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RETIREMENT CREDIT FOR SERVICE WITH THE
STATE OF NORTH CAROLINA

GOVERNMENT

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HEARING
BEFORE THE
COMMITTEE ON RETIREMENT, INSURANCE,
AND HEALTH BENEFITS
OF THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 1783

A BILL TO GRANT CREDIT FOR PURPOSES OF THE CIVIL SERVICE RETIREMENT ACT FOR SERVICE PERFORMED BY FEDERAL EMPLOYEES UNDER A COOPERATIVE AGREEMENT BETWEEN THE FEDERAL GOVERNMENT AND THE STATE OF NORTH CAROLINA WITH RESPECT TO THE ADMINISTRATION OF THE FAIR LABOR STANDARDS ACT OF 1938 IN SUCH STATE, AND FOR OTHER PURPOSES

APRIL 26, 1966

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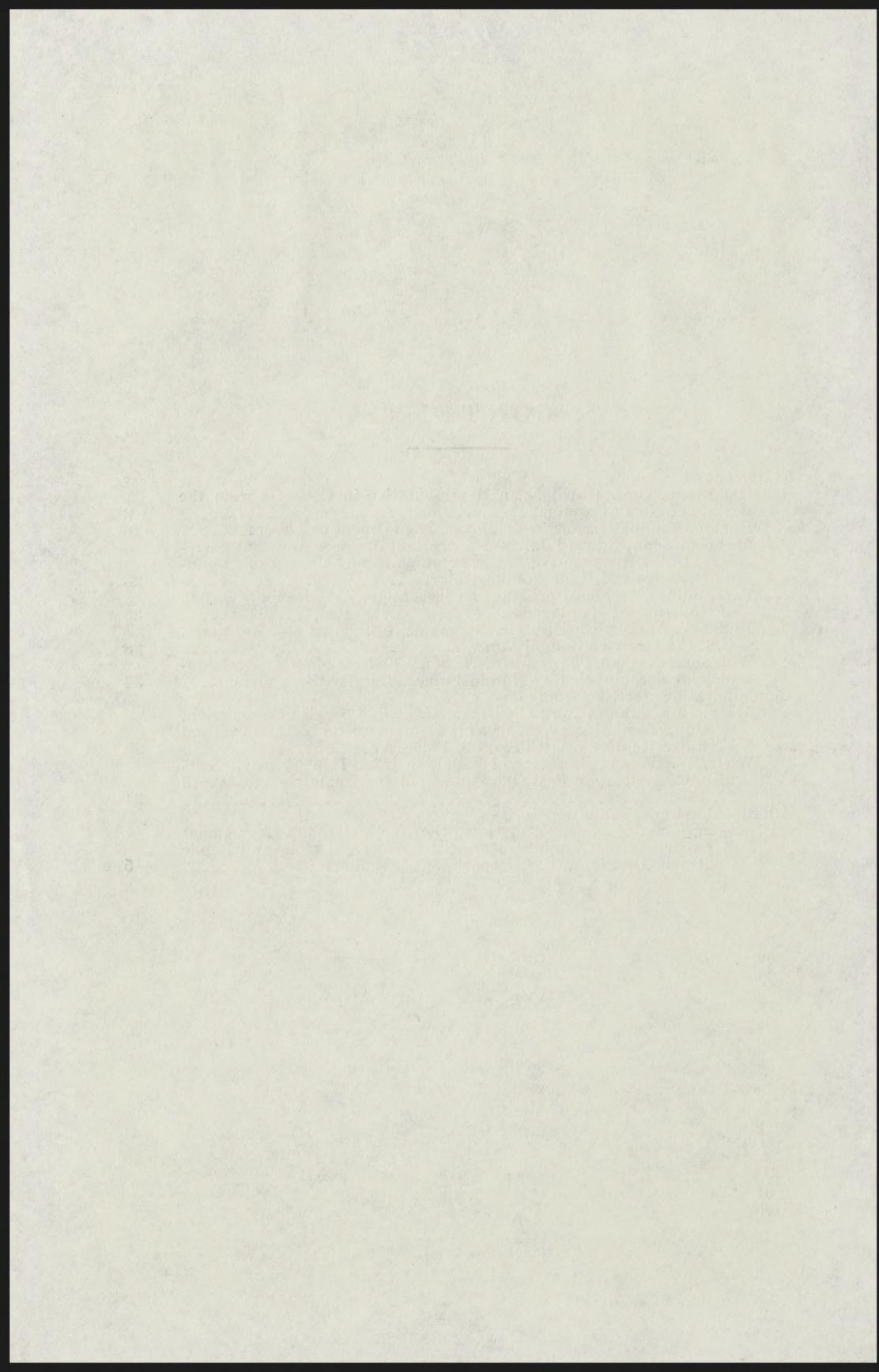
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RETIREMENT CREDIT FOR SERVICE WITH THE STATE OF NORTH CAROLINA

TUESDAY, APRIL 26, 1966

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

The subcommittee met at 10:15 a.m., in room 219, Cannon House Office Building, Hon. Dominick V. Daniels (chairman of the subcommittee) presiding.

(The bill, H.R. 1783, follows:)

[H. R. 1783, 89th Cong., 1st sess.]

A BILL To grant credit for purposes of the Civil Service Retirement Act for service performed by Federal employees under a cooperative agreement between the Federal Government and the State of North Carolina with respect to the administration of the Fair Labor Standards Act of 1938 in such State, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Civil Service Retirement Act, as amended (5 U.S.C. 2253), is amended by adding at the end thereof the following new subsection:

“(k) Subject to the provisions of sections 4(c) and 9(f) of this Act, an employee shall be allowed credit for periods of service performed by him as an employee of the State of North Carolina under a cooperative agreement between the Government and such State for the administration of the Fair Labor Standards Act of 1938 in such State. The Secretary of Labor is authorized and directed to prescribe and issue such regulations as may be necessary to effect the application and operation of this subsection with respect to such employee. The Commission is authorized and directed to accept the certification of the Secretary of Labor or his designee with respect to service described in this subsection performed by such employee. The Department of Labor shall pay, as an agency contribution, into the fund, in accordance with procedures prescribed under section 4(a) of this Act, for each employee who performed such service, an amount equal to the aggregate amount which such employee would have been required to contribute for retirement purposes if he had been subject to this Act during such service.”

SEC. 2. The provisions under the heading “Civil Service Retirement and Disability Fund” in title I of the Independent Offices Appropriation Act, 1959 (72 Stat. 1064; Public Law 85-844), shall not apply with respect to benefits resulting from the enactment of this Act.

Mr. DANIELS. The Subcommittee on Retirement, Insurance, and Health Benefits will now come to order.

The subcommittee is meeting this morning to consider the bill H.R. 1783, which proposes to grant credit for purposes of the Civil Service Retirement Act for services performed under a cooperative agreement between the Federal Government and the State of North Carolina, with respect to the administration of the Fair Labor Standards Act.

Although this proposal was granted to Federal employees who rendered State service under the cooperative agreement, in effect from 1939 to 1963, its primary objective is to extend to a limited number of former State employees who transferred into Federal service upon the termination of such agreement, the same retirement status they would have had if all of their State employment had been Federal employment.

The subcommittee is pleased to have as its first witness our diligent and highly valued colleague of the House Civil Service Committee, the author of H.R. 1783, Hon. David N. Henderson, Representative from the State of North Carolina.

I might also add that he is a very highly regarded and dedicated Member of the House of Representatives, and one who contributes greatly to the deliberations of the full committee.

Mr. HENDERSON. Thank you, Mr. Chairman.

STATEMENT OF HON. DAVID N. HENDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. HENDERSON. Mr. Chairman, as a matter of procedure, I would like to ask if the Chair would permit Mrs. Pauline W. Horton, who was the Federal representative of the Wage and Hour Division of the Department of Labor assigned to North Carolina, and who worked in this program for 26 years and 10 months, to join me at the witness table, permitting me to make my statement, and then Mrs. Horton to make her statement on behalf of the employees, and then the two of us would try to answer any questions that you or the members of the committee would like to ask.

Mr. DANIELS. That is perfectly satisfactory to the committee.

Mrs. Horton, will you step forward and take a seat alongside Congressman Henderson?

Mr. HENDERSON. Mr. Chairman, I want to thank you for this opportunity to present testimony in behalf of the employees that would be covered by H.R. 1783. By way of explanation, I would like to say that in an earlier Congress I introduced a similar bill. At that time I was requested to speak for, and to represent, the entire North Carolina delegation, in that most of these employees lived in different locations throughout the State. There were only 25 employees involved at that time, and my recollection is that only 1 or 2 of them lived in my congressional district. I would like the record to show the entire North Carolina delegation has indicated to me, in correspondence that I have in my file, that they would appreciate my speaking and testifying in their behalf.

Mr. Chairman and colleagues, may I first express my appreciation to you for scheduling this hearing and considering the measure. As many of you know, I introduced an identical bill to H.R. 1783 in the 88th Congress, and no action was taken on it primarily because the administration opposed its enactment.

I feel that this measure is at least entitled to have a subcommittee hearing and subcommittee consideration, regardless of the position of the administrative agencies, and I want to thank you gentlemen for extending us this courtesy and giving my constituents from North Carolina their "day in court" so to speak.

First of all, let me say that this bill is completely unique so far as I am able to determine, because it seeks to remedy a completely

unique situation. Likewise, I would later point out our main contention is that the administration's position is not quite what they say it is.

When the Fair Labor Standards Act was first enacted, the U.S. Department of Labor, as I understand it, gave the various States a choice of having the law enforced and administered within the State by the U.S. Department of Labor, with Federal employees—or the State labor department—with State employees, under a cooperative agreement. I am informed that North Carolina is the only State which elected to administer and enforce the law with State employees under the cooperative agreement, and that it entered into such a contract with the Department of Labor on or about November 1, 1939.

At this point, Mr. Chairman, I would like to add into my statement that the big question here involved is what was the true relationship of these employees to the Federal Government? The administration's report, a copy of which I am sure you have and the staff would want inserted into the record at the proper time, addressed to the chairman of the full committee, Hon. Tom Murray, dated March 23, 1966, on page 2 says: "The employment involved is not Federal employment."

I want to take issue with that particular point. I really think that whether or not they were State employees or Federal employees is a matter for us to decide, for the particular purpose of this legislation. I believe that the employment involved was Federal employment.

I would like to point out at this time, Mr. Chairman—and if the committee wishes, I can furnish for the record or the use of the committee—the cooperative agreement which was entered into by the State of North Carolina and the Department of Labor. I would like to read from the agreement—

Mr. DANIELS. Mr. Henderson, do you have a copy or draft of the agreement in its entirety?

Mr. HENDERSON. Yes.

Mr. DANIELS. If there is no objection, I would suggest that it be made a part of the record.

Mr. HENDERSON. May I be permitted to furnish this to the committee during the course of the day, Mr. Chairman? I don't have it prepared for submission at the present time.

Mr. DANIELS. Without objection, it will be incorporated in the record immediately following your testimony.

Mr. HENDERSON. Mr. Chairman, under an appointment of personnel to engage in work under the act, it says—

Selection of new personnel to be engaged in joint work for the divisions and for the Department of Labor will be made from persons from North Carolina whose names appear on the Federal register established through competitive exams for similar positions.

It goes on to provide, that if there are not qualified persons on the Federal register, how they might be otherwise employed. I thought this was an important point to make early in the testimony here, because this is really the meat of the coconut, from the standpoint of the subcommittee members' consideration.

Now, in October of 1963, Mr. Chairman and members of the committee, this contract was unilaterally terminated by the Federal Government, which offered the 25 employees, comparable employment with the Federal Government.

Clearly, at this point, the question was settled, and once and for all they became Federal employees. These 25 were "blanketed in," so to speak, and my statement should read at that point "and 21 became Federal employees." They received job security but not competitive status. They received comparable pay, or in some instances slightly higher pay, but they lost their membership in the North Carolina State retirement system, but yet had to come into the Federal retirement system as brandnew members.

Mr. Chairman, in addition to the prepared statement, I would point out that those employees who had 15 years of State retirement service were then eligible, and some of these employees had more than 15 years. So for those employees, my statement would not be exactly accurate to say they lost their retirement benefits, but it is accurate for those who did not have 15 years of service as State employees.

My purpose in introducing this bill was to afford these 25 employees exactly the same retirement benefits they would have had if they had been Federal employees all along; no more and no less.

In short, I feel that they should be given a chance to buy into the fund. I emphasize, "buy into the fund," for their years of State service, with the U.S. Department of Labor paying the employer's share for those years.

I would not ask that any Federal retirement privileges be extended to persons who may have worked for the State labor department under the cooperative agreement in past years, but who were not caught in the changeover. This means that the maximum number of persons who might conceivably be affected would be 25.

Secondly, I do not ask that these employees be given free credit in the fund. Instead, I do ask that they be given credit only upon paying into the fund the full amount they would have paid had they been under it at the beginning of their employment, just as any other Federal employee would do, Mr. Chairman.

I would distinguish between these 25 persons and the hundreds of thousands of people throughout the country who have worked in various State-Federal programs as State employees, and who now seek to get into the Federal retirement fund for their years of State service.

The grounds for distinction are these: First, the only thing that made these individuals State rather than Federal employees was the unique cooperative agreement between North Carolina and the Federal Government. Their sole function was to administer and enforce the Federal law. They were performing exactly the same work before the changeover as they were after the changeover. There is no possible room for quibbling over whether the program was a Federal program. These people were employed solely to administer and enforce Federal law.

Second, these people did not voluntarily leave their State employment to seek greener pastures in Federal jobs and then, as an afterthought, try to get retirement credit for non-Federal service. Their jobs were involuntarily converted to Federal jobs, without their doing anything to bring this situation to pass.

I am informed by the subcommittee staff that my bill, as introduced, goes beyond what I have testified as my intention. If it does, I hope the subcommittee will amend the bill to limit it to what I have outlined in my testimony. I am not asking for these people to be given something for nothing. I am not asking any special privilege for

them which would or could become a precedent for extending similar privileges to others.

Mr. Chairman, in conversation with Mr. Ruddock before the hearing this morning, it is his interpretation that the bill does require the employees to make their contribution. If it is not clear, if your staff, or the members, are not satisfied with the clarity of this bill, and think that amendments are necessary and desirable, I would wholeheartedly support such action.

What I am asking, and what I believe these individuals are entitled to, is simple justice in a situation over which they had no control.

As I read the reports of the administrative agencies, I find their basic position is to oppose, entirely, any measure which would give any individual credit in the retirement fund for any year in which there was not a direct employer-employee relationship between him and the Federal Government.

For practical purposes, the reason behind this is dollars. The inclusion of large numbers of persons in the retirement fund for years in which they were not, in fact, Federal employees, would cost the Government millions and millions of dollars, and would create additional unfunded liability against the civil service retirement fund.

There is no rule to which exceptions should not be made in unusual cases having merit. This is such a case. The dollars involved would be few. No precedent will be set, and a remedy will be afforded individuals who have been involuntarily terminated from State employment and the State retirement system without fault or affirmative action on their part.

Mr. Chairman, that concludes my formal statement. I am very appreciative of your attention.

Mr. DANIELS. I believe it would be in order at this time for Mrs. Horton to proceed with her testimony, and then, upon the conclusion of her testimony, the committee will ask both of you questions.

Mr. HENDERSON. All right.

(The agreement referred to is as follows:)

AGREEMENT BETWEEN THE NORTH CAROLINA DEPARTMENT OF LABOR AND THE ADMINISTRATOR OF THE WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS, U.S. DEPARTMENT OF LABOR (AS APPROVED BY THE SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR)

This Agreement provides for cooperation in making investigations and inspections under the Fair Labor Standards Act of 1938, as amended 52 Stat. 1060, as amended, 29 U.S.C. § 201, *et seq.*) and the Walsh-Healey Public Contracts Act, as amended (49 Stat. 2036-2039, as amended, 41 U.S.C. § 35-45) (herein referred to as the "Acts") for the period beginning July 1, 1962, and ending June 30, 1963, entered into pursuant to the provisions of Section 11(b) of the Fair Labor Standards Act, and Section 4 of the Walsh-Healey Public Contracts Act, Reorganization Plan No. 2 of 1939 (4 F.R. 2731, 53 Stat. 1431), Reorganization Plan No. 2 of 1946 (11 F.R. 7873, 60 Stat. 1095), Reorganization Plan No. 6 of 1950 (15 F.R. 3174, 64 Stat. 1263), General Orders of the Secretary of Labor, United States Department of Labor, and the Regulations of the United States Department of Labor, entitled "Utilization of State Agencies for Investigations and Inspections" (29 CFR Part 4, Subpart F; 29 CFR Part 515) and "Enforcement of Safety and Health Standards by State Officers and Employees" (41 CFR Part 50-205).

Whereas the North Carolina Department of Labor has submitted to the United States Department of Labor for approval under the said Regulations its plan (hereinafter referred to as the plan) for making investigations and inspections under the Acts; and

Whereas the Secretary of Labor and the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, have found that the plan is approvable, as reasonably appropriate and adequate to carry out their functions and duties under the Acts, the Reorganization Plans, and the applicable Regulations and Orders: Now therefore,

The parties hereto agree that the plan which is herewith incorporated by reference, together with all amendments thereto which may from time to time be agreed upon, shall constitute the basis of cooperation between the North Carolina State Department of Labor and the Wage and Hour and Public Contracts Divisions of the United States Department of Labor for the period beginning July 1, 1962, and ending June 30, 1963, in making investigations and inspections pursuant to the provisions of Section 11(b) of the Fair Labor Standards Act, Section 4 of the Walsh-Healey Public Contracts Act, Reorganization Plan No. 2 of 1939, Reorganization Plan No. 2 of 1946, Reorganization Plan No. 6 of 1950, and the said Regulations; and it is further agreed that this Agreement may be terminated by the Commissioner of Labor of the State of North Carolina with the approval of the Governor and Attorney General of the State of North Carolina, or by the Administrator of the Wage and Hour and Public Contracts Divisions with the approval of the Secretary of Labor, upon 30 days' prior written notice.

The Commissioner of Labor of the State of North Carolina agrees to make or cause to be made such investigations, inspections, and reports, and to perform or cause to be performed such services as are specified in the plan as the same may from time to time be amended.

The Administrator of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor, pursuant to authorization from the Secretary of Labor, hereby designates the Commissioner of Labor of the State of North Carolina as his representative to administer on behalf of the Secretary of Labor the provisions of the plan, and, in consideration of the services provided by the North Carolina Department of Labor pursuant to this Agreement, agrees to reimburse the said State agency monthly for advancement of salaries paid by the State on behalf of the United States Department of Labor to employees engaged in work under this plan and duly authorized expenses in connection with administration of the plan, in accordance with the report of expenditures and claim for reimbursement for services rendered which is submitted by the North Carolina Department of Labor and approved by the Administrator of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor, within the maximum amount of \$212,000.00 for the full period of this Agreement.

No member of nor delegate to Congress shall be admitted to any share or part of this contract or to any benefit arising therefrom.

By: _____
 Commissioner of Labor, Administrator,
 North Carolina Department of Wage and Hour and Public Contracts
 Labor. Divisions,
 United States Department of Labor.

This agreement is valid in the form as executed, under the Laws of the State of North Carolina.

Approved: _____ Approved: _____
 Attorney General of the Secretary of Labor,
 State of North Carolina. United States Department
 of Labor.

Approved: _____ Date: _____
 Governor and Director of
 State Budget.

NORTH CAROLINA DEPARTMENT OF LABOR PLAN FOR MAKING INVESTIGATIONS AND INSPECTIONS UNDER THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED, AND THE WALSH-HEALEY PUBLIC CONTRACTS ACT

IN COOPERATION WITH THE WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS OF THE UNITED STATES DEPARTMENT OF LABOR, 1962-63

(Submitted pursuant to the Regulations of the United States Department of Labor, entitled "Utilization of State Agencies for Investigations and Inspections" (29 C.F.R. Part 4, Subpart F; 29 C.F.R. Part 515 and 41 C.F.R. Part 50-205)

1. *Definitions*

As used in this plan: "Acts" means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended, 29 U.S.C. 201, et. seq.) and the Walsh-Healey Public Contracts Act as amended (49 Stat. 2036-2039, as amended, 41 U.S.C. 35-45).

"Secretary of Labor" means the Secretary of Labor, United States Department of Labor.

"Divisions" means the Wage and Hour and Public Contracts Divisions of the United States Department of Labor.

"Administrator" means Administrator of the Divisions.

"Joint Regulations" means the Regulations of the United States Department of Labor, entitled "Utilization of the State Agencies for Investigations and Inspections" (29 C.F.R. Part 4, Subpart F; 29 C.F.R. Part 515).

"Agreement" means the contract between the North Carolina Department of Labor and the Administrator, as approved by the Secretary of Labor, entered into pursuant to the Acts and the Joint Regulations.

"Federal Unit" means the Federal personnel assigned by the Divisions to represent the Administrator of the Divisions in coordinating the State and Federal work under the Agreement.

"State Department of Labor" means the Department of Labor of the State of North Carolina.

"Commissioner" means the Commissioner of Labor of the State Department of Labor.

"Divisions of Standards and Inspections" means the Division of Standards and Inspections of the State Department of Labor.

"Raleigh Office" means the Office of the State Department of Labor in Raleigh, North Carolina.

"Deputy Commissioner" means the administrative officer in charge of the Divisions of Standards and Inspections in the State Department of Labor.

"National Office" means the office of the Divisions located in Washington, D.C.

2. *Qualifications of the State Department of Labor*

The State Department of Labor is the State agency charged with responsibility for the enforcement of the State minimum wage, maximum hours, safety and health, and child labor laws, and authorized to cooperate with the Divisions in the administration of the Acts.

A copy of the act establishing the State Department of Labor and copies of the laws administered by the State Department of Labor are submitted as Exhibit I. In addition, included as part of Exhibit I is a copy of the act specifically authorizing the State to cooperate with the Divisions or the Secretary of Labor, or both.

3. *Organization of the State Department of Labor*

A description of the State Department of Labor's organization and an organization chart of the Department are submitted as Exhibit II. An organization chart showing the lines of authority to be followed in the enforcement of the Acts and of comparable State laws by the Division of Standards and Inspections, the administrative division of the State Department of Labor which is designated to make inspections and investigations under the Acts, is submitted as Exhibit III.

4. *Functions of the State Department of Labor under the Agreement*

Except for purposes of litigation under the Acts, the State Department of Labor will have the same power, duties and responsibilities as a Regional Office of the Divisions with the Commissioner of Labor having the same status as Regional Director. The work of the State Department of Labor pertaining to the Acts will be performed in accordance with the policies and procedures established by the Divisions as authorized by the Secretary of Labor. Interpretations of the Acts will be made exclusively by the United States Department of Labor.

5. *Functions of the Federal Unit*

There shall be a Federal Unit stationed within the offices of the State Department of Labor, composed of a Federal Representative, and Assistant Federal Representative, a Secretary and a Clerk-Stenographer. The Federal Unit may be either increased or decreased as determined by experience and agreed upon by both contracting parties. When deemed advisable by either the Divisions or the State Department of Labor, the Federal Representative or Federal investigators assigned by the Divisions may make investigations in order to insure effective administration of the Acts.

The Federal Representative will advise the Commissioner on all matters pertaining to the Acts in order to insure uniform investigations in conformity with the policies and procedures established by the Divisions. The Federal Representative will cooperate with and assist the Commissioner in every way possible to coordinate the work and to promote and effectively attain the aims and objectives of the Agreement.

6. *Manner in Which Investigations and Inspections under the Acts will be Coordinated with the Investigations and Inspections for Enforcement of the State Safety and Health, Child Labor, Minimum Wage and Maximum Hours Laws*

The Division of Standards and Inspections under the direction of the Deputy Commissioner is responsible for inspection of places of employment in connection with the enforcement of State safety and health, minimum wage, hours of work, and child labor laws and regulations. Under the plan of cooperation, this Division is designated to make investigations and inspections under the Acts.

The functions of the Division are divided among six Bureaus as follows:

The Bureau of Mine and Quarry Inspections inspects for safety and health conditions in mines, quarries, and pits, and in other establishments as time permits.

The Bureau of Boiler Inspections inspects for compliance with the State boiler safety law.

The Bureau of Elevator Inspections is responsible for checking the safety of elevators in accordance with the State elevator safety code.

The Bureau of General Safety and Sanitation Inspections is responsible for inspections to determine compliance with general State safety and health laws.

The Bureau of Mercantile Inspections inspects for compliance with State minimum wage, hours of work, child labor, and safety and sanitation laws relating to retail, service and intrastate manufacturing establishments. Wholesale and combination wholesale-retail firms will not be inspected except upon request by the Bureau of Labor Standards Inspections.

Inspectors of these Bureaus will also obtain data which indicate apparent violations of the provisions of the Acts and submit a report on Form NC-160 (Exhibit IV).

The Bureau of Labor Standards Inspections is responsible for inspections of factories, wholesale establishments, banks, insurance companies, mines, transportation and communication firms, and all other establishments, except retail or service establishments and intrastate manufacturing establishments, to determine compliance with the State minimum wage, hours of work and child labor laws. This Bureau is also designated to make investigation to determine compliance with the provisions of the Acts relating to wages, hours, and child labor, in the foregoing establishments as well as in all retail or service establishments and intrastate manufacturing establishments covered by and non-exempt from the Acts. In the scheduling of investigations in the latter type of establishments there will be coordination with the Bureau of Mercantile Inspections to prevent unnecessary duplication of investigation and inspection activity. Where there is dual coverage, a combined Federal and State investigation will be made for each establishment visited. Investigators of this Bureau will not make safety inspections and will not take up with the management questions relating to safety and health, except where there is imminent danger to the life and security of the workers, but will observe and report apparent violations of the State safety laws and regulations. A check and a report will also be made on compliance with the recordkeeping requirements on injury frequency rates for establishments subject to the Walsh-Healey Public Contracts Act. Copies of these reports will be submitted to the Deputy Commissioner.

The Federal Unit will select establishments for inspection for compliance with the safety and health provisions of the Public Contracts Act. The requests for all such inspections will be made to the Deputy Commissioner. These inspections will be made to determine compliance with the safety and health regulations contained in 41 CFR Part 50-204. These inspections will be made as soon as feasible in accordance with the Divisions' procedures and a report covering the findings will be prepared on an approved form as designated by the Divisions. Letters confirming agreements by employers to correct unsafe conditions or orders requiring such corrections, as may be necessary, will be sent by the Commissioner of the North Carolina State Department of Labor to the employers in accordance with prescribed procedures of the Divisions for issuance of corrective orders or confirming letters. In the event a firm refuses to comply with a corrective order issued by the Commissioner, further action with respect to the individual case will be handled in accordance with paragraph 10 of this Plan. The Divisions'

Safety Engineers will, from time to time, provide training of North Carolina State safety inspectors.

7. *Division of Time of Investigations between State and Federal Work*

The investigator will enter on each investigation report of an establishment whose employees are covered by the Acts the time he began and the time he ended the investigation. Time spent in examining records, making transcription of records and interviewing workers and other persons to determine whether there has been a violation of the State minimum wage, maximum hour or child labor laws, or violations of the Acts, will be charged to the State Department of Labor and to the Divisions in proportion to the time spent in behalf of each. As some of this work is done simultaneously, it will be necessary in each case for the investigator to estimate how much time should be charged to the State Department of Labor and how much to the Divisions. This estimate will be subject to review by the Commissioner and the Administrator, and/or by their designated representatives.

All work done in establishments not covered by the Acts will be charged to the State Department of Labor; all work done in establishments not covered by State laws will be charged to the Divisions.

The time spent on State work by investigators of the Bureau of Labor Standards Inspections will be offset by the time spent on Federal work for which no reimbursement is claimed by:

(1) The Commissioner and/or his designated representatives on administrative and supervisory services for the Federal investigation work.

(2) Inspectors of the Bureau of Mine and Quarry Inspections, the Bureau of Boiler Inspections, the Bureau of Elevator Inspections, the Bureau of General Safety and Sanitation Inspections, and the Bureau of Mercantile Inspections in obtaining data which indicate apparent violations of the provisions of the Acts and reporting such data on Form NC-160.

(3) State Publicity Specialist on work relating to the Acts.

In addition, the State will provide office space in Raleigh for the Federal work and the Federal Unit.

8. *Location of Offices of the Division of Standards and Inspections*

The State will operate as one general inspection district with headquarters in Raleigh.

The investigators of the Bureau of Labor Standards Inspections and of the Bureau of General Safety and Sanitation Inspection will be assigned to the headquarters office or to one of the field offices of the Department located at Asheville, Greensboro, Charlotte, Goldsboro, and such field stations as may be designated by the Commissioner and the Federal Representative. The number of investigators assigned to the headquarters office or to a field office will be subject to change whenever necessary to meet changes in workload.

9. *Supervision*

The Commissioner will be responsible for the effective performance of the plan of work and will exercise general administrative control for the Divisions over the work done by the State Department of Labor in connection with investigations made under the Acts.

In addition, the Commissioner and/or his designated representative, and in cooperation with the Federal Representative, will exercise general supervision over employees of the Division of Standards and Inspections engaged in work under the Acts. The Investigation Supervisor under the general direction of the Commissioner and/or his designated representative and in cooperation with the Federal Representative, will be responsible for the direct supervision and administrative function of the Federal investigation program and will issue all work assignments and necessary instructions to the investigator.

In order to utilize the inspection and investigation staff effectively, the Commissioner, the Deputy Commissioner, the Investigation Supervisor, and the Federal Representative will meet not less than monthly to discuss and plan an investigation program for the following month in accordance with the general investigation program for the year promulgated by the Divisions' National Office.

10. *Litigation*

The State will prosecute in cases of violation of a State law. All litigation relating to enforcement of the Fair Labor Standards Act of 1938, as amended, (other than civil actions for the recovery of wages due instituted pursuant to

Section 16(b) of the Fair Labor Standards Act) and all administrative proceedings instituted pursuant to Section 5 of the Public Contracts Act, shall be undertaken by and be under the direction and control of the Federal Government.

11. *Personnel*

Inspectors of the Bureau of Mine and Quarry Inspections, the Bureau of Boiler Inspections, the Bureau of Elevator Inspections, the Bureau of General Safety and Sanitation Inspections and the Bureau of Mercantile Inspections making inspections under the State labor laws, rules and regulations, and who in addition obtain data indicating apparent violations of the provisions of the Acts, will meet qualifications for positions as established by the North Carolina Department of Personnel.

Pursuant to the Joint Regulation, it is agreed that employees engaged in work under the Acts will be covered by the following personnel plan:

A. Employment, Job Classifications, and Descriptions.—In connection with the performance of work under the Agreement and this plan, the State Department of Labor shall comply with and be subject to section 301 of Executive Order 10925 (26 F.R. 1977) and all other pertinent provisions thereof and regulations issued pursuant thereto. The positions in the State Department of Labor to be filled by personnel engaged in the administration of the Acts and who are paid by Federal funds or on a reimbursable basis are as follows:

Investigation Supervisor—Duties.—Under the direction of the Commissioner and/or his designated representative and in cooperation with the Federal Representative, plans and supervises the Federal field and office work of the Bureau of Labor Standards Inspections; directly supervises the Federal investigation work; assigns work to investigators; reviews the reports of investigations made under the Acts to determine conformity with the policies, procedures and regulations of the Divisions; prepares memoranda relating to adequacy of investigations and closing the reports; prepares notification letters to employees; makes test reinvestigations as required under procedure of Divisions; makes recommendations to the Commissioner for improvement of investigation work; confers with employers and employees; conducts staff conferences; and performs other related work as required.

Senior Investigator—Duties.—Under direction of Investigation Supervisor and in cooperation with the Federal Representative, assists with supervision of the Federal investigation work; reviews the reports of investigations to determine adequacy and conformity with the policies, procedures and regulations of the Divisions, and the State Department of Labor, and prepares memorandum to investigators in regard thereto; assists investigators; makes investigations and test reinvestigations when deemed advisable by the Investigation Supervisor; makes recommendations for improvement of investigation work and programs; and performs other related work as required.

Investigator—Duties.—Under supervision of Investigation Supervisor makes investigations of places of employment to see that the provisions of the Acts relating to wages, hours and child labor are complied with; audits payrolls and interviews workers; supervises payment of back wages in certain cases; makes special child labor and home work investigations; makes special investigations of applications for certificates of exemptions under the Acts and prepares reports of such investigations; inspects for compliance with injury frequency-rate regulations issued under the Walsh-Healey Public Contracts Act; observes and reports to supervisor apparent violations of the State safety and health laws and regulations; prepares reports on investigations and makes recommendations, secures evidence of violation and, when necessary, appears in court to testify; concurrently inspects for compliance with State laws relating to minimum wages, hours of work and child labor; and performs other related work as required.

Exemption Analyst—Duties.—Under direction of Commissioner and in cooperation with Federal Representative, is responsible for the review of applications submitted under Section 14 of the Fair Labor Standards Act; reviews closed investigation files for determination of status of compliance of employers and, with the exception of authorization for employment of learners at special minimum wage rates, issues special certificates authorizing appropriate special minimum wage rates; handles correspondence, prepares reports, and on occasions makes investigations relating to exemption work; and performs other related work as required.

Senior Clerk—Duties.—Under direction, acts as administrative assistant to Investigation Supervisor; maintains industry files, investigation controls, closed case files, records of investigation assignments and itineraries; prepares monthly

activity and other reports relating to Federal work for the Divisions and the State Department of Labor; and performs other related work as required.

Stenographer-Clerk—Duties.—Under supervision, takes and transcribes dictation relating to investigations under the Acts; does miscellaneous typing and clerical work; files correspondence, reports and other papers relating to work under the Acts; and does other work as required. (One stenographer-clerk will act as file and supply clerk and will be responsible for maintenance of the general and alphabetical files relating to work under the Acts; assist with maintenance of investigation control file cards and closed case files; maintenance of adequate supplies and records incidental thereto; and will take and transcribe dictation when necessary.)

Messenger-Clerk—Duties.—Under supervision, acts as mail and messenger clerk; collects and distributes all mail and messages relating to the Agreement and this plan; assists with maintenance of stock room; operates mimeograph equipment; maintains mail records; and performs other related work as required.

B. *Appointment of personnel to engage in work under the Acts.*—No employee will be appointed or assigned to work under the Acts until the applicant has been interviewed by the Federal Representative and a statement of his training and experience has been submitted to the Administrator and approval and appointment authorization from the United States Department of Labor has been received.

Selection of new personnel to be engaged in joint work for the Divisions and for the State Department of Labor will be made from persons from North Carolina whose names appear on Federal registers established through competitive examinations for similar positions. If in the opinion of the Commissioner and the Administrator personnel suitable for work for the State Department of Labor and the Divisions cannot be secured from the list of persons from North Carolina on appropriate Federal registers, personnel to be engaged in work under the Acts will be employed in the usual manner of employing other State personnel, after a record of their training and experience has been submitted to and approved by the Administrator.

C. *Salary Schedules.*—The compensation schedules for employees to be engaged in work under the Acts is set forth in the statement of estimated expenditures (item 17, Estimated Expenditures). Such salaries are comparable to salaries of other North Carolina State employees in similar positions, have been approved by the Director of the Budget of North Carolina as being in accordance with the positions as classified by the North Carolina Personnel Department, and do not exceed Federal salaries for similar positions.

D. *Training of Staff.*—Training of staff will be a joint responsibility of the State Department of Labor and the Federal Representative.

(a) *Formal Instruction*

Inexperienced investigators will be given formal instruction for a reasonable period of time by qualified persons from the Divisions and the State Department of Labor. Such instruction will cover the administrative set-up, duties and activities of the United States Department of Labor, the State Department of Labor, and related agencies; provisions, regulations and interpretations of the Acts and the State laws enforced by the State Department of Labor; procedures and policies to be followed in making and reporting inspections and investigations; and general office procedure. Investigators will be examined on the content of the instructions.

(b) *Field Training*

Following formal instruction, inexperienced investigators will work with experienced investigators as observers and assistants. During this period the inexperienced investigator, under the direction of the experienced investigator, will assist in making plant investigations, will be present at interviews with employers and workers, and will prepare investigation reports.

From time to time representatives of the State Department of Labor and the Federal Representative will observe the work of investigators in the field and will assist them in making investigations to insure uniformity of procedure.

Information concerning the work of the State Department of Labor and the Divisions will be forwarded to investigators by the Commissioner and/or his designated representative as it becomes available. From time to time all investigators will be called into the Raleigh Office for staff conferences. Investigators will be encouraged to continue their education on the job by reading publications and reports on related work.

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E. *Promotion*.—Within budgetary limits, administrative salary increases and promotion of staff will be on the basis of qualifications and performance with due regard to length of service.

F. *Security of Tenure*.—Reduction-in-force actions resulting from budgetary conditions, and all other personnel actions such as dismissal, demotion, transfer and resignation, affecting security of tenure of employees engaged in work for the Divisions will be administered in accordance with regulations and procedures of the State Personnel Department.

G. *Political Activity*.—State Department of Labor employees engaged in work under the Acts who are paid by Federal funds on reimbursable basis, will be prohibited from engaging in any political activity, other than the exercise of their right to vote and to express privately their opinions on political questions, and will be subject to the provisions of the Hatch Political Activity Act, as amended (53 Stat. 1147, as amended, 5 U.S.C. 118(i)).

12. *Disbursement*

A. *Method of Reimbursement*.—Reimbursement to the State Department of Labor by the Administrator shall be made monthly for salaries paid by the State of North Carolina on behalf of the United States Department of Labor to employees engaged in work with respect to the Acts under the Agreement and this plan, within the limits provided in the budget of estimated expenditures. Reimbursement shall be made monthly for traveling expenses incurred by such employees within the limits provided in the budget of estimated expenditures. Expenses in connection with travel by the Commissioner for purposes of the administration of the Acts will also be reimbursed.

Reimbursement for field office rent in locations where State-owned office space is not available, telephone and telegraph expenses shall be made within the amount provided in the budget of estimated expenditures.

Request for reimbursement will be presented on voucher forms furnished by the Divisions on or before the fifth of each month.

Pursuant to the Joint Regulations, the accounting records and the supporting data pertaining to expenditures for investigations and inspections under the Acts shall be subject to audit by the United States Department of Labor annually, or so often as may be required by the Secretary of Labor or by the Administrator acting in his behalf.

B. *Services for Which No Reimbursement is Requested*.—The State will furnish office space in Raleigh to employees engaged in work under the Acts, and will use its services to secure office space in the field offices from other State and local agencies.

The Divisions will allocate non-expendable equipment and furnish office supplies in the Raleigh and field offices, as required, for use of staff engaged in work under the Acts. None of the allowances provided in the budget of estimated expenditures shall be available for the procurement of non-expendable equipment by the State Department of Labor on a reimbursable basis.

13. *Compensation for Injured Employees*

Employees appointed or assigned to work following approval and authorization by the United States Department of Labor as provided for in Section 11 B of this plan and receiving salaries from funds appropriated for the purpose of this plan shall be regarded as entitled to the benefits of the Federal Employees' Compensation Act if injured while in the performance of any duties under the plan.

The State Department of Labor agrees that persons employed by it under the plan, no part of whose salaries is reimbursable by the Federal Government, shall not be regarded as in the purview of the Federal Employees' Compensation Act but will receive workmen's compensation benefits under the State law.

14. *Appropriation to and Expenditures by the State Department of Labor for the Enforcement of Comparable Laws*

A statement of expenditures by the State Department of Labor for the enforcement of comparable State laws during the fiscal year July 1, 1961, to June 30, 1962, estimated expenditures for the fiscal year July 1, 1962, to June 30, 1963 and funds appropriated by the General Assembly of North Carolina for meeting estimated expenditures during the fiscal year July 1, 1962 to June 30, 1963, is submitted as Exhibit V.

15. *State Laws Governing Fiscal Practices*

Copies of the State laws and regulations in regard to fiscal practices are submitted as Exhibit VI.

16. *State Laws Governing Appointment of Personnel*

There is no State-wide civil service law in North Carolina and the only State employees subject to a merit system are those so specified by specific acts (employment service and unemployment compensation, for example). However, employees of the State Department of Labor are chosen on the basis of their qualifications and are classified by the North Carolina Personnel Department. For State laws in regard to the appointment of employees of the State Department of Labor, see Exhibit I and Exhibit VI.

17. *Estimated expenditures for services to be rendered in connection with the administration of the acts and for the enforcement of State laws, July 1, 1962-June 30, 1963*

A.—Personnel paid entirely by Federal funds

| Number | Title of position | Annual salary rate | Monthly salary rate | Period total | |
|--------|--|--------------------|---------------------|--------------|-----------|
| FIELD | | | | | |
| 1 | Investigation Supervisor..... | \$8,724 | \$727.00 | \$8,724 | |
| 1 | Senior Investigator..... | 7,608 | 634.00 | 7,608 | |
| 1 | do..... | 7,596 | 633.00 | 7,596 | |
| 2 | Senior Investigators..... | 7,392 | 616.00 | 14,784 | |
| 4 | Investigators..... | 6,840 | 570.00 | 27,360 | |
| 1 | Investigator..... | 6,740 | 561.66 | 6,740 | |
| 1 | do..... | 6,612 | 551.00 | 6,612 | |
| 1 | do..... | 6,600 | 550.00 | 6,600 | |
| 3 | Investigators..... | 6,468 | 539.00 | 19,404 | |
| 1 | Investigator..... | 6,447 | 537.25 | 6,447 | |
| 1 | do..... | 6,276 | 523.00 | 6,276 | |
| 2 | Investigators..... | 6,048 | 504.00 | 12,096 | |
| 3 | do..... | 5,364 | 447.00 | 16,092 | |
| 1 | Exemption Analyst..... | 5,212 | 434.33 | 5,212 | |
| | Total..... | | | | \$151,551 |
| OFFICE | | | | | |
| 1 | Senior Steno. Clerk..... | 4,692 | 391.00 | 4,692 | |
| 1 | Senior Clerk..... | 4,278 | 356.50 | 4,278 | |
| 1 | Messenger Clerk..... | 3,456 | 288.00 | 3,456 | |
| 1 | Steno. Clerk..... | 3,456 | 288.00 | 3,456 | |
| | Total..... | | | | 15,882 |
| | Salary increments during the year..... | | | | 2,954 |

B.—Personnel paid jointly by State and Federal funds

| | State | Federal | Total | Monthly salary | |
|---|---------|---------|---------|----------------|---------|
| Principal General Clerk..... | \$4,200 | \$660 | \$4,860 | \$55 | 660 |
| Total salaries including increments..... | | | | | 171,047 |
| Social security and State retirement..... | | | | | 11,393 |
| Total salaries..... | | | | | 182,440 |

C.—Travel paid entirely by Federal funds

| | Total amount | |
|----------------------------------|--------------|---------|
| Commissioner and Supervisor..... | \$1,000 | |
| Investigators..... | 25,200 | |
| Total..... | | 26,200 |
| Other expenditures: | | |
| Telephone and other..... | | 2,100 |
| Rent—field offices..... | | 1,260 |
| Total..... | | 212,000 |

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D.—Personnel paid entirely by State funds

| Number | Title of position | Annual salary rate | Salary increment | Period totals |
|--------|---|--------------------|------------------|---------------|
| 1 | Commissioner of Labor | \$12,000 | | \$12,000 |
| 1 | Deputy Commissioner | 11,136 | | 11,136 |
| 1 | Ind. Safety Improvement Officer | 7,920 | | 7,920 |
| 2 | Ind. Safety Rep. (Construction) | 6,528 | \$324 | 13,704 |
| 1 | do | 5,628 | 276 | 5,904 |
| 1 | do | 6,716 | 324 | 7,040 |
| 1 | Ind. Safety & Labor Reg. Supv. | 7,920 | | 7,920 |
| 1 | Ind. Safety Inspector I | 4,632 | 228 | 4,860 |
| 7 | Ind. Safety Inspectors II | 6,840 | | 47,880 |
| 3 | do | 5,904 | 300 | 18,612 |
| 1 | Ind. Safety Inspector II | 5,364 | 264 | 5,628 |
| 1 | do | 6,072 | 300 | 6,372 |
| 1 | do | 6,408 | 312 | 6,720 |
| 1 | do | 6,440 | 312 | 6,752 |
| 1 | do | 6,704 | 136 | 6,840 |
| 1 | do | 6,720 | 120 | 6,840 |
| 1 | Ind. Safety Inspector III | 6,840 | 336 | 7,176 |
| 2 | Ind. Safety Inspectors III | 7,248 | 360 | 15,216 |
| 1 | Labor Regulations Inspector | 5,070 | 240 | 5,310 |
| 1 | do | 5,316 | 264 | 5,580 |
| 1 | do | 5,520 | 108 | 5,628 |
| 5 | Labor Regulations Inspectors | 5,628 | | 28,140 |
| 1 | Elevator Inspection Supervisor | 7,392 | 360 | 7,752 |
| 1 | Elevator Inspector | 6,276 | 312 | 6,588 |
| 1 | do | 6,564 | 276 | 6,840 |
| 1 | do | 6,588 | 252 | 6,840 |
| 1 | Mines and Quarries Safety Inspection Supervisor | 6,996 | 336 | 7,332 |
| 2 | Mines and Quarries Inspectors | 5,628 | 276 | 11,808 |
| 1 | Clerk IV | 5,100 | 264 | 5,364 |
| 1 | Stenographer II | 3,288 | 168 | 3,456 |
| 2 | Stenographers II | 3,456 | 168 | 7,248 |
| 2 | do | 3,624 | 180 | 7,608 |
| 1 | Stenographer II | 3,636 | 168 | 3,804 |
| 1 | do | 3,824 | 192 | 4,016 |
| 1 | do | 3,912 | 204 | 4,116 |
| 1 | do | 3,936 | 192 | 4,128 |
| 1 | do | 4,104 | 96 | 4,200 |
| 1 | do | 4,200 | | 4,200 |
| 2 | Typist-Clerks II | 3,132 | 156 | 6,576 |
| 1 | Typist-Clerk II | 3,456 | 168 | 3,624 |
| 1 | do | 3,568 | 168 | 3,736 |
| 1 | do | 3,996 | | 3,996 |
| 1 | Steam Boiler Inspection Supervisor | 7,592 | 328 | 7,920 |
| 1 | Steam Boiler Inspector | 5,628 | 276 | 5,904 |
| 2 | Steam Boiler Inspectors | 6,072 | 300 | 12,744 |
| 1 | Steam Boiler Inspector | 6,394 | 312 | 6,706 |
| 1 | do | 6,680 | 160 | 6,840 |
| | Total | | 11,880 | 396,524 |

E.—Travel paid entirely by State funds

| Number | Title of position | Total amount for period |
|--------|-----------------------|-------------------------|
| 1 | Commissioner of Labor | \$2,000 |
| 1 | Deputy Commissioner | |
| 46 | Inspectors | 59,900 |
| | Total | 61,900 |

F.—Total estimated expenditures

| | State | Federal | Total |
|-------------------------------|-----------|-----------|-----------|
| Personal service | \$396,524 | \$182,440 | \$578,964 |
| Travel expense | 61,900 | 26,200 | 88,100 |
| Postage, telephone, and other | 5,300 | 2,100 | 7,400 |
| Rent—Field offices | 2,400 | 1,260 | 3,660 |
| Equipment | 450 | | 450 |
| Total | 466,574 | 212,000 | 678,574 |

EXHIBIT V.—Expenditures by the State Department of Labor for the enforcement of comparable State laws during the fiscal year July 1, 1961, to June 30, 1962, and the funds appropriated by the General Assembly of North Carolina for meeting estimated expenditures during the fiscal year July 1, 1962, to June 30, 1963

| | Expenditures, 1961-62 | Estimated expenditures, 1962-63 | Funds appro- priated, 1962-63 |
|---|--------------------------|---------------------------------------|-------------------------------------|
| ADMINISTRATION | | | |
| Salary, commissioner | \$12,000.00 | \$12,000.00 | \$12,000.00 |
| Salary, office force | 19,032.00 | 20,147.00 | 20,147.00 |
| Postage, telephone, and telegraph | 2,064.45 | 2,000.00 | 2,000.00 |
| Field travel | 2,175.16 | 2,000.00 | 2,000.00 |
| Repairs and alterations | 537.86 | 300.00 | 300.00 |
| General expense | 1,161.52 | 500.00 | 500.00 |
| Equipment | 21.27 | 50.00 | 50.00 |
| Total | 36,992.26 | 36,997.00 | 36,997.00 |
| Average number of employees | 5 | 5 | 5 |
| Average annual salary or wage | \$6,206.40 | \$6,429.40 | \$6,429.40 |
| DIVISION OF STANDARDS AND INSPECTIONS | | | |
| Salaries, office and field | 358,644.61 | 383,136.00 | 383,136.00 |
| Postage, telephone, and telegraph | 3,869.99 | 3,300.00 | 3,300.00 |
| Field travel | 58,466.67 | 59,900.00 | 59,900.00 |
| Office rent | 1,920.00 | 2,400.00 | 2,400.00 |
| Equipment | 998.49 | 450.00 | 450.00 |
| Total | 423,899.76 | 449,186.00 | 449,186.00 |
| Average number of employees | 63 | 66 | 66 |
| Average annual salary or wage | \$5,692.77 | \$5,805.08 | \$5,805.08 |

MEMORANDUM OF AGREEMENT

This will serve to confirm arrangements for the temporary extension of the fiscal year 1963 Agreement between the North Carolina Department of Labor and the Administrator of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor made by letter, copy attached, from Clarence T. Lundquist, U.S. Department of Labor to Frank Crane, Commissioner, North Carolina Department of Labor. It is agreed, however, that the total expenditures by the State of North Carolina under the extension of this Agreement will not exceed \$70,000, and that there will be no reimbursement for expenses incurred after October 15. This Memorandum will also serve to extend the 1963 Agreement formally for a terminal period beginning July 1, 1963 until October 15, 1963.

By Frank Crane,
Commissioner of Labor, North Carolina Department of Labor.

By Clarence T. Lundquist,
Administrator, Wage and Hour and Public Contracts Divisions, United States Department of Labor.

This Memorandum is valid in the form as executed, under the Laws of the State of North Carolina.

Approved: T. W. Bruton,
Attorney General of the State of North Carolina.

Approved: W. Willard Wirtz,
Secretary of Labor, United States Department of Labor.

Approved: Terry Sanford,
Governor and Director of State Budget.

Date: October 10, 1963.

Mr. DANIELS. You may proceed, Mrs. Horton.

**STATEMENT OF PAULINE W. HORTON, FORMER EMPLOYEE,
U.S. DEPARTMENT OF LABOR**

Mrs. HORTON. Thank you, Mr. Chairman, and members of the subcommittee. I have been asked by Congressman Henderson and the employees concerned in H.R. 1783 to appear before you for review of pertinent background information for consideration about the proposed legislation.

Beginning October 1, 1939, and continuing through September 30, 1963, an agreement was in effect between the North Carolina Department of Labor and the Administrator of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor—as approved by the Secretary of Labor—for making investigations and inspections under the Fair Labor Standards Act, as amended, and the Walsh-Healey Public Contracts Act, as amended. The cooperative enforcement arrangement was pursuant to the provisions of section 11(b) of the Fair Labor Standards Act and section 4 of the Walsh-Healey Public Contracts Act, reorganization plans and regulations of the U.S. Department of Labor entitled “Utilization of State Agencies for Investigations and Inspections.”

The terms of the agreement, renewed each year during the 24-year period, provided that all investigative work performed in connection with the enforcement of the acts in North Carolina be executed by employees of the State department of labor and that such work be in accordance with instructions, policies, and procedures of the Divisions. It was stipulated that no employee would be appointed or assigned to work under the acts until the applicant was interviewed by the Administrator’s representative, and approval and appointment authorization from the U.S. Department of Labor had been received. When available, the personnel were selected from persons whose names appeared on Federal registers, established through competitive examinations for similar positions. The employees were trained by Federal staff of the Divisions and their work performance was evaluated on basis of established Federal standards. They were, in fact, employees of the State, but were performing Federal work under acts.

The terms of the agreement further provided that the Administrator of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, reimburse the State agency for advancement of salaries paid employees engaged in work for the Federal agency and other expenses incurred by the State in connection with the administration of the acts in North Carolina. In other words, the full salaries and travel expenses of employees appointed under the agreement were paid by Federal funds. Operating instructions for work performed by such employees were issued by the Divisions to the State agency, on the same basis as were issued to the Federal staff of established field offices of the Divisions. The Administrator of the Federal agency maintained close control of work under the agreement for assurance of uniformity of standards of enforcement in North Carolina with the Division’s enforcement of acts in other States. Surveys of operations were made by the Administrator’s field representatives regularly, to insure conformity with the enforcement policies and procedures and instructions issued by the Divisions.

With the continuing operation of the State-Federal program in North Carolina, the career employees, working under the agreement, felt that they had job security. When the agreement was terminated September 30, 1963, as a result of the Divisions' establishment of a new regional office in Atlanta, Ga., under a reorganization plan, 21 employees with a total of some 203 man-years of experience in work under the cooperative program, were transferred to the Federal payrolls of the Divisions. They were transferred to positions with the Divisions as career-conditional appointments. However, they went in as newly appointed personnel, without any service credit for retirement purposes.

It is pointed out, that as State personnel under the agreement, the employees concerned in the proposed legislation were subject to the North Carolina State Retirement Act, which became effective in 1941. They were also under social security since 1957.

Contributions had been made by the employees to these retirement funds. The State paid the employer contributions until July 1, 1961, after which the Federal agency reimbursed the State for such expenditures. Rights under the retirement system of the State are available only to employees who are working for the State at time of retirement, and are eligible for retirement, or are 60 years old or over, and have vested rights provided for employees with 15 or more years of service.

The majority of employees transferred to the Federal payrolls at termination of the agreement did not have vested rights under the State Retirement Act. Therefore, through the legislation introduced by Congressman Henderson, these employees are seeking credit under the Civil Service Retirement Act for the service performed for the Federal Government under the State-Federal program for the enforcement of the acts in North Carolina.

I shall be glad to answer any questions you may have for clarification of my statement.

Mr. HENDERSON. Mr. Chairman, eight of the employees who are affected, are present this morning. I have their names, their positions, and their addresses. With your permission I would ask that their appearances be shown in the record at this point.

Mr. DANIELS. Without objection, it will be done.

(The list is as follows:)

V. C. Banks, investigator, 2618 Van Dyle Avenue, Raleigh, N.C.
 William L. Mercer, investigator, 1404 Westwood Avenue, Wilson, N.C.
 V. J. Craddock, Jr., investigator, Long Leaf Acres, Goldsboro, N.C.
 R. E. Price, investigator, 1314 South Park Drive, Reidsville, N.C.
 C. E. Graves, investigator, 6213 Friendly Road, Greensboro, N.C.
 Grace W. Griffith, investigator, 194 Victoria Road, Asheville, N.C.
 John E. Walker, Jr., 715 Simpson Street, Greensboro, N.C.
 Harold C. Cox, 3904 Sedgemoor Road, Greensboro, N.C.

Mr. HENDERSON. If you have any questions, Mrs. Horton and I will try to answer them.

Mr. DANIELS. Congressman, this agreement was in effect from 1939 to 1963, a period of 24 years. You have testified that North Carolina was the only State in the Union which had such an agreement with the Federal Government, with respect to the administering of the Federal laws involved. Do you know why this unique arrangement with North Carolina was entered into?

Mr. HENDERSON. I believe I might give some light on it—perhaps Mrs. Horton or others could fully explain it—I believe that in the enactment of the Fair Labor Standards Act of 1938 it was the desire of the Governor of North Carolina and my predecessor, Hon. Graham Barden, who was then in Congress, to provide that there might be this cooperative enforcement of the Federal law. My understanding is that the law itself provided that the Department of Labor should, or at least might, offer such arrangement to all of the States. It seems that North Carolina was the only State that chose to enter into such a cooperative agreement. While it worked very effectively, we think, in our State, the North Carolina congressional delegation had no objection to the reorganization plan in 1963, because we could understand that it was at least unique, unusual, and perhaps costly to the Department of Labor to have one cooperative agreement with one State rather than to have the uniform organization and enforcement of the act.

Mr. DANIELS. Do I understand your testimony clearly that while these employees were so employed under this cooperative agreement that they actually performed services administering Federal laws and that no State laws were involved?

Mr. HENDERSON. That is my understanding. The Fair Labor Standards Act and Walsh-Healey Act.

Mrs. HORTON. Under the program they did have some joint responsibilities. It so happens that in the terms and provisions of the State laws and applicable regulations, the standards are pretty much in line under that of the Federal. When the Federal Government went in to make an investigation under the Federal law, the employees, of course, could advise the employer of the requirements of the State law and actually didn't have to spend much time in that connection.

Mr. DANIELS. Did these employees administer any State laws?

Mrs. HORTON. Yes, they did administer the State law.

Mr. DANIELS. Have you any idea how much time was involved in that?

Mrs. HORTON. As I just mentioned, the set of standards of the State law were somewhat under the standards of the Federal law. They had knowledge of the State laws and they did, at times, make reports; but it took a very negligible amount of their time.

Mr. DANIELS. Approximately how many employees were employed per annum under this program, from 1939 to 1963?

Mrs. HORTON. Twenty-five employees were employed under it. In 1939?

Mr. DANIELS. Approximately how many employees were employed in each year?

Mrs. HORTON. Well, the number varied. It varied anywhere from about 10 or 15, up until at one time it was 27 employees, I believe.

Mr. DANIELS. At the time the agreement was terminated in 1963?

Mrs. HORTON. There were 25.

Mr. DANIELS. And 21 of the 25 were blanketed into the Federal service?

Mrs. HORTON. That's right.

Mr. HENDERSON. On that point I would like to make it crystal clear that this seems to eliminate one of the problems we have had with regard to other legislation that has faced our committee in that here we are certain of the number, and we can identify these 21 employees. I

am sure that we could dig into the records and get the dollars and cents that they were paid during the time they were employees, so that we do not have any problem of speculation here as to who we are talking about or what it would cost the Federal Government, if this bill were enacted.

Mr. DANIELS. The purpose of this bill is to take care of only those who were blanketed in. That would be the 21 employees?

Mr. HENDERSON. That's right.

Mr. DANIELS. What about the alleged rights of those who were employed prior to the blanketing in, in 1963?

Mr. HENDERSON. Mr. Chairman, we feel they had left the service voluntarily, or for reasons satisfactory to themselves, and that they were not caught, as these 21 were, in that they were taken, by the action of the Federal Government, out of the State retirement fund and were not given any rights in the Federal. For those that had been employed previously, I don't think they can make that point, because they had left their employment.

Mr. DANIELS. The salary of these employees was paid by the State of North Carolina, but under the terms of the agreement the State of North Carolina was reimbursed by the Federal Government; is that correct?

Mr. HENDERSON. That is correct; as Mrs. Horton pointed out in her statement, the State paid the contribution into the State retirement fund until 1961. At that date the Federal Government reimbursed the State of North Carolina for their retirement paid into the State retirement fund.

Mr. DANIELS. How many of the 21 employees who were blanketed in, in 1963, had rights accrued to them under the North Carolina retirement fund?

Mrs. HORTON. There were five that had vested rights under the North Carolina retirement plan.

Mr. HENDERSON. I believe by vested rights, Mr. Chairman, that they had the right to withdraw their contributions to the retirement fund. The ones that did not have 15 years' service could not do that. They lost their contribution.

Mrs. HORTON. Well, they didn't lose their contribution. They could have withdrawn the contribution. By "vested rights," I had a reference to employees that could participate in the North Carolina retirement system.

Mr. DANIELS. If this bill were to be enacted into law, as the author, do you contemplate that any of the people who had been blanketed into the Federal service may not only become members of the Federal retirement system but also receive the benefits of the retirement laws of North Carolina?

Mr. HENDERSON. Mr. Chairman, if there is any doubt about it, I would certainly be satisfied for the legislation to specify that they have the choice of one or the other, but not both. It was my intention that they be provided the right to buy into the Federal retirement system, and envisioned they would do that only because they could not participate in the State retirement fund.

Mr. DANIELS. In reading the bill, Mr. Henderson, the thought occurred to me that you are giving these people who were blanketed in an option of contributing their share to the fund, or to take a reduced annuity by not contributing. Now your testimony goes a

bit deeper. You testified that they should contribute their full share toward the fund.

Mr. HENDERSON. Mr. Chairman, I would certainly prefer that they be given the choice to buy in, because I think this is not unusual. If the committee felt that they should make the choice to go all the way, they would have to pay it all back. I would defer to the committee's wisdom on this point. In fact, I think I will even defer to the position of Mr. Andy Ruddock, who is so knowledgeable in this area.

As you say, my initial intention was to afford them the right to buy in, but I feel that they ought to be given the opportunity, either limited or all the way.

Mr. DANIELS. Thank you.

Mr. HANLEY, do you have any questions?

Mr. HANLEY. Thank you, Mr. Chairman.

I want to thank Mrs. Horton for a very fine statement, and our colleague, Mr. Henderson, for his very comprehensive statement and, in addition to that, I would like to say that in Mr. Henderson the people of the State of North Carolina have indeed a very effective legislator who is ever alert to their problems and also attempting to effect a cure.

I only have one or two questions to just clarify this in my mind. I interpret this as previous to the implementation of this change in 1963, members of this agency were covered both by social security and the State retirement program?

Mr. HENDERSON. That is correct.

Mr. HANLEY. In 1963, did any people leave employment due to this change? Did they choose to accept retirement?

Mrs. HORTON. Two employees remained with the State department of labor. Two employees retired. The other 21 employees were transferred over to the Division's Federal payroll.

Mr. HANLEY. At that point they had the option of recouping their investment in the retirement program?

Mrs. HORTON. Yes; they could.

Mr. HANLEY. I see.

Mrs. HORTON. The majority of them didn't have rights under the State retirement act by reason that they hadn't reached the age of 60 or over, nor had they had 15 years of service. That is a condition of the State retirement act.

Mr. HANLEY. Though they didn't meet this criteria, they still could recoup whatever they had invested in the program?

Mrs. HORTON. Yes; they could.

Mr. HANLEY. Do we have a cost with respect to this bill?

Mr. HENDERSON. Mr. Hanley, let me say that what we have is our best estimate. I would be glad to explain how we arrived at that estimate. As I said earlier, I think with a detailed study of these 21 employees and their exact salary over the entire period of time that would be covered, and the applying of the contribution percentage to that, we could come up with an exact figure. Without going to that detailed mathematical computation, Mrs. Horton and I and the group earlier this morning estimated that the average employee salary over the period of time would be about \$50,000. If we applied to that a 5-percent contribution on the part of the Federal Government, which would be something of an average over the entire period of time, for 21 employees this would approximate \$50,000. I

believe that would be the maximum amount the Department of Labor would have to secure through the appropriation process if this bill were enacted, and pay into the Federal retirement fund.

I have some others here who might be more exact than we have been. They may have a mathematical computation, but I believe for the general consideration of the subcommittee that figure is a reasonable one.

Mr. HANLEY. I appreciate your fine explanation.

I have no further questions.

Mr. DANIELS. I have just one or two further questions. I want to clear up the record as well as my own mind, as to the number of people involved here.

In 1963 when this agreement terminated, 21 of the 25 employees employed in the program were blanketed into the Federal service. What happened to the other four?

Mrs. HORTON. Two of the employees remained with the State department of labor. One employee retired and I am not sure about the other one. She may have retired or may have gone into private employment.

Mr. DANIELS. Now, of the 21 who were blanketed in, 5 or 6 of those had vested rights under the State retirement plan?

Mrs. HORTON. Yes.

Mr. DANIELS. Now, in order to obtain such rights under the State retirement plan, it would be necessary for the employee to be employed by the State at the time of their eligibility for retirement, and also, to be eligible for retirement that person would have to be 60 years of age and have 15 years of State service.

Mrs. HORTON. Or 15 years of State service.

Mr. DANIELS. Regardless of the number of years of employment?

Mrs. HORTON. Or 15 years of service. They would have vested rights and would be able to participate in the State retirement program.

Mr. DANIELS. Do you really mean "or"? You mean "and," do you not?

Mr. HENDERSON. I believe what the "or" means is that if they reached the age 60 and had 15 years of service, that they could then retire and take full benefit of the retirement. If they were not 60 years of age, but had 15 years of service, they would have to delay getting their retirement benefits until they became 60, even though they terminated their State employment.

Mrs. HORTON. That is right, or take a reduced retirement.

Mr. DANIELS. On the other hand, if they were 60 years of age but only had 10 years of service, they would not yet be eligible; is that correct?

Mr. HENDERSON. They would take a reduced retirement.

Mrs. HORTON. They would be eligible for retirement if they were 60 years of age and if they had 10 years of service. I would like to ask one of the State employees if that is correct, if I may.

Mr. DANIELS. Go ahead. I would like to get this straight for the record.

Off the record.

(Discussion off the record.)

Mr. DANIELS. Back on the record.

Mr. HENDERSON. I believe that we have now shown that the employee had to have 15 years of service and be the age of 60 to participate in the North Carolina retirement system.

Mr. DANIELS. If the employee had less than 15 years of service, he would not—

Mr. HENDERSON. He would not have retirement rights. He would have only the right to draw his contribution from the retirement system.

Mr. DANIELS. Well, I want to thank you, Congressman Henderson, and you, Mrs. Horton, for coming here today and giving us the benefit of your views on this legislation.

Mr. HENDERSON. Mr. Chairman, I think it would be obvious to anyone that this is legislation not of great national importance. But we in North Carolina feel that these employees, the 21 who are directly involved here, contributed much, if not all, of their time in administering Federal law. They are in this unique situation. We can fully appreciate the problem of setting a precedent that might be used by other employee groups, but we believe that this group can be distinguished, and we are very hopeful that the subcommittee would consider the unique situation that we have presented here. While it is not of major importance, we likewise hope that the administration would ease up just a little bit in its opposition, as regards these 21 people.

In all fairness, I think that the subcommittee chairman and members know of my general interest for some other employees who seek to be brought under, but I would like very much to dissociate from your own mind and from my own position the same argument. I am not trying to make the same argument. I feel this bill, H.R. 1783, as it may be amended by the subcommittee, could stand on its own merits. It certainly should not fail because it happens to be similar to other legislation that does not have the same merit.

Thank you very much, sir.

Mr. DANIELS. Mr. Henderson, you know that when a lawyer stands well in court, he should usually keep quiet and not continue to make a speech.

That brings me to another question. Mrs. Horton, in her statement, made this observation, and I quote:

They were in fact employees of the State but were performing Federal work under acts.

It is acknowledged that these 21 employees were, in fact, State employees. They were hired by the State. The State had the right to hire them and fire them, except that after the program got underway the names of future employees came from the Federal register.

Mr. HENDERSON. This is true. Mrs. Horton might tell us whether the original employees—

Mrs. HORTON. The original employees were appointed under the agreement. The names were selected from Federal registers, and we didn't utilize the services of the State employees with the exception of those that had names submitted to the Administrator with recommendation from his representative and then approved by the U.S. Department of Labor. All employees working under the agreement

had that approval and authorization before they were permitted to engage in work under the agreement.

Mr. DANIELS. Who had the right to fire?

Mrs. HORTON. The Commissioner of Labor, with the approval of the Administrator, was responsible for hiring the employees.

Mr. DANIELS. When you refer to "Administrator," do you mean the Federal Administrator?

Mrs. HORTON. The Administrator approved every employee that worked under this agreement.

Mr. DANIELS. You mean the Administrator of—

Mrs. HORTON. Of the Wage and Hour and Public Contracts Divisions of the U.S. Department of Labor.

Mr. HENDERSON. I believe you have made a good point. I don't think we could contend that they are truly Federal employees if they didn't have retirement. That is what we are seeking to get here. I think the picture has been fairly presented to you.

Mr. DANIELS. Fine. I thank both of you. If there is no objection, the Chair desires to extend to Congressman Henderson the privilege of sitting with the subcommittee and participating in our further deliberations.

Mr. HENDERSON. I thank the gentleman, and will be delighted to do so.

Mr. DANIELS. Our next witness is Mr. Edward J. McVeigh, Assistant Administrative Assistant Secretary, of the U.S. Department of Labor, accompanied by Mr. Clarence T. Lundquist, Wage and Hour Administrator.

You may proceed.

STATEMENT OF EDWARD J. McVEIGH, ASSISTANT ADMINISTRATIVE ASSISTANT SECRETARY, U.S. DEPARTMENT OF LABOR; ACCOMPANIED BY CLARENCE T. LUNDQUIST, WAGE AND HOUR ADMINISTRATOR

Mr. McVEIGH. Mr. Chairman, your letter of April 18, 1966, to Secretary of Labor Wirtz, requested that an official of the Department of Labor appear to present testimony of a technical nature on H.R. 1783. The Secretary's position on this bill is stated in his letter of April 22, 1966, to the chairman, Committee on Post Office and Civil Service.

The Secretary is opposed to enactment of H.R. 1783, since its provisions are not consistent with the administration's objectives.

I have with me Mr. Clarence T. Lundquist, the Wage and Hour Administrator, who is familiar with the details of the cooperative agreement with the State of North Carolina. He will be glad to answer any questions the subcommittee may have regarding that agreement.

Mr. DANIELS. At this point I would like to offer the letter of the U.S. Department of Labor, dated April 22, 1966, to which the witness has just referred.

It will be made a part of the record at this point, if there is no objection.

(The letter referred to follows:)

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 22, 1966.

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

DEAR MR. CHAIRMAN: This is in response to your request for our comments on H.R. 1783.

This bill would grant credit for purposes of the Civil Service Retirement Act for the years during which certain employees of the State of North Carolina performed services for the U.S. Department of Labor in enforcement and administration of the Fair Labor Standards Act, under a cooperative agreement with the State of North Carolina. The Department of Labor would be required to pay into the Civil Service retirement fund the amount of contributions the employees would have been required to pay for the period of service so credited.

The cooperative agreement referred to was entered into by the Department of Labor with the State of North Carolina on November 1, 1939. The Department agreed to use State employees for carrying out certain functions of the Department within the State of North Carolina in administering the Fair Labor Standards Act. The Department agreed to reimburse the State for that part of the salaries of the employees, and other costs to the State, of carrying out these Federal functions, including contributions to the State retirement system for the State employees. The agreement was terminated on October 15, 1963, at which time 20 State employees who had worked under the agreement were hired by the Department of Labor. At least 5 of these employees have had 20 or more years of employment for the State and, therefore, would appear to qualify for retirement under the State system.

H.R. 1783 would give these 20 former State employees benefits under the Federal Civil Service Retirement Act which other State employees who transfer to the Federal Government do not have, even though their employment may have been financed in whole or in part by the Federal Government. The bill thus raises the fundamental issue as to whether credit under the Civil Service Retirement Act should be granted for periods of prior employment by a State where the Federal Government has financed the employment in whole or in part.

This issue has been considered and dealt with by the Cabinet Committee on Federal Staff Retirement Systems, the report of which the President transmitted to the Congress with his endorsement on March 7, 1966. The Report included the following recommendation:

"Civil service retirement credit should be granted only for service which meets the clear general criteria presently established for that purpose. Proposals which would broaden these criteria, or authorize exceptions to them, to credit service performed by State or State-instrumentality employees in programs supported wholly or partly by Federal funds should be disapproved."

The Department of Labor is therefore opposed to the enactment of H.R. 1783.

The Bureau of the Budget advises that there would be no objection to the submission of this report as enactment of H.R. 1783 would not be consistent with the administration's objectives.

Sincerely,

W. WILLARD WIRTZ,
Secretary of Labor.

MR. DANIELS. Mr. Lundquist, do you care to proceed?

MR. LUNDQUIST. I have before me a few items of factual data. I represent long years of service in the Wage and Hour Division, some 25 or more, starting in 1938. I have worked with these people. I know them intimately, in the process of our working together. They are employees of the Wage and Hour Division of the Department of Labor.

I thought it might be helpful if I talked about some of the State agreements that were in existence, as indicated earlier by Congressman Henderson and Pauline Horton.

The North Carolina agreement was in existence from 1939 until October of 1963. We had an agreement with the District of Columbia

from July 1, 1940, through June 30 of 1945. We also had an agreement with the State of Connecticut from July 1, 1940, though June 30, 1943, and one with Minnesota which lasted a little longer; from August 1, 1940, through September 30, 1955.

There is no point in my talking further about the North Carolina agreement as such, but with respect to the number of personnel in Minnesota, for example, there the agreement provided for reimbursement for seven investigator positions during fiscal year 1955, which was the last full year of the agreement.

With respect to Connecticut, it provided for reimbursement for 15 positions during fiscal year 1943, the year that that agreement was terminated.

With respect to Minnesota, four investigators were placed in other jobs at the time of the termination by the State, and the other three were offered Federal appointments. At least one of the three transferred to the Wage and Hour Division and has recently been separated. His employment has been terminated.

In Connecticut all personnel working on the agreement were placed by the State. They didn't transfer to the Wage and Hour Division.

In relation to retirement programs—the contributions in Minnesota which, as you will recall, existed for a period of about 15 years—all contributions there to the State retirement program were made by the State.

In North Carolina, we have referred to this procedure there, and the retirement contributions were made by the State without asking for reimbursement up until 1962. But in 1962 we then included those payments as part of the funds that were to be for reimbursement purposes.

These are just some of the factual matters, Mr. Chairman, concerning the agreements that we did have with the various States.

In the District of Columbia, if memory serves me well, there was no reimbursable program, but just an arrangement with the District.

I certainly would welcome the opportunity to try to respond to any questions that the Chair or the committee may have.

Mr. DANIELS. Then as I understand it, there were three other such cooperative agreements entered into by the Federal Government. One with the District of Columbia, one with the State of Connecticut, and the other with the State of Minnesota.

Mr. LUNDQUIST. Yes, Mr. Chairman, for the enforcement of the Fair Labor Standards Act wage and hour provisions. We have had other agreements with States, and still do, in relation to the enforcement of the safety and health provisions of the Walsh-Healey Public Contracts Act.

These are different kinds of agreements. They are nonreimbursable and they exist today in six States. But we had as many as 23. So there was this other kind of agreement that still exists.

Mr. DANIELS. Why was this agreement terminated with the State of North Carolina in 1963?

Mr. LUNDQUIST. I think the Congressman and Mrs. Horton have touched on that point adequately. Here was one State operating in a specialized situation and it was deemed appropriate, from our standpoint, that some greater administrative efficiency would be obtained. We were convinced that such greater administrative efficiency would result. It was for this reason that we terminated the working arrangement.

Mr. DANIELS. Mrs. Horton testified, Mr. Lundquist, that these employees under this cooperative agreement performed substantially Federal services, that the State services that they rendered under the State law was minimal. Is that correct?

Mr. LUNDQUIST. Yes. I think this is so. We generally thought of it as about a 90- to 10-percent break. I am not so sure we can statisticalize this. But substantially this was a Federal piece of work.

Mr. DANIELS. And the employees were hired from the Federal register with the approval of the Administrator of the Wage and Hour—

Mr. LUNDQUIST. Yes. But they were limited to residents of North Carolina. There was no hiring of employees outside of the State of North Carolina.

I don't know whether we can call it a special register, but it was a register for North Carolinians.

Mr. DANIELS. Would you consider the employees working under this agreement in a special category? Were they working under an agreement which is distinctly different from any other agreement in existence between your agency and the State?

Mr. LUNDQUIST. I would consider them as in the same category that the employees in Minnesota, Connecticut, and the District of Columbia operated, and of course, since 1955 we had no other such agreements. So for a period of 8 years, until October of 1963, they were in a very specialized category. They were the only employees of a State that were performing this Federal wage-hour function.

Mr. DANIELS. Well, it is not unusual for one seeking Federal employment, as a qualification for such employment, to come from a certain area; isn't that true?

Mr. LUNDQUIST. That's right.

Mr. DANIELS. So, even though the requirement was that these people who desired to work for the Wage and Hour Division, under this cooperative agreement, had to be residents of North Carolina; that it was not unusual.

Mr. LUNDQUIST. I suspect not, although they didn't compete for any positions elsewhere in the organization. Their opportunity for promotion was limited to the State. They were State employees.

We did not, in the Wage and Hour Division, have the authority to fire them. We had the authority to supervise the hiring of them, to assure ourselves that we were getting qualified people. We did that, but the direction and control was under the Commissioner of Labor.

Mr. DANIELS. What would happen if the Administrator was dissatisfied with the work of an employee?

Mr. LUNDQUIST. Well, the process of administration would follow this pattern, generally. The matter would be discussed with the Federal coordinator, which position Mrs. Horton filled, and the disabilities, if there were any, were called to her attention. Ultimately, of course, they were called to the attention of the commissioner of labor in the State, who was the employer of these people.

Mr. DANIELS. Who did the actual firing?

Mr. LUNDQUIST. I don't know that any were fired as a result of any criticisms on our part. Perhaps we did not have, or the other Administrators didn't have, reason to take such action. I don't know of any action that I took during the period that I was Administrator.

Mr. DANIELS. Mr. Lundquist, specifically what is the objection of the Department of Labor to approval of this bill?

Mr. LUNDQUIST. I think that can be summarized very well in the statement that Secretary Wirtz sent to the committee on April 22, and that is that the issue has been considered and dealt with by the Cabinet Committee on Federal Staff Retirement Systems, the report of which the President transmitted to the Congress with his endorsement on March 7, 1966.

The report included the following recommendation:

Civil service retirement credit should be granted only for service which meets the clear general criteria presently established for that purpose. Proposals which would broaden those criteria, or authorize exceptions to them, to credit service performed by State or State-instrumentality employees in programs supported wholly or partly by Federal funds should be disapproved.

Mr. DANIELS. Thank you.

My able colleague from New York, Mr. Hanley. Do you have any questions?

Mr. HANLEY. Thank you very much, Mr. Chairman.

Sir, of the comparable instances which you have mentioned, did any Federal retirement participation result?

Mr. LUNDQUIST. There was one person in Minnesota. There were four investigators that were placed by the State. There were seven positions authorized, and the other three were offered Federal appointments.

My note here indicates that at least one of the three transferred to the Wage and Hour Division and then separated thereafter. I suspect he retired, not separated. I think the word "separated" is probably a poor word there.

So the retirement benefits were attained for this individual based upon his Federal employment.

Mr. HANLEY. You have but one instance then—there is one instance where this could take place?

Mr. LUNDQUIST. Yes, Mr. Hanley. One, at least, because in Connecticut, all personnel there were—15 positions—were transferred back to the State.

Mr. HANLEY. In your statement, where you indicate that the opposition is based on the fact that it is not consistent with the administration's objectives, can I assume that the objectives are based upon the proposal of the Committee which reported to the President, indicating that any expansion of this type of program should be frowned upon? Would this be the proper interpretation of objection?

Mr. LUNDQUIST. Well, I would prefer to have the civil service representative, who will be testifying shortly, respond to that question. I don't feel qualified to answer that.

Mr. HANLEY. I see. I have no further questions, Mr. Chairman.

Mr. DANIELS. Mr. Henderson, do you desire to ask a question?

Mr. HENDERSON. One question comes to mind that I don't know the answer to.

As you said earlier, sometimes it pays to be quiet when not sure of yourself, but I would like to ask Mr. Lundquist, with regard to the 21 employees involved here, are they still with you?

Mr. LUNDQUIST. I think a substantial number are. I know we had at least one or two that died, and the others, I believe, are still with us.

Mr. HENDERSON. Mr. Chairman, I would emphasize one point he made that I had not thought about until I heard his testimony. That

is the fact that under the cooperative agreement these employees were not able to move up by way of promotion and take advantage of other positions in the Wage and Hour Division, so I conclude by asking: Have you had any promotions from this group?

Mr. LUNDQUIST. Yes, we had some.

I would like to supplement my statement concerning the response to your question, and that is, I do have more detailed information. Of 20 State employees who transferred to the Divisions, 5 have separated, 4 had more than 20 years of State service. Eight had 7 or fewer years of service under the agreement. Three had more than 7, but less than 20 years of State service under the agreement.

I must confess I don't know what advantage we have here explaining these various statistical data, but the fact is that five did separate.

Mr. McVEIGH. Just so the record may be more fully correct, it should be noted that in the interim period, from the spring of 1942 until sometime in mid-1947, the executive branch operated under the war service regulation and during that period there were no competitive examinations for our investigator positions. The program was reestablished sometime after mid-1947, at which time the register was again established.

Mr. DANIELS. If there are no further questions, we will excuse you gentlemen.

We want to thank you for coming here.

Our next witness is Mr. Andrew E. Ruddock, Director, Bureau of Retirement and Insurance, U.S. Civil Service Commission. You may proceed, Mr. Ruddock.

STATEMENT OF ANDREW E. RUDDOCK, DIRECTOR, BUREAU OF RETIREMENT AND INSURANCE, U.S. CIVIL SERVICE COMMISSION

Mr. RUDDOCK. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear today to present the views of the Civil Service Commission on this legislation to amend the Civil Service Retirement Act.

In recent years, the 1938 Fair Labor Standards Act has been federally administered by Labor Department employees in all States except North Carolina. Until yesterday we were under the impression that North Carolina was the only State which had an agreement of this type. We learned yesterday what the committee heard this morning, that there were similar agreements in effect for periods of time in the District of Columbia, Minnesota, and Connecticut.

In North Carolina, from 1939 to 1963, the act was administered under a cooperative agreement between that State and the Department of Labor. Starting September 1, 1963, administration of the act in North Carolina, and most of the employees involved under the cooperative agreement—about 25—were transferred to the Labor Department.

H.R. 1783 proposes to allow these employees, transferred into Federal Service Retirement Act, credit for their years of prior service spent in administration of the Fair Labor Standards Act. The Labor Department would be required to pay into the civil service retirement fund the equivalent of agency contributions for service so credited. Employees could make deposits, deductions plus interest, for the past service, or could elect to receive credit without deposit, with a slight reduction in annuity.

By report dated April 6, 1966, the Commission stated fully its reasons for strongly recommending against the enactment of this legislation. If you agree, Mr. Chairman, I suggest that report be made part of the record at this point.

Mr. DANIELS. Without objection, the report will be incorporated in the record.

(The document referred to follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 6, 1966.

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

DEAR MR. CHAIRMAN: This refers further to your letter requesting Commission report on H.R. 1783, a bill "To grant credit for purposes of the Civil Service Retirement Act for service performed by Federal employees under a cooperative agreement between the Federal Government and the State of North Carolina with respect to the administration of the Fair Labor Standards Act of 1938 in such State, and for other purposes."

Section 3 of the Civil Service Retirement Act currently allows credit for retirement purposes basically for periods of employment during which an employer-employee relationship existed between the individual and the Federal Government or the municipal government of the District of Columbia. H.R. 1783 would extend retirement credit to individuals now employed by the Federal Government for prior service as employees of the State of North Carolina engaged in that State in administration of the Fair Labor Standards Act of 1938. The Department of Labor would be required to pay into the Civil Service retirement fund the equivalent of agency contributions for service so credited. Each employee receiving such credit could pay into the fund the equivalent of retirement deductions plus interest for the service covered, or he could elect to receive credit without deposit with a slight reduction in annuity.

The Commission has been advised that North Carolina is the only State in which the investigation and inspection functions of the Fair Labor Standards Act of 1938 were performed by State employees under cooperative agreement between the State and the U.S. Department of Labor. In other States, the functions were performed by employees of the United States, appointed and supervised directly by officials of the Department of Labor.

The format of the cooperative agreement itself is not unique; it is a format requiring submission of a plan by the State, approval of the plan by an agency of the Federal Government, and reimbursement by the Federal Government for expenses incurred by the State in carrying out the approved plan. It is one of the accepted and frequently used methods by which the Federal Government obtains performance of a Federal function without actually hiring and supervising the employees who do the necessary work. That service as a State employee under such an arrangement is not creditable for Federal retirement purposes has been conclusively established by the decision of the U.S. Court of Appeals for the District of Columbia Circuit (*Stapleton v. Macy*, et al., 304 F. 2d 954, June 28, 1962).

The cooperative agreement with the State of North Carolina was apparently in effect from November 1, 1939, to 1963. On September 1, 1963, the function and most of the employees involved were transferred to the U.S. Department of Labor; the agreement was terminated before the end of 1963. The purpose of H.R. 1783 is to extend to the State employees who transferred into Federal service the same retirement status they would have had if all of their service in administering the Fair Labor Standards Act of 1938 had been Federal rather than State employment. We are advised that less than 25 employees would be affected by this bill.

The Commission has in the past consistently recommended against enactment of legislation which would allow credit under the Civil Service Retirement Act for periods of prior employment for a State, or in fact for any service in which the Government was not the employer. Despite its narrow scope, H.R. 1783 is legislation of this nature—it proposes to allow Federal retirement credit for periods of past service in the employ of a State—and the Commission is unable to concur in its enactment.

On March 7, 1966, the President transmitted to the Congress, with his endorsement, the report of the Cabinet Committee on Federal Staff Retirement Systems which included the following recommendation:

"Civil service retirement credit should be granted only for service which meets the clear general criteria presently established for that purpose. Proposals which would broaden those criteria, or authorize exceptions to them, to credit service performed by State or State-instrumentality employees in programs supported wholly or partly by Federal funds should be disapproved."

The Commission is in complete accord with the position of the Chief Executive and for the reasons above recommends strongly that adverse action be taken on H.R. 1783.

The Bureau of the Budget advises that there would be no objection to the submission of this report as enactment of H.R. 1783 would not be consistent with the administration's objectives.

By direction of the Commission:

Sincerely yours,

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

Mr. RUDDOCK. Because this proposal was offered, not to gain a special retirement advantage but to care for the welfare of the people involved, the terms of the cooperative agreement under which these people worked were studied with particular care, to see if the resulting employment could possibly be Federal or unique in nature so as to warrant an exception to the policy against the crediting of State service. However, the facts simply did not admit of either conclusion.

The format of the agreement was not unusual; it required submission of a plan by the State, approval of the plan by the Federal agency, and reimbursement by the Federal Government for expenses incurred by the State of North Carolina in administering the Fair Labor Standards Act under the approved plan. The agreement thus set up one of the commonly used methods by which the Federal Government obtains performance of a Federal function without actually hiring or supervising the employees who do the necessary work. The resulting employment did not meet all of the tests of Federal service. While employees serving under the agreement were engaged in the performance of a Federal function, they were hired and supervised by State rather than Federal officials.

Under these circumstances, and in line with its consistent opposition in the past to crediting non-Federal service under the Civil Service Retirement Act, the Commission firmly opposes enactment of H.R. 1783.

This policy position was underscored and reaffirmed by the President in his message of March 7, when he transmitted to the Congress with his endorsement, the report of the Cabinet Committee on Federal Staff Retirement Systems. The report includes this specific recommendation:

Civil service retirement credit should be granted only for service which meets the clear general criteria presently established for that purpose. Proposals which would broaden those criteria, or authorize exceptions to them, to credit service performed by State or State-instrumentality employees in programs supported wholly or partly by Federal funds should be disapproved.

Thank you for affording me the privilege of appearing before you this morning. I will be pleased to answer any questions.

Mr. DANIELS. Mr. Ruddock, you state that the employees involved under this bill do not meet the criteria for determining the retirement creditability of service for the Federal Government. But actually, did they not perform services for the Federal Government?

Mr. RUDDOCK. Yes. They were performing a Federal function. The three tests by which we are guided in determining whether any

given employment is Federal service are first, whether the individual is performing a Federal function, authorized either by law or by Executive order. That requirement was clearly met by these employees. They were administering certain provisions of the Fair Labor Standards Act.

The second criteria is that they be appointed as Federal employees by a Federal official acting in his capacity as such. These people, I am sorry to say, do not meet that criteria. They were appointed as State employees by a State official.

The Federal Government, in this particular instance, exercised a degree of supervision over the execution of the plan, and that supervision would include ascertaining that prospective employees did meet certain qualifications which the Federal Government insisted be possessed by people who were going to work under this particular contract.

The third test of Federal employment is whether people are supervised by a Federal official acting in his capacity as such. These people, from what we have been able to learn, were supervised in the performance of their duties by State officials rather than Federal.

The U.S. Department of Labor clearly had an interest in execution of the terms of that contract in accordance with those terms, so the Federal Government, I would presume, did exercise some supervision over the State of North Carolina in the performance of contract, as distinguished from the normal supervisory employee relationship that exists between a Federal employee and his immediate supervisors.

Mr. DANIELS. Then the Federal Government, to a degree, supervised these employees. Did it have any authority to discharge them if their services were unsatisfactory?

Mr. RUDDOCK. I am not sure that my answer on that is authoritative. I would think, under the terms of the agreement, the Federal Government would not have that authority. The Federal Government, being a party to the contract, would certainly have the right to insist that the State remove from its employment rolls an unsatisfactory employee. But I don't believe that authority would exist directly with the Federal Government.

Mr. DANIELS. Under the proposed legislation, do you know whether or not an employee would be entitled to a dual credit, one under the Federal law for pension rights and one under the State law?

Mr. RUDDOCK. There is nothing in the legislation, as it is before the committee this morning, which would prevent an employee from receiving credit for that service, both under the State retirement system and under the Civil Service retirement system.

Mr. DANIELS. The previous witness, Mr. Lundquist, testified that there were three similar cooperative plans in the District of Columbia, Minnesota, and Connecticut; and that there is only one employee employed under that group that came into the Federal service.

Could you give this committee any idea what the cost would amount to if these 21 people, now blanketed into the Federal service, plus that one in Minnesota, in the event of the approving of this bill?

Mr. RUDDOCK. We didn't make any estimate on that, Mr. Chairman, because the opposition of the administration was not primarily to the cost. As this cost would be related to overall retirement costs, it would be minimal.

I am quite willing to accept Congressman Henderson's estimate that the payment required from the Department of Labor, with respect to these people, would be in the neighborhood of \$50,000.

Mr. DANIELS. Mr. Hanley, do you have any questions?

Mr. HANLEY. Mr. Chairman, simply to clarify a point, I think the question I posed to the preceding gentleman was: Was there any instance where a person affected by such a transition became the beneficiary of the Federal retirement program? And if I interpreted his answer correctly, he indicated that there was one instance where this was affected.

I am wondering what the basis would have been there.

Mr. RUDDOCK. My understanding of his response to your question, Mr. Hanley, was that one employee of the State of Minnesota became a Federal employee. There was not then and there is not now any law which would authorize crediting his service as an employee of the State of Minnesota under the Civil Service Retirement Act.

I don't know the circumstances in this particular case, but the individual, if after he were transferred to Federal employment had at least 5 years of Federal service, could have qualified for civil service retirement annuity.

Now, I might point out that we did not get testimony this morning with respect to the retirement status of those employees of the District of Columbia who were involved in a similar agreement. I would say, however, that the municipal government of the District of Columbia does not have its own retirement system. Rather, its employees are always covered under the civil service retirement system, so it would be immaterial for credit purposes whether the individual was an employee of the District of Columbia government or of the U.S. Department of Labor.

It would be creditable either way. The problem would not arise with respect to that group.

Mr. HANLEY. It still isn't clear in my mind, with respect to Mr. Ruddock's answer. May I direct a question to Mr. Lundquist, please?

Did I understand you to say that one individual affected by this transition in the past became a participant in the Federal retirement program?

Mr. LUNDQUIST. Yes. That was the intent of my answer, that he did transfer. But he transferred, as Mr. Ruddock indicated, to the Wage and Hour Division and then attained Federal retirement to the extent that his service would entitle him to Federal retirement.

Mr. HANLEY. I see. Thank you.

I have no further questions, Mr. Chairman.

Mr. DANIELS. The staff has propounded a couple of questions which I would like to ask.

Mr. Ruddock, would this bill grant credit to a former State employee who renders service in any Federal agency, even though he was not a State employee at the time the cooperative agreement was terminated?

Mr. RUDDOCK. The bill, as drafted, does not limit credit to those employees who transferred when the agreement terminated. In other words, in direct response to your question, any person currently working in a Federal agency who had prior service of this type would be entitled to credit for that service as a result of the bill as drafted.

Mr. DANIELS. Also, would this bill grant credit equal to 90 percent for such service without requiring contributions by the employee?

Mr. RUDDOCK. The bill, as drafted, would give the employee the option of paying in the equivalent of retirement deductions for the past service. If he did not make that payment, he would receive credit for that past service. His annuity would be reduced by 10 percent of the amount he owes the fund. In other words, the reduction is 10 percent of his indebtedness to the fund, not 10 percent of his annuity.

Mr. DANIELS. Is it consistent with existing law that the Department of Labor, as proposed in this bill, should make a mandatory contribution to the retirement fund, whereas the employee would not be so required?

Mr. RUDDOCK. The provision is a little unusual. Federal agencies do currently, and have since July 1, 1957, paid amounts into the retirement fund which match deductions actually made from the salaries of their employees.

I do know, from prior conversations with the author of this bill, that Mr. Henderson intended that the Government obligation with respect to this past service be fully met by a payment by the Department of Labor into the retirement fund and without regard to any idea of matching actual contributions made by the employees. This is an unusual provision.

Mr. DANIELS. Would opposition to the bill be lessened if this committee amended the bill to the extent that the employees be required to make their contributions?

Mr. RUDDOCK. The answer to that, I think, is "No." Actually, the reduction in annuity of 10 percent of the amount owed the fund is greater than an actuarial reduction for most employees, so that so far as the retirement fund is concerned, there is no particular advantage in giving the individual full credit after making the deposit, as compared with giving him credit with the annuity reduced by 10 percent of the amount of his indebtedness.

Mr. DANIELS. Would the opposition to this legislation be less if we limited its provisions to only those employees blanketed into Federal service?

Mr. RUDDOCK. Mr. Daniels, the best answer I can give you to that is that I see no chance of lessened opposition as long as we have Presidential endorsement of the Cabinet Committee recommendation, that credit for service performed by State or State-instrumentality employees in programs supported locally or partly by Federal funds should be disapproved, so that perhaps we are talking about degrees of opposition. I see no chance of a "no objection" position from the administration on this bill.

Mr. DANIELS. The administration is unalterably opposed.

Mr. RUDDOCK. That is it.

Mr. HENDERSON. On that point I would like the record to be clear that at the time I drafted and introduced the legislation, it was my intention that the benefits of the bill only apply to those employees that did come to Federal employment. I believe that the record has been clear that there were 25 that could have come in, and now we find as an actual fact that 21 did come in.

Since that time there have been—I think the figure is five that are no longer involved—but I feel that the justice of the legislation,

if it is to be enacted, would be to provide those benefits to those employees who were offered employment and who chose the Federal employment.

I think the very basis for the bill is the fact that they were taken from the State system and brought into the Federal system. I would not want the bill to cover 25, and one to cover the 21, and, of course, I think Mr. Ruddock's testimony generally on that point—we are not in disagreement. Our disagreement is on bringing in the 21.

Mr. DANIELS. I understand.

Anything further? Mr. Hanley?

Mr. HANLEY. No questions.

Mr. DANIELS. Mr. Ruddock, thank you.

Our next witness is Mr. Nathan T. Wolkomir, president of the National Federation of Federal Employees.

STATEMENT OF NATHAN T. WOLKOMIR, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY HAROLD FINNEGAN, LEGISLATIVE ASSISTANT

Mr. WOLKOMIR. Mr. Chairman and members of the subcommittee, my name is Nathan T. Wolkomir. I am president of the National Federation of Federal Employees. To my right is Dr. Harold Finnegan, legislative assistant to the president of NFFE.

Our organization has members in virtually all departments and agencies here and overseas and is the oldest and largest independent union of Federal employees.

NFFE urges the approval of H.R. 1783 as it will correct an inequity to a number of employees in the Department of Labor, an inequity that can be corrected only by legislative action.

For years the Department of Labor had an agreement with the State of North Carolina whereby State employees, under the supervision of an employee of the Department of Labor, enforced the Fair Labor Standards and Public Contracts Acts within the State of North Carolina. Recently this agreement was terminated and the State employees became Federal. Under existing laws, these employees can count toward Federal retirement, only the brief time since they were federalized. This despite the fact they were engaged in the performance of Federal functions authorized by Congress and performed these functions under the supervision and direction of a Federal officer.

H.R. 1783 would authorize an employee who wished to do so to count his State service as Federal service for the purpose of retirement, providing the employee paid into the retirement fund the moneys he would have paid in had he been a Federal employee all of the time.

H.R. 1783 also requires that the Department of Labor pay into the retirement fund, the moneys it would have paid in had the employee been a Federal employee all of the time. Thus, while it will enable the employee to count toward Federal retirement the time spent as a State employee enforcing Federal statutes, H.R. 1783 is sound fiscally so far as the civil service retirement fund is concerned.

Under these circumstances NFFE believes the contribution the Department of Labor would have to make is a small price to pay for correcting the inequity. This is true especially in the instant cases as the Department would have had to pay the salaries as well as the

retirement fund contributions had the employees been Department of Labor employees rather than State employees carrying out a Department of Labor mission.

This is our testimony, Mr. Chairman, and I wish to express the appreciation of the National Federation of Federal Employees to you and the other members of the subcommittee for the opportunity of testifying on this issue today.

In discussion and as an offside from my prepared text, Mr. Chairman, with the people themselves who have been affected by this particular bill, we find that in truth it seems that their supervision has been with a Federal employee, Mrs. Horton, practically acting as their full-time supervisor through these many years, and in particular since the changeover from 1963. In fact, we also find out that not only has she, as a Federal employee, been acting as a supervisor, but I believe since 1963 she even has a Federal assistant to act as an additional supervisor in the administration.

NFFE, of course, is always basically interested in the merit concept of civil service and certainly all through the criteria of stability and promotion and appointment based upon capability and no discrimination, the three basic elements of the merit concept in government we believe is equitable and applicable to these people, and it is for this reason that NFFE, as a basic principle, is testifying today on behalf of this bill.

Mr. DANIELS. Thank you.

Mr. Hanley, any questions?

Mr. HANLEY. Thank you, Mr. Chairman.

I really haven't any questions. I want to express my appreciation for your interest and your fine presentation.

Mr. DANIELS. Mr. Henderson?

Mr. HENDERSON. No questions.

I appreciate Mr. Wolkomir's statement.

Mr. WOLKOMIR. I may have missed the pay testimony yesterday, but this was just as important.

Mr. DANIELS. The Chair likewise desires to compliment you for your testimony here today. Thank you very much.

I would like to submit for the record the statement of the American Federation of Government Employees. It may go in the record at this point, without objection.

(The statement referred to follows:)

PREPARED STATEMENT OF JUDITH PARK, TECHNICAL ASSISTANT ON LEGISLATION,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

I am Judith Park, technical assistant on legislation, American Federation of Government Employees. I am representing the American Federation of Government Employees this morning due to the fact that National President John F. Griner and Legislative Director Thomas G. Walters are testifying on pay legislation before the Senate Post Office and Civil Service Committee.

The American Federation of Government Employees appreciates the opportunity of appearing and endorsing Congressman Henderson's bill, H.R. 1783, whose intent is to grant credit for purposes of the Civil Service Retirement Act for service performed by Federal employees under a cooperative agreement between the Federal Government and the State of North Carolina with respect to the administration of the Fair Labor Standards Act of 1938 in such State, and for other purposes.

The American Federation of Government Employees is of the opinion that not only should H.R. 1783 be enacted into law, but that in the not-too-distant future,

hearings should be held for other small groups of employees and former employees who are not recognized for retirement and other fringe benefit purposes by the State or Federal Government. However, in an effort to show our full cooperation and support to H.R. 1783 we are not suggesting that these other groups be considered at this hearing.

On behalf of the American Federation of Government Employees, President Griner and Mr. Walters, I express our thanks and appreciation for the privilege of appearing in support of H.R. 1783.

Mr. DANIELS. That concludes today's hearing. The committee stands adjourned.

(Whereupon, at 11:40 a.m. the subcommittee was adjourned.)

