration.

Mr. RACUSIN. The civilians may think there is discrimination against them in doing that.

Mr. O'HARA. Gentlemen, I thank you for your appearance before us. I, of course, would not wish to prejudge any case but the reason this committee has paid considerable attention to the employment of airline stewardesses is because it is the consensus of the committee that this constitutes probably the most obvious case of discrimination on the basis of age that we could find.

I mention this because it indicates a little something about the views of a certain number of Members of Congress with respect to the question of whether or not the termination of employment of airline stewardesses is or is not a discrimination on the basis of age.

Now we are not judges, probably some of us would like to be but none of us are, and I don't think anyone would be bound by this consensus of the members of this subcommittee, but I call it to your attention as just a matter of perhaps passing interest.



Secondly, I know the committee would be very appreciative of receiving from the Department of Defense progress reports on the actions you are taking on these complaints. You indicated that you were going to take further action sometime relatively shortly after October 4 and I am sure we would appreciate being advised of whatever further action you do take pursuing this question.

Mr. RACUSIN. We will be glad to do so.

Mr. O'HARA. Mr. Hathaway, do you have any further comments or questions?

Mr. HATHAWAY. No, sir.

Mr. O'HARA. The Select Subcommittee on Labor now stands in adjournment subject to the call of the Chair.

(Whereupon, at 11:40 a.m. the subcommittee adjourned subject to the call of the Chair.)

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#### BACKGROUND DOCUMENTS

The following letters, statements, and other documents, inserted by order of the subcommittee, document some aspects of the handling of this problem by the executive branch, culminating in the action of the Department of the Air Force in advising its airline contractors of their obligations under Executive Order 11141.

JULY 9, 1965.

HON. JOHN R. GRONOUSKI,  
*Postmaster General,  
Post Office Department, Washington D.C.*

DEAR MR. GRONOUSKI: It is my understanding that most, if not all, of the commercial air carriers are certified by the Civil Aeronautics Board as mail carriers. It is my further understanding that the carriers are paid by the ton-mile rather than through any contractual arrangement with the Post Office Department.

I am enclosing for your reference a copy of Executive Order 11141 issued by the President on February 12, 1964. You will note that this order declares a public policy against discrimination on the basis of age.

I would appreciate receiving your opinion as to whether the provisions of this Executive order apply in the case of air carriers which are transporting mail for the Post Office Department, even though these carriers may not technically be contractors in the usual sense of the word.

Thank you for your attention in this matter.

Very truly yours,

JAMES G. O'HARA,  
*Member of Congress.*

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POST OFFICE DEPARTMENT,  
OFFICE OF THE GENERAL COUNSEL,  
*Washington, D.C., July 23, 1965.*

HON. JAMES G. O'HARA,  
*House of Representatives,  
Washington, D.C.*

DEAR CONGRESSMAN: This will reply to your letter to the Postmaster General regarding the application of Executive Order 11141 to air carriers engaged in transportation of the mails.

The Department does have a few air star route contracts with air carriers for mail transportation where special conditions exist. The Executive order would, of course, apply to these contractors.

Generally, mail is transported by air carriers on a noncontractual basis. Such transportation is performed as a statutory obligation of the holder of a certificate of necessity and convenience issued by the Civil Aeronautics Board. Com-



pensation for such carriage is fixed by the Board rather than by agreement between the parties. In this circumstance the Department has not regarded the air carrier as a contractor for the purposes of Executive Order 11141.

Sincerely yours,

HARVEY H. HANNAH,  
*Acting General Counsel.*

AUGUST 23, 1965.

Mr. PAUL A. NAGLE,  
*Deputy Contracts Compliance Officer,  
Post Office Department,  
Washington, D.C.*

DEAR MR. NAGLE: I am enclosing a copy of a letter dated July 9 which I sent to the Postmaster General regarding the application of Executive Order 11141 to air carriers engaged in transporting the U.S. mails. Also enclosed is a copy of a letter I received from the Acting General Counsel.

I should very much appreciate receiving your comments on this exchange of correspondence. I do not believe that the reply I received was particularly responsive to the problem which prompted my original letter.

Thank you for your attention.

Very truly yours,

JAMES G. O'HARA,  
*Member of Congress.*

OFFICE OF THE POSTMASTER GENERAL,  
*Washington, D.C., August 27, 1965.*

Hon. JAMES G. O'HARA,  
*House of Representatives,  
Washington, D.C.*

DEAR CONGRESSMAN O'HARA: Reference is made to your letter of August 23, 1965, concerning an exchange of correspondence with the Postmaster General in regard to possible violation of Executive Order 11141 concerning discrimination against employees because of age.

The reply of July 23 by the Acting General Counsel, Mr. Harvey H. Hannah, to your letter of July 9 to the Postmaster General declared correctly that: "In this circumstance the Department has not regarded the air carrier as a contractor for the purposes of Executive Order 11141."

My suggestion would be that if there are instances in which specific carriers have violated the Executive order, you might wish to contact the contracts compliance officer for the Department of the Air Force. For purposes of equal employment in matters of race, religion, national origin, etc. (as contrasted with age), the Department of the Air Force has been designated as predominant interest agency for the airlines.

You are assured that the Post Office Department is ready and willing to provide you with whatever assistance may be necessary, and which may appropriately fall within our jurisdiction.

Sincerely yours,

PAUL A. NAGLE,  
*Deputy Contracts Compliance Officer.*

JULY 30, 1965.

WILLIAM F. McKEE,  
*Administrator, Federal Aviation Agency, Washington, D.C.*

DEAR MR. McKEE: The purpose of this letter is to call to your attention the provisions of Executive Order 11141 which was issued on February 12, 1964. You will note from the enclosed copy of the Executive order that it declares a public policy against discrimination on the basis of age.

The Executive order provides that it is the policy of the Federal Government that contractors and subcontractors engaged in the performance of Federal contracts shall not discriminate against persons because of their age. Under the provisions of the order, the head of each department and agency is charged with the responsibility of enunciating this policy.

It is my understanding the Federal Aviation Agency has contracts with certain private air carriers. I am also informed that certain of these carriers,



but not all, arbitrarily terminate the employment of female stewardesses at a certain age. Enclosed please find a summary of the practices of various air carriers as I understand them.

It seems to me that some of these carriers are violating the spirit of Executive Order 11141 and that it should be the responsibility of your Agency to take the necessary steps to eliminate such discrimination on account of age.

It is my further understanding that the air carriers have felt themselves obligated not to discriminate on the basis of race, color, creed, or national origin in accordance with Executive Order 10925. Do they feel similarly obligated with respect to Executive Order 11141? If they have been required to assume these obligations under Executive Order 10925, should they not also be required to refrain from discriminating because of age?

I would appreciate it very much if you would advise me at your earliest convenience of the steps you are taking to obtain compliance with Executive Order 11141 on the part of air carriers with whom you hold contracts.

Very truly yours,

JAMES G. O'HARA,  
*Member of Congress.*

FEDERAL AVIATION AGENCY,  
Washington, D.C., September 10, 1965.

HON. JAMES G. O'HARA,  
*House of Representatives, Washington, D.C.*

DEAR MR. O'HARA: This is in reply to your letter of July 30, 1965, concerning Executive Order 11141, issued on February 12, 1965, as it relates to possible discrimination on the basis of age in the employment of stewardesses by certain air carriers.

The Executive order declares as Government policy that contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with employment, discriminate against persons because of age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement. It also requires the head of each contracting agency to take appropriate action to enunciate this policy, and to this end requires that the Federal procurement regulations be amended to give continuous notice of the existence of the policy declared by the order.

The Federal Aviation Agency has a continuing interest in the utilization of manpower resources in the aircraft industry and is in full agreement with the policy expressed in Executive Order 11141. However, the Agency has no general authority over airline employment practices; its authority covers the ability of those who are hired to meet safety requirements.

In your letter you refer to the record of air carrier compliance with Executive Order 10925, which order prohibits discrimination in employment under Government contracts because of race, creed, color, or national origin. Unlike Executive Order 10925, however, Executive Order 11141 does not call for the use of a contract clause, nor does it provide for sanctions (such as termination of the contract) to obtain compliance. The order provides, after setting forth the governmental policy against discrimination because of age, that the Federal procurement regulations be amended to give continuous notice of the existence of the policy of the Government in this area.

We understand that you are making inquiry of the agencies and departments primarily responsible for Government procurement and labor policy and actions; we would defer to them on the question you raised.

Sincerely,

NATHANIEL H. GOODRICH, *General Counsel.*

JULY 9, 1965.

HON. ROBERT S. McNAMARA,  
*Secretary of Defense,*  
*Washington, D.C.*

DEAR MR. SECRETARY: The purpose of this letter is to call to your attention the provisions of Executive Order 11141 which was issued on February 12, 1964. You will note from the enclosed copy of the Executive order that it declares a public policy against discrimination on the basis of age.

The Executive order provides that it is the policy of the Federal Government that contractors and subcontractors engaged in the performance of Federal con-



tracts shall not discriminate against persons because of their age. Under the provisions of the order, the head of each department and agency is charged with the responsibility of enunciating this policy.

It is my understanding that the Department of Defense has contracts with a number of air carriers. Among the 21 airlines holding Military Air Transport Service contracts for fiscal 1966 are Northwest, \$13,904,000; Southern, \$5,203,000; and Trans World, \$6,194,000.

For your reference, I am enclosing information relating to the policies of these three airlines with regard to stewardesses. In my opinion, the arbitrary age for termination of employment for stewardesses in the case of these airlines constitutes a practice which is contrary to the policy enunciated in Executive Order 11141. It is noteworthy, I think, that not all airlines terminate employment of stewardesses before the normal retirement age.

I should very much appreciate receiving your comments on this matter. Thank you for your attention.

Very truly yours,

JAMES G. O'HARA, *Member of Congress.*

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OFFICE OF THE SECRETARY OF DEFENSE,  
*Washington, D.C., July 13, 1965.*

HON. JAMES G. O'HARA,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. O'HARA: The Secretary of Defense has asked me to acknowledge receipt of your letter of July 9, 1965, relative to Executive Order 11141 and the retirement age of airline stewardesses.

Your letter has been referred to the appropriate officials in this Department, and you will be advised further as soon as possible.

Sincerely,

CHARLES N. GREGG, Jr.,

*Special Assistant to the Assistant to the Secretary (Legislative Affairs).*

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DEPARTMENT OF THE AIR FORCE,  
*Washington, July 28, 1965.*

HON. JAMES G. O'HARA,  
*House of Representatives.*

DEAR MR. O'HARA: This is further response to your letter of July 9, 1965, to the Department of Defense (DOD) concerning employment policies of certain airlines with regard to age requirements for termination of employment of stewardesses.

The national policy, enunciated in Executive Order 11141, dated February 12, 1964, has been incorporated as DOD policy in section 12-901 of the Armed Services Procurement Regulations. Contractors are encouraged to comply with this policy.

The Air Force is advising the three airlines mentioned in your letter that their policies on termination of employment of stewardesses because of age have been questioned and that this matter is being brought to their attention for appropriate review.

We are pleased to be of service in furnishing you this information.

Sincerely,

L. CONQUES,

*Colonel, USAF, Chief, Congressional Inquiry Division, Office of Legislative Liaison.*

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DEPARTMENT OF THE AIR FORCE,  
*Washington, September 22, 1965.*

HON. JAMES G. O'HARA,  
*House of Representatives.*

DEAR MR. O'HARA: This is to provide you additional information concerning employment policies of certain airlines with regard to age requirements for termination of employment of stewardesses.



The Air Force sent letters to 22 airline contractors requesting that each review the policy enunciated in Executive Order 11141 with respect to its applicability to any limitations imposed upon the continuing employment of stewardesses after attainment of a certain age.

To date, 10 replies have been received. They reflect that either each company has no age limitation on the employment of stewardesses or that the company policy provides for reassignment of stewardesses, after a certain age, to other positions at an equal or higher pay. Attached for your convenience is a brief résumé of each reply.

We shall communicate with you further as soon as the remaining replies are received.

Sincerely,

DWIGHT W. COVELL,

Colonel, USAF, Congressional Inquiry Division, Office of Legislative Liaison.

#### RÉSUMÉ

*American Airlines.*—Its labor and management agreement with the Transport Workers Union, Airline Stewards and Stewardesses Association, does not require termination of employment at any given age, but at age 32 offers reassignment—at equal or greater pay with other rights guaranteed—to another job within the company.

*Aerico Airlines.*—No age limitation has been imposed.

*Alaska Airlines.*—Age is not a limiting factor in its stewardess contract.

*Capitol Airways, Inc.*—Its present stewardesses' working agreement does not contain any maximum age limitations or provisions.

*Continental Air Lines, Inc.*—Continental has stewardesses who are over 40 and whom they would hate to see leave as long as they continue to work effectively. The stewardesses have an obligation to keep their appearance up and to represent the airline to its passengers with enthusiasm and interest. When any of them cease to do so, Continental will have to face the problem and see how it can be resolved. So far, none has come up.

Upon accepting employment, stewardesses are now required to sign a statement which provides that they will resign at age 32. However, this has not yet been implemented, and Continental is several years away from the time when any of the girls who have signed this statement reach age 32. In the event that compulsory severance is implemented at age 32, another position of like status and pay will be offered.

*The Flying Tiger Line, Inc.*—Stewardesses have never been terminated because of age.

*National Airlines, Inc.*—Its advertisements do reflect a maximum age limit for employment as a stewardess. However, no age limitations for continued employment has as yet been set. If such a policy were adopted, alternate ground employment would be offered.

*Seaboard World Airlines.*—Seaboard has never imposed age limitations upon stewardesses to preclude continuation of their employment after the attainment of a certain age. Nor is any change in policy contemplated.

*World Airways, Inc.*—An age limit for stewardess employment has not been imposed.

*Zantop Air Transport, Inc.*—Zantop does not impose any limitation as to maximum age for continuing employment of stewardesses.

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[From the New York Times, Sept. 5, 1965]

OBSERVER: UP IN THE AIR WITH THE GIRLS

(By Russell Baker)

WASHINGTON, September 4.—In the present enlightenment, few people will be shocked to hear that the airlines have been subtly trading in sex. Where the modern spirit of tolerance rebels, however, is the point at which the flying industry starts trying to dictate their clients' taste in women.

This is the issue the airline stewardesses have raised before Congress in complaining that four domestic lines require them to quit at the age of 32 in some cases, and 35 in others, because they are too old to keep the male passengers titillated. "It's the sex thing," one airline executive was quoted as saying. "Put a dog on an airplane and 20 businessmen are sore for a month."



## TOO LITTLE RESEARCH

The airline policy is the kind of blunder that results from too much abstract psychological thinking about passenger motivation and too little basic research. The most haphazard study will show that, where sex is concerned, male airline passengers fall into three categories.

By far the largest group consists of those who find it impossible to think about women while strapped into a metal cylinder that is moving at the speed of sound 4 miles above all civilized trysting places. Men in this group don't care how the coffee, tea, or milk arrives. They have serious things on their minds. Things like how to knife a competitor upon arrival at point B or how to catch a 30-minute nap without being awakened for chewing gum.

Others want to listen for engine failure, worry whether the barber shop will be closed at the next airport or, perhaps, repent of minor peccadillos committed in the last town. To these men, a stewardess can never be more than a waitress. If they think about her at all, it is to wonder why such well-girdled women choose to schlep coffee to ingrates when they could be discovering radium or pouring wine in the sunlight.

## REALLY A WAITRESS?

Stewardesses wearing the universal airline hips, top-knotted grandmothers in bombazine, old gentlemen with gravy stains on their apron fronts—it makes no difference to the group I passenger who brings the coffee and doesn't wake him up for chewing gum.

Group II and group III are, admittedly, womanminded, but with a distinct difference. Men in group II concur generally with the anonymous airline executive that the thirtyish woman is "a dog." Though they may themselves be eligible for medicare, they insist that the female population should be stowed in warehouses and kitchens from the day the first crow's foot appears.

When the coffee, tea, or milk arrives, group II wants it delivered in a flurry of youth, with teeth that have never known unfluoridated water, hips that have never suffered from depression's macaroni diet and feet that have never been trampled in the fox trot.

It is group II at which airline policy is aimed. Many stewardesses marry their passengers, and invariably their husbands come from group II. When their marriages fail, it is only because the wife has turned 32 and developed an early-morning crow's foot. When this happens, the husband has only to redouble his air travel.

This leaves that large body of men who make up group III. Group III men like a provocative stewardess on board as much as men in group II. What they do not like is the airlines' tyrannical effort to impose group II's preference for the younger woman.

Men in group III happen to be utterly indifferent to women under 32, and in many cases even to women under 35. What's worse, they are absolutely terrified by women under 27, and women under 24—well, to a group III man, a woman under 24 is all right as a daughter, but she can scarcely be thought of as a woman.

The fact about men, which the airlines fail to grasp, is that one man's woman is another man's yawn. The airlines' attempt to limit feminine desirability to femininity born after the Hoover administration is an affront to the taste of every man in group III, and as such, should be looked into by the Civil Aeronautics Board.

Group III men prefer their women older. The airline's suggestion that the older woman is a "dog" is as insulting to the tastes of these men, as it is to the women. Group III would prefer to have stewardesses kept off airplanes until they are at least 32.

This is not simply a matter of preferring the fuller hip and the more worldly eye. When the group III man contemplates the standard under-30 model, which the airlines insist on presenting him, he sees nothing but misery and frustration.

At a glance, he can see that an evening with her would involve him in the most humiliating lies to conceal the fact his lumbago is not up to dancing the monkey. If he wanted to reminisce with her about the NRA, he would first have to spend hours telling her what it was. And then, she would want to reminisce about Elvis Presley.



## GROUP FLIGHTS

In all likelihood, the group III man knows, he would end by telling her "You remind me of my daughter." The group III man does not want to be reminded of his daughter while airborne. He wants the coffee delivered in a flurry of experience, with a wrinkling about the eyes that says, "The monkey may leave me cold, but I could tell you a thing or two about the NRA."

With this background, the airlines' stewardess problem is easily solved. Just as they now provide first-class and tourist flights for differing tastes, they should establish group II, group III and group I flights. Stewardesses would be graduated from group II to group III as they turned 35. On group I flights, the coffee would be served by the copilot.

NOVEMBER 15, 1965.

HON. JAMES G. O'HARA,  
*House of Representatives, Washington, D.C.*

DEAR SIR: I have been a stewardess with Northwest Airlines for the past 8 years and as of October 31, my employment in this position was supposed to be terminated because of reaching the age of 32.

I am enclosing a copy of a grievance I have filed with my union against Northwest Airlines in regards to the manner in which my termination with them was handled. This grievance should be self-explanatory.

I would, at this time, like to place this same grievance on file with your committee in the event that some future action might be taken by the committee on my case.

Respectfully yours,

NITA BAUM.

NOVEMBER 3, 1965.

COLLEEN BOLAND,  
*President, ALSSA, Local 550, TWU,  
Chicago, Ill.*

Forthwith is a statement concerning my termination of employment as a stewardess with Northwest Airlines.

As of October 10, 1965, I reached the age of 32. On October 18, I was told by my immediate supervisor, Mr. E. L. Larson, that as of October 31, I would no longer be employed by Northwest Airlines in the position of stewardess and, at that time, I was to come into the office and sign a resignation form and turn in my company manual and equipment.

I had bid a schedule for the month of October which listed a ramp turn-around flight to New York and back on October 31. This would in no way interfere with the termination of my employment at that date. However, the company put forth a major schedule change during the month of October and instead of my returning from New York on the 31st, my outgoing flight was built into a 3-day shuttle returning me to my home base on November 2. On the 26th of October, upon my return from a scheduled flight, I informed crew scheduling that their change in schedules would require me to go out on a 3-day shuttle, and this I did not care to do. Instead, I wanted them to drop me from that trip and give me a ramp turn-around to replace the one I was originally scheduled for. At this time I was told by Mr. Will Siemering of crew scheduling that I would be required to fly the trip as it had been set up. No further word was received by me from the company in regards to my termination because of reaching the age of 32 as of October 31.

At 5:30 a.m. on October 31, I was called by crew scheduling and asked to report for the outgoing flight which led into the aforementioned 3-day shuttle. The company then allowed me to complete the rebuilt schedule, which returned me to my home base 2 days past the date specified by the company for my termination. The company has stated that a stewardess would not be allowed to fly beyond the last day of the month in which her 32d birthday occurred. This is the set company policy.

This action by the company dispels the proposition put forth by them that once you have reached the age of 32, you are no longer suitable to perform the duties of a stewardess.

I am submitting this statement as a grievance against the retirement policy of Northwest Airlines in regards to stewardesses upon reaching the age of 32, which I feel is a very unfair and discriminatory action.

NITA L. BAUM.



NOVEMBER 24, 1965.

Miss NITA BAUM,  
Minneapolis, Minn.

DEAR MISS BAUM: My thanks for your letter of November 15, setting forth the details of your termination as a stewardess with Northwest Airlines. It is particularly interesting to note that the company's needs for your services past your 32d birthday seemed, in this case, to temporarily stem the sudden onslaught of senility which they feel affects your fellow stewardesses when they achieve the advanced age of 32.

Your letter will certainly be made a part of the hearing record on the question of age discrimination. However, I would like to ask your permission to forward your letter to the Department of the Air Force, with whom Northwest has contracts subject, in my judgment, to the provisions of Executive Order 11141. If you would write me authorizing me to submit your letter as a formal complaint to the Department, I think we might have an excellent case in point.

Very truly yours,

JAMES G. O'HARA,  
Member of Congress.

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MINNEAPOLIS, MINN., December 1, 1965.

HON. JAMES G. O'HARA,  
House of Representatives, Washington, D.C.

DEAR SIR: Thank you for your letter of November 24 in regard to my termination as a stewardess with Northwest Airlines.

I am herewith giving you my consent to forward my letter of grievance to the Department of the Air Force concerned with the MATS charters that Northwest Airlines holds, and I thank you for your interest in my case.

I am also enclosing with this letter a copy of a letter I sent to the Hon. James Scheuer, putting forth a few of the different aspects of this situation. One other thing I would like to mention in regard to this is the fact that we have male cabin attendants who perform exactly the same duties as a stewardess but are not affected by age or the marriage stipulation. At the present time, these male cabin attendants on Northwest Airlines are referred to as "pursers," however, many of them have worked in the capacity of flight service attendants and were incorporated in the stewardess seniority list in regard to bidding of schedules. They were also bound by the same contract as the stewardesses. We still have several male cabin attendants remaining in this capacity. Again, may I point out that they are not required to retire at age 32.

On November 19, Northwest Airlines granted me a hearing on my grievance, and on November 29, I received a letter from Northwest Airlines stating that my grievance had been denied. I am appealing this action.

Again, may I thank you for your interest and cooperation.

Respectfully yours,

NITA L. BAUM.

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MINNEAPOLIS, MINN., November 15, 1965.

HON. JAMES SCHEUER,  
House of Representatives,  
Washington, D.C.

DEAR SIR: I was a stewardess with Northwest Airlines and as of October 31, I reached the age of 32 and was forced to leave my job as stewardess and go into another position with the company which does not compare in hours, benefits, or salary with stewardess work. Why, I do not know. I have an excellent record with the company. I have always been conscientious in my work and continually lived up to all the provisions set forth by the company in the contract signed by me which I started with them 8 years ago. I am in excellent health, have a nice figure, and am attractive in appearance. I enjoy my work very much and always have. Now suddenly, the company is allowed to remove me from a position which I have worked hard at and love, simply because I am 32 years old.

Many girls on Northwest Airlines signed the contract previous to the one I signed and, although they are older than 32, they are allowed to continue to fly and may do so until they are 65 if they so wish. Now, today, I have read an



article in the paper stating that companies are not going to be allowed to retire girls because of their being married. If this is so, then why should they be allowed to retire single girls who are required to support themselves and continue to employ married women who have a husband to take care of them? This is completely ridiculous!

If the company could come forth with a logical reason, such as my inability to do the job satisfactorily, either mentally or physically, I could maybe understand their position. However, this is not the case. I have never been more active physically, and I certainly feel that with my 8 years of flying, I am much more capable of coping with any emergency or other types of situations which may and do occur constantly on flights. When you consider the fact that the airlines are allowed to put over a hundred people who are completely unfamiliar with airplanes on a flight and then send it out with four stewardesses who are just out of class with no experience whatsoever, it makes those of us with a few years behind us shudder. The company, however, gives one the impression that they could care less about the efficiency and capability of their stewardess as long as she is very young and attractive to the businessman. This all leads us back to the old American way of using sex and womanhood for the advancement of big business.

Now that I am 32, the company puts forth the proposition that I am no longer able to benefit them in this manner but I am good enough to work for them, but out of sight of the public, this constituting becoming a reservationist. Thereby, they are allowed to capitalize on my experience and know-how at my expense, simply because I have reached the undesirable age of 32.

We girls that are being retired at 32 have been with Northwest Airlines during the crucial years of the airline industry, which constitutes the past 10. It was we who provided the in-flight service desired by the company when competition between the domestic airlines was at its keenest. It was we who contributed greatly to its growth in popularity with the public. Now that there are numerous people traveling and competition is now longer a big factor, we are shunted aside in preference to younger girls.

A few days ago we received company bulletins asking us to help recruit new girls as Northwest is in great need for more stewardesses in order to handle the MATS charters received from the Government along with our regularly scheduled flights. Cannot the Government step in and prevent a company from discriminating because of age when MATS charters are concerned? When shipping troops, would not the Government prefer to know that these flights are handled by experienced, capable, and efficient girls or do they also wish to provide the troops with young desirables?

Also, there is the situation whereby the airline employs us to their advantage until we reach this age of 32 and then they are allowed to force us to take a position of their choosing whether we enjoy it or not. Many of us are without college degrees or training in any other profession and, therefore, we have no choice but to accept the positions offered us. You must remember that we are all single girls and obligated to support ourselves and cannot afford the luxury of returning to college and obtaining a degree in another profession. We must keep a paycheck coming in, in order to live. Teachers, nurses, librarians, secretaries, etc., are not forced to retire at age 32. They become more valuable to their employers as they gain experience. Why not stewardesses? This again points out that the airlines aren't really too concerned with capability and efficiency, only in providing a "young" attractive girl for the businessmen to look at. At this time, may I also point out that when a stewardess has flown for 10 years, she enters the top wage bracket. Could this possibly have any bearing on their choice of 32 as a retirement age?

I have listed just a few of the different aspects of this situation. If one wanted to take the time, many more points against this retirement at 32 could be brought to light.

As you may well imagine, I am anxiously awaiting any action taken by your committee in regard to this situation. If possible, I would appreciate hearing from you as to what progress has been made to date.

Respectfully yours,

MISS NITA BAUM.



DECEMBER 10, 1965.

Mr. A. J. RACUSIN,

*Deputy for Procurement Management, Office of the Secretary, Department of the Air Force, the Pentagon, Washington, D.C.*

DEAR MR. RACUSIN: On September 29, you appeared before the Select Subcommittee on Labor and presented testimony on the question of Air Force policy toward alleged age discrimination by certain air carriers in their employment policies. The specific problem discussed at that hearing was the policy of forcing stewardesses to leave their jobs at the age of 32. During that hearing you indicated you had received only a few complaints of age discrimination by Air Force contractors, and you subsequently wrote Chairman Holland a letter, dated October 11, describing those cases.

In the meantime, I have received from Miss Nita L. Baum, a stewardess with Northwest Airlines, letters describing her own case. On October 10, she reached the advanced age of 32, and shortly thereafter was advised that she would have to resign as a stewardess by the end of that month. Interestingly enough, this "bona fide occupational requirement" seemed to lose its compelling quality when scheduling requirements made it convenient for Northwest Airlines to demand Miss Baum's services as a stewardess for 2 days past the end of October.

In view of the substantial MATS contracting in which Northwest engages and in view of Executive Order 11141, I would like to submit Miss Baum's letters to you, with her permission, as a complaint, and I would appreciate being advised what the Air Force plans to do to persuade its contractor to comply with the policy on which Executive Order 11141 is based.

A copy of Miss Baum's similar letter to Congressman Scheuer is also enclosed. I would appreciate your reporting to Mr. Scheuer as well as to me on this matter.

Very truly yours,

JAMES G. O'HARA,  
*Member of Congress.*

DEPARTMENT OF THE AIR FORCE,  
*Washington, December 23, 1965.*

HON. JAMES G. O'HARA,  
*House of Representatives.*

DEAR CONGRESSMAN O'HARA: This is in response to your letter of December 10, 1965, transmitting the complaint of Miss Nita Baum, who alleged that she was terminated by Northwest Airlines because she had reached the age of 32.

You were advised in our December 13, 1965, letter that data concerning certain airline employment practices had been referred to the Assistant Secretary of Defense (Manpower) for review and coordination with other appropriate Government agencies.

The employment policies of Northwest Airlines, upon which Miss Baum's complaint was based, is one of the airline contractors whose policies are under review by the Assistant Secretary of Defense (Manpower). Accordingly, her complaint has been forwarded to that office. You will be advised of the results.

Sincerely,

AARON J. RACUSIN,  
*Deputy for Procurement Management.*

[Press release of State Commission for Human Rights, New York, N.Y., Dec. 6, 1965]

The State commission for human rights will hold a hearing tomorrow (Tuesday, December 7) into the maximum age specifications required for airline stewardesses employed by commercial carriers that fly in New York State.

The commission will examine the policies and practices of airlines in initial hiring of stewardesses and the use of maximum age limitations for continued employment in flight duties.

The hearing will commence at 10 a.m. at the commission's New York City offices in the State Office Building, 270 Broadway. Commissioner J. Edward Conway will preside.

Commissioner Conway has invited representatives of the 20 carriers that fly into New York State to participate. Invitations also have been sent to Local 550, Air Line Stewards and Stewardesses Association of the Transport Workers Union, and to the Stewards and Stewardesses Division of the Air Line Pilots Association.



Since 1958, New York State has had a provision in the employment section of the State law against discrimination which prohibits denial of equal opportunity in employment to persons because of chronological age. The law protects the right of older workers in initial hiring, upgrading, transfer, and dismissal from employment.

The commission recognizes valid exceptions based on particular job requirements, but it requires employers to submit justifications for such age specifications.

The hearing will be apart of an informal investigation into the employment practices of airlines as related to stewardesses. The investigation was authorized by the commission under its power to initiate investigations and studies to carry out the purpose of the law.

Commissioner Conway said he was hopeful that the hearing will "help bring out all pertinent factors bearing on our effort to resolve the question whether a bona fide occupational qualification properly applies to the stewardess position on either particular airlines or the airlines generally under the age provisions of the New York State law against discrimination."

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STATEMENT OF COMMISSIONER J. EDWARD CONWAY, STATE  
COMMISSION FOR HUMAN RIGHTS

The New York State Commission for Human Rights has duly authorized an informal investigation into the policies and practices of the airline industry with respect to maximum age requirements for initial employment in the stewardess capacity and for continued employment in flight service. I have been designated as the commissioner to carry out this investigation.

The underlying authority for such an inquiry are those provisions in the New York State law against discrimination dealing with chronological age as a criterion in hiring, in discharge, and in the terms, conditions and privileges of employment. Section 296(a) of the law makes it an unlawful discriminatory practice: "for an employer, because of the age, (race, creed, color, national origin or sex) of an individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

The underlying premise of this provision of the law is that arbitrary assumptions based on age are prohibited.

At the same time, the law does make provision for age specifications where they are based on bona fide occupational qualifications related to job performance. It is therefore part of the commission's function, in this area of its jurisdiction, to set standards and guidelines on an industrywide basis, wherever possible—as well as to resolve issues of this type in particular complaint cases.

The subjects of this hearing are, primarily, the use—by some airlines—of a maximum age for continued employment of stewardesses in their flight service; and a related use—by most airlines of an age ceiling for initial employment in this job category. Our purpose is to marshal all the relevant evidence and gather all information which bears upon these issues.

In carrying out my investigation to date, I have had the cooperation of both the unions which represent the airline stewardesses and a substantial number of the airline companies, particularly through their personnel and industrial relations offices.

The inquiry has been developed thus far through field investigation, supplemented by a questionnaire to which there has been a useful response by the airline companies.

The purpose of this hearing is to provide an opportunity to those affected to present oral testimony and argument and written statements in amplification of their views on the underlying issues. The 20 airline companies which fly into New York State, the Air Transport Association (an industry association), and the 2 major stewardess unions; the Stewards and Stewardesses Division of the Air Line Pilots Association, and Local 550 of the Air Line Stewards & Stewardesses Association of the Transport Workers Union, have all been invited to participate and to present their respective positions. In addition, we have indicated our willingness and desire to hear from any other interested party in the airline industry, including the airlines which do not fly into the State of New York.

The commission has already had experience with the general problem of bona fide occupational qualifications in a variety of situations; in the main, however,



these have concerned initial employment. Where continued employment is concerned, the problem is somewhat different; and it is the commission's wish in such situations to have as great a body of documentation and expert testimony as possible to assist it in making its evaluations. It is the commission's experience that, within each industry, there is a reservoir of that kind of expertise which can present the issues most clearly and fully by way of the three main groups involved: namely, the employer, the union, and the individuals directly affected by the existence of age ceilings.

It is my intention to conduct this hearing—and any continuances which may become useful—in a nonadversary manner, and to exclude from consideration any specific complaint cases: past, pending, or prospective. It may well be, of course, that the information and data which will be produced will assist the commission in resolving complaint cases, when such matters are brought under consideration, in a framework of conference and conciliation—and without prolonged adversary proceedings.

The possibility is recognized that there may be variations in the particular situations of individual airlines, or of individual categories or subcategories of employees; these issues, too, will be explored by me insofar as is possible.

I am hopeful that the hearings now being instituted will help bring out all pertinent factors bearing on our effort to resolve the questions to which I have referred; and which are, in summary, whether a bona fide occupational qualification properly applies to the stewardess position of either particular airlines or the airlines generally under the age provisions of the New York law against discrimination.

I will note for the record that letters of invitation to participate in this hearing were sent on November 8, 1965, to the following airline companies:

- |                          |                                |
|--------------------------|--------------------------------|
| 1. Airlift International | 11. New York Airways           |
| 2. Allegheny Airlines    | 12. Northeast Air Lines        |
| 3. American Airlines     | 13. Northwest Air Lines        |
| 4. Braniff Airways       | 14. Pan American World Airways |
| 5. Delta Airlines        | 15. Pan American-Grace Airways |
| 6. Eastern Air Lines     | 16. Seaboard World Airlines    |
| 7. Flying Tiger Line     | 17. Slick Airways              |
| 8. Lake Central Airlines | 18. Trans Caribbean Airways    |
| 9. Mohawk Airlines       | 19. Trans World Airlines       |
| 10. National Airlines    | 20. United Airlines            |

In addition, as I have mentioned previously, invitations were also extended to the industry association (the Air Transport Association), and to the two employee associations (Local 550, the Air Line Stewards & Stewardesses Association of the Transport Workers Union; and the Air Line Pilots Association, Steward & Stewardess Division).

I have recently been informed that the airlines which accepted the invitation to participate are represented jointly by counsel, Poletti, Freidin, Prashker, Feldman & Gartner of New York City and that various members of their personnel and industrial relations staff may also be present as observers. (I suggest that members of airline management staff who are present might wish to note their appearance on the record, even though they intend to confine their participation today to the role of observers.)

Scheduled to appear before me today to present oral testimony and to answer my questions are representatives of the two major stewardess unions.

At the conclusion of today's testimony, I shall be pleased to entertain any statement or application from counsel or other representative of the invited airlines, or from any other party with a particular concern in regard to age qualification in the job categories under consideration.

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STATEMENT OF FRANCIS A. O'CONNELL, LEGISLATIVE DIRECTOR, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, BEFORE THE STATE OF NEW YORK, STATE COMMISSION FOR HUMAN RIGHTS

Mr. Chairman and members of this commission: my name is Francis A. O'Connell. I am legislative director of the Transport Workers Union of America, AFL-CIO, with offices at 100 Indiana Avenue NW., Washington, D.C.

I am here today to present the Transport Workers Union case in helping the New York State Commission for Human Rights decide the issue of discrimination because of age by certain airlines which fly into New York State.



The Air Transport Division of the Transport Workers Union represents over 10,000 flight service personnel on 10 international and domestic airlines. We have represented the flight personnel of Pan American Airways since 1946. We also are the collective bargaining representative for Trans Caribbean Airways as well as the flight attendants on the eight airlines represented by TWU Local 550, Miss Colleen Boland, president.

With the exception of the three airlines under discussion here today, American, Northwest and Trans World, none of these other carriers have ever had arbitrary age limitations for terminating the employment of flight service personnel, either by contract or company regulation.

This is not to say that at one time or another, other carriers have not proposed arbitrary age limits. But the TWU's Air Transport Division under the directorship of James F. Horst has refused to entertain any such suggestion, and will continue to oppose any such proposal.

But the three carriers under discussion—American, Northwest, and Trans-World—have instituted arbitrary and capricious career termination ages. It is 32 in the cases of American and Northwest; 35 for Trans-World.

These three airlines are living dangerously. The Transport Workers Union has no intention of allowing them to continue this discriminatory practice.

Resolutions were adopted unanimously at the 12th constitutional convention of the Transport Workers Union—held in this city in October—condemning the policy of the airlines in this regard. The Transport Workers Union is united in its obligation to rid these carriers of this policy by any and all means available—including strike action if need be.

Our 150,000 members—airline, transit, rail, and utility employees—and our International President Michael J. Quill—are pledged to go to the wall on this issue. They feel they have a mandate to eliminate this arbitrary age limitation.

This is not an unusual stance for our organization. The Transport Workers Union has been at the forefront of the drive for equal rights for all people in all circumstances since the union was organized 38 years ago. Thus, as it has fought for the full rights of Negroes and other minority groups, the Transport Workers Union is now prepared to do battle against all other forms of discrimination, including that because of age and sex.

We intend to do this through enforcement of title VII of the Civil Rights Act of 1964 and its ban on discrimination because of sex, and through new legislation to include under that bill, a ban on discrimination because of age.

And we hope to battle this issue in New York through a favorable ruling resulting from these hearings.

American, Northwest, and Trans-World have offered no valid basis for imposing the arbitrary termination of flight careers of airline stewardesses. Their reasons are flimsy and specious.

Consider, if you will, these points. This age limitation is not traditional, it is not a "bona fide qualification," it is not required by law or regulation and it is not universal.

It might be easy to assume that the airlines have always had a policy of retiring stewardesses at an early age since you generally don't see older flight attendants aboard planes. But that is because most of these attractive young ladies fall in love, marry and leave their jobs and because the airline industry, itself, is a relatively new industry. But the fact that most stewardesses do not want to continue flying should not allow the airlines to exclude, or arbitrarily retire, those who do want to make a lifelong career of service to air passengers.

American instituted its retirement age of 32 in 1953, Northwest in 1956 and Trans-World's age limitation has been in effect only since 1957. Thus, this is a policy instituted long after the companies themselves came into existence.

Nor is this discrimination universal. Of all the major trunkline carriers in the United States—with which we have dealings, only these three have instituted this policy. Pan American—one of the world's oldest and largest air carriers, and others, have never found it necessary or desirable to limit the age of their flight attendants.

As to the requirements of the job: Federal agencies which govern airline operations—the Federal Aviation Agency and the Civil Aeronautics Board—have never ruled or even indicated any feeling, that there should be an age limitation for flight attendants. The Federal Aviation Agency is the body which sets operating and safety standards for commercial aviation—and their standards are high and encompassing. If the FAA had ever had any feeling that a woman suddenly is unable to carry out her duties as a stewardess when she reaches a certain age, the agency would certainly have had no hesitation to suggest such a rule.



The fact that no such rule has been proposed is a strong indication that none is needed.

So much, then, for the question of "bona fide occupational qualifications."

I would like to be able to report some progress today toward solving this form of discrimination, but there is very little progress to report. We are hopeful that the New York State Human Rights Commission might be able to move it off center and that New York can take leadership in this field as it has in so many other areas.

There is a possibility of some legislative action on this matter when Congress reconvenes next month. Several proposals have been forwarded, and more are expected, to ban discrimination on account of age by including it under title VII of the Civil Rights Act of 1964.

Hearings on discrimination because of age were held last year by a special subcommittee of the House Committee on Education and Labor. We are hopeful that the proper legislation will evolve from those hearings.

Miss Boland testified before that committee, as she did here today.

Her testimony and the reaction of the subcommittee received a considerable amount of attention from the press and television—some of it serious, some of it with tongue in cheek.

We cannot blame the press for being attracted to a story concerning charges of flying bunny clubs and the sexiness of a 32-year-old airline hostess. But, we must not overlook the serious side of this problem—the fact that there is a serious problem of discrimination because of age.

During that congressional hearing, Representative William Hathaway, of Maine, made reference to the famous Playboy Clubs, when he said—not in jest—that "the airlines must learn that they are not operating flying bunny clubs, but just another form of transportation."

As Miss Boland pointed out, the air carriers that are practicing discrimination by age hold contracts with the Federal Government, and are carriers of the U.S. mail. Thus, their discrimination places them in violation of Executive Order No. 11141, issued by President Johnson, banning such discrimination.

However, when the congressional committee called before it representatives of the Post Office Department, the Federal Aviation Agency, and the Defense Department (which has Military Air Transport Service contracts with the airlines) the agency representatives said there is little or nothing they can do to end this discrimination. We don't believe this is the case.

The Transport Workers Union has been in contact with the White House on this issue, also. The director of our air transport division, Mr. Horst, told the White House of the position taken in the hearings by the Federal agencies, and suggested that provisions be made by the executive branch to enforce the terms of the Presidential directive banning discrimination by age.

Mr. Horst was informed by Lee C. White, Special Counsel to the President, that the administration presently has under consideration various means to insure that artificial age barriers to employment are eliminated. But, Mr. White quoted the Secretary of Labor in a report to Congress which said: "The possibility of new nonstatutory means of dealing with such arbitrary discrimination has been explored. That area is barren." In other words, indications before the congressional hearing and indications from the White House, are, that new legislation will be necessary to solve the problem on a nationwide basis.

But, here in New York State, this commission already has the tools at its disposal to make a beginning toward ending this discrimination because of age. All that is needed is a favorable ruling in the case now pending before this body—a finding that the forced termination of stewardesses employment at age 32 or 35 is discrimination in violation of New York State law.

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STATEMENT OF COLLEEN BOLAND, PRESIDENT, AIR LINE STEWARDESSES & STEWARDESSES ASSOCIATION LOCAL 550, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, BEFORE THE NEW YORK STATE COMMISSION FOR HUMAN RIGHTS

I am Colleen Boland, president of Local 550 for the Transport Workers Union of America, AFL-CIO, known as the Air Line Stewards & Stewardesses Association. With me are representatives of our international, our national officers, and other interested representatives and members. Our local represents at the present time over 7,000 flight attendants flying domestic and international routes for 8 American air carriers. In other locals of TWU, there are an additional



2,000 to 3,000 flight attendants, also comprised of men and women. Of these, about 3,000 are residing in the State of New York.

In about 1935 the airlines first began hiring nurses to accompany their passengers on flights. The airline industry was new and it was very difficult to convince the traveling public that flying was a safe way to travel. The publicity convinced the traveling public—if young girls were not afraid it must be safe enough—and the airline industry grew.

While the great majority of flight attendants were women, many airlines first employed men probably because the duties of flight attendants included baggage handling as well as in-flight duties. As the airlines grew, more and more women were hired.

The majority of female attendants voluntarily leave this profession while in their twenties or early thirties, but those who do desire to continue are prohibited from doing so if their employer is Southern, Northwest, Trans World, or American Airlines. They are required to terminate and being earning a living at some other job without benefit of retraining or other assistance, and are required to do so because of a condition which they are unable to alter—their age. No other factors are considered—personal performance, ability, work record, efficiency, seniority. These items which have been primary factors in determining their continued employment through 10 to 12 years of previous employment suddenly have no merit. The one and only factor which is now considered is their chronological age. The airlines have employed men and women for this job for a period of 30 years.

Some of the present employees have continually performed the duties of this job for almost that entire period and many for from 20 to 28 years. They continue to satisfactorily perform the function of the job in all respects today. They were employed prior to any company retirement policy being in effect. When such policies were adopted by the individual companies, they included these stewards and stewardesses and set the normal retirement age at age 65. These policies remain in effect today and many of these people are members of that retirement plan and have been over a period of many years. Any benefits due them from these plans are payable upon reaching age 65. Some were required to become members of the retirement plan as a condition of employment.

By imposing an arbitrary age limitation, the airline management has imposed undue and unnecessary hardship on the employees involved. They have used the services and skills of these people and then terminated those services without thought to the future welfare of the individual involved in any way, either in preparation for promotion within that company or in retraining for another job, or in retirement or severance benefits. Any consideration whatsoever in these areas has come about only through the efforts of the union.

About a year ago we filed with this Commission a complaint charging discrimination because of age. We sought relief from this body because of the language of our contract with American Airlines which specifically provides that the union may test the validity of the arbitrary age limitation imposed upon American stewardesses (see exhibit No. 1, p. 4).

Subsequent to this complaint, another complaint was filed with this Commission by another member of our organization who was denied the right to continue her employment with Trans World Airlines because of her age.

During this past year I have submitted to you many exhibits, summaries and other documents which might be of value in your investigation. Many of these are attached to my statement as various designated exhibits. I would request that the original complaints of Pat Arnold and Jan Lamer contained in your files also be included in this record.

The definition of a flight attendant as outlined in our agreements with the various airlines, I believe, is the best indication of the requirements of the job. Basically, they say that the flight attendant, whether they be called purser, stewards, stewardesses, hostess, or what have you, define the duties as consisting of the performing or assisting in the performance of en route cabin service, or related ground service in a resourceful and gracious manner, and applying these services for the welfare, comfort, enjoyment, and safety and passengers (see exhibits Nos. 2, 3, 4, and 5). If you will study the various definitions you will see that there is no basic difference for men or women.

The actual duties are more elaborately defined in the company manuals and define the duties to consist of preparing Government required forms, company



required reports, forms, and inventories. They include serving and preparing meals, preparing and serving drinks, assisting ill or disabled passengers, and assuring that all passengers comply with safety regulations, such as having seat belts fastened, cigarettes extinguished, and being familiar with emergency equipment carried on board the airplane. In a time of emergency, they are required to use the evacuation equipment and to evacuate the passengers in the event of emergency. They may be required to serve for up to 18 hours at a time and may work nights rather than days, including holidays and weekends. They are not given regular meal periods and meals are not necessarily provided while they are on duty. They are under certain circumstances subject to call on days scheduled to be free of duty.

In order to qualify for the job of stewardess or flight attendant each applicant must pass written and oral examinations and physicals which are set by the company. Each accepted applicant must pass a training course which includes checkout of emergency equipment and the evacuation of an aircraft in a simulated emergency. Most of the procedures and rules governing these are set by the Federal Aviation Agency. We, as the representatives of flight attendants, have long sought even more stringent rules and training. We have asked that they license flight attendants as they do other flight crew members, which would make federally regulated physicals a mandatory requirement for the continued performance of the job.

We believe that the physical performance and agility of the flight attendant is necessary if the safety of the traveling public is to be safeguarded. The seniority rosters I have submitted show nearly 500 flight attendants who have performed the duties of this job well past the age of 32 or 35. Many of these same people have been involved at one time or other in serious emergencies and have performed the duties necessary to evacuate to safety the passengers in their care.

Most airlines require applicants to be between the ages of 20 or 21 and 27. They require them to be single, without dependents. They must be subject to call at any time, day or night. They must be willing to be away from home anywhere from 2 to 10 days at a time. Their private lives are not allowed to interfere with their job. They are required to undergo proficiency checks by their employers. They must perform their duties at maximum speed and efficiency, and are constantly under pressure to complete those duties at an unknown deadline time; that is, whenever the seat belt sign goes on.

Aside from minor deviations, such as senior flight attendant or stewardess to purser, which carries additional monetary compensation for additional responsibility, there is no avenue of promotion based on length of service or performance. Promotion to stewardess supervisor is quite common but is chosen strictly on the basis of management preference with no consideration given to length of service.

There is no question in my mind that the job is a physically demanding one but not beyond that of normal endurance. There is no unusual lifting or moments of extreme physical exertion except possibly in the event of an accident or like emergency. It is demanding only to the point of requiring speed, efficiency, and duty for long hours at a time without being broken by rest or relaxation periods and without being provided the opportunity to have regular nourishment.

To my knowledge, most of the airlines require periodical physical examinations and these examinations are as extensive as the employer deems advisable. A history of heart problems or weight gains have terminated employment even though it has been acknowledged that these problems had not adversely affected the job performance of the individual, but on the basis that they might impair future performance. This, then, is the job of which we speak, a job which does not, in our opinion, require or justify a maximum age requirement other than that which has been established for all other employees.

We represent the flight attendants on Pacific, Caribbean Air, Northeast, and Eastern Airlines. These four companies do not have any age restriction in effect and have not attempted to impose an age restriction, either by policy or through negotiations. I have attached the seniority roster of Eastern and Northeast (Exhibit Nos. 6 and 7) which reflect the number of stewards and stewardesses who have chosen to continue to serve as flight attendants when no age restriction influenced their decision. You will note that on Northeast there are 18 who were hired prior to 1957. Assuming that they were 21, the minimum age when hired, there is one over 40, five over 35, and seven over 32 years of age. If



their job performance or physical ability were subject to question, their employer would not hesitate to terminate their services.

If you will note the Eastern roster you will find that we have designated those who are men and those who are women. Of those hired prior to 1957, 186 are men and 162 are women. There are a total of 348 who have chosen to continue as flight attendants when no age restriction influenced their decision. Again you will find, assuming a hiring age of 21, that there are 22 over 40, 136 over 35, and 219 over 32. I would like to point out, however, that many of these may have been 23 or 24 when hired, making their present age even higher.

I have not included the seniority roster for Pacific and Caribair, since there are no stewardesses on these airlines who were hired prior to 1957. Part of the reason for this is that Pacific formerly hired men, who were subsequently replaced by women.

Pan American and Eastern base over 1,000 flight attendants in the State of New York. Both employ men and women whose job category and conditions of employment and salaries are identical. Both men and women have a normal retirement age of 65. Both allow men and women to marry.

American Airlines adopted a policy effective December 1, 1953, that after that time they would terminate a stewardess because of reaching the age of 32. (Exhibit No. 8.) We find that 70 stewardesses remain in the employ of American Airlines who were not affected by this age rule, 19 of which are supervisors. At least 1 of these must be over 50, 2 over 45 and 41 over 35. (Exhibit No. 9.)

It is interesting to note that 10 stewardesses who were hired in 1953 continue to fly as stewardesses and 3 more as supervisors. In comparing this with 1954, only 1 remains, presumably because she has not yet reached her birthdate. There are 26 who were hired in 1955 who will soon be affected.

We first became a part of the Transport Workers Union in 1961 and shortly after that entered into negotiations with American for a new contract. The age provision was amended at that time providing for other employment offers or severance pay. (Exhibit No. 10.) We recently again modified this agreement, improving the previous allowances and providing for a return to stewardess duties in the event of legislation to that effect. (See Exhibit No. 11.) During the course of negotiations we were provided with the breakdown of what had happened to those who were required to exercise an option under the terms of the memorandum. As of June 1965, 48 had been affected, 8 resigned, 3 of whom received severance; 20 flew the maximum time allowed and left without benefit of severance or other jobs. I presume that the other 20 did take other jobs with the company. An additional 29 have been affected since June, but I do not know what choices were made. I believe, however, that these few figures prove that the majority would prefer to continue to fly if given the opportunity.

Northwest also requires their stewardesses to terminate upon reaching age 32. Just exactly when their policy went into effect, I am not exactly certain, but it was about the fall of 1956. There is no written policy that I know of except the preemployment form each stewardess is required to sign. (Exhibit No. 12.) When the first stewardess was terminated under this policy we processed the case through arbitration (Exhibit No. 13) but the arbitrator upheld the company policy. Since that time the stewardesses affected have been offered employment in reservations at the time affected. Northwest also employs men as pursers and flight service attendants. They are not covered under the age policy.

There are presently 89 flight attendants employed by Northwest who were hired prior to this age ruling. Of them 51 are men, 38 are women. 34 of these were employed prior to 1950 which means these 34 must be over 35 and several of them well over 40. (Exhibit No. 14.)

Trans World Airlines also employs men and women. In 1955 they proposed to the union to incorporate a mandatory age limit for hostesses. (Exhibit No. 15.) Failing to reach any agreement on the matter, they adopted a policy of terminating the hostesses hired after January 1957 when they reached age 35. (Exhibit No. 16.) Just prior to this, they did for the first time allow the hostesses to be married. (Exhibit No. 16.) Because of being hired or rehired at an age somewhat above 21, four TWA hostesses have been severed under this rule. There are, however, 211 hostesses who were hired prior to this ruling (Exhibit No. 17), some of whom are well over 40 and a few over 50. There are some 77 pursers also flying for TWA who are not affected by the ruling and at least



1 of these retired under the company retirement plan at age 60. (Exhibit No. 18.) There are several others flying at present who are well past 50. There are over 50 hostesses who were hired in 1957 still flying for TWA and an additional 40 who were hired the following year. During the last contract negotiations, agreement was reached to improve the conditions existing for the four hostesses affected during the term of this contract. As well as providing an offer of other employment, the agreement provides for continuance of their flight seniority rights. (Exhibit No. 19.) Obviously the continuance of seniority rights will have meaning and benefit only if the mandatory age ruling is abolished.

Until 1963 the stewardesses who flew for Southern Airways were unorganized. We were certified as their bargaining agent in July of that year and began negotiations for their first contract. One of the policies that Southern management had in effect and was adopted about 1959 stated that all stewardesses, regardless of date of hire, would be terminated at age 35. (Exhibit No. 20.) Since this applied retroactively there are, of course, no stewardesses presently employed who are over 35. There were two who were terminated under this ruling. During our negotiations the company did agree that if legislation were adopted the rule would be rescinded. (See Exhibit No. 21.) None of Southern stewardesses will be affected in 1966.

I would like you to consider here the drastic change created in the seniority rosters because of the application of this rule, coupled with the fact that American employed only women.

During the years 1935 to 1957, Eastern, Trans World, and American were airlines of comparative size and employed about the same number of flight attendants. There are 348 flight attendants who were hired by Eastern during this period who continue to fly and 280 on TWA versus only 51 on American. We will find that the TWA roster during this period reflects comparatively with Eastern. Obviously the experience and seniority of the group as a whole has been almost completely eliminated on American.

Union representation is also seriously affected, for in this group, as in any other, leadership is most often found in those who have gained experience and seniority and who tend to make a career of the job itself. If no new member of this group is ever allowed to remain beyond 32 or 35 years of age then, obviously, they cannot be expected to assume leadership of the group except on a very temporary basis.

Considering the fact that the union had first really asserted itself about 1951, I cannot help but feel that this factor was considered when the airlines first introduced the mandatory age ruling.

It is necessary, I believe, to discuss the possibility of a bona fide occupational qualification. A bona fide qualification, in my opinion, would be some reason that the job could not be performed by a member of a particular sex, or that someone too young or too old could not physically perform the duties of that particular job.

The job of flight attendant is not limited to men or women. Past history has proven that. Some managements may prefer men to women and some prefer women to men, but in any event both men and women have performed the job and have contributed to the benefit of the company and the industry as well as the traveling public. There is logic to a minimum age of 21 since, as I have previously stated, these employees are required to travel extensively, to assume a great deal of responsibility, and are also required to serve liquor as a part of their duties.

There are, I am sure, many people who could not perform this job because of physical defects such as hearing, eyesight, or lack of agility; however, these handicaps are covered in the company required physicals. Perhaps 65 does not seem a logical age when you consider the public image of an airline stewardess. The fact of the matter is that no stewardess has ever reached that age. But there are both men and women in this profession who are exceeding 50 and who continue to meet all the qualifications of the job.

I believe it is important to point out again that the retirement policies of the various airlines who encourage and, in some cases, require participation by the flight attendants, continue to carry a normal retirement age of 65. This normal retirement age continued to be in effect even after the same airlines imposed



the 32- and 35-year-age limits for stewardesses and, in fact, continued even after the retirement age was changed to 60 for pilots. In fact the TWA pursers retirement plan was amended to age 60 but the hostesses remained at 65.

The equal opportunities commission has recently issued guidelines on sex discrimination provisions of title VII of the Civil Rights Act of 1964. In their release of November 22 they state "The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities \* \* \*."

Each stewardess who is affected by the age ruling presently in effect has met and passed the standards and duties of the job for a period of at least 10 to 12 years. There is no valid reason to justify the position that at the age of 32 or 35 she has lost her ability to continue in this—her chosen profession. I do not believe that any arbitrary age can be established which would be reasonable or logical. There is only one criterion that can justifiably be used to measure her performance and that would be to judge the employee on an individual basis, on the basis of her performance of the job itself and her ability to pass the periodic physical examinations and physical emergency evacuation procedures as well as proficiency in the day-to-day performance of her duties.

On behalf of the hundreds of American women who chose to serve the American public as flight stewardesses, we urge that this commission find that unjustified discrimination because of age exists in this field and that there is no basis to support an exemption based on a bona fide occupational qualification.

We urge and request that this commission take the appropriate action necessary to discontinue this discriminatory practice by the employers under its jurisdiction, and further, we urge that this commission grant necessary and proper relief to all stewardesses who have been affected by this practice, thereby allowing them to return to their chosen vocation.

(The following report and decision were submitted by Mr. Conway:)

#### REPORT OF FINDINGS AFTER INVESTIGATION

##### IN THE MATTER OF AIRLINES INDUSTRY—MAXIMUM AGE REQUIREMENTS (STEWARDESSES)

On December 17, 1964, the commission authorized an informal investigation on a statewide basis into the age ceilings for employment of airline stewardesses. I was designated by the chairman of the commission as the investigating commissioner with respect thereto.

The plan of the investigation has been, generally, to determine the policy and practice in this area of age ceilings for stewardesses on an industrywide and statewide basis by affording to the airlines, individually and collectively, and to the stewardesses, individually and collectively, opportunities to present facts and arguments in support of their positions; and, finally, to report as to whether granting of an industrywide bona fide occupational qualification is warranted under the New York State law against discrimination.

This report is confined to age ceilings for continued employment as stewardess; a separate report will be made as to age ceilings for initial hire of stewardesses.

While the commission has before it individual verified complaints by stewardesses and applicants for stewardess positions charging specific airlines with discrimination based on age, the merits of these complaint cases are not the subject of this inquiry; they will be dealt with separately, upon the facts and the law pertaining to each complaint.

This investigation, as conducted by me with the assistance of the commission's employment division, consisted of three main phases:

*Phase 1.*—A field investigation, conducted during the first half of 1965, which included interviews by commission staff with key personnel representatives of three airline companies (American Airlines, Trans World Airlines, and United Air Lines) and with officers of the two major stewardess unions (Air Line Stewards & Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO, and Air Line Pilots Association, Steward & Stewardess Division, AFL-CIO).



*Phase 2.*—A mail questionnaire, sent in July 1965 to the presidents of the 17 other airline companies flying into the State of New York, to which all but 1 responded. (Attachment A includes copies of the questionnaire and covering letter, and a list of the airlines to which these were sent.)

*Phase 3.*—An informational hearing, held on December 7, 1965, at the commission's offices at 270 Broadway, New York City, to which were invited each of the 20 airlines flying into the State of New York, the Air Transport Association, and the 2 major stewardess unions.

At the informational hearing, representatives of the two unions testified orally, submitted written evidence, and responded to the commission's question—all relating to the issues raised by the specification of age ceilings.

Each union appeared by counsel: Herbert A. Levy, Esq. (of Cohen & Weiss of New York City), on behalf of the Air Line Pilots Association, Steward & Stewardess Division, AFL-CIO; and Asher W. Schwartz, Esq. (of O'Donnell & Schwartz of New York City), on behalf of the Air Line Stewards & Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO. The union representatives testifying included the following: Colleen Boland, president, Air Line Stewards & Stewardesses Association, Local 550; Francis A. O'Connell, legislative director, Transport Workers Union; Deloros Kidder, vice president, Air Line Pilots Association, Steward & Stewardess Division; and Marjorie Cooper, regional vice president, Air Line Pilots Association, Steward & Stewardess Division.

None of the airlines accepted the invitation to present testimony or argument on the merits through their own executive or staff personnel. Jesse Freidin, Esq. (of Poletti, Freidin, Prashker, Feldman & Gartner of New York City) noted his appearance on behalf of 13 airlines and the Personnel Relations Conference of the Air Transport Association.

Counsel for the airlines challenged the commission's jurisdiction on various grounds; his request for an adjournment to December 15, 1965, in order to afford the airlines a further opportunity to decide whether to appear and submit evidence or argument on the merits, was granted. On December 10, Mr. Freidin informed me that he would not avail himself of the opportunity to appear before the commission on December 15th but would instead seek to challenge the commission's jurisdiction in court; and he requested a reasonable period of time within which to prepare to do so, which was granted. It is noted that on December 7 Mr. Freidin, stating he had full authority to speak for the airlines in this regard, rejected my suggestion that the airlines which fly into the State of New York and have a maximum age policy for airline stewardesses refrain from dismissing any person from the position of stewardess on the basis of age pending the resolution of this problem.

To date, no action in court has been taken by Mr. Freidin; and it is my opinion that no further extension of time is warranted. Accordingly, and based on the facts and arguments before me, I am herewith issuing my report and recommendations.

\* \* \* \* \*

The three phases of the investigation combined to yield the following background information and basic facts relating to the use of age ceilings by the airlines for continued employment of stewardesses:

*(1) Background information*

(a) On the airlines, the job titles of "stewardess" and "hostess" are interchangeable; those of "flight service attendant" and "cabin attendant" cover both stewards and stewardesses; those of "purser" and "senior flight attendant" cover both males and females in a higher classification.

(b) The 38 U.S. airline companies currently employ some 15,000 stewardesses, and this number is expected to increase during the next few years. There is a high turnover rate in the stewardess classification; the average length of service is about 2 years; each year over 5,000 new stewardesses are hired from an estimated 100,000 applicants. Despite this high turnover rate, there are currently in active flight service several hundred stewardesses who have been flying between 10 and 30 years and whose ages range between 30 to over 50 years.



(c) Of the 38 U.S. airlines, 20 fly into the State of New York and 9 of these have stewardess bases in the State of New York. Stewardesses based in New York State start and end their flight duties at airports within the State (for example, at John F. Kennedy International and LaGuardia airports). Attachment B identifies these airlines.

(d) Pursuant to regulations of the Federal Aviation Agency (FAA), airline stewardesses are required to pass, at least annually, various examinations relating to their continued ability to perform their duties in flight service; these include examinations for emergency evacuation procedures, familiarity with the airplanes in service, and personal health.

*(2) Age ceiling for continued employment as stewardess*

(a) The first airline stewardess was hired in 1935. Until the 1950's, no airline had set an age ceiling for continued employment as stewardess. A few airlines introduced such an age ceiling in the 1950's—setting it at age 32 or 35; others introduced it as recently as 1964.

With but few exceptions, the policy has been instituted unilaterally by the company and not as part of its contract with the union. With but two exceptions, the policy when instituted was not made retroactive, those employed prior thereto being permitted to continue flying until the employer's mandatory retirement age (generally 60 or 65).

The first application of a special maximum age ceiling (age 32) to produce discharge of a stewardess occurred in 1963; since then, others have been discharged or removed from flight duty because they reached the special maximum age ceiling (age 32 or 35) for continued employment as stewardess.

(b) The setting of an age ceiling for continued employment as stewardess is not a "general industry practice." Of the 38 airlines in the United States, 24 do not have this policy.

Pan American World Airways, the major U.S. international airline, does not have this policy. Of the group of domestic airlines frequently referred to as the "Big Four"—namely, American Airlines, Eastern Airlines, Trans World Airlines, and United Airlines—only 2 (American Airlines and Trans World Airlines) had this policy at the time of the informational hearing. (The Commission is more recently in receipt of information that United Airlines is now seeking to establish an age ceiling for continued employment of its new stewardesses.)

In 1963-64, Airlift International and Central Airlines, both of which had had such an age policy, discontinued it.

Available information on foreign airlines is that on seven of them the age ceilings generally fall in the 40's and 50's, up to a maximum age of 67 in Norway.

(c) No similar age ceiling for continued employment for stewards exists on any airline. According to the information on hand, the job duties of stewards and stewardesses are the same.

#### SUMMARY

(1) None of the evidence on hand gives warrant for the establishment of an industrywide policy setting a special arbitrary chronological age for continued employment of airline stewardesses—whether age 32 or 35, or any age below that of the standard mandatory retirement age for company employees.

(2) The evidence on hand does support the opposite position; namely, that termination as an airline stewardess prior to the employer's standard mandatory retirement age should be predicated solely on the individual stewardess' continued ability to perform the duties of the position at the level of performance required by each airline company for its stewardesses.

(3) On the basis of the evidence before me as investigating commissioner, I do not find that, under the New York State law against discrimination, there is support for a claim that a bona fide occupational qualification based on age for continued employment properly applies to the airline stewardess position on an industrywide basis.

J. EDWARD CONWAY,  
*Investigating Commissioner.*



*Reported age ceilings for continued employment as airline stewardess on the 38 airlines listed in the World Aviation Directory as A-1 or U.S. Air Carriers Certificated by the Civil Aeronautics Board*

## NO AGE CEILING

| Airline                        | Number of stewardesses |
|--------------------------------|------------------------|
| Group A:                       |                        |
| 1. Airlift International ..... | 48                     |
| 2. Eastern .....               | 1,773                  |
| 3. N.Y. Airways .....          | 14                     |
| 4. Northeast .....             | 171                    |
| 5. Pan American .....          | 2,085                  |
| 6. United .....                | 2,352                  |
| Group B: <sup>2</sup>          |                        |
| 7. Delta .....                 | (3)                    |
| 8. Flying Tiger .....          | 62                     |
| 9. Lake Central .....          | 72                     |
| 10. National .....             | 423                    |
| 11. Pan American Grace .....   | (3)                    |
| 12. Seaboard .....             | 60                     |
| 13. Trans Caribbean .....      | (3)                    |
| Group C: <sup>4</sup>          |                        |
| 14. Alaska .....               | 21                     |
| 15. Aloha .....                | 22                     |
| 16. Caribbean Atlantic .....   | 50                     |
| 17. Central .....              | 68                     |
| 18. Hawaiian .....             | 33                     |
| 19. Mackey .....               | 19                     |
| 20. North Central .....        | 125                    |
| 21. Pacific .....              | 50                     |
| 22. Pacific Northern .....     | 42                     |
| 23. Piedmont .....             | 96                     |
| 24. West Coast .....           | 62                     |

## WITH AGE CEILING

| Airline               | Number of stewardesses | Age ceiling (years) |
|-----------------------|------------------------|---------------------|
| Group A: <sup>1</sup> |                        |                     |
| 1. American .....     | 1,800                  | 32                  |
| 2. Mohawk .....       | 141                    | 32                  |
| 3. TWA .....          | 2,200                  | 35                  |
| Group B: <sup>2</sup> |                        |                     |
| 4. Allegheny .....    | 116                    | 32                  |
| 5. Braniff .....      | 342                    | 32                  |
| 6. Northwest .....    | 800                    | 32                  |
| 7. Slick .....        | 37                     | 32                  |
| Group C: <sup>4</sup> |                        |                     |
| 8. Bonanza .....      | 52                     | 32                  |
| 9. Continental .....  | 320                    | 32                  |
| 10. Frontier .....    | 91                     | 32                  |
| 11. Ozark .....       | 112                    | 32                  |
| 12. Southern .....    | 80                     | 35                  |
| 13. Trans Texas ..... | 80                     | 35                  |
| 14. Western .....     | 393                    | 32                  |

<sup>1</sup> Airlines with stewardess bases in New York State.

<sup>2</sup> Airlines flying into New York State, no stewardess bases in New York State.

<sup>3</sup> Information not available.

<sup>4</sup> Other airlines.

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION—COMMISSION DECISION

Case No. 5-10-2153

*Evenson, Judith W. (Mrs.) v. Northwest Airlines, Inc., St. Paul, Minn.*

Date of filing: October 25, 1965

Date charge served on respondent: November 16, 1965

## SUMMARY OF CHARGE

Complainant alleges discrimination based on sex, in that in line with a company agreement following completion of training, she was forced to resign upon her marriage. Male employees are not required to sign such agreements, nor are they terminated on marriage.



## SUMMARY OF INVESTIGATION

1. The company does require female employees (stewardesses) to sign an agreement concerning termination upon marriage.
2. Male employees (flight attendants) are not required to sign such an agreement, nor are they terminated on marriage.
3. The contract defines the jobs of stewardesses, flight service attendants and pursers and shows that the duties of stewardesses and flight attendants are identical.
4. The duties of a purser differ only in that he is detailed to foreign flying, and is charged, in addition, with supervisory, recordkeeping, and public relations responsibilities.
5. Northwest Airlines employs only females as stewardesses, males as flight service attendants, and males as pursers.

## COMMISSIONER DECISION

1. I find reasonable cause to believe that the complainant was discriminated against because of her sex in that:

- (a) The job of stewardess (female) is exactly similar to that of flight attendant.
  - (b) Flight attendants (male) are not required to terminate their employment upon marriage.
  - (c) Flight attendants (female) termed stewardesses, are required to terminate employment upon marriage.
2. I further find reasonable cause to believe that the job of purser has no elements that would warrant the granting of an exemption to title VII protections based on the existence of a bona fide occupational qualification.

(S) Aileen C. Hernandez,  
AILEEN C. HERNANDEZ,  
*Commissioner.*

Date: December 16, 1965.

ASSISTANT SECRETARY OF DEFENSE,  
*Washington, D.C., December 28, 1965.*

Mr. JAMES HARRISON,  
*Director, Select Subcommittee on Labor,*  
*Washington, D.C.*

DEAR Mr. HARRISON: This is to confirm our telephone conversation of December 20, 1965.

Pursuant to the referral of the Air Force as to whether all airline companies are complying with Executive Order 11141, my office on December 23, 1965, requested advice from the Department of Labor as to whether the maximum age restrictions for stewardesses is based on a bona fide occupational qualification as set forth in the Executive order. Their response, with our comments, will be forwarded to the Air Force as soon as received.

This office will be glad to be of any assistance to you in the future.

Sincerely,

JACK MOSKOWITZ,  
*Deputy Assistant Secretary,*  
*(Civil Rights and Industrial Relations).*

DEPARTMENT OF THE AIR FORCE,  
*Washington, February 10, 1966.*

HON. JAMES G. O'HARA,  
*House of Representatives.*

DEAR Mr. O'HARA: Reference is made to my letter dated December 23, 1965, concerning discrimination complaints against Air Force airline contractors.

The Department of Labor has advised the Department of Defense that the current employment policies of certain airlines with respect to the maximum age limitation for continued employment as an airline hostess do not appear



to constitute a bona fide occupational qualification. Accordingly, action has been initiated to cause certain airlines to review their employment policies in the light of this determination. You will be advised of the results of this action.

I am happy to be of assistance in this matter and trust that this information may be useful to you.

Sincerely,

AARON J. RACUSIN,  
*Deputy for Procurement Management.*

MARCH 28, 1966.

Mr. AARON J. RACUSIN,  
*Deputy for Procurement Management, Office of the Assistant Secretary, Department of the Air Force, Washington, D.C.*

DEAR MR. RACUSIN: This is in further reference to your letter of February 10, 1966. As you may know, Commissioner J. Edward Conway of the New York State Commission for Human Rights has recently issued an opinion holding that maximum age restrictions as they apply to airline stewardesses are not based on a "bona fide occupational qualification."

In view of this decision by a highly respected State authority, and in view of the advice given to you by the Department of Labor, and to which you refer in your February 10 letter, I remain most anxious to know what steps have been taken by airlines contracting with the Department of Defense to change their policies, and in the case that these policies have not been altered, I am anxious to know what further steps DOD plans to take under Executive Order 11141.

I appreciate the interest you have shown in this matter thus far, and I trust you will continue to pursue it to the end that the public policy set forth in Executive Order 11141 shall be fully implemented.

Very truly yours,

JAMES G. O'HARA,  
*Member of Congress.*

MARCH 25, 1966.

Mr. JACK MOSKOWITZ,  
*Deputy Assistant Secretary of Defense for Civil Rights and Industrial Relations, Washington, D.C.*

DEAR MR. MOSKOWITZ: In a letter to me dated February 10, Mr. Aaron J. Racusin, Deputy Assistant Secretary of the Air Force for Procurement Management, advised me that the Department of Labor had written the Defense Department to the effect that airline company practices with respect to forced retirement of stewardesses at age 32 were not based on a "bona fide occupational requirement."

I would appreciate it if you could provide me with a copy of the findings of the Labor Department to which Mr. Racusin has reference.

Very truly yours,

JAMES G. O'HARA,  
*Member of Congress.*

ASSISTANT SECRETARY OF DEFENSE,  
*Washington, D.C., March 28, 1966.*

Hon. JAMES G. O'HARA,  
*House of Representatives, Washington, D.C.*

DEAR MR. O'HARA: In response to your request of March 25, 1966, I am enclosing correspondence between Stanley Ruttenberg, Administrator, Manpower Administration, and me relative to the interpretation of the phrase "bona fide occupational qualification" as set forth in Executive Order 11141.

If I can be of any other assistance, please call me.

Very truly yours,

JACK MOSKOWITZ,  
*Deputy Assistant Secretary,  
(Civil Rights and Industrial Relations).*



DECEMBER 23, 1965.

Mr. STANLEY H. RUTTENBERG,  
*Administrator, Manpower Administration,*  
*U.S. Department of Labor, Washington, D.C.*

DEAR MR. RUTTENBERG: Advice from your Department is desired as to whether the maximum age restriction for stewardesses imposed by certain airline companies is based upon a bona fide occupational qualification as set forth in Executive Order 11141 (nondiscrimination because of age).

The stewardess age limitation policies of airline contractors have been under review by this Department. Of the 22 airline contractors originally contacted by the Department of the Air Force, the contracting agency in the Department of Defense, 10 contractors indicated that their employment policies imposed a maximum age restriction for stewardesses. These carriers were requested to provide detailed statements of their policy and procedures, and of their reasons for this requirement. A copy of the reply (in duplicate) of these carriers is attached. A summary of the carriers' position is that an age limitation is a bona fide occupational requirement in that younger girls are needed for a variety of reasons, including (a) safety (they have the agility, endurance, and strength necessary for emergencies), (b) appearance, (c) attitude, desire, and personality, and (d) less absenteeism due to better health.

I am enclosing for your information a statement made on September 2, 1965, by Miss Coleen Boland, president, Airline Stewards and Stewardesses Union Local 550, to the Select Subcommittee of the House Committee on Education and Labor and a copy of a letter dated December 13, 1965, from the Air Force to the chairman of that committee, Congressman James G. O'Hara, who has indicated a continuing interest in this problem. Also inclosed is a copy of a recent complaint from Miss Nita Baum against the age limitation policy of Northwest Airlines.

We would appreciate it if this matter could be reviewed expeditiously. My office would be willing, of course, to assist in any way possible with respect to this matter.

Sincerely yours,

(Signed) JACK MOSKOWITZ,  
*Deputy Assistant Secretary,*  
*Civil Rights and Industrial Relations.*

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U.S. DEPARTMENT OF LABOR,  
OFFICE OF THE MANPOWER ADMINISTRATOR,  
*Washington, D.C., January 13, 1966.*

HON. JACK MOSKOWITZ,  
*Deputy Assistant Secretary of Defense,*  
*Civil Rights and Industrial Relations,*  
*Washington, D.C.*

DEAR MR. MOSKOWITZ: Thank you for your letter of December 23, 1965, requesting advice concerning whether the maximum age restriction for stewardesses imposed by certain airline companies is based upon a bona fide occupational qualification as set forth in Executive Order 11141.

On the basis of a review of the correspondence and statements enclosed with your letter, such maximum age restrictions appear to be arbitrarily established, and do not constitute a bona fide occupational qualification. There may be special situations in which younger women might have advantages as a stewardess with regard to the factors summarized in your letter. However, we believe that qualifications for these selection factors are more validly determined by physical examination and other examination techniques than by setting an arbitrary age limit. It is well known that individual differences will account for wide variation in performance; conceivably, a stewardess in her middle or late thirties may meet the standards for stewardess work, whereas one many years her junior may not. The point is that chronological age, per se, is not the critical factor.

Using age as a qualifying factor simplifies their selection system for stewardess positions. The fact that some of them have not implemented their age restrictions shows their tacit recognition of the fact that the restrictions are arbitrary, to be used at their discretion. If the airline companies used valid rating and examination techniques by which the qualifications of stewardesses for continuing in their positions were determined, it is likely that those retained would be the younger women. But those not retained would know that it was because of an actual qualifying factor, not just because they happened to pass a certain chronological age point. We would then have no cases such



as that Miss Nita Baum described in her complaint against Northwest Airlines.

The material you sent for review indicated extensive exploration on the part of your department of the age restriction problem of airline stewardesses. Has there been similar exploration of the possibility of racial discrimination for stewardess positions? I would appreciate receiving any information you might have concerning such studies or inquiries.

I hope the review comments we have made will contribute to the solution of the compliance problem you presented. If I can be of further assistance, please let me know.

Sincerely,

STANLEY H. RUTTENBERG,  
*Manpower Administrator.*

DEPARTMENT OF THE AIR FORCE,  
*Washington, April 14, 1966.*

HON. JAMES G. O'HARA,  
*House of Representatives*

DEAR MR. O'HARA: I refer to your recent letter regarding the employment policies of airline contractors that impose maximum age restrictions for stewardesses.

As previously reported to you, the Department of Labor determined in mid-January of this year that these restrictions do not constitute a "bona fide occupational qualification" and appeared to be arbitrarily established. The Department of Defense (DOD) shared this view and concluded that the age limitations are violations of the public policy set forth in Executive Order 11141 and that the airline contractors involved should be advised of this position and requested to take immediate corrective action.

In view thereof, Air Force Headquarters instructed the Military Airlift Command (MAC) to appoint an appropriate senior representative to promptly contact the 10 airline carriers whose policies provide for terminating employment of stewardesses at a certain age and to secure elimination or appropriate revision so as to conform with Executive Order 11141. Headquarters MAC was also requested to submit a full report of results obtained.

To this end, letters were sent by Headquarters, MAC, to the presidents of the 10 airline contractors whose companies have or advocate a policy of age restrictions for their stewardesses. They were duly informed of the Department of Labor and DOD position that such age restrictions are contrary to the policy in Executive Order 11141. These letters are being supplemented by a series of meetings with senior executives of the airlines. Two such meetings have been held; one with Braniff International and the other with Slick Corp. The remaining contacts will take place this month.

As a result of the actions thus far, Continental Airlines has been fit to discontinue its policy of age restrictions. American Airlines and Northwest Airlines are continuing to maintain that the age restrictions for stewardesses constitute a "bona fide occupational qualification" based upon the nature of their duties. However, the Air Force is hopeful that based on Commissioner Conway's opinion and in response to MAC's actions, these airlines will see fit to abandon the age restrictions in their employment policies.

Three special cases have been revealed. First, National Airlines, while supporting the age restriction policy in principle, has not implemented such a policy and confirms that it does not intend to do so. Secondly, Pacific Northern Airlines had such a policy but abandoned it some time ago; they have been requested to confirm that this is still the case. Finally, Slick Corp., though not engaged in airlift business for the Air Force in recent months, has been requested to advise us whether stewardesses are still on its payroll. This is rather academic, however, because Airlift International is in the process of acquiring Slick Corp. and it does not have an age restriction policy.

Our MAC representative is continuing his efforts with American Airlines, Braniff International, Northwest Airlines, United Airlines, Trans World Airlines, and Trans International Airlines. You will be kept fully informed about any further progress on this subject.

I am pleased to be of service in furnishing you this report.

Sincerely,

AARON J. RACUSIN,  
*Deputy Assistant Secretary, Procurement.*



The first of the problems of older workers is the problem of age discrimination. This is a problem that has been recognized by the courts and by Congress. The Age Discrimination in Employment Act of 1967 (ADEA) was passed to protect older workers from discrimination in the workplace. The ADEA prohibits employers from discriminating against older workers in hiring, firing, promotion, and other employment practices. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The second of the problems of older workers is the problem of ageism. Ageism is a form of discrimination based on age. It is a prejudice against older people that is based on the belief that older people are less capable, less productive, and less valuable than younger people. Ageism can be found in the workplace, in the media, and in society as a whole. Ageism can lead to discrimination against older workers in the workplace and in society.

The third of the problems of older workers is the problem of age-related health problems. As people age, they are more likely to develop health problems. These health problems can make it difficult for older workers to perform their jobs. Health problems can also lead to discrimination against older workers in the workplace.

The fourth of the problems of older workers is the problem of age-related cognitive decline. As people age, they are more likely to experience cognitive decline. This decline can affect an older worker's ability to perform their job. Cognitive decline can also lead to discrimination against older workers in the workplace.

The fifth of the problems of older workers is the problem of age-related social isolation. As people age, they are more likely to experience social isolation. This isolation can lead to discrimination against older workers in the workplace and in society.

The sixth of the problems of older workers is the problem of age-related financial problems. As people age, they are more likely to experience financial problems. These financial problems can make it difficult for older workers to support themselves and their families. Financial problems can also lead to discrimination against older workers in the workplace.

The seventh of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The eighth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The ninth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The tenth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The eleventh of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The twelfth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The thirteenth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The fourteenth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The fifteenth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The sixteenth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The seventeenth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

The eighteenth of the problems of older workers is the problem of age-related discrimination in the workplace. This is a problem that has been recognized by the courts and by Congress. The ADEA was passed to protect older workers from discrimination in the workplace. However, the ADEA does not protect older workers from discrimination in the form of harassment or from discrimination based on age in the form of pay or benefits.

