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AGE DISCRIMINATION IN EMPLOYMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 830

TO PROHIBIT AGE DISCRIMINATION IN EMPLOYMENT

S. 788

TO PROHIBIT ARBITRARY DISCRIMINATION IN EMPLOYMENT ON ACCOUNT OF AGE, AND FOR OTHER PURPOSES

MARCH 15, 16, AND 17, 1967

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AGE DISCRIMINATION IN EMPLOYMENT

WEDNESDAY, MARCH 15, 1967

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON
LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 4232, New Senate Office Building, Senator Ralph Yarborough presiding.

Present: Senators Yarborough (presiding), Randolph, Pell, Javits, and Fannin.

Committee staff members present: Robert O. Harris, counsel to the subcommittee, and Eugene Mittelman, minority counsel.

Senator YARBOROUGH. The subcommittee will come to order.

Today the Subcommittee on Labor considers legislation to prohibit discrimination in employment on account of age. The bills referred to the subcommittee for consideration include S. 830, which I introduced, and S. 788, introduced by Senator Javits. Three days of hearings have been scheduled to hear witnesses on these bills.

The bills will be placed in the hearing record at this point and also any departmental reports we have received.

(The bills and departmental reports referred to follow:)

90TH CONGRESS
1ST SESSION

S. 830

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1967

Mr. YARBOROUGH (for himself, Mr. BIBLE, Mr. CANNON, Mr. CLARK, Mr. KENNEDY of Massachusetts, Mr. LONG of Missouri, Mr. MORSE, Mr. RANDOLPH, Mr. SMATHERS, and Mr. WILLIAMS of New Jersey) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To prohibit age discrimination in employment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Age Discrimination in Employment Act of 1967."

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their

efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of employment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce of arbitrary discrimination in employment because of age burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this Act to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

EDUCATION AND RESEARCH PROGRAM

SEC. 3. The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older

workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this Act, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures:

(a) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(b) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(c) foster, through the public employment service system and through cooperative effort, the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(d) sponsor and assist State and community informational and educational programs.

PROHIBITION OF AGE DISCRIMINATION

SEC. 4. (a) It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, condi-

tions, or privileges of employment, because of such individual's age; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age.

(b) It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to

discriminate against an individual in violation of this section.

(d) It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member, or applicant for membership, has opposed any practice made unlawful by this section, or because such individual, member, or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(e) It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;

(2) to separate involuntarily an employee under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this Act; or

(3) to discharge or otherwise discipline an individual for good cause.

STUDY BY SECRETARY OF LABOR

SEC. 5. The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress.

ADMINISTRATION

SEC. 6. The Secretary shall have the power—

(a) to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this Act;

(b) to cooperate with regional, State, local, and

other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act.

ENFORCEMENT

SEC. 7. (a) Whenever the Secretary on his own investigation or upon the basis of a written charge by any person claiming to be adversely affected or aggrieved, or on his behalf has reason to believe, that a practice made unlawful by this Act has been committed, he shall endeavor to eliminate any such practice by informal methods of conference, conciliation, and persuasion.

(b) (1) If the Secretary fails to effect voluntary compliance with the Act as a result of such informal methods, he shall issue and serve upon the person who has allegedly committed the unlawful practice a complaint stating such allegations and containing a notice of opportunity for a hearing thereon. After such opportunity for a hearing, the Secretary shall decide on the record whether or not an unlawful practice has been committed under this Act. If it is found that any person has engaged in an unlawful practice, the Secretary may issue an order requiring such person to cease and desist therefrom and to take such affirmative action, including reinstatement or hiring of employees, with

or without back pay, as will carry out the purposes of this Act.

(2) For the purpose of any hearing or investigation under this Act, the provisions of section 21 of the Act of June 6, 1934, as amended (48 Stat. 899), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary.

(3) The Secretary may petition any United States court of appeals for any circuit wherein the discriminatory practice in question occurred or wherein the person alleged to have committed an unlawful practice resides or transacts business, for the enforcement of any order issued under subsection (b) (1) of this section and for appropriate temporary relief or restraining order, and any person aggrieved by an order of the Secretary under that section may obtain review thereof in such court. Upon the filing of a petition for enforcement or review the Secretary shall certify and file in the court the record of the proceeding, as provided in section 2112 of title 28, United States Code. No objection to the order of the Secretary shall be considered by the court unless such objection has been urged before the Secretary, or unless the failure or neglect to urge such an objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record con-

sidered as a whole, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding, the court may order such additional evidence to be taken before the Secretary and to be adduced upon hearing in such manner and upon such terms and conditions as the court may direct. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file with the court such modified or new findings. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

The filing of a petition for court review by any aggrieved person shall not operate as a stay of the Secretary's order, unless specifically ordered by the court.

NOTICES TO BE POSTED

SEC. 8. Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Secretary setting forth information as the Secretary deems appropriate to effectuate the purposes of this Act.

RECORDKEEPING

SEC. 9. Every employer, employment agency, and labor organization subject to this Act shall make, keep, and preserve such records and shall preserve such records for such time, and shall make such reports, as the Secretary shall prescribe by regulation or order as necessary or appropriate for the enforcement of this Act.

RULES AND REGULATIONS

SEC. 10. The Secretary of Labor may issue such rules and regulations as he may consider necessary or appropriate for carrying out this Act, and may establish such reasonable exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest.

CRIMINAL PENALTIES

SEC. 11. Whoever shall (1) forcibly resist, oppose, impede, intimidate, or interfere with a duly authorized representative of the Secretary while he is engaged in the performance of duties under this Act or (2) willfully commit a practice made unlawful by this Act shall be punished by a fine of not more than $500 or by imprisonment for not more than one year, or by both: *Provided, however,* That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

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DEFINITIONS

SEC. 12. For the purposes of this Act—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided*, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means any agent of such a person, but such term does not include the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States

Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

LIMITATION

SEC. 13. The prohibitions in this Act shall be limited to individuals who are at least forty-five years of age but less than sixty-five years of age: *Provided*, That in order to effectuate the purposes of this Act the Secretary may by rule or regulation issued under section 10 of this Act provide for

appropriate adjustments, either upward or downward, in the maximum and minimum age limits provided in this section.

FEDERAL-STATE RELATIONSHIP

SEC. 14. Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age.

EFFECTIVE DATE

SEC. 15. This Act shall become effective one hundred and eighty days after enactment (except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to an additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions.

APPROPRIATIONS

SEC. 16. There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act.

90TH CONGRESS
1ST SESSION

S. 788

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 1967

Mr. JAVITS (for himself, Mr. ALLOTT, Mr. KUCHEL, Mr. MURPHY, and Mr. PROUTY) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To prohibit arbitrary discrimination in employment on account of age, 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 6(d) (4) of the Fair Labor Standards Act of 1938 is amended by inserting after the word "subsection" the words "or subsection (f)".

SEC. 2. Section 6 of such Act is amended by adding at the end thereof a new subsection as follows:

"(f) (1) No employer having fifty or more employees subject to any of the provisions of this section shall, within any establishment in which such employees are employed—

"(A) refuse to hire, discharge, or otherwise dis-

criminate against any person forty-five years of age or older with respect to the terms, conditions, or privileges of such person's lawful employment, because of such person's age, when such an age distinction is not a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; or

"(B) utilize in the hiring or recruitment of individuals for employment otherwise lawful any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against persons forty-five years of age or older because of their age.

"(2) No labor organization having fifty or more members subject to any of the provisions of this section shall so discriminate against any person forty-five years of age or older or limit, segregate, or classify its membership in any way which would deprive or tend to deprive such person of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as such an applicant for employment, or would affect adversely his wages, hours, or employment conditions, because of such person's age.

"(3) No employer subject to paragraph (1) or labor organization subject to paragraph (2) shall discharge, expel,

or otherwise discriminate against any person, because he has opposed any practice prohibited by either such paragraph or has filed a charge, testified, participated, or assisted in any proceeding under this Act arising out of any such practice.

"(4) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld from such employee in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

"(5) Before instituting any action under section 16 or section 17 with respect to any practice by any employer or labor organization in violation of this subsection, the Secretary shall endeavor to eliminate such practice by informal methods of conference, conciliation, and persuasion.

"(6) Upon the request of any employer, whose employees or some of them refuse or threaten to refuse to cooperate in effectuating the provisions of this subsection, the Secretary is authorized to assist in such effectuation by conciliation or other remedial action.

"(7) The Secretary is authorized to make such technical studies as are appropriate to effectuate the purposes and policies of this subsection and to make the results of such studies available to interested governmental and nongovernmental agencies.

"(8) The Secretary is authorized to create such local, State, or regional advisory and conciliation councils as in his judgment will aid in effectuating the purpose of this Act, and to empower them to study the problem or specific instances of discrimination in employment because of age and to foster through community effort or otherwise means to fully utilize the skills of workers over forty-five, and make recommendations to the Secretary for the development of policies and procedures in general and in specific instances. Such advisory and conciliation councils shall be composed of representative citizens, residents of the area for which they are appointed, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the Secretary may make provision for technical and clerical assistance to such councils and for the expenses of such assistance.

"(9) Notwithstanding the provisions of paragraph (1) of section 13 (a), this subsection shall not be inapplicable to employees described in such paragraph."

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, March 20, 1967.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of February 13, 1967, for a report on S. 830, a bill "To Prohibit Age Discrimination in Employment." The bill would authorize the Secretary of Labor to carry out a comprehensive educational and enforcement program to combat age discrimination in employment experienced by workers age 45 to 65. Specifically, the bill would give authority to the Secretary of Labor to conduct education and research studies designed to provide more objective information about the skills and abilities of older workers; declares unlawful the practice of age discrimination in employment by employers, employment agencies and labor and sets forth the conditions under which such a finding shall be made; directs the Secretary of Labor to study conditions leading to involuntary retirement practices and report his findings to the President and the Congress; gives authority to the Secretary of Labor to carry out enforcement provisions, including conciliation procedures and, where necessary, the power to issue cease and desist orders; and provides for a criminal penalty against whoever shall interfere with any duly authorized representatives of the Secretary of Labor in the carrying out of duties set forth under the bill or willfully commits a practice deemed unlawful under the bill as introduced.

The bill embodies the recommendations made on this subject by the President in his Message on Older Americans submitted to the Congress on January 23, 1967. In the Message, the President outlined the serious problems confronting many older workers because of arbitary age discrimination in hiring practices and the subsequent loss in both economic and personal terms to the Nation and older workers and their families.

In the report of the Secretary of Labor to Congress on June 30, 1965, on Age Discrimination in Employment, he stated, "The possibility of new *non-statutory* means of dealing with such arbitrary discrimination has been explored. That area is barren." He further stated, "The elimination of arbitrary age limits on employment will proceed much more rapidly if the Federal Government declares, clearly and unequivocally, and implements so far as is practicable, a national policy with respect to hiring on the basis of ability rather than age."

We would therefore recommend that the bill receive favorable consideration by the Committee.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILBUR J. COHEN,
Under Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 27, 1967.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the Bureau's views on S. 788, a bill "To prohibit arbitrary discrimination in employment on account of age, and for other purposes," and S. 830, a bill "To prohibit age discrimination in employment."

S. 788 would amend the Fair Labor Standards Act of 1938 to prohibit arbitrary discrimination in employment on account of age when such an age distinction is not a bona fide occupational qualification. This protection would extend to workers who are 45 years of age and older. The enforcement provisions of this bill would be similar to those provided under the Fair Labor Standards Act.

The President in his message to the Congress of January 23, 1967, on Older Americans stated:

I recommend that—

> The Congress enact a law prohibiting arbitrary and unjust discrimination in employment because of a person's age.

The law cover workers 445 to 65 years old.

The law provide for conciliation and, if necessary, enforcement through cease-and-desist orders, with court review.

The law provide an exception for special situations where age is a reasonable occupational qualification, where an employee is discharged for good cause, or where the employee is separated under a regular retirement system.

Educational and research programs on age discrimination be strengthened.

As Secretary Wirtz testified before your Committee on March 15, 1967, S. 830 would carry out these recommendations. Accordingly, we recommend its enactment.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

The technological advances made by our great American society has created untold benefits to mankind. However, this same technology has some less fortunate side effects. While we all applaud the use of automated machinery to relieve workers of the drudgery of simple repetitive tasks, in some cases this also relieves the workers of their employment.

We are all very proud that there is free mobility of everyone throughout our country and we still echo Horace Greeley's statement, "Go west, young man, go west." People can go where they like and live where they like. Often this means that a worker will leave his hometown and his past employment to strike out anew in another area.

In each of these situations a young man may easily adjust to the changed conditions. But an older worker—one 45 years of age—really in the prime of life—is less fortunate.

Our industrial system has apparently almost unconsciously placed a premium on youth. Whether there is sufficient job qualification justification, is the question we will explore here.

In any event, unemployment strikes harder at the older worker. In 1965, unemployment for workers over 45 lasted an average of 19 weeks a year while young workers stayed unemployed only 13 weeks a year.

In the past, we in Congress have concentrated on the problems of the retired individual. It is time that we turn our attention to the older worker who is not ready for retirement—but who cannot find a job because of his age, despite the fact that he is able, capable, and efficient. He is not ready for retirement—but he is, in effect, being retired nonetheless, regardless of his ability to do the job.

Before hearing from Secretary Wirtz, I understand that my distinguished colleague from New York, the ranking member of the minority, Senator Javits, wishes to testify on the bills pending before the subcommittee.

Senator Javits.

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Normally it would be adequate for a member of the subcommittee to read a statement or make a statement as a member of the subcommittee. I think this legislation is so important, and I am entirely willing to be cross-examined with respect to it by my colleagues, that I feel it is my duty to testify.

I might say that I will not read my statement, I will summarize it, and I ask unanimous consent that it may be made part of the record preceding my oral statement.

Senator YARBOROUGH. The request is granted. This entire statement by Senator Javits, entitled "Administration Age Discrimination Bill Must Be Amended," will be ordered printed in the record at this point, preceding the oral statement of Senator Javits.

(The prepared statement of Senator Javits follows:)

PREPARED STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF N.Y.

ADMINISTRATION AGE DISCRIMINATION BILL MUST BE AMENDED

In recent years, Congress has begun to respond in a variety of ways to the problems of older Americans. Medicare, the Older Americans Act of 1965, and various sections of the anti-poverty programs represent great strides in the continuing struggle to ensure that our older citizens may live their lives with some measure of dignity. But this struggle has really just begun.

One of the most difficult problems facing our older citizens is the resistance they encounter in seeking employment when, usually because of circumstances beyond their control, they become unemployed. The accent on youth—almost a cult in the nation—understandable as it is in such a fast-moving era has nonetheless given rise to the wholly fallacious, yet widely held belief, that older persons are unqualified, or less qualified, to perform many tasks in this technological age.

As Secretary Wirtz put it in his landmark report in the Older American Worker:

"An unmeasured but significant proportion of the age limitations presently in effect are arbitrary in the sense that they have been established without any determination of their actual relevance to job requirements, and are defended on grounds apparently different from their actual explanation."

Age discrimination in employment is a tragedy, not only from the standpoint of our older workers themselves, but also from the standpoint of the nation as a whole. For it represents, a great waste of one of our most precious resources—in this case the talent and experience accumulated by our older workers over many years. We must also remember, too, that youth itself has a stake in guarding against age discrimination in employment, for nothing but time stands between the "younger worker" and the "older worker."

The duty of Congress to act to prohibit arbitrary and unjust age limits on hiring, resulting from prejudice or, even more often, simply from misunderstanding, is clear. As Secretary Wirtz pointed out in his report:

"The elimination of arbitrary age limits on employment will proceed much more rapidly if the Federal Government declares, clearly and unequivocally, and implements, so far as is practical, a national policy with respect to hiring on the basis of ability rather than age."

Since 1957 I have been proposing in the Senate legislation to deal with the problem of age discrimination in employment. Although my proposals—and similar ones offered by others—were always warmly received, the first breakthrough did not come until 1964, when Executive Order 11141 made it the public policy of this nation to ban age discrimination in employment under Federal contracts except upon the basis of a bona fide employment qualification, retirement plan, or statutory requirement.

Then, in the Civil Rights Act of 1964 the Secretary of Labor was directed to make a study of the problem and report back to Congress. The result was a landmark report which spelled out, with facts and figures, the difficulties confronting older workers attempting to find a new job.

Last year, together with Senators Murphy, Prouty, Fannin, Griffin and Smathers, I succeeded in adding an amendment barring age discrimination in employment to the Fair Labor Standards bill which was actually adopted by the Senate. Unfortunately, the age discrimination amendment was dropped by the Conference Committee, which substituted a provision directing the Secretary of Labor to submit legislative proposals early this year. The result was S. 830, which is now before this subcommittee.

In the meantime, the States have also manifested their awareness of the problem of age discrimination in employment. Some 23 states and Puerto Rico now have laws prohibiting age discriminated in employment. Over half of these laws have been passed since 1960; all but three since 1955. Under these measures, the States have had broad success in reducing age discrimination and expanding job opportunities for older workers. The major hindrance to further progress has been limitation on staff and funds. My own State of New York has had such a law since 1958, and substantial progress has already been made. I know that the Committee will want to question closely the representative of the New York State Commission For Human Rights, who will be here on Friday, in order to examine in detail the working of our State's law.

With the introduction of a bill by the Administration it appears that, at long last, we are going to have Federal action—and Federal action is unquestionably appropriate, for the problem is clearly national in scope.

It is important, needless to say, that any Federal age discrimination law be administered as efficiently as possible. At the same time, all parties concerned must be guaranteed a prompt and fair hearing on the many difficult questions which are sure to arise under the law.

I believe that the most effective way of accomplishing these objectives is to utilize the Administrator of the Wage and Hour Division of the Labor Department to administer and enforce the Act. This is the approach utilized in my bill, S. 788, which has been co-sponsored by Senators Allott, Kuchel, Murphy and Prouty. The Wage-Hour office is an existing, nationwide structure into which the functions of enforcement of the age discrimination law could easily be integrated. Here is a ready-made system of regional directors, attorneys and investigators, which has vast experience in making periodic investigations similar to those which would be required under the age discrimination law.

The Administration's bill, on the other hand, would require the establishment of a wholly new and separate bureaucracy within the Labor Department, replete with regional directors, attorneys and investigators, as well as trial examiners. Aside from the needless duplication of functions involved, one result of the Administration's approach will surely be the same delays which plague so many of our agencies, such as the EEOC and the NLRB. The EEOC, for example, is already years behind in disposing of its docket. Such delay is always unfortunate, but it is particularly so in the case of older citizens to whom, by definition, relatively few productive years are left. By utilizing the courts rather than a bureaucracy within the Labor Department as the forum to hear cases arising under the law, these delays may be largely avoided.

We must also be sure that the law which is passed does not in practice encourage rather than discourage discrimination against older workers. One of the problems which must be faced in this connection concerns the operation of established pension plans, some of which provide benefits based to a certain extent on the age of the employee when first hired.

The Administration bill, which permits involuntary separation under bona fide retirement plans meets only part of the problem. It does not provide any flexibility in the amount of pension benefits payable to older workers depending on their age when hired, and thus may actually encourage employers, faced with the necessity of paying greatly increased premiums, to look for excuses not to hire older workers when they might have done so under a law granting them a degree of flexibility with respect to such matters.

I do not mean to in any way minimize the importance of adequate pension benefits for older workers. Indeed, I have recently introduced a comprehensive bill to deal with this problem. I merely suggest that the age discrimination law is not the proper place to fight this particular battle.

Another problem which is not specifically dealt with in the Administration bill is that of seniority. The seniority system, as it has developed in this country, operates to ensure the job security of older workers, and thus constitutes a built-in protection against premature discharge, based on age alone. We must be sure that any age discrimination law which is adopted does not hamper the operation of bona fide seniority systems.

I have prepared and will introduce today, a series of amendments to the Administration's bill, which I believe will meet these various problems, while retaining the most desirable features of the Administration's bill, and of S. 788. Let me briefly describe them:

First, the administration and enforcement of the law is placed in the hands of the Wage-Hour Division, and the method of enforcement almost exactly

parallels that used in minimum wage and hour cases—that is direct action in the District Court by the Secretary of Labor or the employee for appropriate relief. Such action may only be commenced after informal methods of conciliation have been exhausted.

Second, the criminal penalty in cases of wilful violation has been eliminated and a double damage liability substituted. This will furnish an effective deterrent to wilful violations and at the same time avoid the difficult problems of proof which would arise under a criminal provision.

Third, a fairly broad exemption has been provided for bona fide retirement and seniority systems. As I previously noted, S. 830 contains only a limited exemption for retirement systems and no exemption for seniority systems.

Fourth, the proviso guarding against pre-emption of the jurisdiction of state agencies performing like functions is continued, but a provision is added giving the Secretary of Labor a very limited power to adopt uniform standards to which state agencies would have to defer. The power could only be exercised in the case of employees whose duties require them to spend substantial amounts of time in more than one state. In the absence of some uniform Federal policy to cover such cases an employer might find himself faced with the necessity of complying with numerous and perhaps conflicting state laws for a single employee. Any regulation adopted pursuant to this power would not operate to pre-empt the jurisdiction of state agencies, it would merely obligate them to apply such Federal standards as the regulation established.

Fifth, the Secretary of Labor's power to adopt rules and regulations, including his power to declare exemptions and to vary age limits, is expressly made subject to the provisions of the Administrative Procedure Act.

I believe that adoption of these amendments will result in a law which is more efficient, at the same time fairer to all parties than the Administration's bill in its present form.

In conclusion, let me add that I think we all agree on the ultimate objectives of these hearings—that is to report meaningful legislation to protect the opportunities of our older workers to find employment.

Our differences concern the means to be utilized in achieving this objective. I am confident that these differences will be resolved and that this important legislation can finally be enacted. Without it we would be forced to fight the battle to protect our older citizens with one hand tied behind our backs. For all the counseling and retraining programs we may enact will be of only limited value if we cannot at the same time break down the wholly irrational barriers to employment, based on age alone, which have been permitted to spring up to hinder the older worker in his search for employment opportunities. This legislation is not the complete answer to all the problems of older workers, but it is certainly an extremely important weapon which our arsenal has for too long been without.

Senator JAVITS. My interest in preventing age discrimination in employment goes back to when I was attorney general of New York, serving with then Gov. Averell Harriman, now the President's roving Ambassador, and I am very gratified that following my efforts and those of then Governor Harriman, we did enact one of the very early bills against job discrimination because of age in New York.

Now, I think the time has come to act in the Federal Establishment. I am deeply gratified that the President has signalized this in his state of the Union message. The purpose of my testimony is to reconcile S. 788 with S. 830, the administration bill. Obviously, Mr. Chairman, it will be the efforts of the majority and I understand it perfectly well, to put S. 830 in shape.

Now, we have, in the Congress, begun to respond in many ways to the problems of older Americans. We have passed special legislation on housing, medicare, antipoverty, research, the Older Americans Act of 1965, and other programs. But, considering the enormous incidence of older people in the population attributable to marvelous advances in health, there is a great deal more we are going to have to do.

Secretary Wirtz will be here to testify this morning and his department has been responsible for some extraordinarily fine fact finding upon this subject and has made some very fine statements with respect to it.

He has pointed out in his report recently made on the older American worker, and I quote, because it seems to me to state the essence of what we are trying to do:

> The elimination of arbitrary age limits on employment will proceed much more rapidly if the Federal Government declares, clearly and unequivocally, and implements, so far as is practical, a national policy with respect to hiring on the basis of ability rather than age.

We are going to face opposition to this measure without any question. Notwithstanding that, it does have heavy backing in the Congress and is based upon a study of the Secretary of Labor. I am very proud to say I had a good deal to do with the inclusion in the Civil Rights Act of 1964, of the requirements for that study.

I might point out, too, that there has been a very favorable attitude upon this whole matter which has developed recently. We now have an Executive order made in 1964, eliminating age discrimination in employment under Federal contracts. That gives us good guidelines for legislation.

Now, I have sponsored legislation in this field last year with Senators Murphy, Prouty, Fannin, Griffin, and Smathers. I might point out the Senate went along with us in the fair labor standards bill which was adopted but our amendment was dropped in conference. I was a party to it because we were so anxious to get the minimum wage raise provided in that particiular bill that we accepted a provision requiring the Secretary of Labor to submit legislative proposals early this year. I would assume that S. 830, bill before us, represents those legislative proposals.

Some 23 States and Puerto Rico now have laws prohibiting age discrimination in employment. Over half of these laws have been passed since 1960; all but three since 1955. Under these measures, the States have had broad success in reducing age discrimination and expanding job opportunities for older workers.

Naturally, not as much has been put into the programs in the States in the way of staff and funds as should be. But, nonetheles, where there has been such law a good deal of progress has been made. I think now, with the administration back of the move, at long last ought to be successful in enacting legislation at the Federal level.

I wish to point out that the amendments which I suggest now, Mr. Chairman, and I shall be very practical, relate to the fears of business, which are expressed every time you try to do a reform of this character, whether it is about women or about race, color, or creed, that businessmen are to be subjected to vexatious suits; they are going to be made to hire people who are not competent in the job; they will be made to break down its hiring practices, et cetera.

The same refrain has been heard time and again throughout our history.

In New York State going back over 20 years to the first antidiscrimination in employment bill, the so-called Ives-Quinn bill, as we call it, dealt with race, origin, color, et cetera, and was superbly successful,

notwithstanding all the fears expressed about it. We have tried to answer some of these fears and I would like to go into them as follows:

We favor the approach utilized in our bill which is cosponsored by Senators Allott, Kuchel, Murphy, a member of the full committee, and Prouty, a member of this subcommittee. We favor the approach of having the Administrator of the Wage and Hour Division of the Labor Department administer and enforce the act rather than a new agency for enforcement as provided in the administration bill.

We think that a new agency would call for a new and separate bureaucracy, complete with a great deal of detailed organization, whereas the Wage and Hour Division already has the basic structure necessary for administration and enforcement. We are better advised to build on that existing structure, even if some expansion is necessary.

Now, another problem is the operation of established pension plans, some of which provide benefits based to a certain extent on the age of the employee when first hired.

The administration bill, which permits involuntary separation under bona fide retirement plans meets only part of the problem. It does not provide any flexibility in the amount of pension benefits payable to older workers depending on their age when hired, and thus may actually encourage employers, faced with the necessity of paying greatly increased premiums, to look for excuses not to hire older workers when they might have hired them under a law granting them a degree of flexibility with respect to such matters.

That flexibility is what we recommend.

We also recommend that the age discrimination law should not be used as the place to fight the pension battle but that we ought to subordinate the importance of adequate pension benefits for older workers in favor of the employment of such older workers and not make the equal treatment under pension plans a condition of that employment.

Another problem which is not specifically dealt with in the administration bill is that of seniority. The seniority system, as it has developed in this country, operates to insure the job security of older workers, and thus constitutes a built-in protection against premature discharge, based on age alone. We must be sure that any age discrimination law which is adopted does not hamper the operation of bona fide seniority systems.

If we fail to take that precaution we will run into the strong opposition of both management and unions, and footdragging on the part both of employers and of trade unions in complying with the law.

So, Mr. Chairman, in order to meet these needs, I will introduce the following amendments to S. 830.

First, that administration and enforcement be placed in the hands of the Wage and Hour Division.

Second, that the criminal penalty in cases of willful violation be eliminated and a double damage liability substituted. This is an adequate deterent in a bill of this character, and there is no use giving people the argument that it has criminal sanctions as a reason for refusing to cooperate or testify in investigations or proceedings.

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Third, that a fairly broad exemption be provided for bona fide retirement and seniority systems which will facilitate hiring rather than deter it and make it possible for older workers to be employed without the necessity of disrupting those systems.

Fourth, a provision guarding against preemption of the jurisdiction of a State agency performing a like function, but giving the Secretary of Labor a limited power to adopt uniform standards to which State agencies would have to defer.

Fifth, giving the Secretary of Labor power to adopt rules and regulations including the power to declare exemptions and to vary age limits but making that power subject to the requirement of the Administrative Procedure Act.

In my judgment, Mr. Chairman, and I have been devoted to this subject for years, this will materially improve the administration program as submitted.

In conclusion, I think we all agree on the ultimate objective of this hearing; that is, to report a meaningful bill to protect the opportunities of older workers to find employment. The differences are solely in the means to this objective. I am confident these means can be resolved, and I think that by resolving them we are better able to protect the older worker than if we did not resolve them and adopted some doctrinaire or stiff-necked attitude which, though it might look good on paper, would not result in the maximum hiring of older people.

We must break down the wholly irratioanl barriers to employment based on age alone which have been permitted to hinder the older worker in a search for employment opportunity.

This present age has been called on age where the cult of youth seems to prevail over everything else.

Mr. Chairman, it will be our job to introduce a note of realism in that situation which will emphasize the ability and capability of the worker to do the job, rather than his age level, as the desirable criterion for American employment practices.

Thank you, Mr. Chairman.

Senator YARBOROUGH. Senator Javits, I appreciate your statement. You are one of the most diligent workers on the full Committee on Labor and Public Welfare as well as on the subcommittee. Your valuable suggestions have gone into all the legislation that has come out of this subcommittee as well as the full committee.

We know you are taking part in hearings of another subcommittee meeting at this time Your suggestions will be studied fully by the rest of us, but I want to comment on one point you mentioned, the matter of pensions.

I was chairman of the Civil Service Subcommittee of the Post Office and Civil Service Committee for about 5 years. We found that young people objected to older workers coming and getting a job because of a fear as to how this would affect their pensions.

They feared the older workers would not contribute enough to the pension fund; that the older workers would be retiring earlier and getting an unfair portion—in the minds of the younger worker who would be contributing for years—an unfair portion of the benefits in relation to the short number of years that they worked. I think this is a matter that we have to ask the Labor Department to work on.

There were a good many points brought up by your suggestion here and the amendments you offer to S. 830 which I have coauthored along with a number of others including Senators Bible, Cannon, Clark, Kennedy of Massachusetts, Long of Missouri, Moss, Randolph, Smathers, and Williams of New Jersey. All of these points will be worked out in the hearings.

Thank you for your presentation, Senator Javits.

Senator George Smathers of Florida has a statement for the record. We are always happy to hear from him and welcome his comments on this vital matter.

STATEMENT OF HON. GEORGE A. SMATHERS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator SMATHERS. Mr. Chairman, I offer this testimony in support of S. 830, of which I am a cosponsor. As a member of the Senate Special Committee on Aging throughout its existence and as its chairman for 4 years, I participated in many hearings and studies which graphically revealed the tragedies to older workers and their families which flow from age discrimination in employment.

For many years, I have been an advocate of legislation to prohibit age discrimination in employment. When the Civil Rights Act of 1964 was being debated on the Senate floor, I offered an amendment which would have prohibited employment discrimination on the basis of age as well as on the other bases provided in that legislation. That my amendment was defeated was due to the parliamentary situation in which we then found ourselves. I am confident that there is overwhelming sentiment in Congress to prohibit age discrimination in employment and that legislation to this effect which is reported from the Senate and House committees will pass by comfortable margins.

S. 830 is superior in a number of respects to other proposals which have been advanced to prohibit age discrimination in employment. First, it places maximum reliance upon voluntary means of preventing discrimination, such as education, information, and research. Second, it separates the enforcement of the prohibition against age discrimination from the enforcement of prohibitions of other types of discrimination. This will avoid the possibility that the enforcing agency will neglect the enforcement of the age discrimination provisions in order that it may concentrate on other types of discrimination. Third, S. 830 provides maximum administrative flexibility and discretion by permitting the Secretary of Labor to assign responsibility for enforcing this statute to any of the existing agencies in his Department, or even to create a new agency for its enforcement, if he deems best. This flexibility seem especially wise since this will be a new and untried program within the Federal Government, and it may be necessary to proceed on a trial-and-error basis, until the best administrative formula has been found.

Meritorious as most of the bill's provisions are, there is one deficiency in it as now drafted which should be cured in committee. As presently drafted, the bill would probably be interpreted to require that workers hired for the first time between the ages of 45 and 65 be given the same private pension rights and other fringe benefits that workers are

given who began with the employer at younger ages, thus ignoring the fact that providing fringe benefits for the former can be expensive. This is contrary to the bill's general approach, demonstrated time after time throughout the bill, of being fair to the employer. This is a wise approach, inasmuch as we can only expect employers to be fair in cooperating with the purposes of the legislation if they are made to feel that it is fair and reasonable to them in every respect. Thus, with this feature the bill could be self-defeating in destroying the willingness of employers to cooperate, which is so vital to the bill's success.

If this defect is allowed to remain, it would be self-defeating in another respect as well. If the bill is interpreted to require employers to hire older workers and to provide the same fringe benefits for them as are provided for younger workers, regardless of costs, they would be given a handy excuse for refusing to hire older workers. They would be able to argue, with considerable justification, that their refusal to hire older workers is not due to arbitrary discrimination based upon age but instead is due to increased fringe benefit costs.

To cure this defect, I recommend that the subcommittee consider a clarifying amendment somewhat along the lines of the following:

On page 6, between lines 12 and 13, insert the following:

(g) Nothing in this Act shall be construed to make unlawful the varying of coverage under any pension, retirement, or insurance plan or any plan for providing medical or hospital benefits or benefits for work injuries, where such variance is necessary to prevent the employer's being required to pay more for coverage of an employee than would be required to provide like coverage for his other employees.

Adoption of this amendment would permit an employer to limit his outlay for fringe benefits for an older worker and would thus make the older worker competitive with younger workers, as far as the cost of fringe benefits are concerned. By permitting employers who comply with the new law to avoid higher fringe costs, a better compliance climate will be created.

In conclusion, I commend the Senators on this subcommittee for the careful, intelligent consideration you are giving this legislation, which has too long been neglected. I hope and trust that your diligent efforts will be rewarded by enactment of a statute on age discrimination in employment which will benefit Americans of all ages.

Senator YARBOROUGH. Thank you, Senator Smathers, for your fine statement.

We will now hear from Senator Jennings Randolph, a most respected member of the subcommittee and the full Committee on Labor and Public Welfare, who has much experience in the field of aging.

You may proceed, Senator Randolph.

Senator RANDOLPH. Thank you, Mr. Chairman.

STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Mr. RANDOLPH. Mr. Chairman, I offer this testimony as chairman of the Subcommittee on Employment and Retirement Incomes of the Senate Special Committee on Aging, and as a cosponsor of your bill,

S. 830. The testimony we have heard on these bills has been excellent. However, in this statement, I emphasize two points which may not have been emphasized as much as other aspects of this matter.

First, I emphasize that this legislation is important to all age groups in our American society, not just to those who are middle aged or older at this particular time. Many younger persons are dependent relatives of older workers who have difficulty obtaining and retaining employment due to age discrimination. If these older family members suffer employment discrimination due to their ages, they are unable to care for and educate their children and other younger dependents as they wish. Then, too, it must be borne in mind that if we enact one of the bills before us we shall be setting legislative patterns which assure today's youth that they will not be prematurely cast out of the labor market years from now when they, in turn, become the Nation's older workers. Also, by helping older workers to help themselves, we shall make them a buoyant effect on the economy instead of a drag on it, as they are when they are forced into untimely idleness and dependency. For the youth of the Nation, this makes for a healthier economy and a decreased welfare burden.

The second major point I make is that legislation to prevent age discrimination in employment, meritorious as it is, is not the complete answer to employment difficulties of older workers. Secretary Wirtz, in his June 1965 report to Congress, "The Older American Worker," listed four action steps which he deemed essential to insure an adequate beginning toward solving employment problems of older workers. One of these we are now considering in hearings, the Secretary has described as "action to eliminate arbitrary age discrimination in employment." The other three action steps recommended by the Secretary were:

One. Action to adjust institutional arrangements which work to the disadvantage of older workers;

Two. Action to increase the availability of work for older workers; and

Three. Action to enlarge educational concepts and institutions to meet the needs and opportunities of older age.

The Subcommittee on Employment and Retirement Incomes of the Special Committee on Aging plans to begin an examination of these recommended action steps in a few weeks.

Mr. Chairman, I share with the subcommittee the words of one of my constituents, Dr. J. T. Richardson of Marshall University, who once testified before a subcommittee of the Committee on Labor and Public Welfare:

> Our waste of resources because of age in this country is one of the greatest tragedies of our modern culture and civilization.

Our Nation cannot afford this waste. With the enactment of legislation before us and other bills with the same purpose which I hope will follow, we shall release the time, talents, energies, and enthusiasm of older workers to benefit not only themselves but the entire Nation as well.

Senator YARBOROUGH. Thank you, Senator Randolph, for your most illuminating statement. It is always a pleasure to work with you on the matters before our committee.

Now we will have a statement from our colleague, also a member of the full committee, the gentleman from California, Senator George Murphy.

STATEMENT OF HON. GEORGE MURPHY, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Mr. MURPHY. Mr. Chairman, I have long had an interest in the problem of the older worker. One of my earliest acts after I was elected to the Senate was to cosponsor S. 1752, which, like the bills before the committee today, would have prohibited job discrimination because of age.

Last year, along with Senator Javits and other minority members of the Senate Labor and Public Welfare Committee, I cosponsored an amendment to the minimum wage legislation, which would have outlawed discrimination in employment on account of age. As the members of the committee will recall, this amendment was adopted as a Senate floor amendment but was later deleted in conference.

I, of course, was very disappointed that the conferees to the minimum wage bill did not retain the amendment, and I think it is clear that had the administration supported and worked for the age discrimination ban in employment last year, the legislation would be on the books today.

I am now pleased to learn that the administration has sent to the 90th Congress legislation on this subject, and although I am convinced that the approach of the Javits-Murphy bill is far superior, I do hope that as a result of these hearings and the attention given to this subject, legislation will be enacted that will end discrimination in employment based solely on age.

In 1964, the Congress enacted a civil rights bill prohibiting discrimination in employment on the basis of race, color, religion, sex, and national origin. This, of course, was a step to make available to all of our citizens equal employment opportunities. This 1964 act was in keeping with the basic beliefs and philosophies of our forefather when they landed on the shores of our country that a man should be judged by his deeds and not by his religion, sex, color, or national origin. The act, however, left one big loophole that needs to be closed. Enactment of legislation preventing age discrimination would plug this loophole.

Mr. Chairman, I fully realize that the problem of age discrimination is not a simple one. We are not, however, without experience in this area. Twenty-three States and Puerto Rico have adopted legislation outlawing age discrimination. The States' experience shows the legislation is workable.

Mr. Chairman, I understand that testimony will be taken this week regarding the arbitrary age requirement for airline stewardesses. Some of these ladies have talked with me about this problem, and I certainly hope that the committee will give this matter its careful consideration. I would also hope that the airlines themselves would take the steps necessary to end this practice.

I would like to say in closing, Mr. Chairman, that in 1966 in a Senate floor statement I treated this subject more exhaustively. I now ask unanimous consent that this statement be printed in full in the record.

[From the Congressional Record, Aug. 26, 1966]

STATEMENT BY SENATOR MURPHY

For some time this great nation has sought to make available to all its citizens equal opportunities for employment. We have attempted to eliminate artificial and discriminatory barriers to employment. Beginning when our forefathers first landed on our shores, we early realized that a man should be judged by his performance, not by his religion, sex, color or national origin.

The gates leading to equal employment have not always been open, at least equally wide, to all American citizens.

As my colleagues know, in the 1964 Title VI of the Civil Rights Act outlawed discrimination in employment practices on the basis of race, color, religion, sex and national origin.

One form of employment discrimination was neglected. I am referring to employment discrimination because of an individual's age. I am speaking of job discrimination facing the nation's older worker. This has long been a great concern to me. One of my early acts when I came to the Senate last year was to join Senator Javits in cosponsoring S. 1752, which would prohibit job discrimination because of age. Regrettably, no action has been taken on S. 1752. Fortunately we have at hand a vehicle in the form of the minimum wage measure that will permit us to accomplish the purposes of S. 1752. This amendment, offered by Senator Javits and others, and which I am cosponsoring, will amend the Fair Labor Standards Act by adding a new title prohibiting discrimination in employment because of age. Enforcement of the prohibition against age discrimination will be by the Wage and Hour Division of the Department of Labor.

To appreciate fully the problems of the older worker, when he becomes unemployed for one reason or another, it might be helpful to examine some of the general characteristics of this group of Americans. In this day and age when such emphasis and importance are placed on education, the older worker's educational deficiencies are a major obstacle. Among male workers age 45 to 54, nearly one-third of those who are white and almost two-thirds of those non-white groups have not gone beyond the eighth grade. Among the male workers 55 to 64, nearly one-half of the white group and more than three-fourths of the non-white group have not gone beyond the eighth grade.

Many of these workers were forced by economic necessity during the depression to leave school and find means to help sustain their families through those troubled times. Many of the younger members of this age group left school and entered the labor market during World War II when work was plentiful and employers begged for workers.

Then, for whatever the reason, perhaps automation or the closing of a plant, the older worker might have been told that his services were no longer needed. The world, crushing in on him, our older worker now walks the streets seeking new employment. Not only will he be made aware of his educational deficiencies, but frequently he also finds that employers disqualify him because of his age.

Also, we know that the older worker has less mobility than his younger counterparts in the labor market. This results from numerous factors. The older worker probably owns his own home, may have school age children, and has strong ties with the community which are difficult for him to sever. The younger worker, on the other hand, usually finds it easier to move in order to locate another job. Evidence from many studies indicates that unemployed workers who move, have greater economic prospects than those who are reluctant to move. A recent Labor Department study of geographical mobility substantiates these findings. About 72% of the unemployed persons who moved between March 1962 and March 1963 were employed a year later. Only 55% of those who did not leave their communities were able to find new jobs. The older worker's reluctance to move adds to his difficulties in finding new employment.

Statistics clearly show that the older worker once unemployed, is likely to remain without work for a longer period of time. The average duration of

unemployment for males in 1964 in the 45 to 64 age group was 20.8 weeks. This compares to an average of 14.5 weeks for all males.

Now, if it were not enough that the doors to employment were closed to the older worker because of lack of education and skills, an older worker often faces an attitude on the part of some employers that prevents him from receiving serious consideration or even an interview in his search for employment. This employer discrimination results to a great extent from employer misconceptions about the performance of older workers and the relative cost to the firm of hiring older rather than younger workers.

In 1963, a study of employer orders received in the local state Employment Service offices in eight major cities in states not having anti-discrimination laws found that 47% of job orders specified upper age limits, 18% specified workers under 35, and 33% set age limits under 45. The 1963 study was updated by the Employment Service in a survey done in the Spring of 1965. The Employment Service interviewed selected employers as to their attitudes and hiring records. Only 8.6% of new workers hired by these employers during 1964 were over 45, which was less than one-third of this group's proportion among the unemployed. Approximately 25% of the employers interviewed had upper age limits for hiring.

Employers gave many reasons why they do not hire older workers. In a 1959 study done in my state of California, the following reasons were given for not hiring older workers: 22.4% of the employers said that older workers cannot maintain production standards; 20.9% said that they cannot meet a company's physical requirements; 13.2% said older workers were inflexible; 10.1% mentioned pension and insurance costs; 7.1% felt that the older workers were too close to the compulsory retirement age; 5.2% preferred younger people; 3.2% found older workers more difficult to train; 3.1% felt that they were excessively absent; and 2.7% had a policy of promotion from within the firm. While obviously some of the reasons given by the employers are just and reasonable, there certainly does not appear to be a justification for some of the reasons given by employers for upper age limits.

A recent Bureau of Labor Statistics study of health and insurance plans and their effect on the employment of older workers shows that the costs do not vary greatly due to age, since the rates are based on the entire company's average costs. For example, the older worker frequently does not have the small children nor the expense of maternity care, and savings such as this would equal or perhaps outweigh the higher costs of morbidity. Private pension plans have also been an obstacle to the hiring of older workers. In the United States today twenty-five million workers are covered by some form of private retirement plan. Most of these plans require involuntary retirement. The cost of a pension depends on the age of the worker at the time he is hired and, therefore, pension plans are more expensive when a worker is hired at a later age.

Many studies, however, have argued that the pension and insurance costs of hiring older workers are over-estimated. This can be outweighed by careful consideration of the skills and experience that the older worker is bringing to the job. The National Association of Manufacturers has stated: "The more one examines pension and insurance costs, the less valid they become as legitimate barriers to the employment of mature workers. When one considers the many personal assets the mature employee brings to the job, pension, and insurance costs certainly lose whatever significance they may appear to have."

There have also been many studies done on the job performance of the older worker and studies done by the Labor Department show that job performance does not decrease significantly with age. A 1961 survey of postal employees showed that workers 40 to 59 years of age produced as much as younger workers in the same type of job. Even at age 60 and over, the average output was only 4% less than the output of workers age 35 to 39. Two surveys of performance done by the Labor Department in 1956 and 1957 indicate that there is a stable average performance level through age 54 with some falling off of the average output of the age 55 to 64 group. The studies also indicated that there was a wide variability of performance within a given age group. These studies showed too that there was no difference in attendance between the age groups.

Perhaps the most useful indication of the value of the older worker is in the evaluation of the employers themselves. Employers consistently praised their older workers. A 1951 study by the National Association of Manufacturers showed that out of 3,107 reporting companies, the great majority found their older workers equal or superior to younger workers.

Percentages of employers holding specified opinions of older workers

Factors	Performance of older workers		
	Superior	Equal	Not equal
Work performance	22.4	70.3	7.2
Attendance	48.3	49.8	1.9
Safety records	32.2	65.2	2.6
Work attitudes	48.4	50.8	.8

I would like to read this NAM survey.

A panel of 196 executives was polled in 1959 by the Bureau of National Affairs and the results of this questionnaire further indicate that older workers have definite advantages for employers. I would also like to read this survey.

	Company with less than 1,000 workers		Company with more than 1,000 workers	
		Percent		*Percent*
Is the older worker less efficient?	No	70	No	75
Is he less regular in attendance?	No	98	No	98
Is he more accident prone?	No	77	No	90
Is he more inclined to grumble?	No	86	No	87
Is he more likely to be late?	No	100	No	100
Is he more difficult to supervise?	No	90	No	81
Is he more understanding of management?	Yes	86	Yes	91
Is he less likely to move to a new job?	Yes	93	Yes	91
Is he more resistant to new ideas and methods?	Yes	77	Yes	73

At the present time laws prohibiting discrimination in private employment on the basis of a person's age are in effect in twenty states and Puerto Rico. In New York State a report on the first two and a half years (July 1, 1958, to December 31, 1960) of their age discrimination law, a total of 277 complaints alleging discrimination on account of age are described. In 31% of these cases, some unlawful practice was found and adjusted. 209 of the cases had been closed by the end of 1960. A spot check was taken at one office before and after the law was enacted. In 1955–1956, 22.7% of the job orders placed with the office carried upper age limits. This number had been greatly reduced by 1958–1959 to .3% of the total. A general evaluation of the experience in New York indicates that prejudice is breaking down and that there has been almost a complete elimination of the age specification in want ads and a great reduction of placing age limits by employers in job orders.

In a survey conducted by the Labor Department in 1963 on the effectiveness of state laws, the response from state agencies indicated that the enactment of age discrimination statutes has been followed by a decrease in discriminatory age specifications in job advertising and in job orders.

In 1964 the Department of Labor conducted a conference of officials who administer the state anti-discrimination laws, and one point made at this conference was the desirability of federal legislation in this field. Secretary Wirtz has reported that in thirty states which have no laws against age discrimination, fully half of all the job openings are closed to applicants over 50 years of age and about one-third of the job openings are closed to applicants over 45 years of age.

So, it is obvious that age discrimination does present a problem in this country. I see no reason why we should not include job discrimination on the basis of age with the present ban on discrimination on the basis of race, color, religion, sex and national origin. I am hopeful that the Labor and Public Welfare Committee will enact this amendment to the minimum wage bill.

I do not feel that this will be a complete panacea for the problems of our older workers. It will, however, be a significant step in the right direction. Nor do I believe, Mr. President, that the federal government alone should involve itself in this problem. The states are moving have moved and should continue to move toward equal employment opportunities. Private groups have done outstanding

work in initiating programs to help older workers and to help educate the public at large. In California this has certainly been true. In Pasadena a group called "Jobs After Forty," formed in 1959, has conducted surveys, sponsored workshops, clinics and forums with employers and potential employees and reports great successes in the placement of applicants. "Experience Unlimited" is an organization composed of jobless executives and managerial personnel. They make extensive use of group discussions and group counseling to aid the older worker in locating employment. "California Assoicates" is a similar organization for women in the executive or managerial field. "Careers Unlimited" for women is another private and civic organization which tries to place older women in jobs, and volunteers work with applicants on an individual basis often accompanying applicants when they go to see prospective employers.

National organizations, such as the American Medical Association, the National Association of Manufacturers, the American Legion, and the Fraternal Order of Eagles have conducted intensive massive campaigns to promote the hiring of older workers. Federal programs, such as the Older Americans Act, the Vocational Education Act, and the Manpower Development and Training Act have helped the older worker.

The Manpower Development and Training Act has not been giving the attention to the older worker that it should. In 1962–1963, a total of 3,250 workers 45 years old and over completed training courses under the Act. This constituted about 11% of those trained. The older workers comprised about 29% of the unemployed group. The on-the-job training program has not been used adequately. Early this year, the Senate Labor and Public Welfare Subcommittee on Employment and Manpower, of which I am a member, held hearings on the on-the-job training programs, and I was shocked upon hearing the testimony on the amount of paper work required in order to participate in on-the-job training. It is no wonder that the employers have not been participating as much as some of us would hope. In all fairness to the Labor Department, it was announced that they have finally taken steps to lessen the paper work.

The older worker, like all Americans, should be judged on his merit. The older worker should not have the doors to employment closed before he is even given consideration. Enactment of this amendment will be of great significance to our older workers.

Senator YARBOROUGH. Thank you, Senator Murphy, for your fine statement and your interest in this matter before our committee. Your background and experience in this field of aging are a real asset to the committee.

Secretary Willard Wirtz, Secretary of Labor, will be the next witness. Mr. Secretary, you may proceed in your own way.

STATEMENT OF HON. WILLARD WIRTZ, SECRETARY OF LABOR

Secretary WIRTZ. Thank you, Mr. Chairman, I have a statement which has been submitted to the committee and if it suits the committee's convenience, I would add it to the record and comment briefly on it.

Senator YARBOROUGH. The statement of Secretary Wirtz, Secretary of Labor, will be ordered printed at this point in full in the record.

(The prepared statement of Secretary Wirtz follows:)

PREPARED STATEMENT OF HON. W. WILLARD WIRTZ, SECRETARY OF LABOR

Mr. Chairman and members of the subcommittee, the authentic genius of the American economy is not just its efficiency, but the achievement of that efficiency with due and increasing regard to human values.

S. 830 is in this tradition.

It has to do with the entering of the verdict—the harshest in a good many people's lives—that they are no longer worth their keep.

The once absolute power of employers to render that verdict has been limited over the years in a variety of ways: in the seniority clauses and "unjust dis-

charge" provisions in private collective bargaining agreements, in the "civil service" system adopted by governments, and in the development of "tenure" concepts in such fields as education.

It remains today a significant and accepted part of the idea of the employment relationship—and of the larger human ethic—that when "a person's age catches up with him" and diminishes his capacity and competence, he must accept the fair-minded economic judgment of those he works for, or seeks to, that his value has fallen below the break-even point.

S. 830—a "bill to prohibit age discrimination in employment"—reflects the equally accepted principle that this power is not properly exercised where a person's employment is "*arbitrarily*" prejudiced on the ground of his age—when he is denied employment or any of its normal incidents or privileges because of his age, considered without regard to his "potential for job performance."

In recommending to the Congress its enactment of such legislation of such legislation, President Johnson said—in his January 23, 1967 Message on Older Americans:

> "Hundreds of thousands not yet old . . . find themselves jobless because of arbitrary age discrimination . . .
>
> "In economic terms, this is a serious—and senseless—loss to a nation on the move. But the greater loss is the cruel sacrifice in happiness and well-being which joblessness impairs on these citizens and their families."

Recognizing the increasing habit to call upon statistics to confirm what is clear in experience and conviction, I note these facts—many of them based on the Report on Age Discrimination in Employment prepared by the Department of Labor at the direction of Congress in Section 715 of the Civil Rights Act of 1964:

> There are today 37 million men and women in this country between the ages of 45 and 64; and 18 million who are over 65. These numbers are increasing rapidly. By 1975, there will be 44 million between 45 and 64, and 21 million 65 and over.
>
> In 1964, approximately half of all private job openings were barred to applicants over 55; a quarter to those over 45; almost all to those over 65.
>
> In 1966, there were at all times about three-quarters of a million unemployed workers 45 years and over.
>
> Over three-quarters of a billion dollars in unemployment insurance was paid out in 1964 to workers 45 and over.
>
> Older workers bear a disproportionate share of long-term unemployment. Among men unemployed 27 weeks or more, those 45 and over rose from 30.2 percent in 1965 to 34.3 percent in 1966. This age group represented 24.7 percent of the labor force.
>
> More than half of the nation's poor families are headed by persons 45 and over; more than one-third by persons 55 and older; and more than one-fifth by persons 65 and older.

These figures are all properly subject to the question of how much they reflect discriminatory treatment on the basis of age, on the one hand, and, on the other, a variety of very different factors. This "measurement" problem reflects, furthermore the one significant question which attends this legislative proposal and which explains its not having been pressed earlier.

Nobody would support a national policy, developed in private employment practices but condoned in law, of "discriminating" against older workers where there is no reason for it. The relevant inquiry about S. 830 is not about its purpose but whether the situation it covers permits administrative distinction between cases where there is good and sufficient reason for adjusting the incidents of a person's employment to his age, and those cases where there is not that justification.

This bill is drawn with close attention to this key distinction.

It does not prohibit or apply in any way to differentiations or distinctions being made on the basis of age so far as there is legitimate relevance between age and employment capacity. The "discrimination" it is directed against is the "unjust" or "arbitrary" distinction (which is what "discrimination" is normally taken to mean) which may be made in the absence of any legitimate relevance between age and employment capacity.

The bill is designed not to give any person more than he or she is worth, but to assure every person that his or her right to opportunity will not be diminished unfairly on the basis of an irrelevancy.

S. 830 is also designed to recognize two distinct elements in the unfairness which does in fact attend the employment of older people: (i) the discrimination which is the result of *misunderstanding* of the relationship of age to usefulness; and (ii) the discrimniation which results from deliberate desire or willingness to take advantage of a chronological fact. The results of the two types of discrimination are the same. The remedies are different.

This Bill accordingly emphasizes, and in this order: *first*, research, education and information; and *second*, prohibition.

It is at the same time an essential element in this proposed legislation that *both* types of programs are established. Experience with the administration of some 22 State laws demonstrate conclusively the ineffectiveness of legislation in this area which extend only to education and persuasion and omits any sanctions.

S. 830 accordingly provides:

In section 3 for extensive informational and educational programs;

In Sections 4 and 7 for an enforcement program including conciliation and persuasion, cease and desist orders following the issuance of complaints and the holding of hearings, and judicial review and enforcement; and

In Section 11 for criminal penalties in the event of willful commission of practices made unlawful by the Act.

The prohibitions in the Bill are directed against employers (Sec. 4(a) and Sec. 12(b)), employment agencies (Sec. 4(b) and Sec. 12(c)), and labor organizations (Sec. 4(c), Sec. 12 (d) and (e)).

S. 830 is a product of the confluence of four significant developments:

First, the development of medical and life science so that the individual's usefulness at what used to be considered advanced age is rapidly increasing;

Second, a rapid advance in technology which is reducing markedly the demand in many jobs for those human capacities in which age plays the largest factor;

Third, a developing strength in the economy which both permits the employment of those who would previously have been submarginal in economic terms and also requires a significantly larger work force; and

Fourth, an increasing sense of the human ethic that as much of the life experience as possible—and more than has been recognized before—should include the opportunity to be useful.

A rapidly increasing body of information reveals the considerable extent to which the factor of age itself has been exaggerated as an invariable or even typical cause of significantly diminished work capacity. Saying it more simply more people are worth a lot more for a good deal longer than we have been thinking. The tendency has been to overemphasize certain obvious "signs of age," and to disregard other compensating factors.

These surveys and studies (some of which are summarized in my 1965 Report to the Congress) confirm in significant and conclusive detail what there was a tendency before to dismiss as no more than sentiment.

They show that "experience" and the tendency of older people to make up in one way or another for whatever are the negative effects of aging, *fully* compensate in the substantial majority of cases for whatever impairment of physical capacity there may be.

It now appears that there is very little diminution of workers' productivity in most occupations before age 60, and that even after 60 there is such wide variety in productivity changes that age itself is an unreliable index to this change.

There is increasing evidence that in a large number of cases in which reduced productivity appears—say between the ages of 55 and 65—it results from the individual's reaction *to the prevailing practices and attitudes* regarding the effects of age rather than from the individual's age itself.

In the Manpower Development and Training Act programs it is being discovered, for example:

That while younger trainees perform better "on the average," as many as 40% of the older trainees are also "above the average";

That while younger trainees do better in the shorter training courses, especially where perceptual-motor skills are involved, the older trainees often *average* higher than those who are younger where the courses are longer and involve larger judgment factors; and

That there are infinite possibilities of job redesign which would permit the use of older workers' skills with substantial net advantage to employers.

It will remain to develop, under the education, research, and information programs to be established under Section 3 of S. 830, the extent to which these emerging lessons of experience and analysis can be put to the extension of the human capacity to be useful in the traditional sense and to the fuller recognition of the usefulness which already exists.

Sections 4 and 7 of the Bill provide, as has been indicated, for the prevention of discrimination in employment on the basis of age.

The prohibition against such discrimination is limited, by Section 13, to "individuals who are at least forty-five years of age but less than sixty-five years of age"—with administrative authority to adjust these limits upward or downward where this is appropriate.

It is made clear throughout the Bill, and identified specifically in Section 2(b), that the prohibition is of "discrimination" in the sense of "*arbitrary* age discrimination." This is reflected particularly in Section 4(f), which provides that—

> It shall not be unlawful for an employer, employment agency or labor organization—
>
> (1) to take any action otherwise prohibited (in the Act) *where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;*
>
> (2) to separate involuntarily an employee *under a retirement policy or system* where such policy or system is not merely a subterfuge to evade the purposes of this Act; or
>
> (3) to discharge or otherwise discipline an individual *for just cause.*
>
> (Underscoring added.)

The underscored provisions in Section 4(f) are obviously broad. Taken along with the requirement in Section 7(a) that the first step in any "enforcement" procedure must be an endeavor to eliminate any seemingly unlawful practice "by informal methods of conference, conciliation, and persuasion," the legislative intent and words are clear: This is a problem to be approached with full respect, carefully—but firmly.

Section 4(a) also reflects, implicitly, the significant fact that what S. 830 does, in general, is to extend to individuals in situations not covered by collective bargaining agreements or established retirement policies, a degree of protection—against discrimination on the basis of age—very much like that which has evolved in enlightened private experiences and practice.

Section 14 of the Bill, providing for the continuing jurisdiction of State agencies acting in this area, should also be noted for its reflection of the Congressional recognition of the value of continued probing for the full answer to this problem.

S. 830 may not provide that full answer. It proceeds from what is now clear, and provides that the explanation be carried forward. To do more would be premature. To do less would be to let law lag behind conscience, and good sense.

For the improvement of the uses of older age is indistinguishably an economic and a human concern.

In the adoption of Medicare and the expansion now of the Social Security system and benefits we are making more adequate provision for the time when life's work—in the traditional sense—is done.

We know the value of these programs, and accordingly push forward with them.

We also know their costs, and cannot be oblivious to them. It would be the falsest economy to spare any effort to firm up the employment base itself, and to extend it as far forward as possible—to extend as long as we can the period of complete self-sufficiency.

To be reminded again that hundreds of millions of dollars are being paid out now each year in unemployment insurance to people between the ages of forty-five and sixty-four is to realize the savings that can be achieved from a better ordering of things.

S. 830 is good business.

It is most of all good human sense.

Senator YARBOROUGH. Mr. Secretary, we invite your presentation in such manner as you deem best.

Senator JAVITS. Before the Secretary starts, I join the Chair in welcoming a very distinguished friend. I ask unanimous consent that if I am unable to question the Secretary orally I may submit a list of written questions which the Secretary will answer and that his answers and the questions may be incorporated in the record after his testimony here.

Senator YARBOROUGH. That request is granted. It is so ordered.

Secretary WIRTZ. My informal statement would start with two points, Mr. Chairman and members of the subcommittee. The first would be to express my real appreciation for the comments which have just been made part of this record by the distinguished Senator from New York.

His suggestions raise particular points which will be taken up in the consideration of this bill, I should not want any of my comments on these points to detract in any way from appreciation of the fact that this statement is one of substantial support of the common objectives that are reflected in S. 830 and S. 788. It seems to me the significance of the moment is the virtual unanimity of purpose in the pending bills rather than any small differences in detail.

So I should like to note the real significance of an affirmative approach to the matter.

Senator YARBOROUGH. Thank you, Mr. Secretary. Coming from you with your great knowledge of labor law, labor administration, and labor problems in this country. I think that helps all of us on this committee in our approach to the bill and to the suggested amendments.

I also am looking forward to hearing the witnesses Friday, from the State of New York, give us the benefit of their State experiences.

Thank you.

Secretary WIRTZ. The other preliminary comments, Mr. Chairman and members of the subcommittee, would be this. It seems to be imperative to recognize two things. One is the very, very real importance of the measure which we have before us which I shall identify in my remarks as S. 830.

It is a matter of doing, forthrightly, specifically, directly, so that nobody can misunderstand it, what is very important to do. But it is equally important to recognize that this bill is one little piece of a program on which I think we are all committed, and by "all" I mean all in this country at this point, to embark upon.

We are talking about the area in which the democratic genius and the genius of the American economy really, so far, has accomplished least, in my judgment. We talk from an immediate history which includes the development of the medicare program and the very substantial enlargement of the social security program. We have made many more advances for the first 60 years of people's lives than we have made for the last 20 or whatever it may be, and we are only just starting.

What we are talking about here is only one piece and it would be out of proportion if I put it in any larger context than that. Because it is not enough simply to guarantee employment for older workers. There is so much more ahead of us.

Senator YARBOROUGH. Mr. Secretary, you provoke me to digress just a little to another subject, which I spoke on yesterday. To show

one of these recent technological developments. This little square here about an inch and one-half each way, one thickness of plastic, contains the 1,245 pages of the Bible, King James' Version of the Old and New Testament.

You put it in a machine that costs $200, press a number on each side and throw a picture of any chapter you want on the wall. If you look at it with a magnifying glass you can see a whole page at one time. This was developed within the last 2 months.

I have been told you can put the whole Library of Congress in a suitcase with this new technological development. This frightened me, this vast new age that is going to burst upon us.

Secretary WIRTZ. Also, Mr. Chairman, it shows how much more we have done with the technology of printing processes and so forth than with the improvement of the last 20 years of people's lives.

In fact, to dramatize it, let me say this. I think certain facts will still be true after S. 830 is passed, and I think it will be passed. I think it will still remain true even after we have done what we have before us. I think that life would still make a good deal more sense for most people if it were reversed in the present pattern of things and people came into this world at age 80 and went through what they now go through during the last 20 years first and then had 40 or 45 years of useful employment, and then had an education and then had the first 5 or 6 years of comparative irresponsibility, and if then the whole thing were ended by a doctor picking them up by their heels and patting them goodby instead of saying hello.

Senator YARBOROUGH. That sounds like one of those science fiction magazine articles.

Mr. WIRTZ. I simply want to impress on everyone, we are not accomplishing miracles when we do what we are talking about here. It is only a start.

With respect to the particulars of the matter before us, we recognize that as has already been suggested, this bill will be debated, not in terms of its purpose—because there is complete agreement about its purpose—it will be debated not in terms of the need, which is reflected here, and our own experience leaves no questions about that need. The need is very clear. We are talking about a group of people, those between the ages of 45 and 65, which today number 39 million and which will, within a few years, by 1975, number 44 million.

We are talking about a group in which there is an extraordinary amount of unemployment today. So that the bill deals with the mistakes we made—and that is what they amount to when a person this age is unemployed—the cost of unemployment insurance is three-quarters of a billion dollars a year. There is a better way to spend that money than to put it into unemployment insurance.

We are talking about the part of our work force in which there is the largest percentage of long-term unemployment. We are talking about a group, from 45 to 65 years, which includes the heads of about a third of the Nation's poor families. more than half of the Nation's poor families are headed by people over 45 years of age.

So we are talking about an exceedingly serious matter, one with respect to which there is no division about the importance. We are talking about a problem with respect to which there is no question as

to its dimension. We are talking about a situation in which as Senator Javits has said, the question is how, as a practical matter, a program of this kind will be administered.

S. 830 has been drawn in every word and in every line, in every sentence and every paragraph, with the recognition of that administrative question. As to whether we can properly at this point tie in private employment policies with the establishment of a standard against discrimination on the basis of age, Mr. Chairman, and members of the committee, the evidence is clear this can be done. There are no administrative problems which will present any exceeding difficulties of any sort.

The bill is set up with a clear recognition of two necessary approaches to this problem. One of them is the approach of research, education and information, and the second is prohibition.

We all recognize that there is a great deal more to be done as far as education of the Nation's employers, and employees is concerned, and so we will be emphasizing the educational provisions which are set out in section 3.

In fact, there are three different approaches here. The first is by education, information and research. That is in section 3, and then in section 4 and 7 there is provision for an enforcement program. In section 11 there is provision for criminal penalties.

My statement includes, but I mention it only in passing here, recognition of the timeliness of this particular proposal. This has been illustrated by the Chairman's reference to the amazing development of a new printing process. The timeliness of the proposal reflects the confluence of four forces the effect of which we can hardly realize. And I mean within the last 2, 3, 5 years.

One of those is the technology to which the Chairman referred. Another of them is the development of the life science which has extended the usefulness of life so much. A third of them is the development of the strength in the economy which permits us to do things we had not been able to do. And the fourth of them, is the fact that we are just learning to be more decent with each other nad more realistic in our attempt to make life into something that is worthwhile instead of in so many cases a joke.

Those four things are coming together at the same time and S. 830 reflects this confluence.

The statement includes, Mr. Chairman, the results of the study of the older worker subject in recent years. One of the sources in the report which I filed with the Congress a year and one-half ago. There have been some other developments, too.

We are finding out a lot more about this situation than we knew before. We are finding out particularly that, just to put it briefly, older people are worth a lot more than we had been thinking they were worth as far as normal, traditional employment possibilities are concerned.

Older workers make up in other ways for whatever loss there may be in their physical capacities. We are also realizing that the developing technology of work means that those features of it, namely those involving physical efforts, which were most affected by the debilitating processes of aging are changing in most jobs so that there is less de-

mand for physical effort and there is a much larger component of those factors which age affects compartively little.

I refer specifically to the fact that throughout the bill every effort is made to tie it in with the necessity of recognizing what is difficult to make clear; the differentiation between discrimination on the basis of age, where there is an established relevance of age to the job and where there is not.

We faced a problem in connection with the development of the legislation in this testimony as to whether we should say unjust and arbitrary discrimination. Now, on the one hand, discrimination in itself connotes unjustness and arbitrariness.

To say "unjust and arbitrary discrimination" leads to the question, what other kind of discrimination is there? We have left out of the bill the phrase, "arbitrary," but discrimination throughout this bill means unjust and arbitrary discrimination, if there is any doubt about that.

There is also the effort in S. 830 to make quite clear the relationship which would necessarily be recognized between unjust discrimination and the retirement policies or systems to which Senator Javits has already referred. There is also the necessity of making clear the bill's relationship to contractual relations and collective bargaining relations. There would be no thought whatsoever, and the bill makes it clear, that it would in no way, cut down the possibility of discharge for just cause.

To the extent Senator Javits suggested there should be included recognition of the seniority clauses in collective bargaining agreements, I would personally agree completely with the intention of the bill to include that.

There are a number of other particulars, specific problems which will come up in connection with the discussion of the bill. Section 4(a), for example, reflects simply the significant fact that what we are doing here is to extend to individuals in situations not covered by collective bargaining agreements or established retirement policies, a degree of protection against discrimination on the basis of age very much like what has evolved in private experiences and programs.

Then, in section 14, there is a provision for continuing jurisdiction of State agencies acting in this area—a specific provision against a preemptive effect as far as the State practice is concerned.

Senator Javits suggested there should be at the same time, recognition of the desirability of the establishment of Federal standards which could not be departed from by the States. I do not think that would present a difficult problem at all.

There are a number of other particular problems, Mr. Chairman, and members of the committee, but I think that except as questions about them may arise, or be developed, I should like simply to rest on this statement, repeating again the fact that we face here a community of purpose.

We face here a unanimous recognition, I think, of an established need. We face here questions of administration which, I think, could be easily met.

I think I should speak to one point to which Senator Javits referred. There will arise the question as to whether the best administration of this program is in the pattern of S. 830 or whether it would be better

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in the pattern of the Fair Labor Standards Act. I should like to press the view that there are advantages in the approach taken in S. 830.

There are differences, real differences between the enforcement of minimum wage law and the enforcement of a prohibition against discrimination. The minimum wage law involves looking at people's books, working out a computation to determine whether there has been satisfaction of a minimum wage and time and one-half for overtime.

We would miss a point if we were not to recognize that we have a different problem on our hands in determining when there is and is not discrimination on the basis of age.

I do not mean to suggest that the one approach, the one procedure is right and the other one is wrong. I mean to urge that there is the desirability of recognizing that it takes a very different approach to administer a prohibition against discrimination on the basis of age than it does a minimum wage law.

I think the approach suggested in S. 830 has a good deal to commend it. I will be glad to go into further detail about it but I do not think the distinction between the two approaches is fundamental to the legislation.

Senator YARBOROUGH. Actually, the minimum wage law is easier to evaluate and administer, is it not?

Secretary WIRTZ. It is a matter of looking at records and finding out what has been done on the basis of a paper record. This is a much different job.

Senator JAVITS. Will the Senator yield?

Secretary Wirtz, we are impressed, however, with the fact that Wage and Hour administers the equal pay provisions which forbid discrimination in the amount of wages on grounds of sex; that it administers the child labor provisions and that it administers the new provisions we have put in on hazardous employment of children in agriculture and hazardous employment generally.

It seems to me that administration and enforcement of these provisions requires qualitative rather than merely quantitative analysis. There is no sharp line here. We know what it takes to set up and you know what it takes to set up offices, agencies, technicians, et cetera. The Wage and Hour Division already has established offices all over the country.

It is for that reason we threw the equal pay provisions, which involve sex discrimination into the Wage and Hour Division. It seems to us that we should be absolutely sure we cannot fit age discrimination into an established pattern before setting up a new one. That was the only thing.

Secretary WIRTZ. I agree with you, it is not a black and white, open and shut matter. There are some other administrative factors to be taken into account. One to which we have given real consideration is the fact that the State pattern which we are trying to fit in with here is a separate pattern.

The State programs are administered pretty much in the pattern of S. 830. It would be easier to fit in with the State's structures if we set up some separate unit. It is also true that when we the people, with the Congress, with the Government, have come to discrimination on the basis of race it has seemed necessary to take it out of the pattern.

I do not mention this in disagreement but only as a factor to be taken into account in what I think are key administrative questions.

Senator YARBOROUGH. Mr. Secretary, I am impressed with the fact that earlier in your statement, in your oral statement, you said this bill S. 830, is a workable act, enforceable, reasonable, and practical, and one you can administer. S. 830 has been carefully studied by you and the attorneys and the administrators in your Department, has it not?

Secretary WIRTZ. It has, Mr. Chairman.

Senator YARBOROUGH. Thank you for making available to the committee your great knowledge of this subject and of the practical problems in the administration of our labor laws. Your views as to the desire to giving relief to these older workers—generally between 45 and 65—will be given our most careful consideration.

I have no further questions at this time.

Senator JAVITS. Mr. Secretary, we have a list of questions probing into the details of administration, et cetera. We would like to submit them to you.

Also, perhaps you could read our amendments which we will submit to you and include with your written replies any comments the Department feels appropriate on the amendments which relate to seniority and the pension plans, et cetera.

Secretary WIRTZ. I will be happy to do so.

(The questions submitted by Senator Javits and the answers supplied by Secretary Wirtz follow:)

RESPONSES OF SECRETARY OF LABOR WILLARD WIRTZ TO QUESTIONS SUBMITTED BY SENATOR JACOB K. JAVITS

The details of the administration of S. 830 have not been completed. The answers which follow, therefore, have been prepared in this light.

I. ADMINISTRATION AND ENFORCEMENT

A. Investigations

1. *Where is it presently contemplated that regional offices will be located?*

Existing bureaus and offices of the Department of Labor, including their regional staffs, will probably be utilized in administering and enforcing S. 830, each contributing to these activities to the extent of its expertise.

2. *What will be the make-up of the staff of each regional office?*

Existing staff of the various regional offices, with some augmentation, will probably be utilized to carry out those responsibilities under the Act which need to be decentralized. Based on accumulated experience under the new law, the Secretary of Labor will be able to determine the need for additional personnel, or for new administrative adjustments, which may be indicated.

3. *What will be the total number of personnel required to administer and enforce the Act under present estimates?*

We have not completed our estimates of additional personnel which may be needed. We hope to absorb the new responsibilities within the existing administrative structure, but additional personnel will undoubtedly be required—their number depending on the volume of activity.

4. *What types of periodic investigations will be undertaken? Will there be spot checks or comprehensive investigations of particular industries?*

The extent and scope of investigations depend to a large extent on the number, and nature of the complaints, but generally speaking, as a matter of method, the spot-check mode of operation, which includes necessary routine inspection, is more in keeping with the emphasis on education and persuasion in the bill.

5. *Is it presently planned to coordinate investigations of age discrimination with investigations concerning minimum wage and hour requirements and sex discrimination under the FLSA?*

Yes, to the extent practicable and feasible. It should be pointed out, however, that the FLSA prohibits discriminations based on sex only with respect to an employee's pay. The EEOC deals with sex discrimination in general.

6. *What is the total volume of cases per year which it is anticipated will arise under the Age Discrimination in Employment Act? Based on the experience of the States, what percentage of cases is it estimated will be settled on a voluntary basis?*

It is difficult to determine a potential caseload under S. 830. An indication may be derived from the experience of the State of New York under its Law Against Discrimination. During the eight and one-half years of the Law's operation, the number of age discrimination complaints ranged from 119 in fiscal year 1959, to 57 in fiscal year 1966. Based on this, we may expect in the first few years to process between 800 and 1,000 cases annually.

Voluntary adjustments have been secured by the Wage and Hour Division of the Department of Labor in 97% of the cases of violation handled by the Division under the Fair Labor Standards Act, which includes an equal pay requirement, and the Walsh-Healey Public Contracts Act.

In view of the express provisions in S. 830 for preliminary conciliation and the intent of the Department to stress this procedure, we would expect a high percentage of voluntary settlements.

B. Hearings

1. *Will a system of trial examiners be utilized to conduct initial hearings?*

The services of the Department of Labor's hearing examiners, who presently conduct the hearings pursuant to the various laws aministered by the Department, will probably be utilized for conducting hearings under the bill.

2. *If so, how many trial examiners is it estimated will be required?*

It is contemplated that the present staff should be able to handle the workload occasioned by the enactment of S. 830 for at least the first two years of operation. If the work should increase substantially, an additional hearing examiner could be provided.

3. *Where and how often will the trial examiners sit?*

The hearing examiners' official station is in Washington, D.C., but they travel throughout the country to conduct the hearings at the time and place most convenient for all concerned. This is the way it would probably be done under S. 830.

4. *What will be the nature of the order or decision rendered by a trial examiner, and what will be the appellate procedure within the Department subsequent to the decision of a trial examiner?*

The procedure would probably follow that of the Walsh-Healey Public Contracts Act, conforming to section 8 of the Administrative Procedure Act. Under that Act the hearing examiner would make specific findings as to age-discrimination practices. An appeal could be taken from these findings to the Secretary of Labor.

5. *What is the estimated length of time it will take in the usual case between the date a charge is filed and the date the Secretary issues a final order?*

The length of time between the filing of a complaint and the final order of the Secretary, assuming an appeal is taken to the Secretary, largely depends on the complexity of the case. However, applying the analogy of the administrative procedures under the Walsh-Healey Act we would estimate that the length of time would be from 3 to 4 months.

C. Relief

1. *Does Section 7(b)(2) of the bill confer on the Secretary the powers granted to the SEC under Section 21(e) of the Securities Exchange Act of 1934?*

Section 7(b)(2) specifically incorporates the entire Section 21 of the Securities and Exchange Act.

2. *In view of Section 11, will witnesses in civil proceedings under the Act be entitled to invoke the privilege against self-incrimination as an excuse to refuse to answer questions?*

No but they may claim the privilege of immunity from prosecution if compelled to testify.

D. Comparison of the enforcement procedure provided in S. 830 with enforcement through the Wage-Hour Division

1. *What is the estimated total cost of the administration and enforcement of the Act under the scheme of S. 830?*

Approximately $2,500,000, according to preliminary estimates.

2. *If the amendments proposed by Senator Javits were adopted, would this cost be affected significantly?*

We do not believe it would.

3. *What are the particular reasons, if any, why the method of administration and enforcement provided in S. 830, in its present form, would be preferable to the method of administration and enforcement proposed by Senator Javits in his amendments to S. 830?*

The hearing official in the administrative proceeding would have a specialized knowledge of factors important to understanding the issues which a judicial officer dealing with widely varying cases would not likely have.

II. EXCLUSIONS FROM COVERAGE OF THE ACT

A. Number of employees

1. *How many employees who would otherwise be covered by the Act will be excluded from its coverage because of the exemption for employers with less than 25 employees?*

It is estimated that 18 million employees will remain outside of the Act because of the numerical coverage limitation, 53 million will be covered.

2. *What are the reasons for exempting employers with less than 25 employees from the coverage of the Act?*

Administratively, it is more feasible to cover the larger employers. Practically also where there are more varied jobs, an older worker's skills may be more constructively utilized.

B. The retirement plan exclusion

Under many types of pension plans currently in effect workers over a certain age when hired are excluded completely. Under other types, no benefits are payable unless an employee has worked for the employer for many years. Under these types of plans workers over a certain age when hired will not receive pension benefits. Is this lawful under S. 830?

The existence of such a plan would not justify refusal to hire. Whether refusal to cover an older worker when hired would constitute arbitrary discrimination under the Act would require determination in the light of the facts of each case.

Under other types of plans, older employees are not excluded solely because of age or length of service considerations, but the premiums payable for newly hired older workers are substantially higher than those payable for younger workers. The difference may amount to several hundred dollars per year under certain types of fixed benefit plans. See The Older American Workers, Age Discrimination in Employment, Research Materials, p. 41. Would it be lawful under S. 830 for an employer with such a plan (a) to refuse to hire an older worker, (b) to hire an older worker but pay him or cause him to be paid reduced benefits or no benefits at all?

(a) Generally no. Each case would have to be scrutinized, however, on the basis of its particular equities.

(b) Whether different eligibility requirements or benefit levels for older workers would constitute arbitrary discrimination under the Act would require determination under the facts of each case.

C. Age limitations

1. *Would lowering the minimum age limit to 21 cause any serious problems in the administration and enforcement of the Act?*

It would change the nature of the proposal from an over-age employment discrimination measure and, thereby complicate the education and promotion objectives. It would also increase the number of complaints and tend to confuse the issue of older worker utilization.

2. *Is there any specific policy consideration which supports limiting the coverage of the Act to employees at least 45 years old?*

The Department of Labor 1965 study shows there is a considerable drop in the chances of getting a job after age 45.

3. *Why was an upper age limit of 65 provided? If this is connected with eligibility for social security benefits, what is the purpose of granting the Secretary power to increase the upper limit?*

While substantial numbers of employees perform productive work for many years past age 65, for the majority of workers this is the usual retirement age

and an age at which pensions become payable under the Old Age Survivors and Disability Insurance Program of the Social Security Act, as well as many private pension plans.

The upward adjustment authority is desirable to protect those workers above 65 who want and need work which they are fully capable of performing and also to foster manpower utilization.

4. *If the minimum age qualifications for eligibility for Social Security benefits are decreased, will there be a corresponding decrease in the maximum age limits under the Age Discrimination in Employment Act?*

Experience we will accumulate in the administration of the Age Discrimination in Employment Proposal and economic factors existing at the time of future consideration of maximum age limits would be determinative of the need for amendments in the age limits of the Act.

III. SECRETARY'S POWER TO MAKE REGULATIONS AND EXCEPTIONS

A. Is the Secretary's power under Section 10 and 13 to issue rules and regulations, to establish exemptions from the Act and to vary the maximum and minimum age limits, subject to the rule-making requirements of the Administrative Procedure Act?

Yes.

IV. PRE-EMPTION

A. Does the preservation of the jurisdiction of State agencies in Sec. 14 allow State agencies to impose prohibitions against age discrimination and employment stricter than those provided under Federal law?

Yes.

B. What will be the effect, if any, of a Federal determination that age is a bona fide occupational qualification for a particular job in a proceeding before a State agency involving:

1. *the same parties and the same job*
2. *one or more different parties and the same job?*

It is assumed that the State agency will give full consideration to the Federal determination.

C. Would it not be desirable to establish uniform, Federal standards with respect to age discrimination in employment to cover at least some situations, e.g. where an employer may be subect to conflicting State laws with respect to the same employees.

The establishment of Federal standards would weaken the intent of S. 830, to permit State anti-discrimination laws relating to age to continue to operate. The possibility of conflict between State laws in multi-state employment might be more reasonably solved through exercise by the Secretary of Labor of authority under section 10 to make rules and regulations under the Act or through the promotion of reciprocal agreements between the States.

March 27, 1967

Senator YARBOROUGH. Senator Randolph.

Senator RANDOLPH. I would like to discuss briefly some matters with the Secretary. As you know, Mr. Secretary, there are certain industries that now have what some call "age discrimination" for specific positions. These industries generally are, let us say, intranational, and sometimes international, and they have to do with services, offices, and certain types of competition.

Now, these qualifications are at times imposed by Federal statute. I come specifically to what I am thinking of—that is the airline pilot.

Under the FAA rules, pilots must be retired at age 60. I am told that it costs approximately $250,000 to $300,000 to train pilots. I had 11 years of very intimate association with the airline industry, and I have reason to believe that this information is correct. That period of training runs for about 3 years.

I am wondering if there is a possibility of an understanding on your part as to why the airline might hesitate to invest this sum in, well

say, training a man who is 45 years of age, when that airline would realize that there was only 12 years before his date of retirement.

Now, conceivably you might have an interest in the airline, from the standopint of investment, and so you might be interested in this type of personnel matter because of that problem.

This is an exploratory question and does not indicate any hard opinion on my part but because I think it is an important one. In our mobility on wheels and wings, we are constantly thinking of the transitions which are taking place in movement of persons and products, and this is, of course, an expanding industry, both from the standpoint of services within our own country, and between our country and the other nations of the world.

Would you discuss this problem I brought to your attention?

Secretary WIRTZ. Yes, sir; it would involve in the administration of the law a determination under section 4(f)(1), which appears on page 6. It says:

> It shall not be unlawful for an employer to take any action otherwise prohibited where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age.

You have asked the question tentatively and it is surely proper, and my answer would be tentative, as would be necessary.

I would start and stop, I guess, only with the statement of facts as we have it here. I would find that question not very difficult in my present understanding of it—it is subject to change—my answer. I would think where there is that much training requirement, that that would be a legitimate factor; that you would weigh the period of the usefulness of that person against the period of the training that was required, taking full account of the cost factors and human factors.

I should be surprised to find any difficulty with that case and if I am less than blunt, you will know it is only the proprieties that require my putting this in any other form.

I would not think it would be a violation of this provision to deny employment on those terms.

Senator RANDOLPH. Mr. Secretary, your comment is helpful. We are viewing this problem as one which is somewhat new. You do realize that today there is a shortage of pilots, from the standpoint of our program in defense, and there is also a very, very pressing need, an accute need, for qualified airline pilots.

So when the company in question would have, let us say, $25,000 a year in such a training program for one man, over a 12-year period, frankly, I agree that there is quite a problem here, and I am sure that you are aware of it by the very validity of your answer.

Now, the bill is as I understand it, as you indicate, is particularly aimed at older-than-45 workers.

Secretary WIRTZ. Forty-five, as in section 13, except the Secretary of Labor would have the authority by rule or regulation to provide for appropriate adjustments, either upward or downward.

Senator RANDOLPH. Yes, sir; that is clarifying.

Now, do you believe, Mr. Secretary, that you would have the authority under this legislation, if it becomes law, to give a judgment on age

qualification for, let us say, younger groups of employees? I think in this category we might mention receptionists or secretarial trainee groups where the employer, for specific reasons, wants someone, we will say, in the age bracket of 18 to 30.

What would be your comment on that?

Secretary WIRTZ. There would be enough questions about my authority in an 18 to 30 area so that if it is the intention of Congress to include those ages it should probably be made clearer than section 13 makes it. Putting it differently, I understand S. 830 to be directed at a problem which is identified particularly with what we have been calling older age. If Congress thought to extend that to a comparable set of problems which may arise at a younger age, I would think either the elimination of section 13 or clarification of it would be appropriate.

Senator RANDOLPH. Mr. Chairman, you will note I did not attempt to break down the 18 to 30 except I will say now that older women are very attractive just as are younger women. This is a transition situation.

Mr. Secretary, there are some other groups that have a problem perhaps that is medical in its basis, or has to do with industry competition, and I am wondering if there are age limits set at a maximum of 30 or 35, for certain women, what would be the situation?

Secretary WIRTZ. I do not believe I have that problem clearly enough in mind.

Senator RANDOLPH. Let us say there are other groups that have, for medical or competitive reasons, had age limits set at a maximum of 30 to 35, for women. What is the problem?

Senator YARBOROUGH. You are speaking of airline stewardesses.

Senator RANDOLPH. I said medical or competitive.

Secretary WIRTZ. Your question to me would be——

Senator RANDOLPH. Whether you have flexability.

Secretary WIRTZ. I have the same reaction. There would be serious doubt raised about the authority of the Secretary of Labor to make the extension in that situation, enough doubts that if the intention is to cover those situations, I would think a different form from the one in section 13 would be preferable.

Senator RANDOLPH. To fall into different categories?

Secretary WIRTZ. The importance of the questions you are asking me is such that I think Congress should attend to it rather than leave it to administrative discretion.

Senator RANDOLPH. Would you be against language in this bill as it is drafted which would provide for certain exemptions or exclusions like those we have had oftentimes to write into other laws, for instance, into our minimum wage laws because of the unique character of certain industries?

Would you comment on that for me?

Secretary WIRTZ. Only from the general standpoint, that it does seem to me that this is a problem so pervasive throughout all of industry and so intensely human that I should think the case for special exemptions and that kind of thing would be a very difficult case, Senator Randolph, and I do say again, that what we are talking about here is about the cruelest cut that can come to anybody, when somebody else decides he or she is no longer worth his or her keep.

That is a hard, hard thing and I do not know any commercial consideration which would seem to me to warrant separate handling of that basically human emotion.

I would recognize that there are administrative limitations involving size of the firm and so forth which would have to be taken into account I do not mean to exclude consideration of those, but the exemptions which we both have in mind I do not believe are applicable.

Senator RANDOLPH. A final inquiry. In your statement as I understand it, in talking of age, you did not use the term "less physically debilitating" jobs, but you did as an aside speak of this with regard to our improved technology.

Now, there are jobs that become more physically demanding. I am not attempting to set hard and fast my opinion now, but let us say the stewardess on the airline. She has now become a waitress, hasn't she, to a degree?

She is busy every second. There was a time when this was not true. And she serves now not only 15 or 20 passengers. She is serving, with others, of course, greater numbers of passengers that keep that stewardess busy practically every minute of that flight, whether it is 1 hour, 2 hours or 3 hours, because of the time contraction of flying with jet service.

So this is a problem, very frankly, as we go into this transition with jumbo jets and so forth, where we must think these matters through.

You may have some comment.

You speak of technology, but here the technology has given an added physical strain, let us say, on capability which is required by the person.

Secretary WIRTZ. I think that is right, and there surely are cases in which the physical strain of a particular job is greater than it used to be. In fact, you and I are two who know this.

Senator RANDOLPH. Mr. Secretary, you will never have any trouble being alert and active regardless of the age bracket in which you find yourself.

Secretary WIRTZ. I am a very good witness today. I had a birthday yesterday and it has put me much in mind of this whole problem.

Senator RANDOLPH. Could I inquire for the record what anniversary that was?

Senator YARBOROUGH. I rule the witness does not have to answer that question.

Secretary WIRTZ. I should refuse to answer on the grounds that it might eliminate me; 55 puts me right in the middle.

Senator RANDOLPH. Only 55. I had a birthday on March 8 and I was only 65 and so we both can understand the truth of the poet that "age is opportunity no less than youth itself, though in another dress."

Thank you, Mr. Chairman, for allowing us, on a rather murky morning, to have a little humor although it may not be of the best.

Senator YARBOROUGH. Mr. Secretary, what we really seek to do about this legislation is to get away from arbitrary age distinctions and go to judgment of individudals on their merits. Do we not?

Secretary WIRTZ. That is correct.

Senator YARBOROUGH. How much should we even think of these situations where age might have some relation to ability but not in relation to an individual's merits?

Secretary WIRTZ. I am wondering whether we should strike any reference to age at all in any connection and look at employment only in terms of whether the individual does have or does not have the capacity to do whtaever job it is that that individual is seeking.

I think we are close to the ideal point when we eliminate any reference to age at all.

Senator YARBOROUGH. People differ vastly in their capability at different ages of life. We have what the college professors call the slow, late bloomers, who do not develop until middle age.

We have other people we say are fuzzy thinkers and fuddy duddies at 55 and others are mentally bright at 85 and 90; do we not?

Secretary WIRTZ. That is certainly true. We are both thinking of Leon Green who at 70 is one of the great law teachers in this country.

In these studies which we made, Mr. Chairman and members of the committee, it has become clear that very, very few employees in most ocupations today show any deteriration of ability up to about age 60 and above age 60 there is such a variation between individuals that age is hardly relevant.

In fact the more I look at these studies, the more I think that the most relevant factor is the society's primitive attitude about age.

This attitude is what gives some older people the feeling of being thrown out and discriminated against. It results in the reduction of their capacity.

Senator YARBOROUGH. We have one exception naturally. Senator Randolph referred to pilots of jet planes. Now supersonic planes are being invented to speed up from the jet planes now of 600 miles and hour to 1,500 miles an hour so with the supersonic jets we will have a very different situation.

We will have another situation.

Senator RANDOLPH. I noted, Mr. Secretary, you mentioned the human element here in all of this activity. There is the realization that there are still individual problems with which we must cope.

I understand this. Again I am not trying to take sides at this moment, I am exploring.

In connection with our bargaining today, we think in terms of the very word collective bargaining. Now, does this mean that the union on one hand and the industry on the other will not have an opportunity under the umbrella to incorporate the personal equation at times when there is validity of it?

What about that?

Secretary WIRTZ. I would be inclined in general to rely on the effectiveness of the collective bargaining process to cover this kind of situation.

If we have collective bargaining representation for everybody, I think probably this problem would be of a much lesser nature. Most collective bargaining agreements include employment protection at least as far as the elemination of an employee is concerned.

I would be less confident about the efficacy of that kind of bargaining, of that kind of protection as far as the entry problem is concerned because I think it is true, that in some situations, the collective bargaining system has taken too little account of the individual who might be entering the employment relationship at an advanced age.

There would be three parts to the answer, Senator Randolph.

One, that there should be general respect reflected for the collective bargaining process.

Two, that the collective bargaining process, I think, includes adequate protection as far as the leaving of the job is concerned.

Three, I do not think we should rely on that as far as the entry factor is concerned.

Senator RANDOLPH. I appreciate this reply, Mr. Secretary.

Mr. Chairman, I will not occupy more time except to say for the record it is important to indicate that in presenting Senate 830 which you have introduced with cosponsors, and I am gratified I could join as an author, that we are going into an area here that is very important in its urgency, and that we try to be intelligent in finding these answers.

In our Special Committee on Aging—I am chairing the Subcommittee on Employment and Retirement Incomes for our elderly population—some of our studies have given us the opportunity to make reports which, in part, are helpful, I think, Senator Yarborough, to you and others that are carrying on this subcommittee action.

We will make those available for you because they may complement or supplement some of the work that is being done here. They are in no wise contradictory or jurisdictional; but just certain hearings we have had have given us background knowledge that I think might be helpful.

Thank you.

Senator YARBOROUGH. Senator Fannin?

Senator FANNIN. As long as we are talking about ages and age 45 is mentioned, let me say how proud we are of our senior Senator from Arizona who this year will be double 45, Senator Carl Hayden. I am delighted to have the opportunity to pay tribute to my colleague.

Mr. Secretary, in your opinion, what will be the effect of this legislation on the many private pension and insurance plans now in effect?

Secretary WIRTZ. It would be my judgment, Senator Fannin, that the effect of the provision in section 4(f)(2) which appears on page 6 is to protect the application of almost all plans which I know anything about.

There is that problem specifically recognized and it is provided in that section that "It shall not be unlawful to separate involuntarily an employee under a retirement system where such policy or system is not merely a subterfuge to evade the purposes of that act."

It is intended to protect retirement plans.

Senator FANNIN. I was speaking about hiring. What would be the effect as far as hiring a person?

Secretary WIRTZ. As far as the hiring is concerned, there should be no misunderstanding on that. This provision would not in my judgment warrant any refusal to hire because of the relationship of the age of an individual to a retirement plan.

Senator FANNIN. Do you feel that this legislation will help materially to solve the problems of the older worker?

Secretary WIRTZ. In the context of an earlier statement we better recognize this is only a little bit of what needs doing. In the context of that understanding, my answer would be this is a very important step.

Senator FANNIN. Do you think that the legislation now in effect in 23 States has proven successful?

Secretary WIRTZ. There is a great variety of experience on that. There are differences in the laws and not only in their form but also in the achievements under them.

There is an infinite variety of effectiveness. By my answer is that absent Federal leadership the result as far as the country as a whole is concerned is still far short of what it should be.

We have suggested here, contrary to the usual practice of Federal legislation, there be no preemptive effect. That is with the thought in mind which I think is reflected in your questions, where there is a successful State program.

Senator FANNIN. The Federal program would not preempt?

Secretary WIRTZ. That is correct. But in terms of whether the net total effect on the country as a whole is concerned, I think everybody would agree there has not been adequate accomplishments as as a result of those 23 State laws.

Senator FANNIN. Do you feel that there should be some leeway in the matter of establishing age brackets?

Secretary WIRTZ. No, section 13 which I do support has the 45 to 65 age area identified. My statement was only that if there should be an intention to cover the cases which were raised involving much younger groups this would seem to be a matter of sufficient importance that the intent of the legislation should be made clearer than it is here.

Senator FANNIN. I appreciate that clarification because I did not understand it.

Secretary WIRTZ. The extreme case of that, one I have in mind, is this problem which we are facing which Congress has considered, of whether employers are denying employment to 17 and 18 year olds, for example, because of the possibility of military service.

That situation probably carries this problem to its furthest extreme. I would not feel that this legislation would warrant the Secretary of Labor going into that kind of problem.

If Congress had meant that to be covered here, they would have said so. Then you get into intermediate cases which include the airline stewardesses and some others to which Senator Randolph referred, and my suggesction is if it is intended that some or the whole of the other areas be definitely covered, there is a clearer way to say it.

Senator FANNIN. Thank you, Mr. Secretary.

Senator YARBOROUGH. Thank you, Mr. Secretary for this very clear position and for your very informative answer.

Secretary WIRTZ. I hope it is appropriate for me to express the gratitude we feel at the Department of Labor for the reception we get when we come up here with a discussion of this kind, reflecting the intense humanity of this committee and the chairman of this committee.

I express our gratitude for the introduction of S. 830 and for the reception and consideration which is given it in this committee.

Senator YARBOROUGH. Mr. Secretary, we in the legislative branch, are very much involved with accumulating the knowledge and ex-

perience in the executive department in enforcing these laws, particularly in a period of changing societies such as our today and we are appreciative of you bringing here the knowledge of your great Department. Your experiences in the field, the information you gather and present application of our laws furnish us with the basis for making new laws.

Thank you very much.

At this point in the record I order printed the Manpower Research Bulletin No. 10 of the Department of Labor, dated September 1966, and entitled "Unused Manpower: The Nation's Loss" which graphically illustrates our failure to properly utilize our older workers.

(The publication referred to follows:)

manpower research

BULLETIN
NUMBER 10
SEPTEMBER 1966

UNUSED MANPOWER:

THE NATION'S LOSS

U.S. DEPARTMENT OF LABOR: W. Willard Wirtz, Secretary
MANPOWER ADMINISTRATION

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Young Workers: Their Special Training Needs (No. 3, 1963.)

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Family Breadwinners: Their Special Training Needs (No. 5, 1964.)

The Mentally Retarded: Their Special Training Needs (No. 6, 1964.)

Training Foreign Nationals for Employment With U.S. Companies in Developing Countries—Implications for Domestic Programs (No. 7, 1965.)

Training Needs in Correctional Institutions (No. 8, 1965.)

Training in Service Occupations Under the Manpower Development and Training Act (No. 9, 1966.)

MANPOWER ADMINISTRATION
OFFICE OF MANPOWER POLICY, EVALUATION, AND RESEARCH
CURTIS C. ALLER, DIRECTOR

PREFACE

The requirement of the Manpower Development and Training Act of 1962 that the Secretary of Labor report annually on the use of the Nation's manpower has stimulated new interest in problems related to the utilization of our human resources. This interest has given new impetus to a further analysis of manpower utilization. And, as a result, a new perspective has been gained about the characteristics and implications of data on employment, unemployment, and labor force participation which heretofore have not been fully explored. This new perspective relates primarily to the significant number of male workers in the central working ages who, for a variety of reasons, are not participating in economic activity. This bulletin discusses the trend of male nonparticipation in the labor force, indicates important differences in these rates by color and age, and examines some of the reasons why these disparities may exist.

The purpose of this report is to indicate the economic loss suffered by the Nation when substantial numbers of adult men are not participating in economic activity. An equal objective is to stimulate thinking about how these persons can be brought into the labor force so that they can achieve the dignity associated with work by becoming productive contributors to society.

This bulletin was prepared by Richard G. Seefer and Alexander A. Fourtune under the the direction of Joseph B. Epstein, Chief of the Economic and Manpower Research Group, Office of Manpower Policy, Evaluation, and Research, Manpower Administration.

76-941 O - 67 - 5

INTRODUCTION

The Employment Act of 1946 constituted the first legislative affirmation in this country of a policy of utilizing in our economy all persons able, willing, and seeking to work. The act acknowledged the Government's responsibility with respect to employment and represented a first step in the development of an active manpower policy.

Although two decades have passed, the full objective of the act has yet to be attained. In 1965 the unemployment rate for the year as a whole averaged 4½ percent, the lowest rate in 8 years. By December, the jobless rate had been reduced to 4.1 percent. Nonetheless, at yearend a total of 2.9 million men, women, and teenagers were unemployed—despite the fact that the economy was enjoying the longest peacetime period of uninterrupted growth in its history.

The unemployment rate—the proportion in the labor force out of work and looking for work—provides the best single measure of the extent to which our economy is failing to utilize its human resources. But it is not a complete measure of that failure. For, in addition to the unemployed, there is another manpower resource that fails to contribute to the Nation's production of goods and services. This consists of a large number of persons of working ages in the civilian noninstitutional population who are classed as "not in the labor force"—who are neither employed nor looking for work. These people, together with those who are unemployed, comprise the part of the population that can be viewed as "not utilized."

The reasons why persons are not in the job market and the conditions under which they might enter it are complex and difficult to assess. Yet, for certain groups the reasons are fairly obvious. Some, for example, may never be able to work because of insurmountable mental and physical disabilities. Most teenagers are not in the labor force on a full-time basis since their chief responsibility is acquiring an education. A majority of mothers spend full time taking care of home and children. And many married women do not work simply because their husbands' earnings provide an adequate standard of living. Not all persons of working age, therefore, should or could be expected to work or look for work.

In order to rule out as many of these limiting factors as possible, this report focuses on the utilization—that is, the employment—of men between the ages of 25 and 64. Not only do these men constitute the major component of the work force, but nearly all are likely to be employed or looking for work because of their heavy responsibilities. They have families to support; many have children to raise and educate; and most of them provide the bulk of family income. Hence, changes in the economic utilization of adult men may have far-reaching economic and social implications.

This does not mean, however, that problems of underutilized manpower are limited to the adult male population alone, but only that the technique for measuring their utilization, as used in this report, are not at present applicable to other groups. There are without doubt a considerable number of other persons—particularly adult women, but many youngsters and retired people as well—who want and need jobs but are not seeking them because they believe no opportunities exist or none are available that provide decent wages and working conditions. Still others are not participating in economic activity because of poor health and many mothers cannot be away from home because of a lack of day nurseries or other kinds of family care provisions.

The measure of utilization of adult men, as developed in this report, is based on an analysis of changes in employment, unemployment, and participation in the labor force since 1951–53. The utilization of men is identified by color for the following age groups: 25–44, 45–54, and 55–64.

The years 1951–53 were chosen as the basis for comparison because they provide a pragmatic

reference point for the analysis of labor force behavior under conditions of relatively full employment and its variations since then.[1] Not only was the national unemployment rate then at a record low for the years since the end of World War II, but the early 1950's also represent the most recent period in which unemployment last approximated 3 percent. In addition, participation of men in the labor force was at or near peak rates. (For nonwhites, labor force participation rates during 1951–53 were higher than for any subsequent year; participation rates for white men, however, in some years were occasionally higher than the base period.)[2]

The selection of the base period, which included the Korean conflict, does not imply, however, that partial mobilization is necessary for high utilization of this country's manpower. But it does indicate the effect of increased spending, both public and private, in generating and making available jobs for all those willing and able to work and the response of men to these opportunities as reflected in high labor force participation.

MANPOWER UTILIZATION RATES AND EMPLOYMENT GAP

In order to gain a better understanding of the changes that have taken place, two measures of utilization have been developed. The first indicates the rate at which manpower is being utilized (or not utilized) per thousand men in the civilian noninstitutional population, according to age and color, and changes over time. The second is an estimate of a gap in employment of men aged 25 to 64 defined as the difference between the actual number employed and the number which would have been employed if manpower were utilized at the same rates as were white men in 1951–53. The gap can also be described as the increase in employment—consisting of the reduction in the unemployed and those not in the labor force—required each year to achieve the unemployment rates and the proportion not in the labor force that prevailed for white men in the base period.

It should be stressed that the employment gap relates only to changes in the proportions unemployed and not in the labor force since 1951–53. For example, the portion of the employment gap attributed to increased nonparticipation in the labor force consists only of the number needed to achieve parity with the base period rates. Parity, however, does not imply 100 percent participation in the labor force, either now or in the 1951–53 base period.

The labor force behavior of white males in the base period for each age group was used as the standard for comparing the utilization of whites in subsequent years and of nonwhites both in the base period and following years. The white men's rates were used because in the base period their employment and labor force rates were higher and their unemployment rates lower than the rates for nonwhites. In a democratic society this disparity cannot and must not be accepted as inherent.

This report shows that sharp disparities exist in the pattern of utilization among different population groups. It is clear that a more precise measurement of full or optimum utilization of manpower must await more detailed information on labor force behavior. However, the data available do indicate, even without further refinement, that a significant number of men are not in the labor force because they are discouraged or inhibited from finding or seeking the jobs in which they can make their maximum contribution. This

[1] Because basic data relating to population, employment, and unemployment within the base period and between 1951–53 and subsequent years are not strictly comparable, three adjustments were made in the series: (1) Base year data were revised to reflect differences in population estimates arising from the 1950 census; (2) civilian labor force levels for 1951–53 were raised to take into account the increased numbers of adult men going into the Armed Forces during this period; and (3) employment and unemployment data for 1951–56 were adjusted to make them comparable with data for later years as a result of changes in definitions put into effect in 1957.

The labor force, employment, and unemployment data are derived from sample surveys of households and are subject to sampling variability. For a discussion of statistical reliability, see pages 2E–5E of *Employment and Earnings* of the Bureau of Labor Statistics.

[2] As a result of both low unemployment and high participation, differentials in the utilization between white and nonwhite men in the base period were the lowest than for any subsequent year with relatively low unemployment. For example, in 1956 the unemployment rate was 4.2 percent—the lowest since 1951–53. But at the same time the differential between white and nonwhite utilization worsened as a result of relatively higher unemployment and lower labor force participation among nonwhites. (See appendix table A–1.)

withdrawal from the labor force reflects the effect of many barriers—such as lack of employment opportunities, discrimination, mental or physical disabilities, and cultural and educational handicaps—the elimination of which is a prerequisite for the full utilization of the Nation's manpower.

SUMMARY OF FINDINGS

Despite record peaks in employment and production, the economy is failing to utilize fully the potential of its manpower resources, as compared with the early 1950's. In 1965:[3]

1. Employment of men 25 to 64 years old would have been about 725,000 higher if they had worked at the rate which existed for white men in 1951–53. (See chart 1.)
2. The lack of these jobs—that is, the gap[4] between actual and potential employment—represented a loss of almost $7 billion in gross national product.
3. Two-thirds of the employment gap—484,000—was caused by a higher proportion of men outside the labor force. The rest—238,000—reflected higher unemployment.
4. The decline in the utilization of nonwhite manpower has been especially severe, and has pervaded all age groups. Matching the white standard reference rate of the early 1950's would have required the employment of 300,000 more nonwhites in 1965.
5. Older men—white and nonwhite between the ages of 55 and 64—accounted for 290,000 or two-fifths of the total employment gap. Increased withdrawal from the labor force, most notable among this group, totaled 261,000, of which only a small proportion can be attributed to reasons of personal preference.

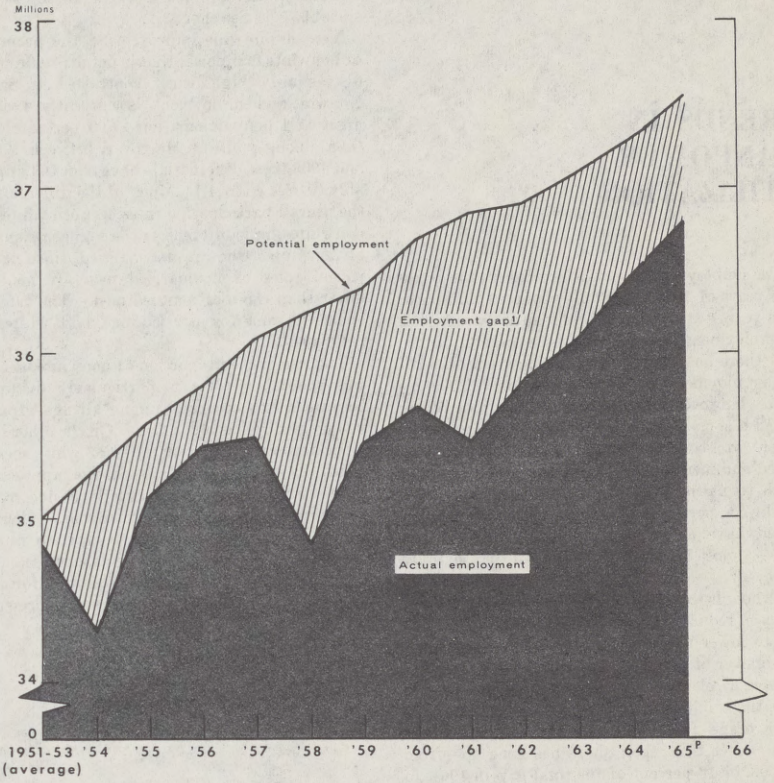
[3] Data for 1965 are based on preliminary annual averages of population, employment, and unemployment, as provided by the Bureau of Labor Statistics.

[4] The 1965 employment gap reflects an increase of almost one-third in the proportion of men not utilized—to 83 per thousand population—when measured against the standard rate for white males in the 1951–53 base period (63 per thousand). Conversely, the proportion of men who were utilized—that is, the employed—declined from the white standard rate of 937 per thousand to an average level of 917 per thousand in 1965.

Chart 1

UNUSED MANPOWER: THE NATION'S LOSS

Employment gap for men aged 25 to 64 totaled 722,000 in 1965.



1/ For explanation of employment gap, see Introduction.

Note: P-preliminary.

Source: U.S. Department of Labor, Manpower Administration, Office of Manpower Policy, Evaluation, and Research, based on data from the Bureau of Labor Statistics.

TRENDS IN MANPOWER UTILIZATION

The employment gap was greatest in the recession years of 1958 and 1961—about 1.4 million in both years—and was due almost entirely to higher unemployment than in the base period. Since 1961 there has been a marked improvement, with the employment gap narrowing to 722,000 by 1965. However, the absence of these jobs represented a substantial loss in the Nation's potential output of goods and services. If this gap were closed and men utilized at jobs that contributed as much to national output as the average for all employed persons, the gross national product would have amounted to over $680 billion in 1965—almost $7 billion higher than that actually achieved.

Although the employment gap in recent years has been reduced, all of this improvement has been due to lower unemployment. At the same time, the number of men leaving the job market appears to have accelerated. For example, from 1954 to 1960 those outside the labor force accounted on the average for 11 percent of the employment gap. Since then, their share has gone up—from 213,000, or 16 percent of the total gap in 1961, to 377,000, or 46 percent in 1964. And in 1965 the portion of those not in the job market rose further —to 584,000—and for the first time constituted a majority (67 percent) of the gap. (See chart 2.)

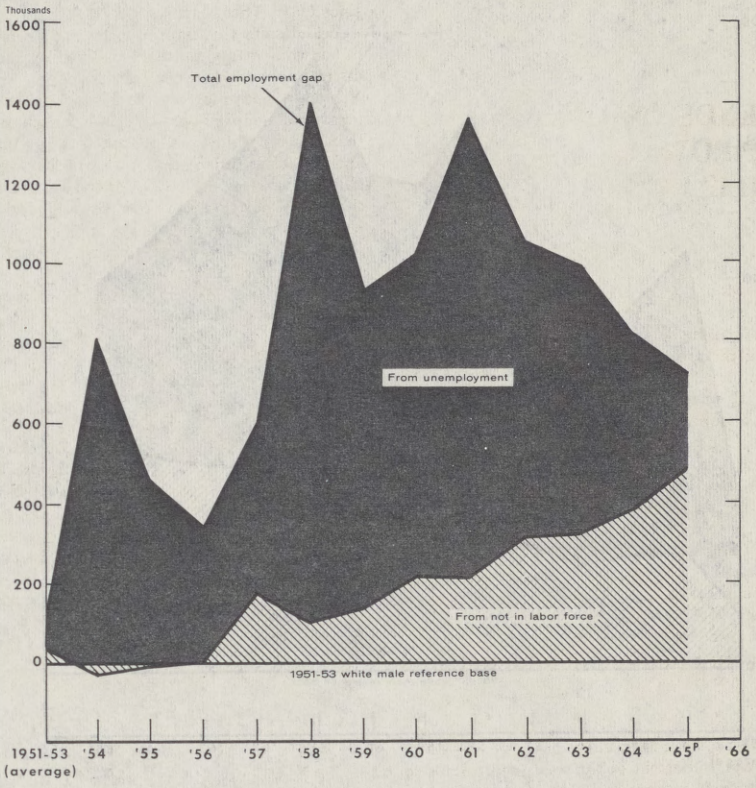
Of the total employment gap in 1965, nonwhite men accounted for 300,000—41 percent—although they comprised only 10 percent of the adult male population. Even in the 1951–53 base period an employment gap of 120,000 jobs existed, all of which reflected the significantly higher rates of unemployment and lesser participation of nonwhites in the labor force. This gap widened by an average of almost 45,000 jobs a year up to 1961, when it reached a peak of 470,000. During the past 4 years, however, there has been diminution of the gap and by 1965 it was at its lowest level since 1957. (See chart 3.)

Yet, despite this improvement, the proportion of nonwhite manpower that is not utilized remains distressingly high when contrasted to whites. Nonwhite unemployment is currently twice as great and nonparticipation is 60 percent higher than among whites. Moreover, between 1951–53 and 1965 these differentials have widened appreciably. (See chart 4.) Much of the differential in the overall participation rates between whites and nonwhites probably reflects the higher proportion of nonwhites who are not married, since participation rates of nonmarried men are generally lower than those of married men. The rates are about the same for married men, both whites and nonwhites.

The rise in the proportion of nonwhite men outside the labor force is particularly disturbing because it has occurred among all age groups—younger as well as older men. On the other hand, labor force participation rates of white men between 25 and 54 did not change appreciably. Most of the white men who left the job market were older workers, 55 to 64 years old. Although some of the decline in the participation rates of older workers undoubtedly reflects increased availability of early retirement opportunities, for many their withdrawal is involuntary and represents a loss of potential manpower.

Chart 2

In 1965, for the first time, a majority of the employment gap among men aged 25 to 64 was from those outside the labor force.

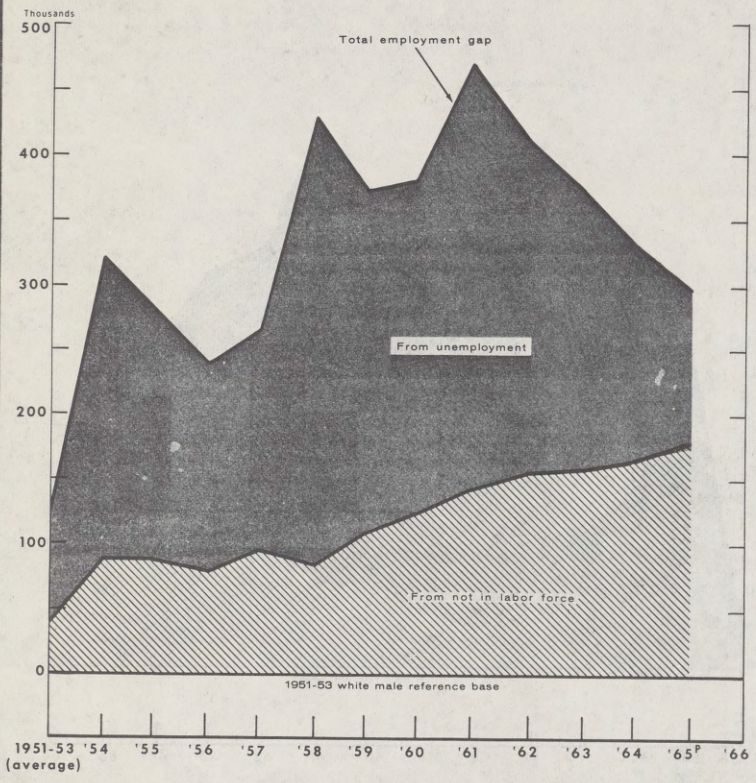


Note: P preliminary.

Source: U.S. Department of Labor, Manpower Administration, Office of Manpower Policy, Evaluation, and Research, based on data from the Bureau of Labor Statistics.

Chart 3

Employment gap for nonwhite men aged 25 to 64 totaled 300,000 in 1965.



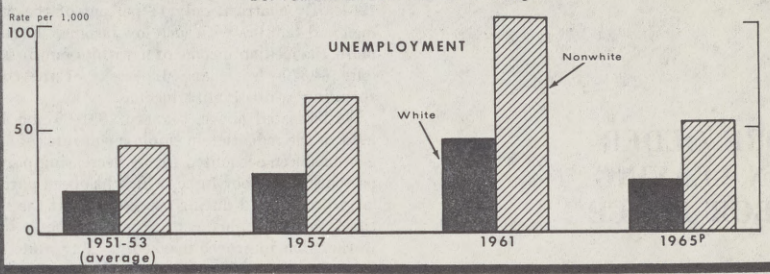
Note: P--preliminary.

Source: U.S. Department of Labor, Manpower Administration, Office of Manpower Policy, Evaluation, and Research, based on data from the Bureau of Labor Statistics.

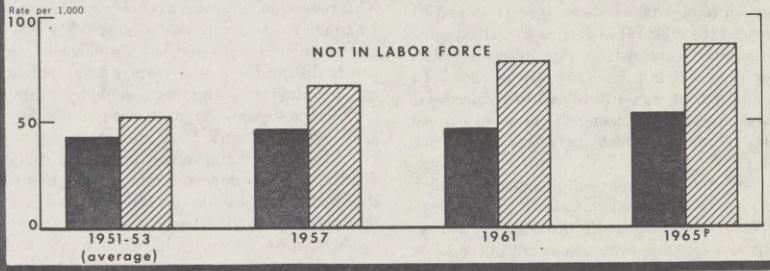
Chart 4

Utilization of Men, 25 to 64 Years Old by Color, 1951-53 to 1965[1/]

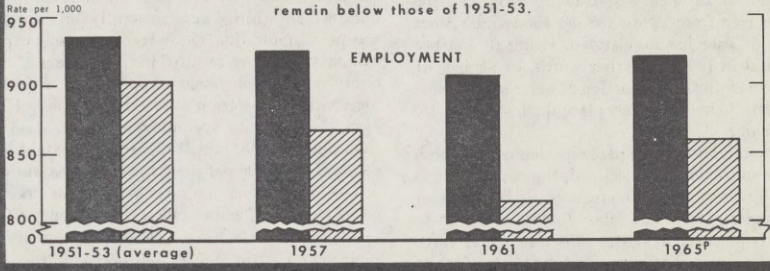
Since 1961 unemployment rates have fallen sharply, especially for nonwhites, but remain above 1951-53 average.



Proportion of nonwhites outside the labor force has risen steadily since 1951-53.



White and nonwhite employment rates, although up from 1961, remain below those of 1951-53.



MORE OLDER MEN LEAVING LABOR FORCE

Of all age groups covered in this report, white and nonwhite men between the ages of 55 and 64 experienced the most rapid decline in utilization—their combined employment rate dropping from 853 per thousand in 1951–53 to 819 in 1965. In 1965, employment would have had to be increased by 290,000 for men of these ages in order to achieve the 1951–53 standard rate for white men. (See chart 5.)

Most of the decline in employment of older workers has been due not to mounting unemployment (from which many are protected by seniority) but to increasing proportions not in the labor force. For example, between 1951–53 and 1960 the number of men withdrawing from the job market rose from 122 to 132 per thousand. Since then this rate has accelerated, rising to 153 per thousand in 1965. In other words, two-thirds of the increase in the proportion of older men outside the labor force has taken place during the past 5 years alone.

Although labor force participation rates of both whites and nonwhites declined, the reduction was much greater among nonwhites as the number withdrawing from the labor force rose by 73 to 212 per thousand in 1965. This was almost three times the rise in the nonparticipation rate of white men, which rose by 27 to 148 per thousand. The generally low levels of education of older nonwhites and their concentration in unskilled jobs, many of which require vigorous health, apparently make them less adaptable to changing demands of the job market. Moreover, premature loss of work is likely to impose much greater economic hardships on older nonwhite breadwinners because of financial vulnerability due to their low income. For example, in March 1965, 30 percent of employed nonwhite male breadwinners aged 55 to 64 lived in families with less than $3,000 income in 1964. By contrast, only 11 percent of the white men had families with such low income. Furthermore, the median income of nonwhite families was only $4,370—less than 60 percent of the corresponding white family income.

As indicated above, between 1951–53 and 1965 most of the reduction in employment rates of older men has been accounted for by decreasing participation in the labor force, which has been particularly pronounced during the 1960's. At the same time, the unemployment situation among older workers has improved markedly. For white men this was reflected in a drop in unemployment from 47 per thousand in 1961 to 26 per thousand in 1965. This reduction, however, has not been accompanied by an increase in employment rates. The fact that the proportion employed has not changed significantly during the past 4 years, despite reductions in unemployment, suggests that many white men on balance are no longer looking for work and are leaving the work force altogether.

On the other hand, about one-third of the reduction in unemployment among older nonwhites during the past 4 years has been reflected in a rise in employment. The reasons why recent employment rates of nonwhites have risen and those of whites have not are not clear, but it may be that the jobs which were available for nonwhites were ones which whites were generally unwilling to accept. In addition, the current economic expansion may also have resulted in the creation of relatively more employment opportunities for older nonwhites than were previously available. However, the nonwhite unemployment rate, at 43 per thousand in 1965, is still disproportionately high compared with 26 per thousand for white workers.

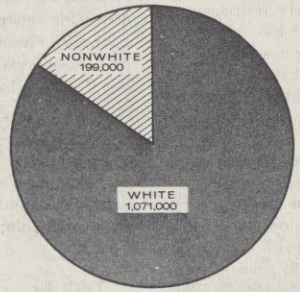
The lower utilization rates of nonwhites as compared to those of whites reflect the combined effects of many inequities; among these are discrimination, poor health, lack of job opportunities, and inadequate education. Because many nonwhites have traditionally been employed in jobs requiring heavy manual labor, they have probably been more

Chart 5

UNUSED MANPOWER: THE NATION'S LOSS

Although nonwhite men made up only 16 percent of the increase in the older population between 1951-53 and 1965,...

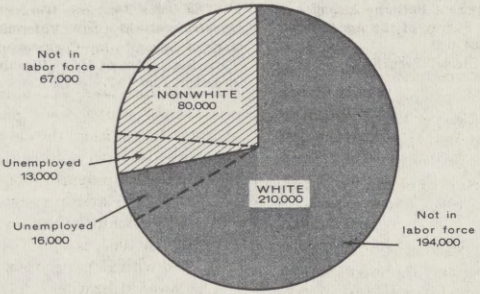
Increase in the Male Population 55 to 64 Years Old
Average 1951-53 to 1965



Total: 1,270,000

...they accounted for more than one quarter of the decline in utilization among older men.

Number of Jobs Needed in 1965 to Reach 1951-53
Utilization Rate of White Males



Total: 290,000

Note: Data for 1965 are preliminary.
Source: U.S. Department of Labor, Manpower Administration, Office of Manpower Policy, Evaluation, and Research, based on data from the Bureau of Labor Statistics.

subject to forced "retirement" for reason of health. In addition, it is these jobs which have been among those hardest hit by increasing mechanization.

For both white and nonwhite older men, some of the decline in participation rates undoubtedly reflects the rising incidence of early retirement. From 1961 to 1965, for example, about 1¼ million men between the ages of 62 and 64 have taken advantage of the amendments to the Social Security Act which permitted early retirement with reduced benefits. While it is difficult to assess the net effect of this development on manpower utilization—because it is not known how many have voluntarily taken advantage of early retirement—it appears likely that many older men are being forced out of the job market because of lack of employment opportunities, lack of skills or education, inability to meet the physical demands of the job, unwillingness to relocate, or discriminatory hiring practices.

For example, only 1 out of 10 men 62–64 years old receiving Social Security benefits in 1963 had retired because of preference for leisure. Two out of five had done so at the employer's decision, predominantly because of poor health or layoffs.[5] About three-fifths of the 62- to 64-year-old men who filed for old-age insurance benefits in 1962 were not employed at the time. About half of these had been out of work for more than 6 months and a fourth for 2 years or more.[6]

On the other hand, many men who retire early—voluntarily or involuntarily—have no intention of stopping work. For example, a survey of civil service retirees who left their jobs between the ages of 55 and 60 showed that 59 percent returned to work.[7] And a 1963 study sponsored by the Department of Health, Education, and Welfare found that nearly half of a group of involuntary early retirees looked for work after retirement.[8] The recent report of the Secretary of Labor on the problems of the older worker points out that: "Repeatedly the majority of retirees who have returned to work or wanted to return to work, give lack of adequate income as their reason."[9]

Changing attitudes toward early retirement and increasing retirement benefits may in time act as a strong inducement for men under 65 to retire. At present, available information is inadequate to establish conclusively the extent to which older men are retiring voluntarily, especially those who hold regular jobs, because they prefer leisure and can live comfortably under current benefit levels. At this point, the bulk of the evidence appears consistent with the hypothesis that most early retirement is not voluntary.

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[5] Erdman Palmore, "Retirement Patterns Among Aged Men: Findings of the 1963 Survey of the Aged," *Social Security Bulletin*, August 1964, p. 9.

[6] Unpublished data from Social Security Administration.

[7] "Thirty-Eight Years Is a Plenty." *Civil Service Journal*, October–December 1964.

[8] Theron J. Fields, *Company Initiated Early Retirement as a Means of Work Force Control: A Report to the Office of the Commissioner, Welfare Administration of the Department of Health, Education, and Welfare* (Ithaca, N.Y.: Cornell University, New York State School of Industrial and Labor Relations, December 1963).

[9] *The Older American Worker: Age Discrimination in Employment—Research Materials*, Report of the Secretary of Labor to the Congress under Section 715 of the Civil Rights Act of 1964 (Washington: U.S. Department of Labor, June 1965), p. 73.

DECLINING UTILIZATION OF MEN, 25 TO 54

Men between 25 and 54 years of age have the highest participation rates of any age group because it is during these ages that their economic and family needs are greatest. Most are heads of households who must have steady employment with adequate income to provide the goods and services required for the rearing of children, household maintenance, and to meet other major responsibilities during the course of a lifetime. However, even within this age bracket, there is a clear pattern of decreasing utilization associated with increasing age.

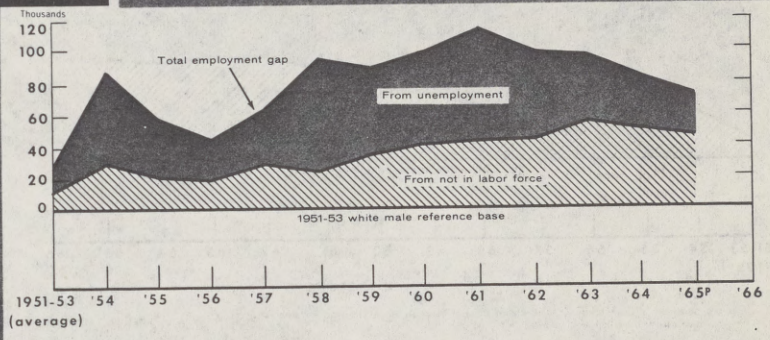
Although not as hard hit as men aged 55 to 64, the utilization of those 45 to 54 years old has also deteriorated significantly since 1951–53. By 1965 their average employment rates had fallen from 943 to 932 per thousand population. In terms of the white male reference rate of the early 1950's, the decline in utilization represented an employment gap of 152,000 jobs.

Men in this age group and their families usually suffer more economic hardships from the loss of employment than older men, since they seldom have recourse to retirement benefits if age or other discriminatory hiring practices or lack of skills prevent them from obtaining employment. As a result, some may be forced to live with or depend on relatives; others may have to rely on various other types of assistance, with attendant loss of self-respect.

Consistent with their generally lower pattern of utilization, employment of nonwhite men aged 45

Chart 6

Despite recent reductions in the employment gap of nonwhite men aged 45 to 54, the proportion attributed to those outside the labor force has risen.

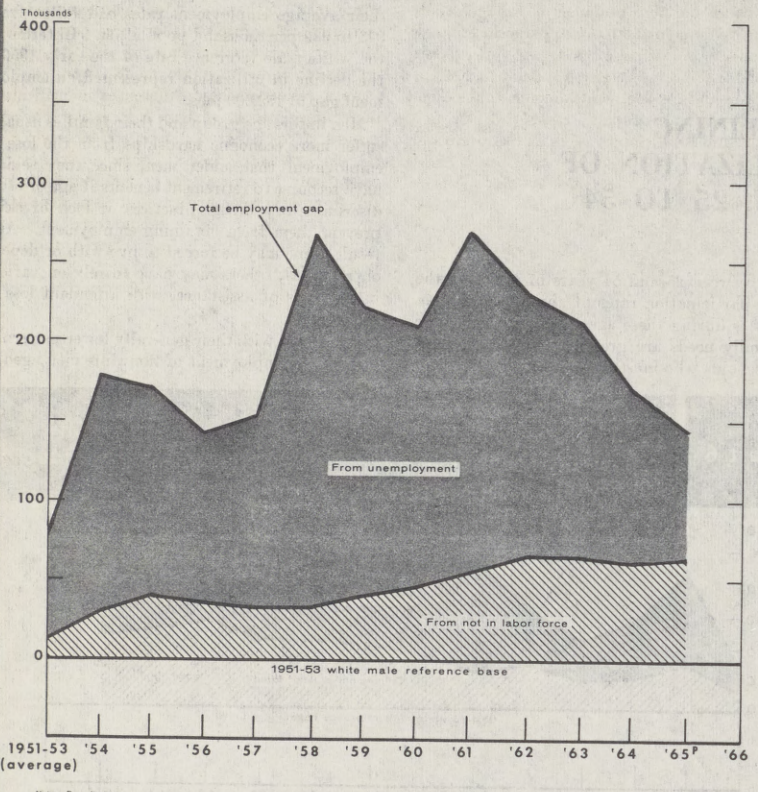


Note: P preliminary.

Source: U.S. Department of Labor, Manpower Administration, Office of Manpower Policy, Evaluation, and Research, based on data from the Bureau of Labor Statistics.

Chart 7

The employment gap of nonwhite men aged 25 to 44 shows a steady rise in the number from outside the labor force.



Note: P-preliminary.

Source: U.S. Department of Labor, Manpower Administration, Office of Manpower Policy, Evaluation, and Research, based on data from the Bureau of Labor Statistics.

to 54 dropped more than for white men in the same age bracket. Although nonwhites constitute less than 10 percent of all men in this age group, they accounted for 48 percent of the 1965 employment gap for these ages. Almost two-thirds of the gap among nonwhite men was attributable to withdrawal from the labor force. (See chart 6.) By contrast, unemployment among whites in most years has constituted the bulk of their gap.

During the past 4 years, however, employment of both white and nonwhite men in this age group has improved, due principally to reductions in unemployment. Among nonwhites the proportion unemployed fell from 94 per thousand in 1961 to 47 per thousand in 1965, while among whites their corresponding rate dropped from 42 to 22 per thousand; for both groups, rates in 1965 were the lowest since 1951–53. On the other hand, there has not been much change since 1961 in the proportion outside the labor force. This appears to have stabilized at about 40 per thousand for whites and 81 per thousand for nonwhites, both of which are substantially above base period rates.

Utilization rates of younger men, white and nonwhite combined, aged 25 to 44, are the highest of the age groups covered in this report. Nevertheless, the same pattern of increasing nonparticipation that prevails among the older nonwhite age groups also applies to younger nonwhites. (See chart 7.) Their proportion outside the labor force rose from 32 per thousand in 1951–53 to 50 per thousand in 1965. In addition, unemployment of younger nonwhites increased by 10 per thousand to 54 per thousand. These increases—in both nonparticipation and unemployment—mean that employment of nonwhite males aged 25 to 44 would have to be raised by 144,000 in 1965 to match the white standard rate for the same ages in the early 1950's. These data reflect the frustrations and barriers that inhibit normal participation by nonwhites in the labor force.

In sharp contrast, the pattern of utilization for white men of these ages was characterized by a virtually stable rate of labor force participation. Most of their employment gap in 1965 was attributed to higher unemployment.

As a result of these differences in utilization, nonwhites 25 to 44 years old, as in the other age groups, account for a disproportionate share of the employment gap. Although nonwhites represent only 10 percent of the male population in this group, they comprise almost 60 percent of the gap attributed to lower labor force participation and almost one-half attributed to higher unemployment.

Since 1961, employment of men in these central age groups has also increased, with nonwhites showing a much faster rate of growth than whites. The improvement in the nonwhite employment rate, however, was less than the accompanying decline in unemployment, with the difference reflected in a rise in those outside the labor force. Among whites, their increased employment rate was due almost entirely to reduced unemployment.

EDUCATION AND MANPOWER UTILIZATION

The close relationship between low levels of educational attainment and high unemployment is well known and has been demonstrated in numerous studies. Less generally known is the substantial impact that inadequate education has on reduced labor force participation. While the correlation between limited education and low levels of utilization is not perfect, it is clear that the most educated are most fully utilized, and those with the least education suffer from the highest unemployment and participate least in the job market.

Moreover, at all levels of educational attainment, except the lowest, proportionately fewer nonwhites were employed than whites. For example, in March 1964, white men between the ages of 25 and 64 with 8 years of schooling were employed at the rate of 874 per thousand—50 per thousand more than the rate for nonwhites. (See table 1.) And even among college graduates, relatively more whites had jobs than nonwhites. Their utilization rates were 961 and 934 per thousand, respectively.

Despite the evidence that increased educational attainment is clearly associated with higher rates of employment for both whites and nonwhites, there are some noticeable deviations from this pattern which are difficult to assess. Among men with the least amount of schooling—4 years or less—the proportion of employed nonwhites was actually higher than the proportion of employed whites. Not only were relatively fewer nonwhites unemployed than whites (69 compared to 75 per thousand) but their proportion outside the labor force—166 per thousand—was also significantly lower than the rate for whites—205 per thousand.

While proportionately more white men had jobs than nonwhites, among those who had only 5 to 7 years of education these differences were relatively small—only 12 per thousand. On the other hand, the greatest difference in white-nonwhite utilization rates was among those with a grammar school

Table 1. Utilization of Men 25–64 Years Old, by Color and Years of School Completed, March 1964

[Rate per thousand population]

Color and employment status	Elementary school			High school		College	
	0 to 4 years	5 to 7 years	8 years	1 to 3 years	4 years	1 to 3 years	4 years or more
White							
Total not utilized (not employed)	280	169	126	93	53	60	39
Unemployed	75	63	53	47	27	22	9
Not in labor force	205	106	73	46	26	38	30
Utilized (employed)	720	831	874	907	947	940	961
Nonwhite							
Total not utilized (not employed)	235	181	176	119	122	76	66
Unemployed	69	84	87	77	90	52	39
Not in labor force	166	97	89	42	32	24	27
Utilized (employed)	765	819	824	881	878	924	934

education and those with a high school background. Apart from those with the lowest educational achievement, it is only among nonwhites with college experience that utilization rates approached those of white men with similar years of schooling.

In order to explain these variations in the patterns of labor force behavior associated with education, considerably more information is needed. The data suggest, however, that educational differences are one of many factors involved in the utilization of manpower. The fact that among men with 0–4 years of education relatively more nonwhites were employed than whites may reflect different living and working environments. This might include the concentration of nonwhites in low skilled, menial, and farm jobs, which are characterized more by part-time work or underemployment rather than regular full-time employment. Conversely, the sharply lower employment rates of nonwhite high school graduates as compared to white graduates may result more from discriminatory hiring practices than from rural-urban differences.

Despite these essentially noneducational factors, the indications are that poorly educated workers will have even greater difficulty in finding work and adapting to change as the educational level of the labor force continues to rise and as technology reaches new levels of complexity. The prospect is not only that the number of jobs requiring little or no education will continue to decline but also that the majority of jobs will require higher level skills and more education.

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IMPLICATIONS FOR NEEDED ACTION

The Employment Act of 1946 was in large measure prompted by a concern over the possibility of sharp increases in unemployment following the demobilization of millions of military personnel and the discharge of war production workers at the end of World War II. The act thus laid the foundation for the establishment of an active manpower policy aimed at the maintenance of maximum employment consistent with price stability.

Two decades later the Nation is still concerned with problems of manpower—employment and unemployment—despite an impressive record of economic and social gains. Since 1961, the Government has undertaken a number of fiscal and monetary actions as well as education and training programs directed at solving specific manpower problems. The results of these efforts have been evidenced in the sustained progress of the economy in providing jobs for a growing labor force and in reducing unemployment.

This report has shown that up to 1961 the greatest impediment to full manpower utilization had been reflected in increased unemployment. Since 1961 there has been a substantial narrowing of the employment gap, caused by reductions in unemployment. But as unemployment has been reduced, nonparticipation in the labor force has assumed greater significance, absolutely as well as relatively. As a result, two-thirds of the employment gap in 1965 can be attributed to reduced labor force participation.

These developments have important implications for manpower policy. As efforts to reduce unemployment, as traditionally measured, to a minimum become increasingly effective, more attention will have to be directed to achieve full or optimum utilization of all our manpower resources. This suggests that those in positions of policy should expand their thinking beyond the traditional concept of the labor force, which has been primarily concerned with those either at work (employed) or looking for work (unemployed). Consideration should now be given to the formulation of economic and social policies and the development or expansion of programs to reach individuals not currently counted in the labor force—those in the working age population who may have given up the search for work or who have never looked for work.

Recognition of a policy of optimum manpower utilization—having as its primary objective a higher rate of labor force participation and employment—implies the establishment of an economic climate, consistent with price stability, resulting not only in the creation of new jobs but also in making them available to all who need and wish to work. At the same time, realization of this goal implies a parallel recognition: That full utilization of all our human resources could free many persons from the economic necessity of having to work in order to maintain an adequate family income. The resulting increase in employment opportunities for family breadwinners could enable other members of the family to turn to noneconomic interests and activities.

A variety of measures may be required to achieve full utilization. For workers who have given up the search for employment in the belief that no jobs are available, more consideration should be given to training such as that supplied under the Manpower Development and Training Act. Such training could be used as an instrument for restoring many workers who are old, disabled, or in poor health to an active and productive role in society. In this regard, the experience gained under the experimental and demonstration projects sponsored by the Manpower Administration is already beginning to show the benefits of proper encouragement, counseling, education, and training in helping people with especially difficult

employment problems to enter or reenter the world of work.[10]

Achievement of full manpower utilization—minimum unemployment and maximum participation in the labor force—requires the elimination of many barriers. One of these is discrimination, the evidence of which has been amply demonstrated by the falling utilization rates of older men and of nonwhites. As the provisions of the Civil Rights Act become fully effective, the situation of nonwhite men should improve.

The problems of the older worker call for additional attention and action. Since one of the purposes of the Social Security Act is to provide workers with a free choice between retirement and work, it is ironic that early retirement at reduced benefits has been a last resort for many older men. Hiring restrictions based on age must be eliminated so that more displaced older workers can be helped.

The reduction in unemployment over the past 4 years, particularly the marked improvements during 1965, demonstrates the vigor of the economy in generating employment opportunities. This reflects a national manpower policy directed to the maximum reduction in unemployment. But this is not sufficient. Action should now be directed even more specifically to those groups which have not shared in the general improvements and to those persons outside the labor force to enable and encourage them to enter the mainstream of the American economy.

[10] For example, see William F. Brazziel, *Factors in Workers' Decisions to Forego Retraining Under the Manpower Development and Training Act* (Washington: Norfolk Division, Virginia State College in cooperation with the U.S. Department of Labor, Manpower Administration, Office of Manpower, Automation and Training, June 1964).

But even as unemployment approaches the rates of the 1951–53 period, the pattern of labor force participation that existed in these years may not be fully restored. This appears to be the case for many nonwhites whose unemployment rates have declined substantially and whose employment rates have risen over the past several years. Where gains in their labor force participation might have been expected, however, the effect of economic growth appears only to have slowed the rate of decline. This development suggests the presence of serious problems and maladjustments in the Nation's social and economic fabric which will not be entirely corrected by an overall expansion in economic conditions alone.

At present it is not known to what extent the labor force behavior or the work experience of individuals is influenced by these factors. The policy approach, therefore, must be flexible and be responsive to new information relating to specific causes for individuals' decisions not to participate in the labor force. The research staff of the Manpower Administration and other Bureaus in the Department of Labor are developing more information which will shed light on these and other aspects of labor force behavior.

The objective of a free industrialized society must include comprehensive programs to evoke the full utilization of not only those who are willing and able to pursue economic activities but, also, of those who presently are not working or seeking work because of remediable ills, disabilities, or lack of motivation. This is necessary not only to maximize production for the benefit of the population as a whole, but also to develop each individual's contribution as a means of enhancing individual worth.

STATISTICAL APPENDIX

Employment, Unemployment, and Labor Force Participation of Adult Men, 1951–53 to 1965

The U.S. Department of Labor is the source of all data in this report unless otherwise noted. Data on utilization were derived from the population and labor force statistics as provided in the sample survey of households, collected and tabulated by the Census Bureau for the Bureau of Labor Statistics, and published in the *Monthly Report on the Labor Force.*

NOTE: Data for 1965 are based on preliminary annual averages of population, employment, and unemployment as provided by the Bureau of Labor Statistics.

Table A–1. Manpower Utilization of Men 25 to 64 Years Old in the Civilian Noninstitutional Population, by Color, 1951–53 to 1965

[Rate per 1,000]

Year	Total employed (white and nonwhite)	White				Nonwhite			
		Employed	Not utilized			Employed	Not utilized		
			Total	Unemployed	Not in labor force		Total	Unemployed	Not in labor force
1951–53 [1]	934	937	63	20	43	906	94	42	52
1954	915	922	78	38	40	848	152	86	66
1955	925	931	69	28	41	860	140	75	65
1956	927	933	67	25	42	873	127	64	63
1957	921	926	74	28	46	868	132	65	67
1958	900	908	92	48	44	824	176	112	64
1959	912	920	80	35	45	840	160	90	70
1960	910	918	82	36	46	841	159	85	74
1961	901	910	90	44	46	819	181	103	78
1962	909	917	83	34	49	834	166	85	81
1963	910	918	82	33	49	843	157	75	82
1964	915	921	79	28	51	853	147	63	84
1965 [2]	917	923	77	24	54	863	137	50	87

[1] 3-year average.
[2] Preliminary.

Table A–2. Manpower Utilization of Men 25 to 44 Years Old in the Civilian Noninstitutional Population, by Color, 1951–53 to 1965

[Rate per 1,000]

Year	Total employed (white and nonwhite)	White				Nonwhite			
		Employed	Not utilized			Employed	Not utilized		
			Total	Unemployed	Not in labor force		Total	Unemployed	Not in labor force
1951–53 [1]	955	959	41	19	22	924	76	44	32
1954	933	940	60	38	22	871	129	92	37
1955	947	955	45	26	19	879	121	81	40
1956	947	953	47	24	23	893	107	68	39
1957	943	949	51	26	25	890	110	73	37
1958	918	927	73	49	24	838	162	126	36
1959	935	944	56	34	22	859	141	102	39
1960	934	942	58	36	22	868	132	90	42
1961	925	935	65	43	22	841	159	113	46
1962	934	943	57	34	23	858	142	91	51
1963	935	943	57	33	24	866	134	83	51
1964	942	949	51	27	24	885	115	66	49
1965 [2]	946	952	48	23	25	896	104	54	50

[1] 3-year average.
[2] Preliminary.

Table A–3. Manpower Utilization of Men 45 to 54 Years Old in the Civilian Noninstitutional Population, by Color, 1951–53 to 1965

[Rate per 1,000]

Year	Total employed (white and nonwhite)	White				Nonwhite			
		Employed	Not utilized			Employed	Not utilized		
			Total	Unemployed	Not in labor force		Total	Unemployed	Not in labor force
1951–53 [1]	943	946	54	20	34	911	89	41	48
1954	923	931	69	37	32	845	155	86	69
1955	934	939	61	28	33	882	118	60	58
1956	937	941	59	27	32	893	107	51	56
1957	931	937	63	29	34	876	124	59	65
1958	912	920	80	46	34	843	157	97	60
1959	919	925	75	38	37	852	148	76	72
1960	919	926	74	35	39	844	156	78	78
1961	908	917	83	42	41	829	171	94	77
1962	919	926	74	34	40	845	155	77	78
1963	922	930	70	32	38	847	153	64	89
1964	926	933	67	28	39	861	139	54	85
1965 [2]	932	938	62	22	40	872	128	47	81

[1] 3-year average.
[2] Preliminary.

Table A–4. Manpower Utilization of Men 55 to 64 Years Old in the Civilian Noninstitutional Population, by Color, 1951–53 to 1965

[Rate per 1,000]

Year	Total employed (white and nonwhite)	White				Nonwhite			
		Employed	Not utilized			Employed	Not utilized		
			Total	Unemployed	Not in labor force		Total	Unemployed	Not in labor force
1951–53 [1]	853	855	145	24	121	825	175	36	139
1954	847	854	146	38	108	764	236	62	174
1955	841	849	151	35	116	753	247	74	173
1956	853	861	139	27	112	767	233	67	166
1957	838	844	156	30	126	774	226	47	179
1958	829	836	164	46	118	748	252	84	167
1959	837	845	155	34	121	757	243	68	175
1960	828	836	164	36	128	746	254	78	176
1961	822	831	169	47	122	730	270	86	184
1962	823	831	169	36	133	737	263	78	185
1963	825	831	169	35	134	764	236	61	175
1964	823	831	169	30	139	740	260	65	195
1965 [2]	819	826	174	26	148	745	255	43	212

[1] 3-year average.
[2] Preliminary.

Table B–1. Composition of the Employment Gap [1] of Men 25 to 64 Years Old, by Color, 1951–53 to 1965

[Thousands]

Year	Total employment gap	White			Nonwhite		
		Total	Unemployed	Not in labor force	Total	Unemployed	Not in labor force
1951–53 [2]	120				120	78	42
1954	816	493	601	−108	323	235	88
1955	462	178	268	−90	284	196	88
1956	345	107	180	−73	238	159	79
1957	605	340	250	90	265	169	96
1958	1,404	974	956	18	430	345	85
1959	928	555	520	35	373	265	108
1960	1,016	636	544	92	380	257	123
1961	1,370	900	829	71	470	328	142
1962	1,060	648	484	164	412	258	154
1963	994	619	455	164	375	216	159
1964	819	484	271	213	335	171	164
1965 [3]	722	425	119	306	297	119	178

[1] This table shows changes in the "employment gap," which represents the difference between actual levels of unemployment and nonparticipation (not in the labor force) and those which would have occurred if the pattern of labor force behavior of white men in 1951–53 had prevailed. These differences are derived by applying the base period pattern for each age group to the appropriate age and color groups in the population in subsequent years. It should be noted that the total employment gap for white men in some years is less than that due to unemployment and results from negative entries for those "not in the labor force." This reflects the fact that labor force participation rates of white men in these years were somewhat higher than they were in the 1951–53 base period. The effect of this development resulted in fewer numbers of men outside the labor force than that which would have been expected based on the standard of the early 1950's.

[2] 3-year average.

[3] Preliminary.

Table B–2. Composition of the Employment Gap [1] of Men 25 to 44 Years Old, by Color, 1951–53 to 1965

[Thousands]

Year	Total employment gap	White			Nonwhite		
		Total	Unemployed	Not in labor force	Total	Unemployed	Not in labor force
1951–53 [2]	75				75	55	20
1954	557	368	377	−9	189	158	31
1955	255	83	132	−49	172	133	39
1956	255	112	103	9	143	107	36
1957	346	193	135	58	153	120	33
1958	889	620	582	38	269	237	32
1959	525	303	295	8	222	184	38
1960	541	332	333	−1	209	164	45
1961	742	472	472	[3]	270	214	56
1962	536	305	279	26	231	165	66
1963	521	308	270	38	213	147	66
1964	363	194	150	44	169	108	61
1965 [4]	280	136	87	49	144	79	65

[1] See footnote 1, table B–1.

[2] 3-year average.

[3] Less than 500.

[4] Preliminary.

Table B–3. Composition of the Employment Gap [1] of Men 45 to 54 Years Old, by Color, 1951–53 to 1965

[Thousands]

Year	Total employment gap	White			Nonwhite		
		Total	Unemployed	Not in labor force	Total	Unemployed	Not in labor force
1951–53 [2]	29				29	17	12
1954	206	120	136	−16	86	56	30
1955	114	58	67	−9	56	35	21
1956	85	39	56	−17	46	27	19
1957	140	77	77	[3]	63	35	28
1958	324	230	230	[3]	94	70	24
1959	270	183	156	27	87	52	35
1960	273	176	131	45	97	56	41
1961	380	266	202	64	114	72	42
1962	278	180	125	55	98	55	43
1963	242	145	108	37	97	43	54
1964	204	121	78	43	83	33	50
1965 [4]	152	79	16	63	73	27	46

[1] See footnote 1, table B–1.
[2] 3-year average.
[3] Less than 500.
[4] Preliminary.

Table B–4. Composition of the Employment Gap [1] of Men 55 to 64 Years Old, by Color, 1951–53 to 1965

[Thousands]

Year	Total employment gap	White			Nonwhite		
		Total	Unemployed	Not in labor force	Total	Unemployed	Not in labor force
1951–53 [2]	16				16	6	10
1954	53	5	88	−83	48	21	27
1955	93	37	69	−32	56	28	28
1956	5	−44	21	−65	49	25	24
1957	119	70	38	32	49	14	35
1958	191	124	144	−20	67	38	29
1959	133	69	69	[3]	64	29	35
1960	202	128	80	48	74	37	37
1961	248	162	155	7	86	42	44
1962	246	163	80	83	83	38	45
1963	232	168	77	91	64	26	38
1964	252	169	43	126	83	30	53
1965 [4]	290	210	16	194	80	13	67

[1] See footnote 1, table B–1.
[2] 3-year average.
[3] Less than 500.
[4] Preliminary.

WHERE TO GET MORE INFORMATION

Copies of this publication or additional information on manpower programs and activities may be obtained from the U.S. Department of Labor's Manpower Administration in Washington, D.C. Publications on manpower are also available from the Department's Regional Information Offices at the addresses listed below.

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1365 Ontario Street, Cleveland, Ohio 44114
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911 Walnut Street, Kansas City, Missouri 64106
411 North Akard Street, Dallas, Texas 75201
300 North Los Angeles Street, Los Angeles, California 90012
450 Golden Gate Avenue, San Francisco, California 94102
506 Second Avenue, Seattle, Washington 98104

Senator YARBOROUGH. Our next witness is Commissioner Bechill. Mr. Bechill, proceed in your own way.

STATEMENT OF WILLIAM D. BECHILL, COMMISSIONER ON AGING, ADMINISTRATION ON AGING, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. BECHILL. Mr. Chairman and members of the committee, I have a written statement which is fairly short, but in view of the fact it enlarges and encompasses the testimony of Secretary of Labor.

I wonder if I might submit the text for the full record and then summarize briefly.

Senator YARBOROUGH. Yes, sir; the request is granted the full statement of Mr. William Bechill's testimony, of the Administration on Aging, will be put in full.

(The prepared statement of Mr. Bechill follows:)

PREPARED STATEMENT OF WILLIAM D. BECHILL, COMMISSIONER ON AGING, ADMINISTRATION ON AGING, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and members of the committee, my name is William D. Bechill, and I am Commissioner of the Administration on Aging of the U.S. Department of Health, Education, and Welfare. I welcome this opportunity to appear before the Committee in support of the provisions of S. 830, designed to prohibit arbitrary age discrimination in the employment of older men and women.

Mr. Chairman, the Administration on Aging administers the various programs authorized under the Older Americans Act of 1965. The Act, which was passed by the Congress by a virtually unanimous vote, declares, in its opening title, ten basic objectives for the older people of our country. One of these is "opportunity for employment with no discriminatory personnel practices because of age." S. 830, which the Committee now has under consideration, will do much to meet this objective more fully. The legislation can contribute to a more favorable climate in which older workers can maintain and have opportunities for employment—in which ability and experience and not age itself are the major tests of qualifications for a job.

NEED FOR THE LEGISLATION

As you know, S. 830 embodies the recommendations made by the President in his message on older Americans submitted to the Congress last January. In the message, the President described the serious problems confronting older workers because of arbitrary age discrimination in hiring practices and the subsequent loss to the Nation and older workers and their families.

There have been several efforts undertaken in recent years to face up to the problem of age discrimination in employment by the Department of Labor, other public and private employment programs, and agencies working in the field of aging to help various employers understand the employment needs and potentials of the older worker. But arbitrary age discrimination practices continue to be a significant barrier to older people who seek employment.

The most recent documentation of the extent of age discrimination in employment was the report submitted by Secretary Wirtz to the Congress in 1965. At that time, the Secretary said, "The possibility of new non-statutory means of dealing with such arbitrary discrimination has been explored. That area is barren. The elimination of arbitrary age limits in employment will proceed more rapidly if the Federal Government declares, clearly and unequivocally, and implements so far as is practicable, a national policy with respect to hiring on the basis of ability rather than age."

Today, with nearly two of every five persons in the labor force age 45 and over, such a clear statement of public policy is of critical importance. Although unemployment among older workers is below the national average for all workers, it has been consistently documented by every recent study on unemployment that

older people, when unemployed, remain unemployed much longer than younger people and make up a very substantial proportion of the long-term unemployed, around 40 percent or more in recent years.

Three years ago when I was the Executive Secretary of the State Commission on Aging in California, the commission and the California Department of Employment were requested by the legislature to undertake a joint study of how employment opportunities for older persons could be improved throughout the State. One of the several projects that was a part of the study, conducted by a prominent management consultant firm, interviewed a select group of employers and labor unions to obtain a record of their experiences in hiring and employing older workers.

One of the most significant findings of the survey was the sharp distinction made between the older worker as an employee as against the older worker as a job applicant. When employed, the older worker was frequently preferred over the younger one, especially for skilled or supervisory positions. Among the positive qualities of older workers mentioned by both employers and labor union representatives interviewed in the survey were stability, skill, and experience.

However, when the older worker became an applicant for a job, employer attitudes changed. In this situation, the survey showed that experiences and past work record were substantially less important to the new employer.

It would be difficult, of course, to categorize as age discrimination these changes in employer attitudes about the capabilities of older workers. Yet, I think further exploration would find that arbitrary age discrimination practices and stereotyped attitudes about the ability of older people play a major role in barring older workers from fair employment consideration when changing jobs. As the President pointed out in his message, nearly one-half of all private job openings are not available to persons age 55 and over; and nearly a quarter of such openings are closed to persons 45 and over. This trend needs to be reversed in a period where there is an acknowledged need for qualified persons in many skilled and service occupations and where there is a general recognition that work and useful activity constitute for many older people a principal source of good health and emotional stability.

COMMENTS ON PROVISIONS OF S. 830

I believe that S. 830 would make a substantial and thoughtful impact on the problem of age discrimination in employment. The provisions which would give the Secretary of Labor authority to conduct research studies should fill a major gap that now exists in providing more objective information about the abilities and skills of older workers. Also, the provisions of the bill which stress the development of educational efforts that would lead to the development of broader job opportunities for older people should be a most effective tool in reducing the incidence of discriminatory hiring practices based solely on chronological age. In this connection, I believe the Department of Labor and State employment offices wuold have the full cooperation of the Administration on Aging and other Federal agencies. State agencies on aging, and many voluntary organizations who are interested in creating new opportunities for middle aged and aged persons in paid employment and other fields, in such information and educational efforts.

I would also urge the inclusion of enforcement provisions in the bill, Mr. Chairman. While these would be used only after all efforts to assure voluntary compliance have failed, enforcement provisions are necessary if this legislation is to have the maximum strength available to assure non-discriminatory employment opportunities for older workers.

Although the bill is directed principally to combatting arbitrary discrimination experienced by people age 45 to 65, Section 13 provides that the Secretary of Labor may make appropriate adjustments in either the maximum or minimum age limit. I think this flexibility is needed to assist the Department in carrying out the intended program.

As a necessary complement to this legislation, as the President has indicated, existing programs which provide information, guidance, training, job placement, and job development opportunities for older workers should be expanded. To strengthen these services, existing programs should be augmented with greater numbers of qualified personnel so that older people will be served

promptly and effectively. The United States Employment Service and the affiliated State services have the basic resources for doing this job. The Department of Labor has reported that where concerted efforts have been made on behalf of older workers, substantial employment opportunities for older people can be developed.

What I am suggesting is the development of a more comprehensive program of information. counselling, referral, and training services for older people through a strengthening of the Federal-State system of employment services. This would enable the U.S. Employment Service and State employment agencies to provide the additional training and retraining opportunities needed by many older workers today; to develop new or more effective methods of training older workers, and to give renewed attention and emphasis to finding and creating jobs for older men and women in our growing economy.

CONCLUSION

In conclusion, this measure would be a major step to improve employment opportunities for older people. I urge the Committee to give favorable consideration to legislation which removes the obstacles caused by arbitrary unjust discrimination and which assures that older workers have opportunities for useful work.

Senator YARBOROUGH. You may proceed and summarize it in your own way.

Mr. BECHILL. Mr. Chairman, the Administration on Aging administers the various programs which were authorized by the Congress under the Older Americans Act of 1965.

The act, which was passed by the Congress by a virtually unanimous vote, declares, in its opening title, 10 basic objectives for the older people of our country. One of these is "opportunity for employment with no discriminatory personnel practices because of age."

S. 830, which the committee now has under consideration, will do much to meet this objective more fully.

Secretary Wirtz commented on the fact that S. 830 embodies certain recommendations which were made by the President in his message on older Americans submitted to the Congress last January.

As Secretary Wirtz has indicated there have been many efforts, and I would say many worthwhile efforts, undertaken in recent years to face up to the problems of age discrimination in employment by the Department of Labor, in public and private employment programs, and in agencies and organizations working in the field of aging to help various employers understand the employment needs and potentials of older people.

I also think the same studies have documented that age discrimination practices are obstacles which continue to be very significant detriments to many older people who seek employment.

Three years ago when I served as the executive secretary of the California Commission on Aging, the Commission in the California Department of Employment was requested by the legislature to undertake a joint study of how employment opportunities for older people could be improved throughout the State.

As part of the overall study, a project was conducted by a prominent management consultant firm in California in which a select group of employers and labor unions were interviewed to obtain a record of their experiences in hiring and employing older people.

One of the most significant findings of this survey was the very sharp and obvious distinction made between the older person who as an employee in contrast with the older person who was an applicant for a job.

When employed, the older worker was frequently preferred over the younger one, especially for skilled or supervisory types of job openings and positions.

Consistently, the positive qualities of older workers were mentioned by the employers and the labor union representatives who were interviewed in the survey. These qualities included stability, skill, experience, maturity, and low absenteeism from the job.

However, when the older worker became an applicant, the employer attitudes changed. This attitude change was consistently reported throughout this survey. The survey showed that the experiences in past work record were substantially less important to the new employer.

I think it would be difficult, of course, to categorize these changes solely as evidence of age discrimination; yet I think one of the values of this legislation is that it would permit further exploration to find the extent to which arbitrary age discrimination, age practices, and certain type attitudes about the ability of older people play a part in barring older workers from fair employment consideration in changing jobs.

I do believe that S. 830 could provide substantial and thoughtful insight into some of these areas. The provisions which would give the Secretary of Labor authority to conduct research studies would fill the major gap which now exists in providing more objective information about the abilities and skills of older workers.

Also, the provisions of the bill which stress the investment of educational efforts that would lead to broader job opportunities should be a most effective tool in helping to reduce discriminatory practices and prejudicial employer attitudes.

In administering the provisions of S. 830, the Departments of Labor and State employment offices would have the full cooperation, I believe, certainly of our office and other Federal agencies who are interested, State agencies on aging, and many voluntary organizations in many fields who are interested in creating new opportunities for older people in both paid employment and other fields.

I would also urge the inclusion of enforcement provisions in the bill, Mr. Chairman. I am sure that these would be used only after all efforts to assure voluntary compliance had failed, but enforcement provisions seem to be necessary if this legislation is to have the maximum possible effectiveness to assure nondiscriminatory employment opportunities for older people.

As a necessary complement to this legislation, as the President has indicated, existing programs which provide information, guidance, training, job placement, and job development opportunities for older workers should be expanded.

To strengthen these services, existing programs should be augmented with greater numbers of qualified personnel so that older workers will be served promptly and effectively. The U.S. Employment Service and the affiliated State services have the basic resources for doing this job.

The Department of Labor has reported that where concerted efforts have been made on behalf of older workers, substantial employment opportunities for older people can be developed.

What I am suggesting is the development of a more comprehensive program of information, counseling, referral, and training services

for older people through a strengthening of the Federal-State system of employment services.

This would enable the U.S. Employment Service and State employment agencies to provide the additional training and retraining opportunities needed by many older workers today; to develop new and more effective methods of training older workers, and to give renewed attention and emphasis to finding and creating jobs for older men and women in our growing economy.

I would like to add in conclusion, this measure would be a major step to improve employment opportunities for older people. I urge the committee to give favorable consideration to legislation which particularly removes some of the obstacles described by Secretary Wirtz.

Senator YARBOROUGH. Mr. Bechill, as a member of the Committee on Aging of the Senate also, and one of the coauthors of this Older Americans Act of 1965, I congratulate you on the work you are doing.

Have you had time to make any studies to this problem, discrimination on account of age, since you have taken office as Commissioner of Aging?

You made some California studies. Have you had time to make any report on your experience on arbitrary job discrimination?

Mr. BECHILL. About the only activity that we have had in this area, Senator, is to obtain as much information as we possibly could about what the impact of these various programs are at the State level.

We relied very heavily on the Department of Labor for this information because it is in the area of their responsibility. The report, for example, that Secretary Wirtz submitted to the Congress in 1965 is very current.

We have begun to receive, Senator Yarborough, under our research and demonstration grant program, some proposals in this area which we are now reviewing.

Senator YARBOROUGH. I thought this Older American Act includes research in this field. In your statement, you say:

> The provisions which would give the Secretary of Labor authority to conduct research studies should fill a major gap that now exists in providing more objective information about the abilities and skills of older workers.

Didn't we provide for the research also under the Older Americans Act of 1965 or not? Isn't such research included in your Administration?

Mr. BECHILL. Yes, sir. I think research proposals, however, that are being directed here are not directed particularly to the problem of age discrimintaion, Senator, as much as they are to some of the aspects of problems surrounding early retirement.

Senator YARBOROUGH. On page 5 of your statement, you recommend the inclusion of enforcement provisions in the bill, and you state that:

> while they would be used only after efforts to assure voluntary compliances failed, that the enforcement provisions are necessary.

Are you familiar with these enforcement provisions?

Beginning on page 7 of S. 830 it provides that the Secretary should first, after a written charge of complaint, "endeavor to eliminate any such practice by informal methods of conference, conciliation, and persuasion."

Then, if that fails, it authorized him to file a complaint, and succeeding provisions provide that he may petition any U.S. Court of

Appeals hearing investigation. It provides many steps for review. So much so that Senator Javits in his recommendations has recommended that the criminal penalty cases for willful violation be eliminated in favor of a double liability provision.

Did you intend by that recommendation for enforcement provision to recommend for more stringent enforcement provisions than we have in S. 830?

Mr. BECHILL. No, Mr. Chairman. The only point I am trying to attempt to make is the necessity for some type of enforcement.

Senator YARBOROUGH. Some type of enforcement rather than persuasion?

Mr. BECHILL. I feel much the same way as the Secretary of Labor testified. I think it is quite clear from his attitudes and thinking about this bill that major reliance is going to be placed on the educational information, research, and the conciliatory approach.

I think he is conscious, and I know I am conscious of the need to place reliance on this approach. The only point I am making about the enforcement is that seemingly, after all of these measures have been legitimately carried out, attempted, and explored, that there still be some recourse in the case that there is found bona fide discriminatory practice.

Senator YARBOROUGH. It seems to me the bill has adequate enforcement provisions. Of course, it is mandatory that the Secretary first attempt to redress any wrongs that are being committed by informal methods of conference, conciliation, and prescription.

This recognizes that the best relationship is voluntary.

Senator RANDOLPH. Mr. Bechill, I wonder if you could underscore what you have said in the closing part of your excellent statement about the expanding economy of this country. In this expanding economy, where there are technological changes, where there is variation in marketing with its computerization, these facets come into the play of our expanding economy. Are we almost up against a problem where perhaps what we do here in this legislation, S. 803, when it becomes law, will be too late?

Are we attempting to keep pace actually, or are we falling behind in the matter of employment for older workers? In other words, we apply these remedies but do they go to the heart of the subject, the core, and when we make a move that entails technological and other changes, have we gone ahead so rapidly that even though we have attempted to do something, properly so, we have not caught up with the problems?

Mr. BECHILL. Senator Randolph, I would have to answer this very profound question this way. The historical decline in the participation of people 65 and older in the labor force is continuing. So that to be very frank we are not keeping pace in one respect.

Second, that one of the reasons why this legislation is attractive to a number of people including myself, is—I do not think we know enough about the changing patterns of work in our country—work today in many, many fields does not require the same kind of physical energy and capacity that it once did.

It does not require a great deal of physical energy and capacity, but, we are moving into a changing work pattern where the service industries, for example, what one person does for another person, are important. And my feeling would be that I do not share the pes-

simism that some people have that this country cannot keep up with that kind of change and would have to come up with a solution that says older people cannot be a part of that change.

I would like to think that this legislation, along with some other steps that may be taken over a period of time, could actually provide stabilization if not an increase of the actual employment available to older men and women.

It is still important to recall that the employment even today, among people 65 and older, for example, is the principal source of income for older people in this country.

Senator RANDOLPH. Thank you very much.

Senator YARBOROUGH. Did you say for people 65 and over employment, even today, is the principal source of income?

Mr. BECHILL. Yes, sir.

Senator YARBOROUGH. Did I correctly understand you that people over 65 earn more money than the total social security payments they receive?

Mr. BECHILL. It is about equal.

Senator YARBOROUGH. That is a very interesting fact.

Senator Fannin?

Senator FANNIN. Mr. Chairman, I think we all agree we are trying to help solve the problems for employment of the older workers. How do you feel about the States that now have laws? Do you feel this legislation in these States has materially helped? How do the 23 States compare with the other States?

Mr. BECHILL. I would have to answer a little bit on my own former experience in the State of California when the law was effected out there in 1961. Provisions to prohibit age discrimination received a lot of public interest and attention because it was debated very heavily in the legislature before passage. And it stressed educational and information programs.

I think very favorable publicity came about as a result of this approach. There were notable increases in the numbers of older workers that were placed in employment. This has been the general experience, Senator, in my review of the situation in the 23 States.

I think the impact of the State programs is well documented in the report which the Department of Labor submitted to Congress in 1965.

Senator FANNIN. But do you have any information that would disclose a comparison of these 23 States with the States that do not have age laws?

Mr. BECHILL. No, sir, I do not have that. But we could submit that.

(The material subsequently supplied for the record follows:)

IMPACT OF STATE LAWS WHICH PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF AGE

(Excerpt: *The Older American Worker: Age Discrimination in Employment.* Report of the Secretary of Labor to the Congress Under section 715 of the Civil Rights Act of 1964. Research materials. June 1965, pp. 109–111.)

State officials generally agree that strong State laws prohibiting discrimination in employment based on age, when actively administered, have reduced arbitrary discrimination against middle aged and older people and have enabled them to be considered more frequently for vacant positions, especially when their

efforts have been actively supported by the State Employment Service. But State officials have also pointed out that lack of adequate funds and personnel for widespread educational and information campaigns and enforcement activities have been a grave handicap.

A few State laws are virtually inoperative and amount to little more than declarations of policy. Other laws are more fully implemented.

In effect, the judgment of informed officials is that some good has been done in the States that have been most active in promoting and enforcing their laws, but that more could and should be accomplished.

Information on new employees hired by all employers, by age, does not exist. Therefore it is not possible to say whether, in fact, placements of older workers have increased in these States. In most of the States, the records of the State Employment Service, whose placements constitute only a small fraction of all placements in the State, show a relatively stable proportion of placements for men and women over 45 in the past few years. In States where there has been an active program to promote the employment of middle-aged and older persons by the Employment Service, together with strong enforcement of the law, the number of placements has risen, however. This is true, for example, of New York State, which has had an increase in placements for several years; of California, with a marked gain after passage of its law in 1961; and of Connecticut and Oregon up to 1964, when both States showed a decline after 3 years of increased placements.

The growing emphasis on programs against discrimination on account of race or religion has diverted staff and resources in State agencies where these functions are combined in such a way as inevitably to deemphasize the activities on behalf of older workers.

There is, however, evidence of greater opportunity for interviews and for consideration of older persons by potential employers. Reports of the administering agencies show—

Elimination of discriminatory age specifications in advertising job vacancies in most States where this practice is prohibited by law.

Easing of age specifications in employer orders received by the Employment Service.

Increase in referrals by the Service without regard to age.

The laws also help to establish and encourage programs to educate employers and the public to the idea that workers should be judged on ability rather than age, and authorize research into the nature and reasons for age discrimination and ways of eliminating it. Most State officials believe that the educational programs conducted under the law are the most important and effective means of gaining compliance.

Compliance is enhanced by strong enforcement provisions, even though these sanctions have very rarely been used.

Formal complaints have not been numerous. Aggrieved workers rarely file complaints. Several States have only 10 to 15 a year. Larger industrial States, like New York and Pennsylvania, report many more. In 1963, 10 States with anti-age discrimination laws in active operation reported a total of about 1,560 complaints since their laws became effective. Over half of these came from four States: Massachusetts, New York, Oregon, and Pennsylvania.

The effectiveness of these laws, however, should not be judged by the volume of complaints alone. The volume is small, partly because, as a rule, complaints must be initiated by aggrieved workers, and partly because the State enforcement agencies have inadequate funds and staff for educational or enforcement efforts.

The disposition of formal complaints provides the most objective evidence of prejudice and unjustified age discrimination in employment. Almost half of the complaints investigated by the 10 States studied in 1963 and the 7 States consulted in the current study were affirmed or were found to involve a violation of the law.

In cases of violation, the prospect of public hearings is reported by several State agencies to be an effective prod to satisfactory settlement by conciliation. Employers are reluctant to become involved in public hearings leading to restitution of back pay or other penalties.

Only two cases have been appealed to the courts, so far as these two surveys indicate—one in Washington and one in Wisconsin. The Wisconsin case, involving the discharge of workers at age 60 under a company pension plan, is still in the courts.

Senator FANNIN. It would give us an opportunity to compare. I wonder when we talk about pre-empting State laws, whether these laws have not brought about a better understanding by the employers and by the public generally. I would think we would need to take that into consideration when we discuss pre-emption.

Mr. BECHILL. I cannot recall the exact language in the Department of Labor report, but I do believe that it documented in that report. The general effect of this type of legislation in the 23 States, I believe, has resulted in the improvement in the numbers of older men and women who found employment. I know this was the case in California.

Senator FANNIN. What is your opinion on the pre-emption of State laws?

Mr. BECHILL. I think the bill, as it is presented here, does not intend to pre-empt State action.

Senator FANNIN. I realize that, but I was wondering what your personal opinion would be? Do you think we should pre-empt State laws?

Mr. BECHILL. No, sir, and I don't think this bill does.

Senator FANNIN. Previously there was some comment about the administration bill's providing for enforcement through administrative hearings to the U.S. court of appeals as compared to Senator Javits' bill. I am wondering whether you would want to comment further on the benefits of the different approaches?

Mr. BECHILL. The only real comment that I have on this is the necessity for the inclusions of enforcement provisions as part of the legislation. I think really the manner in which it may be done may be left strictly to the intent of Congress. I think Secretary Wirtz perhaps may have alluded to this in his testimony.

Senator FANNIN. You would not want to voice your opinion on the two approaches?

Mr. BECHILL. I am here really to support the provisions of Senate 830.

Senator FANNIN. Thank you.

Senator YARBOROUGH. Mr. Bechill, were the results of the study made in California, while you were executive secretary of the State Commission on Aging, under grant to a management consultant firm published or printed or put into a form where there are available copies?

Mr. BECHILL. The summaries of the survey were included in a report that was made to the legislature. The entire survey, I do not believe, was published as such.

Senator YARBOROUGH. It is not available?

Mr. BECHILL. The report, summary of the report is available and I would be glad to supply it.

Senator YARBOROUGH. I would like you to file a copy with this committee for reference. Thank you very much, Mr. Bechill.

(The report referred to, "A Survey of the Employment of Older Workers—1964, a Report to the California Legislature, 1965 Session," is contained in subcommittee files.)

The next witness is Mr. Andrew J. Biemiller, legislative director of the AFL–CIO.

Mr. Biemiller, with your long experience with the American Federation of Labor and Congress of Industrial Organization and your experience as former member of the Congress, I believe you are familiar with the committee procedures so proceed in your own manner.

STATEMENT OF ANDREW J. BIEMILLER, LEGISLATIVE DIRECTOR, THE AFL–CIO; ACCOMPANIED BY KENNETH A. MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE, THE AFL–CIO

Mr. BIEMILLER. Thank you, Senator. It might be interesting to you to know that I once introduced a bill in the Wisconsin Legislature to eliminate discrimination over age 45. That particular bill did not become incorporated into the statutes of Wisconsin until 1959. I certainly hope it will not take you as long, Senator, to get your bill incorporated in the statute of the United States.

Senator YARBOROUGH. Thank you. With your help, we hope we can speed up that legislative process. We hope the legislative process will outrun the aging process.

Mr. BIEMILLER. Mr. Chairman, for the record my name is Andrew J. Biemiller. I am director of the department of legislation of the American Federation of Labor and Congress of Industrial Organizations. I am accompanied by Mr. Kenneth Meiklejohn, one of our legislative representatives.

May I request that my statement be entered and may I make a couple of comments?

Senator YARBOROUGH. Your statement, Mr. Biemiller, will be printed in full and you may condense it in any form you desire.

(The prepared statement of Mr. Biemiller follows:)

PREPARED STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AFL–CIO

Mr. Chairman, my name is Andrew J. Biemiller. I am Director of the Department of Legislation of the American Federation of Labor and Congress of Industrial Organizations, and I appear here on behalf of that organization.

The AFL–CIO regards these hearings on proposed legislation to prohibit discrimination in employment on account of age as of great importance. We agree with Secretary of Labor W. Willard Wirtz who has described the problems of the older worker as "far and away the largest unrecognized need, both in terms of problem and potential, in the country today as far as the development of national policy is concerned." Few, we believe, can dispute this assessment.

Mr. Chairman, both you and Senator Javits deserve the thanks and appreciation of all American workers, and especially those who have reached or are about to reach the age of 45, for sponsoring the bills, S. 830 and S. 788, which you now have before you for consideration in this Subcommittee. Speaking for the AFL–CIO, we are particularly glad that these hearings, which were long overdue, are being held at this time.

Both S. 830 and S. 788 would prohibit discrimination in employment on account of age, although they differ somewhat in administration and enforcement. Their approach is direct and forthright, and this, we believe, is essential if the problem of age discrimination in employment is to be dealt with in an effective and meaningful way.

I shall have more to say about the particular provisions of S. 830 and S. 788 later in my statement. First however, I should like to make some general observations about the need for and the importance of this legislation.

As this Subcommittee will learn in the course of these hearings, about half of all the job openings in this country are in effect closed to people over 55 years

of age; workers over 45 find that a quarter of the jobs in the country are closed to them.

Only a very small portion of newly hired workers today are older workers. According to a report prepared by the U.S. Department of Labor under section 715 of the Civil Rights Act of 1964, fewer than 5 percent of the new hires by the employers surveyed in the study were 45 years of age or over.

One fifth of all of the employers surveyed hired no workers over 45. Of all new hires made by these employers only 8.6 percent were workers who were 45 years of age or over.

This does not come about because older workers are not able to perform satisfactorily and efficiently the tasks required by these jobs. On the contrary, the evidence shows that billions of dollars are wasted annually through failure to use the capabilities of older workers for productive purposes.

And I would also, Mr. Chairman, direct your attention to the human loss, in terms of the undermining of personal dignity and confidence, that afflicts all too many workers, especially those with little or no skills, as they reach the age of 45 and know that if they lose the jobs they hold, it is going to be terribly hard for them to find other jobs.

The employment problems of the older worker come about primarily as a result of employer attitudes, conditioned in no small measure by some of the very employment benefits which have been achieved for workers, such as seniority, pension plans, promotion-from-within policies and early retirement. Some of these attitudes may be justified in connection with particular occupations, but overall they have little justification in fact in present-day industry and business.

In saying this, Mr. Chairman, I do not wish to be misconstrued as expressing any serious scepticism about the need for and the value of these aspects of modern employment relationships. The role they play in conditioning employment attitudes does, however, need to be kept in mind.

Medical research shows that there is no factual support for restrictive age limits in employment. Yet the employer too often tends to think of the older worker as a less efficient and more costly worker. Thus, he is slower to hire him and quicker to fire him.

In our view, this is a situation that urgently calls for correction. It is this aspect of the problems of the older worker that S. 830 and S. 788 are designed to meet head-on.

Of course, solving the problem of discrimination in employment on account of age would mark only a beginning in dealing with the need to develop broad programs to assure continued usefulness and dignity for workers and others as they grow old. It would, however, be a most significant beginning, and we urge the Congress to undertake this step without delay.

The problem of the older worker has engaged the attention of the delegates to the last two AFL–CIO Constitutional Conventions. In 1963, the AFL–CIO Convention resolved unanimously to support legislative and administrative action to aid the aging and called for "vigorous enforcement of laws against discrimination in hiring older workers and an investigation of rigid systems of forced retirement of older workers who retain their full productive capacity."

In 1965, our support for legislation prohibiting discrimination in employment on account of age was reaffirmed and strengthened in a Convention resolution which stated: "We urge the enactment of legislation which will effectively curtail discrimination on account of age. While a number of programs have been developed to meet the needs of youth, and to eliminate discrimination based on color, sex, and national origin, little has been done to provide protection to older workers. This is a waste of human resources which should not be tolerated in any society seeking full employment and a rational manpower policy."

Nor are we alone in seeing that there is a serious employment problem for older workers that urgently requires attention. Twenty-three States and the Commonwealth of Puerto Rico have enacted laws banning discrimination in employment on account of age. These laws, of course, are of varying effectiveness, and nearly all of them suffer through lack of adequate appropriations to enable them to become truly effective in carrying out their purpose. They do, however, constitute widespread recognition of the need to take action in this field and of the appropriateness of legislation to prohibit age discrimination in employment.

The Federal Government, too, has taken some steps to deal with the problem. In March 1963 President Kennedy issued a memorandum to the Executive Branch of the Government reaffirming the policy of hiring and promoting employees on

the basis of merit alone and emphasizing the need to assure that older people are not discriminated against because of their age and receive full and fair consideration for employment and advancement in Federal employment. This was followed by a recommendation by the President's Council on Aging in December 1963 that an Executive Order be issued banning discrimination in employment on the basis of age by Federal contractors and subcontractors.

Executive Order 11141, issued by President Johnson on February 11, 1964, carried out this recommendation by establishing as a policy of the Federal Government that Government contractors and subcontractors should not discriminate in connection with the employment or the terms of employment of persons employed by them because of their age. It also directed that they should not in advertising for employees to work on Government contracts specify maximum age limits for such employment. Exceptions could be made under the order, however, upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement. The order made no special provision for administration and carried no penalties, but required the several Federal departments and agencies to "take appropriate action to enunciate this policy."

In his "Message on Older Americans", which was sent to the Congress on January 23, 1967, President Johnson called for enactment of a Federal law prohibiting "arbitrary and unjust discrimination in employment because of a person's age". On January 23, 1967, also, Secretary of Labor W. Willard Wirtz forwarded to the Congress draft legislation to carry out the President's recommendation. This legislation is contained in S. 830 which you, Mr. Chairman, have introduced.

I cite these expressions of support for the enactment of Federal legislation to prohibit discrimination in employment because of age for the reason that they demonstrate that recognition of the need for such legislation is significant and widespread. We have seen legislation passed in the last few years to prohibit discriminatory employment practices based on color and sex. It is time now to take the further step of outlawing discrimination because of age as well.

I should like now to discuss some of the provisions of the two bills, S. 830, the Administration bill, and S. 788, Senator Javits' bill, which you have before you. Both of these bills have the same objective, namely, to prohibit age discrimination in employment. They differ only in the manner in which they would accomplish this objective.

Although the Javits bill has a number of desirable features, and its approach to the prohibition of job discrimination on account of age as a simple amendment to the Fair Labor Standards Act substantially similar ot the Equal Pay amendment adopted in 1963 has obvious advantages, it seems to us that the Administration bill is the preferable measure. There is a distinction between age discrimination in employment and color and sex discrimination in regard to jobs which, in our estimation, warrants a distinct and separate method of administration and enforcement. S. 830, which would place the responsibility for administration and enforcement in the Secretary of Labor, with authority to delegate his functions in such manner "as he deems necessary to assist him in the performance of his functions under this Act", would provide the necessary flexibility.

Both the Administration bill and the Javits bill proscribe employment practices based on age engaged in by labor unions as well as by employers and employment agencies. We are not aware of any facts that would indicate a need to forbid discriminatory practices on account of age by labor unions. On the contrary, the labor movement, through its international and local unions, has been in the forefront of efforts to draw public attention to the problem of age discrimination in employment and to the need at both the state and Federal levels of legislative action to prevent such discrimination. Accordingly, we suggest that the provisions of the bill which purport to be applicable to labor unions are unnecessary and might well be deleted.

At the same time, we do not see any rational basis for the provisions that appear in both the Administration and the Javits bills which exempt small firms employing fewer than a specified number of employees. Such provisions have the effect, of course, of leaving large numbers of employees outside the protection of the legislation and fly in the face of facts that make clear that the older worker in the small plant or business has just as much need of protection as the older worker in the large plant or business. We are long past the day, it seems to us, if, indeed, there ever was such a day, when it could justifiably be argued based on fact that it may be all right to require a large employer to

observe fair employment practices or labor standards, but all wrong to require his small competitior to do so.

We likewise do not see any reason why the legislation should, as is provided in section 4(f)(2) of the Administration bill, permit involuntary retirement of employees under 65. We do not believe that the safeguard which this provision purports to contain restricting this possibility to cases where it is done "under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this Act", is adequate to prevent serious abuse of this provision. In this connection, it should be observed that there is no age cut-off in this provision. Involuntary retirement could be forced, regardless of the age of the employee, subject only to the limitation that the retirement policy or system in effect may not be merely a subterfuge to evade the Act.

At the same time, section 4(f) might well be strengthened in another respect. There is nothing in this section now which protects the operation of *bona fide* non-discriminatory seniority systems. We urge that this section be amended to protect such systems.

The enforcement provisions contained in section 7 of S. 830 are a mixture, based in part on the Civil Rights Act of 1964, the National Labor Relations Act and the Fair Labor Standards Act. We believe that it would be preferable to utilize the enforcement machinery of one of these Acts rather than to establish still another enforcement system. The staff and experience of the agency administering that Act would be of benefit to those charged with the responsibility of enforcing the prohibitions against age discrimination in employment.

When Congress passed the Equal Pay Act in 1963, it decided to utilize the staff and expertise of the Wage and Hour Divisions in the U.S. Department of Labor to administer and enforce that Act. As far as we have been able to determine, this approach to the problem of enforcing the Act's prohibition against discrimination in wage payments based on sex has worked well. We suggest that the Subcommittee should give serious consideration to simply utilizing the enforcement procedures and machinery of the Wage and House Division to enforce the proscriptions against discriminatory employment practices based on age which are contained in the bill.

Finally, S. 830 provides in section 13 that the effect of the bill is limited to individuals who are between the ages of 45 and 65. There is a proviso added to this section, however, which gives the Secretary of Labor the authority by rule or regulation to "provide for appropriate adjustments, either upward or downward, in the maximum and minimum age limits provided in this section."

I am sure this Subcommittee must be aware of the practice of some of the airlines which refuse to permit stewardesses to work as such beyond the ages of 35 in some cases and 32 in others. You will be hearing testimony from spokesmen for the Transport Workers Union of America, AFL–CIO, tomorrow on this subject. We are in sympathy with their views on the need for relief for their members from the present discriminatory age limits with respect to their employment as stewardesses which the airlines are imposing on them.

It seems to us, however, that the proviso which is included in section 13 is hardly adequate to provide the protection which they need. In our judgment, there is a substantial question whether the proviso permitting "appropriate adjustments, either upward or downward" can be stretched far enough to include workers 35 or 32 years of age under the protection of the bill. Indeed, we see no real basis for either upper or lower age limits in the bill, and we suggest, therefore, that section 13 be eliminated.

Similar observations would, of course, apply to the lower age limit of 45 contained in Senator Javit's bill, S. 788.

Before I conclude, Mr. Chairman, I should like to say a word about the provisions of S. 830 which call upon the Secretary of Labor to undertake studies and provide information "concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy." The Secretary would also be directed to carry on a "continuing program" of education and information designed to (a) reduce barriers to the employment of older persons, (b) publish and otherwise make available findings and materials for the promotion of employment of older workers, (c) foster the developemnt of public and private facilities for expanding the opportunities and potentials of older persons, and (d) sponsor and assist State and community informational and educational programs. Since one of the biggest needs in eliminating age discrimination in employment is getting rid of attitudes about older workers

which are not substantiated by the facts and in making employers and other persons understand the capacities and potentialities of older workers, these provisions are of great importance in aiding and supplementing the substantive provisions of the bill. We are glad to see them in the bill, and we trust the Congress will approve them and will back up both these and the bill's substantive provisions with the necessary funds to make them truly effective.

In conclusion, Mr. Chairman, I would like to say only that I hope the Congress will act speedily to put legislation along the lines of S. 830, with the changes we have suggested, on the statute books. The need for it is great and, so far as I am aware, virtually unchallenged. The problem which the legislation is designed to meet, far from getting less important as time goes on, only grows larger. As Secretary Wirtz has said, the problems of the older workers comprise probably the largest unmet need insofar as the development of national policy is concerned. The early passage of the the bill can make a substantial contribution to achieving a better life for all Americans.

Thank you, Mr. Chairman, for this opportunity to present to you and to the members of this Subcommittee the views of the AFL–CIO on this important and necessary legislation.

Mr. BIEMILLER. We are delighted, Mr. Chairman, that you and Senator Javits have introduced your bills. We think this is a serious problem, one that is long overdue for some kind of legislative action. The conventions of the AFL–CIO in both 1963 and 1965 urged that legislation along the lines of your bill, S. 830, should be adopted.

We recognize that it is becoming increasingly difficult for older workers to be hired. We have certain comments that I wanted to make in regard to some of the details of the bill.

We are particularly concerned that the fine start that the Government made first with President Kennedy's memorandum in 1963, and then with Executive Order 11141, issued by President Johnson on February 11, 1964, should be carried out further into the private economy as well.

We think that the Government's policy is fine but that it should be across the board. Although the Javits bill has a number of desirable features in its approach to the prohibition of job discrimination on account of age as a simple amendment to the Fair Labor Standards Act substantially similar to the Equal Pay Amendment adopted in 1963, it seems to us the administration bill is the preferable measure. There is a distinction between age discrimination in employment and discrimination based on color and sex in regard to jobs which, in our estimation, warrants a distinct and separate mode of enforcement. S. 830, which would place the responsibility for administration and enforcement in the Secretary of Labor, with the authority to delegate his functions in such manner as he deems necessary to assist him in the performance of his responsibilities under this act, would provide the necessary flexibility.

Both the administration bill and the Javits bill proscribe employment practices based on age engaged in by labor unions as well as by employers and employment agencies. We are not aware of any facts that would indicate a need to forbid discriminatory practices on account of age by labor unions. On the contrary, the labor movement, through its international and local unions, has been in the forefront of efforts to draw public attention to the problem of age discrimination in employment and to the need at both the State and Federal levels of legislative action to prevent such discrimination.

We have fought for seniority, both in our industrial contracts and our unions. We believe that we have done everything we could to protect the older worker in his job, and we would suggest the provisions of the bill which purport to be applicable to labor unions are unnecessary and might well be deleted. We think it would simply add a burden on the secretaries of local unions where problems do not exist.

I want to add to that, however, Senator, in case there should be any misunderstanding, we are not objecting to the unions reporting as employers, because we agree that in that capacity the union has to be treated like any other employer. We are talking about the union having to report on the basis of alleged discrimination on the basis of age, in employment generally, because such discrimination by unions simply does not exist and is contrary to everything that the labor movement has fought for.

At the same time, we do not see any rational basis for the provisions that appear in both the administration and the Javits bills which exempt small firms employing fewer than a specified number of employees. Such provisions have the effect, of course, of leaving large numbers of employees outside the protection of the legislation and fly in the face of facts that make clear that the older worker in the small plant or business has just as much need of protection as the older worker in the large plant or business.

We are long past the day, it seems to us, if, indeed, there ever was such a day, when it could justifiably be argued based on fact that it may be all right to require a large employer to observe fair employment practices or labor standards, but all wrong to require his small competitor to do so.

We likewise do not see any reason why the legislation should, as is provided in section 4(f)(2) of the administration bill, permit involuntary retirement of employees under 65. We do not believe that the safeguard which this provision purports to contain restricting this possibility to cases where it is done "under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this act," is adequate to prevent serious abuse of this provision.

In this connection, it should be observed that there is no age cutoff in this provision. Involuntary retirement could be forced, regardless of the age of the employee, subject only to the limitation that the retirement policy or system in effect may not be merely a subterfuge to evade the act.

At the same time, section 4(f) might well be strengthened in another respect. There is nothing in this section now which protects the operation of bona fide nondiscriminatory seniority systems. We urge that this section be amended to protect such systems.

The enforcement provisions contained in section 7 of S. 830 are a mixture, based in part on the Civil Rights Act of 1964, the National Labor Relations Act, and the Fair Labor Standards Act. We believe that it would be preferable to utilize the enforcement machinery of one of these acts rather than to establish still another enforcement system. The staff and experience of the agency administering that act would be of benefit to those charged with the responsibility of enforcing the prohibitions against age discrimination in employment.

When Congress passed the Equal Pay Act in 1963, it decided to utilize the staff and expertise of the Wage and Hour Division in the U.S. Department of Labor to administer and enforce that act. As far as we have been able to determine, this approach to the problem of enforcing the act's prohibition against discrimination in wage payments based on sex has worked well.

We suggest that the subcommittee should give serious consideration to simply utilizing the enforcement procedures and machinery of the Wage and Hour Division to enforce the proscriptions against discriminatory employment practices based on age which are contained in the bill.

Finally, S. 830 provides in section 13 that the effect of the bill is limited to individuals who are between the ages of 45 and 65. There is a proviso added to this section, however, which gives the Secretary of Labor the authority by rule or regulation to "provide for appropriate adjustments, either upward or downward, in the maximum and minimum age limits provided in this section."

I am sure this subcommittee must be aware of the practice of some of the airlines which refuse to permit stewardesses to work as such beyond the ages of 35 in some cases and 32 in others. You will be hearing testimony from spokesmen for the Transport Workers Union of America, AFL–CIO, tomorrow on this subject.

We are in sympathy with their views on the need for relief for their members from the present discriminatory age limits with respect to their employment as stewardesses which the airlines are imposing on them.

It seems to us, however, that the proviso which is included in section 13 is hardly adequate to provide the protection which they need. In our judgment, there is a substantial question whether this proviso, permitting "appropriate adjustments, either upward or downward," can be stretched far enough to include workers 35 or 32 years of age under the protection of the bill. Indeed, we see no real basis for either upper or lower age limits in the bill, and we suggest, therefore, that section 13 be eliminated.

Similar observations would, of course, apply to the lower age limit of 45 contained in Senator Javits' bill, S. 788.

Now, we certainly agree that there is need for carrying on a continuous program of education and information on this subject. You are certainly, Mr. Chairman, doing that very effectively by the very simple fact of holding these hearings.

We are delighted that you are concentrating attention on this issue. We assure you that the labor movement will do everything it can to continue its role in carrying on an informational and educational campaign about this problem, and we are confident that your subcommittee will work out a fine bill.

You have established Mr. Chairman, a great record in this subcommittee and we know that your staff will be working hard on the matter. I simply want to conclude by saying that, as usual, the AFL–CIO staff will be happy to be helpful in any way that it can to you and your staff in working out the details of this very important legislation.

Senator YARBOROUGH. Thank you, Mr. Biemiller. It has been a pleasure to work with you, not only in this Labor Subcommittee, but on other bills where you branched out and started virtually all the legislation in our Great Society.

I want to thank you for years of efforts on behalf of our GI bill. Your organization put its shoulder to the wheel and has been one of the most effective organizations in the country in helping our 4½ million GI's have an opportunity to go to school when they came out of service.

Back to this particular bill, you recommended a number of changes, a number of amendments; I would like to explore those with you, but the hour is late, and we have one other witness.

Instead, would your legal department draft such amendments as you desire adopted and file them with this subcommittee. We will order them printed in the record along with comments on each one that you have already testified about here.

Mr. BIEMILLER. We would be happy to do so.

(The proposed amendments supplied by Mr. Biemiller follow:)

PROPOSED AMENDMENTS SUBMITTED BY ANDREW J. BIEMILLER, LEGISLATIVE DIRECTOR, AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS

AMENDMENT TO EXCLUDE LABOR ORGANIZATIONS FROM THE AGE DISCRIMINATION IN EMPLOYMENT ACT

(a) Strike out subsection (c) of section 4, beginning on line 13, page 4 through line 2, page 5.

(b) On page 5, strike out lines 3 through 13, and insert in lieu thereof the following:

"(c) It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, or for an employment agency to discriminate against any individual because such employee, applicant for employment, or individual has opposed any practice made unlawful by this section, or because such employee, applicant for employment, or individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act."

(c) On page 5, strike out "(c)" and insert in lieu thereof "(d)" in lines 14–15, strike out "labor organization," in lines 17–19, strike out "or membership in or any classification or referral for employment by such a labor organization,"; in lines 23–24, strike out "employment agency, or labor organization" and insert in lieu thereof "or employment agency".

(d) On page 6, line 2, strike out "(c), or (e)" and insert in lieu thereof "or (d)".

(e) On pages 12–13, strike out subsection (d), beginning on line 3, page 12 through line 25, page 13.

(f) On page 11, strike out the period at the end of line 16 and insert in lieu thereof a semicolon and the following: "the term does not include a labor organization except when acting as an employer".

(g) On page 9, strike out lines 20 and 21 and insert in lieu thereof the following:

"Sec. 8. Every employer and employment agency shall post and keep posted in conspicuous places".

(h) On page 10, strike out the commas in line 2 and the words "and labor organization" in lines 2–3, and insert after the word "employer" in line 2 the word "and".

AMENDMENT TO ELIMINATE PROVISION PERMITTING INVOLUNTARY RETIREMENT FROM THE AGE DISCRIMINATION IN EMPLOYMENT ACT, AND TO SUBSTITUTE THEREFOR PROVISION SAFEGUARDING BONA FIDE SENIORITY OR MERIT SYSTEMS

On page 6, strike out lines 7 through 10, and insert in lieu thereof the following:

"(2) to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, except that no such system shall be construed or applied to justify per se the failure to hire any individual; or".

AMENDMENT TO ELIMINATE THE RESTRICTION ON COVERAGE OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT BASED ON NUMBER OF EMPLOYEES

On page 11, strike out lines 7 through 13, and insert in lieu thereof the following:

"(b) The term 'employer' means a person engaged in an industry affecting commerce, and any agent of such a person, but such".

AMENDMENT TO ELIMINATE THE RESTRICTION BASED ON AGE FROM THE AGE DISCRIMINATION IN EMPLOYMENT ACT.

Strike out lines 20 through 25, page 14, and lines 1 through 3, page 15.

AMENDMENT TO UTILIZE ENFORCEMENT PROCEDURES OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED, TO ENFORCE THE AGE DISCRIMINATION IN EMPLOYMENT ACT.

(a) Beginning on page 7, line 6, strike out everything through line 18, page 9, and insert in lieu thereof the following:

"Sec. 7. The provisions of this Act shall be enforced under the remedies and procedures provided in sections 16 (except subsection (a) thereof) and 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216, 217). Any act prohibited under section 4 of this Act shall bedeemed to be a prohibited act under section 15 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 215), and amounts owing to an employee as a result of a violation of this Act shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of section 16 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216). Before instituting any action under this section, the Secretary shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this Act through informal methods of conciliation, conference, and persuasion. Before instituting any action to enforce this Act under section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), an employee shall appropriately notify the Secretary of his intention to bring such action and shall afford the Secretary an opportunity to institute the informal methods of conciliation, conference, and persuasion provided for herein."

"(b) Insert before the period in line 2, page 14, the following: "and, for the purposes of section 7, includes any applicant for employment".

AMENDMENT TO PROTECT NON-DISCRIMINATORY WAGE RATES UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

On page 6, insert between lines 12 and 13 the following:

"(f) An employer who is paying a wage rate differential in violation of this section shall not, in order to comply with the provisions of this section, reduce the wage rate of any employee."

AMENDMENT TO ELIMINATE STATE PRE-EMPTION PROVISION FROM THE AGE DISCRIMINATION IN EMPLOYMENT ACT.

On page 15, strike out lines 5 through 8, and insert in lieu thereof the following:

"Sec. 13. No provision of this Act shall justify non-compliance with any State law more favorable to an employee than this Act."

TECHNICAL AMENDMENTS TO AGE DISCRIMINATION IN EMPLOYMENT ACT.

(a) On page 15, line 10, strike out the figure "15" and insert in lieu thereof the figure "14".

(b) On page 15, line 20, strike out the figure "16" and insert in lieu thereof the figure "15".

Senator YARBOROUGH. We have other amendments that Senator Javits is recommending, and we will take up all these amendments with the staff of the subcommittee, and the staff will give every amendment its consideration.

Senator Fannin?

Senator FANNIN. In regard to the retirement of workers, the Government—and I assume from information that has been furnished—the union and industry are all pushing for early retirement to make room for younger workers. Do you feel that this bill runs counter to that idea?

Mr. BIEMILLER. No; we think that the bill can be drafted in such a way that it would not hamper agreements that are reached by management and labor on voluntary early retirement. We would be opposed to any loopholes, however, that would permit involuntary early retirement of workers.

Senator FANNIN. I think most of your negotiated agreements provide for age 65, is that correct?

Mr. BIEMILLER. Many of them do; yes, sir.

Senator FANNIN. A large percentage?

Mr. MEIKLEJOHN. I believe, Senator, there are very few that do not.

Senator FANNIN. Would you like to comment or give your thoughts as to what should be done as far as any preemption is concerned?

Mr. BIEMILLER. We are frankly a little disturbed by the section in the bill that is now before you which is designed to negative Federal preemption in this field. I think it could lead to great confusion, because if I read it properly, you are virtually leaving the State laws unhampered in their respective jurisdictions.

It would seem to me it would be a far more practical and preferable solution if you would take the pattern that was developed by Senator Dirksen and Senator Humphrey, working in concert, in connection with title VII of the Civil Rights Act of 1964 creating the Equal Employment Opportunities Commission. There, as I recall, when you have a State law that is substantially in agreement with the Federal law a matter of 60 days is given to the State fair employment agency to try to solve the problem.

At the end of that time, if the matter is not resolved, the case is moved to the Federal agency. I think this would be preferable to trying to say that, where there is a State law, the State agency shall have full and complete jurisdiction.

Senator FANNIN. In your testimony, you spoke about the legislation that was passed in 1959. I don't know whether the legislation that was passed is as adequate as you desired.

Would you want to comment about the State of Wisconsin? Do you feel the laws are adequate?

Mr. BIEMILLER. I have not lived in the State of Wisconsin as a practical matter since 1953 and I am not familiar with the actual operation of that law any longer.

Senator FANNIN. Do you feel in the State of New York, for instance, that the law has been satisfactory as far as the unions are concerned?

I understand there has been filed in New York since 1958 over 30 complaints as far as discrimination is concerned, on older workers.

Mr. MEIKLEJOHN. I do not believe we have any serious criticism of it, Senator. I think the question of whether or not the State law should apply, as against the Federal law, has already been answered by Mr. Biemiller. Whether and to what extent the State law should prevail over the Federal law is, of course, a question the committee will have to consider.

Senator FANNIN. Would you want to comment at all on the laws of New York in this regard?

Do you feel they are adequate?

Mr. MEIKLEJOHN. I am not familiar enough with the detailed operation of the New York law to give too much assistance on that. We could submit the information if you like.

Senator FANNIN. Thank you very much.

Senator YARBOROUGH. Senator Pell.

Senator PELL. I have no particular questions. However, I would like to make a comment, for I would be interested in Mr. Biemiller's reply.

I am bothered by certain aspects of this bill, for I believe that it is a good general concept to encourage retirement at 65 and 62 taking into consideration the viewpoint of the younger men coming in and moving up the corporate ladder. However, we also want to avoid prejudice toward people in their 40's and 50's seeking a job.

Do you see any method to balance the equities or an avenue to approach the problem?

Mr. BIEMILLER. No; I think that as far as the labor movement is concerned, the idea of retirement at age 65 has been pretty generally accepted.

Senator PELL. This is a somewhat permissive bill for the Secretary of Labor, if he chose to, under this bill upset the standard practice that people will retire automatically at 65, thus opening up job opportunities for those coming up the ladder.

I do not believe that such wide permissive powers are good, and frankly, I would not be in favor of such a measure.

Mr. BIEMILLER. Certainly, but we do not interpret to bill to mean you are going to protect people over 65 from involuntary retirement.

Senator PELL. I think we should not pass permissive, unclear bills—the language should be more tightly drawn.

Senator YARBOROUGH. I think that was clarified in Secretary Wirtz' testimony with the colloquy he had with Senator Randolph, particularly as it related to airline pilots and jet pilots.

The testimony was not limited to airline pilots, but there were a number of questions asked and I think the record will show, Senator Pell, that not only the intent of the authors of the bill was clarified, but also the Secretary's interpretation of it.

Mr. BIEMILLER. If I may add, Mr. Chairman, to what you just said, the Secretary also was pointing out that there is a real problem with the bill, as it is now drafted in reaching age discrimination against employees who are below age 45. On that, we have a good deal of sympathy, as I stated in my previous remarks, with the views you will hear tomorrow, when you get the testimony of spokesmen for the Transport Workers Union. You will have a good opportunity to get into that problem at this time.

Senator PELL. It would depend on the job. I am 48 and I have nowhere near the reflexes I had 10 years ago. I am not as good in mathematics and things of that sort and I do not think we ought to put a straight jacket on endeavors which have a safety involvement.

Senator YARBOROUGH. The proposed law provides that—

The prohibitions in this Act shall be limited to individuals who are at least forty-five years of age but less than sixty-five years of age.

There is also a proviso that the Secretary—

may by rule or regulation issued under section 10 of this Act provide for appropriate adjustments, either upward or downward, in the maximum and minimum age limits provided in this section.

This is not arbitrary. Nightwatchmen might say go up to 70 or 75. Those who work in nursing homes, 75. Jet pilot, that is a different matter. The main danger there is danger of heart attack rather than arbitrary age itself.

Senator PELL. There is also the question of reflexes, which slow up.

Senator YARBOROUGH. I am not going into psychological and physiological changes that take place in our body or we will have to get medical testimony in here.

Senator PELL. I wanted to express these reservations and hope that they will be more fully clarified. Thank you

Senator YARBOROUGH. Any other questions?

Senator Randolph.

Senator RANDOLPH. Thank you for the opportunity of discussing one or more matters with Andy. I hope that that is not too informal. I had the privilege of serving with him in the House of Representatives, not that he was any younger then than now, but it was at an earlier period in his life.

Senator YARBOROUGH. We just established we are not going to apply the 65 year age amendment to this committee or the witnesses who appear before it.

Senator RANDOLPH. There are exceptions always. Is that correct?

Though I was not present for all of the statement and, of course, it was incorporated in the record, I had looked at its contents earlier today; and it is my understanding, Mr. Biemiller, that you would not consider any age qualification, I believe, either necessary or desirable for any age level or group of persons.

Now, I am not sure that I am correctly stating that that is your position. Are there exceptions that could be made?

Mr. BIEMILLER. I testified earlier, in answer to a question by Senator Fannin, that we have no objection to age limits for retirement reached by mutual agreement in collective bargaining agreements. In terms of categories of workers, however, we do not believe that such arbitrary age limits should be established unilaterally, or by law.

Senator RANDOLPH. I think then there is enough flexibility to not violate the so-called collective bargaining programs.

Mr. BIEMILLER. We would like to see some changes made, which we have agreed to submit, to make sure that collective bargaining agreements are protected under the law.

Senator RANDOLPH. Now, Mr. Biemiller, would a union permit, in its collective bargaining negotiations when contracts are being set, the flexibility that I mentioned as being necessary for the types of individual judgments that have been referred to during the testimony of Secretary Wirtz earlier today?

Mr. BIEMILLER. That would be entirely up to the international union involved.

Obviously, it is pretty difficult to make any arbitrary statements about types of occupations. They vary so much. This is a matter that, under the existing structure of the labor movement, is left entirely to the judgment of the international unions involved. There

is no firm rule. The AFL–CIO, as such, does not attempt to lay down rules governing collective bargaining procedures for its constituent unions.

Senator RANDOLPH. This, perhaps, is the strength of the collective bargaining program, isn't it?

Mr. BIEMILLER. We think it is.

Senator RANDOLPH. Thank you very much.

Senator YARBOROUGH. Any further questions?

Thank you, Mr. Biemiller.

Mr. BIEMILLER. Thank you. We appreciate the opportunity to appear.

Senator YARBOROUGH. The next witness is Mr. Anthony J. Obadal, representing the Chamber of Commerce of the United States. Mr. Obadal, you may present your testimony in such a manner as you deem most appropriate.

STATEMENT OF ANTHONY J. OBADAL, SECRETARY, ADVISORY PANEL ON OLDER WORKERS, U.S. CHAMBER OF COMMERCE; ACCOMPANIED BY ANDREW A. MELGARD, SENIOR ASSOCIATE, HUMAN RESOURCES DEVELOPMENT GROUP, U.S. CHAMBER OF COMMERCE

Mr. OBADAL. We would prefer to file our complete statement, Senator, in lieu of reading it. I would appreciate being allowed to briefly summarize it for you.

Senator YARBOROUGH. We would be glad to hear you.

Your statement will be printed, ordered to be filed, and printed in full including the charts you have submitted with it.

(The prepared statement of Mr. Obadal follows.)

PREPARED STATEMENT OF ANTHONY J. OBADAL, SECRETARY OF THE ADVISORY PANEL ON OLDER WORKERS, CHAMBER OF COMMERCE OF THE UNITED STATES

My name is Anthony J. Obadal. I am appearing before this Committee on behalf of the Chamber of Commerce of the United States. I am a Labor Relations Attorney and Secretary of the Chamber's Advisory Panel on Older Workers. I appreciate this opportunity to present our position on the bills before this Committee that would make age discrimination in employment unlawful except where age is a bona fide occupational qualification.

S. 830 would empower the Secretary of Labor to establish enforcement procedures, and after hearings to issue cease and desist and affirmative orders against violators enforceable in the Federal Courts of Appeals. Criminal penalties for willful infringement are also provided, and any person found guilty of two violations of the proposed statute could be sent to jail. The Secretary of Labor is also authorized to establish: (1) research programs to study problems of older workers steming from institutional pension arrangements, (2) technical programs to assist those interested in helping older workers, and (3) service programs to foster business opportunities for the elderly.

S. 788 would amend the Fair Labor Standards Act by placing enforcement jurisdiction in the Wage and Hour Division of the Labor Department. The Secretary of Labor would be empowered to seek appropriate relief against alleged violators in the Federal District Courts as the law now authorizes in minimum wage cases.

MAJOR CAUSES OF EXTENDED OLDER WORKER UNEMPLOYMENT

The underlying goal of the proposed legislation is a laudable one: that of opening up greater job opportunities to older employees. The most critical problem confronting older workers today relates to the length of time which these workers

are likely to remain unemployed. In 1965, unemployment for workers under 45 lasted an average of 13.1 weeks. Workers who were over 45, however, remained idle for 19.1 weeks.[1]

A number of factors contribute to this situation. Studies made by the Chamber of Commerce of the United States show that the older job-seeker is sometimes confronted with employer misconceptions and inaccurate generalizations about his abilities. Other studies indicate that for many displaced older workers, the search for a job is a new and difficult experience and that they are unprepared for personnel interviews, the occasional employment tests, and the competition of the usually better educated younger worker. Additionally, the older workers initially attempts to seek out better paying jobs commensurate with his experience, thereby tending to diminish the job market available to him. He is hesitant to retrain in order to meet our economy's changing demands for skills and to augment his work qualifications. It is frequently economically or emotionally difficult for him to relocate to areas having better employment prospects.

THE PENDING LEGISLATION

Some method must be found to expand job opportunities for older workers by treating the major causes of this group's long-term unemployment. Legislation prohibiting age discrimination, however, does not appear to be more than a surface solution to the problem.

Presently, 23 states and Puerto Rico have such legislation. In these jurisdictions, the overt indications of discrimination, such as the placing of age limitations in advertisements and in formal requests to employment agencies, have diminished. However, the situation of the older unemployed person has not been shown to have improved in these areas any more than in those jurisdictions not having such laws. Indeed, the largest pockets of long-term unemployed older workers are located in many of the very states in which there are existing laws prohibiting age discrimination in employment. Attached are two charts prepared by the Department of Labor which graphically illustrate this point.[2]

We suggest that such legislation has not met with success because the age barriers that exist in employment due to employer attitudes stem from misconceptions about ability rather than from ill feelings toward older persons. In these circumstances prime reliance upon civil and criminal proceedings is both unnecessary and self-defeating, because employers or unions who establish age barriers are far more likely to resist suggested changes in operations if their statements and acts can provide the basis for later civil or criminal action. A better approach lies in educational programs seeking voluntary enrollment of business and unions in the battle to eliminate this problem.

The inadequacy of the pending legislation, however, does not rest only on its ineffectiveness. It also, in its present form, will disrupt the operations of private pension and insurance plans which are currently benefiting millions of citizens throughout the nation. For example, of approximately sixteen thousand pension plans surveyed in 1965, the Department of Labor asserted that "Maximum participation ages were effective in over three-fourths of the plans with over three-fifths of the workers."[3] One-third of the private pension plans surveyed exclude workers hired at age 55 and over half at age 60. Since the pending legislation prohibits discrimination regarding wages, and terms or conditions of employment based on age, the operation or maintenance of such plans would be made unlawful.[4]

Health and life insurance plans would also be adversely affected. Thus, some individual health plans provide for age cut-off provisions relating to long-

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[1] *Labor Force and Employment in 1965,* Special Labor Force Report No. 69 Published by the Department of Labor, Table G–2.

[2] The first chart, marked Exhibit A, shows the major areas of concentration of older long-term unemployed. The second chart, marked Exhibit B, shows those jurisdictions having anti-discrimination laws. Exhibit B was prepared in 1965; three states, Maine, Maryland and Montana, also have wage discrimination laws.

[3] *The Older American Worker.* Report of the Secretary of Labor to the Congress under Section 715 of the Civil Rights Act of 1964, Research Material, pp. 36 through 38.

[4] The problems involving portability and vesting which this consideration raises are to be separately considered by this Committee when it conducts its hearings into legislation directly dealing with that subject. It would be extremely unfortunate if the pending legislation were used as a back-door attempt to force acceptance of portability and vesting. Since we do not believe that is the Committee's purpose, we will not deal with the merits or faults of vesting and portability in this testimony.

term disability benefits and term life insurance plans provide for reduced benefits based on age. Such variations in terms of employment are made necessary by cost and actuarial considerations. As employers would hesitate to hire workers whose employment would upset the operations of these plans, the pending legislation, by prohibiting the establishment of different terms of employment based on age, would hinder, not help, the employment of older workers.

In addition, we call the Committee's attention to the existence of negotiated employment contracts which permit differences in the terms of employment of older workers. These contracts are designed to allow the employer to retain a worker by adjusting his wages when that worker's productive capacity falters because of his age.[5] Such agreements, designed to assist the older worker, would be made unlawful by the present wording of these bills.

The pending legislation does not take the above factors into consideration. We believe that flexibility, permitting different treatments based on age, is necessary and desirable. We, therefore, suggest that at the very least this legislation be amended by removing the provisions relating to wages, hours, and terms and conditions of employment and by exempting from its purview the operation, maintenance or establishment of pension and insurance plans. It would appear that such an exemption could be adequately specified by a proviso that:

> "Nothing contained in this Act shall be deemed to: affect, prohibit, or prevent the establishment, maintenance, or operation of any retirement, pension, employee benefit, or insurance plan."

The vast majority of states that have enacted age discrimination statutes have recognized this problem and have accordingly attempted to preserve the lawfulness of employee benefit plans by adopting similar exemptions.

THE NATIONAL CHAMBER'S POSITION

If the problems of older workers are to be met, a positive approach is needed. The older worker can be greatly assisted through training devised to prepare him to shift to other employment if his skills are rendered obsolete by technological change. Development of new skills to augment his work qualifications will also enable him to compete with younger better educated workers. Greater use must be made of manpower training to help disadvantaged older people. The granting of tax benefits to employers who give specialized training to older workers should be studied. Research, technical, and service programs designed to assist the older worker should be established. It may also be advisable to place the supervision of such work in the Administration on Aging of the Department of Health, Education, and Welfare, as it is presently engaged in research relating to the problems of older Americans rather than in the Department of Labor. Much duplication of effort will thereby be avoided.

Nationwide educational and informational programs designed to reduce resistance in employment because of age should be established. Significantly, most state officials, charged with the administration of age discrimination laws, believe that educational programs are the most effective and important means of helping older workers.[6]

From the long range point of view, more satisfactory results will be achieved through educating employers and unions voluntarily to act more intelligently about this problem.

Intensive efforts, tailored to the needs of the older worker which seek the voluntary cooperation of business, do bring significant results. In 1956 the Department of Labor conducted an experiment designed to determine if older workers could be given more effective assistance in job employment offices. Over seven thousand persons 45 or over were selected at random from workers seeking employment through the department in seven urban areas. One-half the applicants were to receive the service normally given; the other half were to receive special treatment which included counseling, referrals to training facilities, use of aptitude and proficiency tests, assistance in preparing resumes, and in-depth interviewing to determine all possible job qualifications. These efforts were coupled with community promotional campaigns and localized educational activi-

[5] *Collective Bargaining—Negotiations and Contracts,* Bureau of National Affairs, Volume II, 93: 202.

[6] *The Older American Worker,* supra, note 3, p. 110.

ties among employers. Almost 4½ times as many placements were made in the experimental group as with the group given normal servcie. By 1960, 24 states were using specially trained personnel to assist older workers in finding employment; most of the states with special programs were able to report a definite improvement in the proportion of older workers placed. In the same year, the Department of Labor reported a 20 percent gain since 1958 in annual placement of job seekers 45 years and older.[7]

More recently other efforts have met with success. In North Carolina under the aegis of the North Carolina Fund, a highly imaginative program has been devised to make use of the services of older persons as part of the drive on poverty. In Columbus, Georgia, the Chamber of Commerce in cooperation with local businessmen and the state employment offices of Georgia and Alabama are making an extensive effort to recruit unemployed retired and retiring military personnel. Similar programs are under way in other communities across the country.

An appreciation of the value of the mature worker is spreading throughout our economy. The 45–65 year old worker presently enjoys an exceptionally low rate of unemployment. His relative position, in regard to the duration of his unemployment, is also markedly improving. In 1964 persons above 45 were unemployed over 8 weeks longer than persons under 45. The latest unpublished figures of the Bureau of Labor Statistics show that presently this difference has narrowed to 5.9 weeks. An improvement of better than 25 percent has therefore been made in this area in less than 3 years.

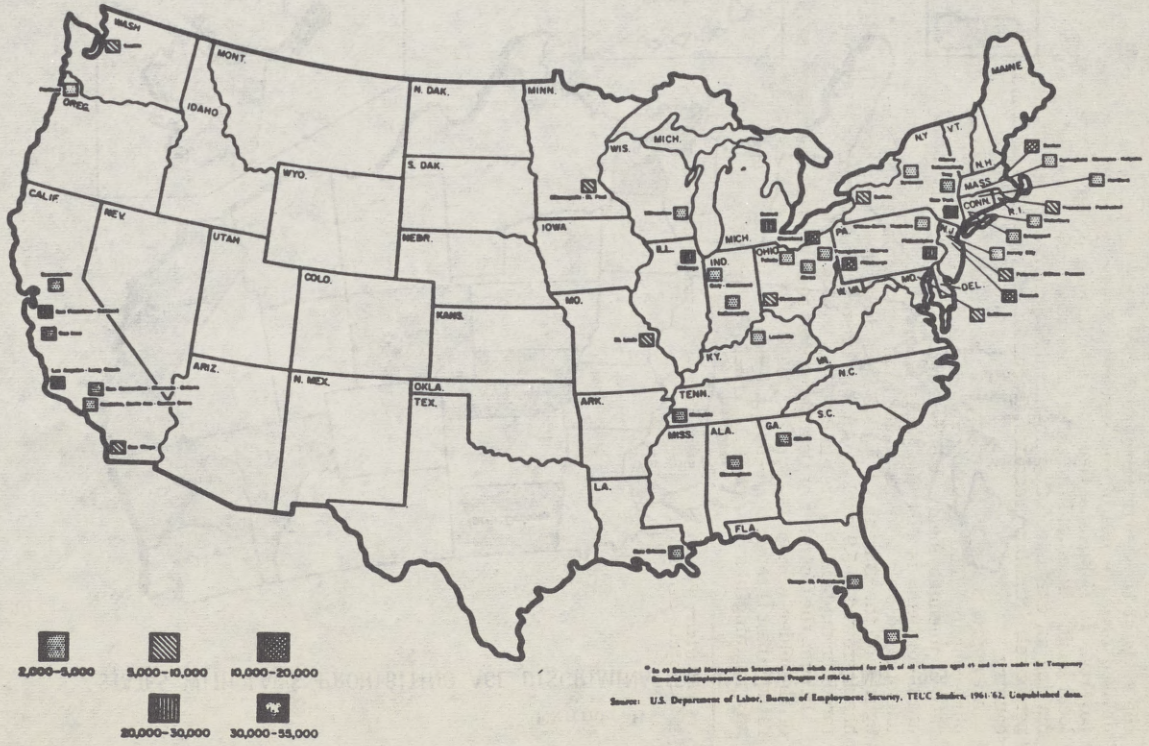
In sum, the Chamber of Commerce is of the view that the answer to the problem of the older worker is through positive programs of the type described above rather than through the pending legislation which we believe will bring little, if any, meaningful assistance to older unemployed persons.

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[7] *The Older Worker*, B. V. H. Schneider, Institute of Industrial Relations, (University of California, Berkeley), pp. 69–70.

EXHIBIT A

AREAS OF MAJOR CONCENTRATION OF THE OLDER LONG-TERM UNEMPLOYED*

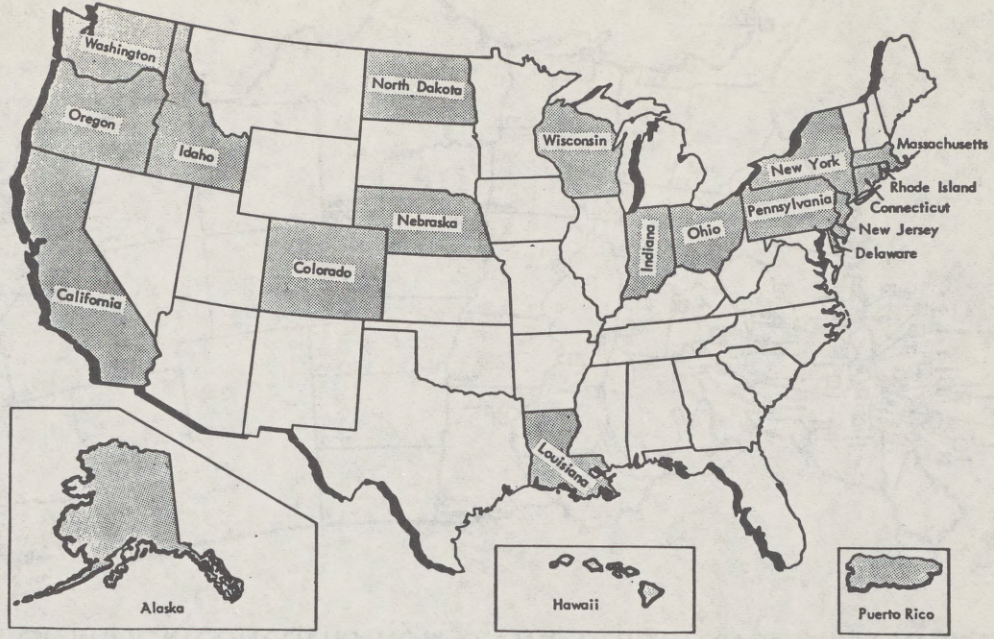


* In 49 Standard Metropolitan Statistical Areas which Accounted for 25% of all claimants aged 45 and over under the Temporary Extended Unemployment Compensation Program of 1961-62.

Source: U.S. Department of Labor, Bureau of Employment Security, TEUC Studies, 1961-62, Unpublished data.

EXHIBIT B

STATES WITH LAWS PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT, 1965



Source: U. S. Department of Labor
Bureau of Labor Standards

Maine, Maryland and Montana also have age discrimination laws.

At the outset, I wish to state that the chamber considers this problem and the manner in which we react to it to be a matter of great significance. The older worker is a valued asset. He is rich in the education which experience brings, and he is most often the type of person who takes great pride and care with his work.

Unfortunately, however, a critical problem exists for those workers over 45 who become unemployed. They will find it more difficult to obtain work than younger people, and generally they will remain unemployed for a longer period of time. The long-term unemployment of the mature worker is an unnecessary waste of national assets and a personal tragedy to the families involved. Our Nation cannot permit this to continue.

If we are to find and effectuate solutions to this unfortunate situation, we must first look at the causes of the problem and at our past experience in attempting to resolve them.

A number of factors contribute to the existence of the age barriers in employment. Studies made by the Chamber of Commerce of the United States and more recently by the Department of Labor show that the older jobseeker is too often confronted with employer misconceptions and inaccurate generalizations about his abilities. For many displaced older workers, the search for a job is a new and difficult experience and they are unprepared for personnel interviews, the occasional employment tests, and the competition of the usually better educated younger worker.

Additionally, the older worker initially attempts to seek out better paying jobs commensurate with his experience, thereby tending to diminish the job market available to him.

Seniority and promotion from within practices also limit the available job market. He is hesitant to retrain in order to meet our economy's changing demands for skills and to augment his work qualifications. It is frequently economically or emotionally difficult for him to relocate to areas having better employment prospects.

Some method must be found to expand job opportunities for older workers by treating the major causes of this group's long-term unemployment. Legislation prohibiting age discrimination, however, does not appear to be more than surface solution to the problem. Twenty-three jurisdictions, numbering among them the largest of the industrial States, have such legislation and yet the problem is still with us.

On the other hand, experience shows that there is another highly effective approach. When positive programs involving retraining and counseling have been combined with educational programs directed at businesses and unions, excellent results have been achieved.

In this regard we strongly support positive approach similar to that set forth in section 3 of S. 830. An approach which we understand is favored by Senators Fannin and Javits in other legislation. The success, which efforts along this line can have, was shown in 1956 by an experiment conducted by the Department of Labor itself.

This experiment was designed to determine if older workers could be given more effective assistance in job employment offices. Over 7,000 persons 45 or over were selected at random from workers seeking employment through the Department in seven urban areas.

One-half the applicants were to receive the service normally given; the other half were to receive special treatment which included coun-

seling, referrals to training facilities, use of aptitude and proficiency tests, assistance in preparing résumés, and in-depth interviewing to determine all possible job qualifications.

These efforts were coupled with community promotional campaigns and localized educational activities among employers. Almost 4½ times as many placements were made in the experimental group as with the group given normal service.

The report of the Department of Labor filed with Congress in June 1956, asserts that on other occasions when the Department has been able to establish programs of this type, they have been "highly successful."

Now, turning away from the general issue of the best approach to this problem, we wish to call attention to the specific inadequacies of the legislation that is pending before the committee. Assuming that some form of age discrimination prohibition will be approved, there are certain problem areas which must be further considered.

This legislation in its pending form will disrupt the operation of private, pension, and insurance plans which are currently benefiting millions of citizens throughout the Nation. For example, of approximately 16,000 pension plans surveyed in 1965, the Department of Labor asserted that "maximum participation ages were effective in over three-fourths of the plans with over three-fifths of the workers."

One-third of the private pension plans surveyed exclude workers hired at age 55, and over half at age 60. Plans of this type are presently covering over 15 million workers. Since the pending legislation prohibits discrimination regarding wages, and terms or conditions of employment based on age, the operation or maintenance of such plans would be made unlawful.

They would effectively prevent an employer from hiring an employee and excluding him from the plan at the same time. We believe that an exemption is necessary in order to permit hiring outside of the pension plan and insurance systems.

Health and life insurance plans may also be adversely affected for many of them have age qualifications. Such variations in terms of employment are made necessary by cost considerations and as a matter of equity among the various groups of employees. The conflicting interests and conflicting needs of the employees are frequently resolved by age qualification provisions in health and insurance plans.

We suggest that the problems which this question raises are many and should be given more careful consideration before changes, if any, are made. While S. 830 recognizes the difficulty raised by this consideration and would establish research programs to study pension arrangements prior to making any changes, the exemption which it contains is not sufficient to accomplish the desired purpose.

It relates primarily, Senator, to retirement rather than to entrance requirements, and we believe it should be expanded to cover that problem. Our full statement sets forth the following recommendations in this regard; and we suggest this with no firm conviction as to its completeness, but rather for discussion, for the problem here is very complex: "Nothing contained in this act shall be deemed to affect, prohibit or prevent the establishment, maintenance or operation of any retirement, pension, employee benefit or insurance plan." That would be our suggestion.

Now, there is some concern that perhaps a plan that is set up to avoid the operation of the act would not be covered by this provision. I do not think as a general rule of law, that a statute protects a fraud designed to avoid it. The insertion, however, if there is any real concern along this line, of the words, "bona fide" at the appropriate place would certainly resolve that objection.

I might point out that the vast majority of States that have enacted age discrimination statutes have recognized this difficulty and have, accordingly, attempted to preserve the lawfulness of employee benefit plans by adopting similar exemptions.

We would also like to call the committee's attention to the existence of negotiated employment contracts which are designed to assist older workers by permitting adjustments in either wages or hours when an older worker's productive capacity falters. We believe that these agreements will also be rendered unlawful by this legislation.

Section 4(a) specifically is not clear enough in this regard. I think the word "discrimination" standing by itself is not sufficient to satisfy the requirement or the need here.

We, therefore, urge that consideration be given to devising some language to preserve this type of contract.

We hope that these suggestions and those contained in our full statement will be of some help to this committee.

On behalf of the chamber of commerce I wish to thank you for this opportunity to present our point of view.

Senator YARBOROUGH. Thank you for presenting this paper, Mr. Obadal. We realize this is a question that touches the employer and touches the employees perhaps even more intimately with the effect of these pension plans. It is a matter which this committee is going to have to give careful consideration to, as to the effect on the individual plans.

Senator Fannin.

Senator FANNIN. Thank you for the statement. It is a very revealing one. I asked a previous witness this question I would like to get your comments.

The administration bill provides for enforcement through administrative hearings. S. 788, Mr. Javits' bill provides for enforcement through the Federal district courts. Could you explain to this committee which procedure you believe is the better and why you feel so?

Mr. OBADAL. In the chamber discussions among its members and panels that were set up to consider this legislation, the specific procedure, either the S. 788 approach or S. 830 approach, was not formally considered.

Generally the opinions that were expressed to me emphasized that a hearing de novo in court is the fairer approach. Each man feels he would like to have his day in court, and so in general the approach of S. 788, as amended, with some modifications particularly with reference to 16(b) of the Fair Labor Standards Act would be the more favored.

S. 830 is defective in that the functions of the prosecutor, the adjudicator and the rulemaker are combined or merged into one administrative office. We do not feel that the administrative experience in this regard has been favorable.

I recall some years ago the NLRB had a similar combination of functions and it ultimately became necessary to amend that act to separate the prosecuting and the hearing function.

Senator FANNIN. I was interested in your comment on S. 830 regarding the criminal penalties to be imposed on those who willfully violate its provision in the second paragraph of your testimony you refer to that.

You state that such provisions are self-defeating and unnecessary. Do you want to amplify your position on that point?

Mr. OBADAL. In this regard we agree with the statement made by Senator Javits, that criminal provisions of this type perhaps would interfere with a full and frank discussion between an employer or a union and the administration agencies. The fifth amendment is a matter of particularly concern and the effect that it would have on full and frank disclosure is obvious. No man, knowledgeable of its provisions, would agree to being made a witness against himself.

Senator FANNIN. You make reference to other means of handling this problem. Do you feel this legislation will materially resolve the problem we are working on or is there a better approach?

Mr. OBADAL. Positive programs similar to those continued in section 3 of S. 830, will resolve the older worker problem. We do not think it is necessary to go beyond that. The hard anvil of experience in 23 States who approach this from a "barring discrimination" point of view, shows that this approach is not the best. If it were effective, we wouldn't be here today.

So, we favor the positive approach and oppose the negative approach of outlawing an age discrimination in an effort to increase jobs for this group. We think an educational program, combined with a counseling and training program, is superior to one which relies principally on coercion. Such positive efforts are more responsive to the needs of older workers.

Senator FANNIN. And these approaches have been taken previously and you feel that they have benefited the worker to a greater extent than what has been done in some of the 23 States that now have legislation?

Mr. OBADAL. Yes, we do.

Senator YARBOROUGH. I am ordering printed as appendixes to the record, a "Summary of State Laws Prohibiting Discrimination of Employment Because of Age," printed by the U.S. Department of Labor, as Fact Sheet 6–B, August 1966, and a table titled "Age Discrimination Prohibited Under State Laws," Fact Sheet 6–C, dated February 1966.

(The documents referred to start on facing page.)

Senator YARBOROUGH. The documents that I have ordered printed as a part of this record itself are abstracts of the laws. I think it will be helpful to print these summaries for the record so we will have these for comparison.

The subcommittee will stand in recess until 10 o'clock tomorrow morning. The hearing will resume then. Thank you, witnesses, for your patience in staying to complete the testimony of all the witnesses.

(Whereupon, at 12:45 p.m., the subcommittee recessed to reconvene at 10 a.m., Thursday, March 16, 1967.)

Appendix A

Summary of State Laws Prohibiting Discrimination in Employment Because of Age

(U.S. Department of Labor, Bureau of Labor Standards, Labor Law Series No. 6–B, August 1966)

Laws prohibiting discrimination in private employment on the basis of a person's age are presently in effect in 23 jurisdictions:[1]

Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Louisiana, Maine, Massachusetts, Michigan, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Washington, Wisconsin.

COVERAGE OF THE LAWS

The laws of nine juridictions—Colorado, Delaware, Hawaii, Idaho, Maine, Nebraska, North Dakota, Ohio, and Puerto Rico—cover all private employment. The other 14 exempt certain occupations or organizations or both:

Both domestic service and employment of a person by his parent, spouse, or child are exempted in eight States:

California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Washington.

Alaska, Indiana, Michigan, and Rhode Island exempt domestic service, and Wisconsin, family employment.

Nonprofit social clubs or religious, charitable, educational, or fraternal organization are exempted in eight States:

Alaska, Indiana, Massachusetts, New Jersey, Oregon, Rhode Island, Washington, Wisconsin.

Farm labor is exempt in Indiana, Pennsylvania, and Rhode Island, and hazardous occupations in Louisiana and Wisconsin.

In addition, in 10 States the laws exempt employers having fewer than a certain number of employees:

New York, fewer than 4; Connecticut, fewer than 5; California, Massachusetts,[2] New Jersey, Oregon, Pennsylvania, fewer than 6; Michigan, Washington, fewer than 8; Louisiana, fewer than 25.

DEFINITION OF AGE

The laws, through their definition of "age," are designed to prohibit discrimination against the older worker, although a few protect also the relatively younger worker. All the laws except those of Alaska, Hawaii, and Maine specify the applicable ages. Such ages vary, but in general the laws apply to persons between the ages of 40 and 65. Specifically, they apply as follows:

California, between 40 and 64; Colorado, between 18 and 60; Connecticut, between 40 and 65 inclusive; Delaware, between 45 and 65.

Idaho, under 60; Indiana, between 40 and 65[3]; Louisiana, under 50; Massachusetts, between 45 and 65 (1937 law), between 40 and 65 (1950 law).

Michigan, between 35 and 60; Nebraska, over 40; New Jersey, 21 and over; New York, between 40 and 65.

North Dakota, between 40 and 65; Ohio, between 40 and 65; Oregon, between 25 and 65[3]; Pennsylvania, between 40 and 62 inclusive.

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[1] Another State, Maryland, has a law making it a "harmful employment practice" for an employer or employment agency to discriminate against any person on the basis of age. However, it does not prohibit such discrimination or set up enforcement methods, and it specifically precludes the penalties in the labor law.

[2] Massachusetts has two laws (see History, p. 5). The 1937 law applies to all employers without a numerical exemption.

[3] Law specifies until the age of 65 years is attained.

Puerto Rico, between 30 and 65; Rhode Island, between 45 and 65[3]; Washington, between 40 and 65; Wisconsin, between 40 and 65.

DISCRIMINATORY PRACTICES PROHIBITED

By employers.—In general, these laws prohibit employers from engaging in the following practices solely because of the employee's or applicant's age: refusing to hire, discharging, or discriminating in compensation, terms, conditions, or privileges of employment. The Colorado law, however, prohibits only discharging, while the Ohio and Louisiana laws prohibit only discharging and refusing to interview persons on the ground of age.

By labor organizations.—Sixteen of the jurisdictions list prohibited practices for labor organizations, such as denying full membership, expelling from membership, or discriminating in any way against members, employers, or other employees because of age:

Alaska, Connecticut, Delaware, Hawaii, Indiana, Massachusetts, Michigan, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Washington, Wisconsin.

By private employment agencies.—Fifteen jurisdictions (those listed above except Indiana) prohibit discrimination by employment agencies, directly or indirectly. Twelve of the laws include, among the prohibited practices, refusing to classify persons properly or refusing to refer them to employment opportunities. In Puerto Rico, these same practices are prohibited, but by the law regulating private employment agencies instead of its law against discrimination. In Nebraska, it is unlawful for an employer to utilize an employment agency which so discriminates, although the law does not restrict the agencies directly. The only application to employment agencies in the Alaska law appears below.

Advertising, application forms, and inquiries.—The use of any form of application for employment, or making any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination as to age, unless based on a bona fide occupational qualification, is prohibited in 11 States:

Alaska, Delaware, Hawaii, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin.

In Massachusetts, the occupational qualification must have been previously established by the Commission, or no inquiry may be made as to age unless required by other laws. In New York and Rhode Island, inquiries are prohibited unless required for a specified valid purpose, and if age is asked, the forms must contian the statement, "The [State law against discrimination] prohibits discrimination because of age."

These 11 States, plus Connecticut, Michigan, and Puerto Rico, prohibit employers and employment agencies from printing or circulating any statement, advertising, or publication which expresses, directly or indirectly, any limitation, specification, or discrimination. In Pennsylvania, this prohibition applies also to applicants and newspapers. In Delaware and Michigan, these prohibitions apply also to labor organzations, in Connecticut to labor organizations and "persons," and in New York, Washington, and Wisconsin to licensing agencies.

Other prohibitions.—Three of the laws (New York, Washington, and Wisconsin) prohibit licensing agencies from refusing to license persons because of their age, and the Indiana and Rhode Island laws void discriminatory contracts which prevent employment of older workers.

The Oregon law applies to apprenticeship, provided the prospective apprentice is able to complete the training, and the industry average period of employment thereafter, before age 65. The Michigan law applies to apprentice or on-the-job training programs under 4 months' duration.

To prevent retaliation against employees, 15 laws forbid employers, unions, and employment agencies to discharge, expel, or otherwise discriminate against an employee because he has opposed their unlawful actions or because he has filed a complaint, testified, or assisted in any proceeding under the law.

Alaska, Connecticut, Delaware, Hawaii, Indiana, Massachusetts, Michigan, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin.

Eleven of these (all but Indiana, Nebraska, Rhode Island, and Wisconsin) also forbid any person to aid, abet, incite, compel, or coerce another to violate this laws.

WHEN LAW DOES NOT APPLY

All of the laws except those of Indiana, Louisiana, Ohio, and Wisconsin provide that the law does not apply when the apparent discrimination is based on a bona fide occupational qualification. In addition, many of the laws specify that they do not apply if the person is physically or mentally unable to perform the duties of the job.

Sixteen States specifically provide that the laws do not apply to the operation of a bona fide retirement or pension plan:

California, Connecticut, Delaware, Hawaii, Idaho, Indiana, Maine, Michigan, Nebraska, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, Washington, Wisconsin.

The Michigan law specifies, however, that this exception does not apply to retirement policies or systems established after July 1, 1965 which set a mandatory retirement age of less than 65.

Seven of the laws (those of Connecticut, Delaware, Hawaii, Maine, Michigan, New Jersey, and Pennsylvania) are also specifically inapplicable to the operation of any bona fide employee insurance plan.

The laws of California, Connecticut, New Jersey, and Washington specify that the prohibitions do not apply to age restrictions under apprenticeship systems and the Michigan law to requirements of Federal or State training or employment programs. The Oregon law does not apply to positions requiring extensive training programs, nor does the Wisconsin law apply where the knowledge and experience to be gained might be expected to aid in development of capabilities for future advancement to supervisory, managerial, professional, or executive positions.

HISTORY

Prior to 1950, there were only three States, Colorado, Louisiana, and Massachusetts, with laws having some provisions relating to discrimination in the employment of older workers. The Colorado act, passed in 1903, specifies that no employer may discharge anyone between the ages of 18 and 60 because of age, but it does not apply to the hiring of individuals. The Louisiana act, passed in 1934, makes it unlawful for an employer having 25 or more employees to adopt any rule for the discharge of any employee or the rejection of an applicant under 50 because of age. A 1937 Massachusetts law prohibits discrimination in hiring or dismissal, make unlawful any contract which prevents employment of any person between 45 and 65 because of age, sets criminal penalties, and authorizes the Commissioner to publish the names of employers found in violation.

In 1950 Massachusetts amended its fair employment practice act to include a prohibition against discrimination because of age. The 1937 law was not repealed; aggrieved persons must choose to file charges under one or the other of these laws. In 1955 Pennsylvania also added age discrimination provisions to its fair employment practice act; New York did the same in 1958; Connecticut, Oregon, and Wisconsin in 1959; Delaware in 1960; Washington in 1961; New Jersey in 1962; and Michigan in 1965. Provisions relating to older workers were included in the antidiscrimination law when it was originally passed: in Puerto Rico in 1959; in Hawaii in 1963; and in Maine in 1965. Separate laws prohibiting discrimination based on age were passed in Rhode Island in 1956; Alaska in 1960; California and Ohio in 1961; Nebraska in 1963; Idaho, Indiana, and North Dakota in 1965. The Alaska law was incorporated in the Human Rights Law in 1965.

ADMINISTRATION AND ENFORCEMENT

Administrative agencies.—Eleven of these laws are enforced by the State labor department:

Delaware, Hawaii, Idaho, Indiana, Maine, Massachusetts (the 1937 law), Oregon, Pennsylvania, Puerto Rico, Rhode Island, Wisconsin.

The California law is enforced by the Department of Employment, and the New Jersey law by the Department of Law and Public Safety. The second Massachusetts law, and the laws of Alaska, Connecticut, Michigan, New York, and Washington are enforced by the State commissions against discrimination. The remaining five laws do not specify an administrative agency.

Enforcement.—Under 15 laws,[4] the administrative agencies are required to

[4] All but California, Colorado, Louisiana, Maine, Nebraska, North Dakota, Ohio, and Puerto Rico.

investigate complaints and to try to eliminate unlawful practices by conference, conciliation, and persuasion. In all of these States except Delaware and Indiana, if the conciliation attempt fails, the agency is empowered to hold a hearing and then, if necessary, to issue a court enforceable order requiring the guilty party to cease and desist from the discriminatory practice, and to take affirmative action, such as hiring, reinstating, or upgrading of the employee, with or without back pay, or restoring to union membership. If the guilty party fails to obey the order, he is subject to a criminal penalty, usually a fine of up to $500 and/or imprisonment for up to 1 year. In addition, some of these laws provide for issuance of injunctions or restraining orders, or for civil suits for damages.

Of the other eight laws, that of Puerto Rico makes the guilty party liable for damages and also makes him guilty of a misdemeanor. In civil actions for damages, the court may issue cease-and-desist and affirmative orders. The Secretary of Labor may also issue affirmative orders and may bring suit on behalf of the employees. The Ohio law has no enforcement provisions. In the remaining six—those of California, Colorado, Louisiana, Maine, Nebraska, and North Dakota—the only sanction are in the form of penalties—fines or imprisonment or both.

Educational programs.—To aid in administering the laws, educational programs to reduce or eliminate discrimination in employment on account of age are authorized in Alaska, California, Connecticut, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania, and Wisconsin. Under these programs, the agencies issue pamphlets, press releases, and publications to inform the public of its civil rights and responsibilities. They also make reports to the State legislatures on complaints and problems encountered and on recommended legislation.

Appendix B

Age Discrimination Prohibited Under State Laws

(U.S. Department of Labor, Bureau of Labor Standards, Fact Sheet No. 6-C, February 1966)

INTRODUCTION

At the present time 23 jurisdictions have laws that prohibit discrimination in private employment on the basis of age. In addition, a Maryland law makes such discrimination a "harmful" employment practice, but does not prohibit such a practice or establish specific enforcement procedures or set penalties. Over the years other State legislatures have passed resolutions declaring age discrimination to be against public policy, have prohibited such discrimination in public employment, or have taken other action, including making studies of the problem.

The accompanying charts show the major provisions in the 23 laws that actually prohibit certain practices in private employment. As can be seen from the charts, the purpose of these laws is to eliminate such practices as refusing to interview persons over a certain age regardless of their ability; refusing older employees on-the-job opportunities; discharging employees when they reach a certain age; expelling older workers from a union; and refusing to refer older applicants to employment opportunities. For more information, see Bureau of Labor Standards Fact Sheet No. 6–B, "Brief Summary of State Laws Against Discrimination in Employment Because of Age" (printed herein as appendix A).

This type of legislation has developed rather recently—the laws in all but 3 jurisdictions have been passed within the last 10 years. In general, the laws follow a pattern. Fourteen of them include a prohibition on the basis of age in their fair employment practice acts, which also prohibit racial or religious discrimination in employment. Most of the laws apply to employers, labor unions, and employment agencies. Usually they cover persons between the ages of 40 and 65, although some cover persons in their twenties and thirties. Most of the laws provide for attempts to eliminate discrimination through informal methods of conference, conciliation, and persuasion; and, if such efforts fail, for the issuance of court-enforceable orders requiring that the discriminatory practice be discontinued and affirmative action taken, such as hiring, reinstating, or upgrading the employee. They also require the administrative agency to set up an educational program to foster the employment of older workers.

ALASKA

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Ch. 10, approved and effective Feb. 24, 1960. Repealed and reenacted with fair employment provisions by ch. 117, approved May 7, 1965, effective May 8, 1965.	None specified.	Employers. Labor organizations. Employment agencies.	Nonprofit social club; religious, charitable, fraternal or educational association or corporation. Domestic service.	For employer: Refusing employment; barring; discriminating with respect to compensation, terms, conditions, or privileges of employment, when the reasonable demands of the position do not require such distinction. For labor organization: Excluding or expelling from membership; discriminating in any way against member, employer, or employee. For an employer or employment agency: Printing or circulating any statement, advertisement, or publication, using any application form, or making inquiries expressing limitation, specification, or discrimination as to age, unless based on a bona fide occupational qualification. For an employer, labor organization, or employment agency. Dishcarging, expelling, or otherwise discriminating against a person who has opposed unlawful practices, filed a charge, testified, or assisted in any proceeding under this act. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of such unlawful acts, or attempting to do so.	Commission on human rights.	If conciliation fails, commission may, after hearing, issue cease-and-desist and affirmative orders enforceable in the courts.	Willfully engaging in prohibited practices; resisting or interfering with administrator in performance of his duties; violating orders of the commission is a misdemeanor punishable by fine of up to $500, and/or imprisonment for up to 30 days.	Yes.

CALIFORNIA								
Provisions on older workers enacted by: Separate Age Discrimination Act, added to Unemployment Insurance Code. Ch. 1623, approved July 14, 1961, effective Sept. 15, 1961.	Between 40 and 64.	Employers of 6 or more.	Family employment. Domestic service.	For employer: Refusing to hire, discharging, dismissing, reducing, suspending, or demoting. Law does not apply to: Rejection or termination of employment where the individual fails to meet bona fide requirements for the job; bona fide retirement or pension plans; age limitation in apprenticeship program; cases where the law compels or provides for such action (e.g., recruitment practice of highway patrol). Promotions within existing staff, hiring or promotion on the basis of experience or training, rehiring on basis of seniority or prior service, or hiring under recruting program from specified schools are not violations in and of themselves.	Department of employment.	No specific provision. Injured person may bring suit for damages. (Opinion of legislative counsel.)	Violation of Unemployment Insurance Code provisions or regulation issued thereunder is misdemeanor punishable by fine of up to $500 and/or up to 6 months in jail.	Yes.
COLORADO								
Provision on older workers enacted by separate age discrimination law enacted 1903.	Between 18 and 60.	Employers.	None.	For employer: Discharging solely upon the ground of age.	No specific provision.	No specific provision.	Fine of not less than $100 nor more than $250 for each violation.	No.

CONNECTICUT

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Amendment to Fair Employment Practice Act. Public Act 145, Approved May 15, 1959, effective Oct. 1, 1959. Rules and regulations issued by Commission.	40 to 65, inclusive.	Employers of 5 or more. Labor organizations. Fair Employment agencies.	Family employment. Domestic service.	For employer: Refusing to hire; barring; discharging; discriminating in compensation, terms, conditions, or privileges of employment. For labor organization: Excluding from full membership rights; expelling from membership; discriminating in any way against member, employer, or other employees. For employment agency: Failing or refusing to classify properly, refer for employment; or otherwise discriminating. For employer, labor organization, employment agency or person: Advertising opportunities in such a manner as to restrict such employment so as to discriminate. Discharging, expelling, or otherwise discriminating against a person for opposing unfair practices, filing a complaint, or testifying or assisting in proceedings under this law. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of such unlawful acts, or attempting to do so. Law does not apply to: Bona fide occupational qualifications or needs; termination of employment where employee entitled to benefits under bona fide retirement or pension plan or collective bargaining agreement; operation of the bona fide retirement or pension plan, group or employee insurance plan, or apprenticeship system.	State commission on civil rights.	If conciliation fails, commission, after hearing, may issue cease-and-desist and affirmative orders enforcible in the courts. Complainant may also seek temporary relief or restraining order, or injunction.	None specified.	Yes.

DELAWARE

Provisions on older workers enacted by: Antidiscrimination Act. Ch. 337, approved and effective July 9, 1960. Ruling No. 2, issued 1960.	Between 45 and 65.	Employers. Employment agencies. Labor organizations.	None.	For employer or employment agency: Refusing to hire, employ, or license; barring; discharging; discriminating in compensation, terms, conditions, or privileges of employment. Printing or circulating any statement, advertisement, or publication, using any application form, or making inquiry expressing limitation, specification, or discrimination. For labor organization: Excluding or expelling from membership; discriminating in any way against members, employers, or employees because of age. For employer, labor organization, or employment agency: Discharging, expelling, penalizing, or otherwise discriminating against person for opposing forbidden practices, filing a complaint, testifying, or assisting in proceedings under this act. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of such unlawful acts, or attempting to do so. Law does not apply to: Bona fide occupational qualifications; termination or change of employment of any person unable to perform his duties; operation of bona fide retirement, pension, employee benefit or insurance plan. Law will not be construed to conflict with law relating to child or female labor.	Division against discrimination in the department of labor and industrial relations.	Not specified in law. Division may make rules and regulations necessary to effectuate the act. When complaint has been filed, department staff shall endeavor to eliminate such practices by conference, conciliation, and persuasion.	For first offense, fine is not more than $200; for second offense, fine of not more than $500 and/or imprisonment of not more than 90 days.	No.

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HAWAII

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Fair Employment Practice Act. Act 180, approved June 3, 1963, effective Jan. 1, 1964.	None specified.	Employers. Employment agencies. Labor organizations.	None.	For employer: Refusing to hire; barring; discharging; discriminating in compensation or terms, conditions, or privileges of employment. For labor organization: Excluding; expelling; otherwise discriminating against members, employers, employees. For employer or employment agency: Printing or circulating any statement or advertisement, or using application form, or making inquiry, expressing limitation, or discrimination. For employer, employment agency, or labor organization: Discharging, expelling, or otherwise discriminating against person for opposing unlawful practices, filing a complaint, testifying or assisting in proceedings. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of such unlawful practices, or attempting to do so. Law does not apply to: Refusing to hire person for good	Department of labor and industrial relations.	If conciliation fails, department may after hearing issue cease-and-desist and affirmative orders enforcible by the courts.	For violation of order, or for willfully resisting, preventing, impeding, or interfering with department in preformance of duties, fine up of to $200; for subsequent offenses fine of up to $500, and/or imprisonment for up to 90 days.	No.

				cause relating to ability to perform the work; terminating or changing employment of person who is unable to perform his duties; establishing or maintaining bona fide occupational qualifications; operation of terms or conditions of bona fide retirement, pension, employee benefit, or insurance plan; fulfilling statutory or security requirements of State or Federal Government agencies.				
IDAHO								
Provisions on older workers enacted by: Separate Age Discrimination Act. Ch. 154, approved Mar. 17, 1965, effective May 18, 1965.	Under 60 years.	Employers. Labor organizations. Employment agencies.	None.	For employer: Refusing to hire or employ; barring; discharging; otherwise discriminating in compensation, hire, tenure, terms, conditions, or privileges of employment, if the individual is the best able and most competent to perform the required services. For labor organization or employment agency: Prohibitions not specifically enumerated but a complaint alleging an unlawful employment practice may be filed against a labor organization or employment agency. Law does not apply to: Bona fide occupational qualifications; retirement or pension plans; or applicable security regulations established by the State or the United States.	Department of labor.	Commissioner of labor, after hearing, may make such orders as appropriate to enforce the act; orders are enforceable by the courts. Complainant or commissioner may also seek temporary relief or restraining order.	Willful violation of an order or willfully resisting, preventing, impeding, or interfering with commissioner in performance of duties is a misdemeanor, punishable by imprisonment for not more than 30 days and/or fine of $100 to $500.	No.

INDIANA

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Separate Age Discrimination Act. Ch. 368, approved Mar. 12, 1965, effective July 8, 1965.	Between 40 and 65.	Employers. Labor organizations.	Nonprofit religious, charitable, fraternal, social, educational, or sectarian organizations other than labor organizations and nonsectarian organizations engaged in social service work. Private domestic service. Farm labor.	For employer: Refusing to employ or rehire; dismissing or discharging an employee because he has furnished evidence in connection with a complaint. For labor organization: Denying full and equal membership rights or failing or refusing to classify members properly or to refer them for employment. Contracts: Discriminatory contracts or understandings entered into on or after Oct. 1, 1965, which tend to prevent employment solely because of age are null and void. Law does not apply to: Person who is qualified for benefits under an employer retirement or pension plan or system. Fixing compulsory retirement requirements for any class of employees at an age less than 65; fixing eligibility requirements for participation in any annuity, pension, or retirment plan; keeping records of age for such purposes.	Division of labor.	Commissioner may receive, investigate, and pass upon charges of discrimination. If conciliation fails, commissioner may issue a compliant, hold a hearing, and make findings of fact. Commissioner may publish the facts after a determination is made.	No provision.	No.

LOUISIANA

Provision on older workers enacted by Act 226, approved July 12, 1934.	Under 50 years.	Employers of 25 or more.	Hazardous occupation or occupations requiring unusual skill and endurance. Bus drivers (Op. Atty. Gen.).	For employer: Adopting any rule for the discharge of employees and for the rejection of applications for employment of new employees because of age. Law does not apply to: Employers with a system of pensioning employees having service no greater than 35 years and with a pension of no less than $45 per quarter.	No specific provision.	No provision.	Fine of not more than $500 and/or imprisonment for not more than 90 days.	No.

MAINE

Provision on older workers enacted by: Fair Employment Practice Act. Ch. 394, approved June 4, 1965, effective Sept. 3, 1965.	None specified.	Employers. Labor organizations. Employment agencies.	None.	For employer: Refusing to hire; barring; discharging; otherwise discriminating with respect to compensation, hire, tenure, terms, conditions, or privileges of employment. Provided, the individual is the best able and most competent to perform the services required. For labor organizations and employment agencies: No practices specified. Law does not apply to: Bona fide occupational qualifications; actions based on applicable security regulations; operation of the terms or conditions of a bona fide retirement or pension plan which have the effect of a minimum service requirement; termination of employment because of the terms or conditions of such plans. Operation of the terms or conditions of a bona fide group or employee insurance plan.	Department of labor and industry.	Complaints may be filed with the labor commissioner. No further procedure specified.	Fine of $100 to $250.	No.

MASSACHUSETTS

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Separate age discrimination law. Ch. 367, 1937.	Between 45 and 65.	Employers.	Domestic service. Farm labor.	For employer: Hiring; dismissing; contracting to prevent employment because of age.	Department of labor and industries.	Inspection, hearing, department may publish names of violators.	For violation, fine of not more than $100. For failure to keep records, fine of $25 to $100 for each day of failure to keep such records. Failure to cooperate with department, fine of $25 to $200. Discharge of employee for serving as witness, fine of $50 to $200.	No.
Amendment to Unlawful Discrimination Act.[1] Ch. 697, approved Aug. 1, 1950, as amended. Rules of practice and procedure issued by commission Jan. 6, 1961.	Between 45 and 65.	Employers of 6 or more. Labor organizations. Employment agencies.	Family employment. Domestic service. Nonprofit social club, fraternal, charitable, educational, or religious organization.	For employer: Refusing to hire; barring; discharging: discrimination in compensation, terms, conditions, or privileges of employment, or in rehiring, upgrading, reinstating. For labor organization: Excluding from full membership rights; expelling; discriminating in any way against member,	State commission against discrimination.	If conciliation fails, commission, after hearing, may issue cease-and-desist and affirmative orders enforceable in the courts.	For violation of orders or willful interference with commission in performance of its duties, imprisonment for not more than 1 year and/or fine of not more than	Yes.

Preemployment inquiry guide, Apr. 7, 1961. Rulings of commission.				employer, or other employees. For employer or employment agency: Printing or circulating statement, advertisement, or publication, or using application form, or making inquiry or record expressing limitation or discrimination. Inquiry into date of birth or age or an applicant, or revealing age of applicant to prospective employer by agency, except when based on a previously established bona fide occupational qualification; when necessary to check evidence for honesty or for criminal record; in compliance with governmental reporting requirements. For employer, labor organization, or employment agency: Discharging, expelling, or discriminating against person for opposing forbidden practices, filing complaint, testifying or assisting in any proceeding under this law. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of acts forbidden by this law or attempting to do so. Law does not apply to: Bona fide occupational qualifications.			$500. For failure to post commission notices, fine of $10 to $100.

[1] Sec. 9 provides that the previous statute remains in effect and gives to an aggrieved person an option of resorting to the procedures under either law. If he chooses to obtain redress under the 1937 statute, he may not resort subsequently to the procedures of the law against discrimination.

MICHIGAN

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Amendment to the Fair Employment Practice Act. Public Act 344, Approved July 23, 1965; effective October 1, 1965.	Between 35 and 60.	Employers of 8 or more. Labor organizations. Employment agencies.	Domestic service.	For employer: Refusing to hire or otherwise discriminating with respect to hire, tenure, terms, conditions, or privileges of employment. For employment agency: Failing or refusing to classify properly, refer for employment, or otherwise discriminating; conducting business under a name which connotes any limitation, unless it displays a nondiscrimination statement. For labor organization: Discriminating; limiting, segregating, or qualifying membership so as to deprive person of employment opportunities, limit opportunities, or adversely affect his status, wages, hours, or employment conditions.	Civil rights commission.	If conciliation fails, commission, after hearings, may issue cease-and-desist and affirmative orders, enforceable in the courts.	For refusing to post required notice, fine of $100 to $500.	Yes.

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NEBRASKA

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provision on older workers enacted by ch. 281, approved July 5, 1963, effective Oct. 19, 1963.	Over 40.	Employers. Labor organizations.	None.	For employer: Refusing to hire; discharging; otherwise discriminating with respect to terms, conditions, or privileges of employment, otherwise lawful when reasonable demands of job do not require age distinction; utilizing employment agency, placement service, training school, or center, labor organization, or other source which so discriminates. For labor organization: Discriminating as above; limiting, segregating, or classifying membership so as to deprive such person of lawful employment opportunities, limit, or adversely affect his status as employee or applicant, or affect adversely his wages, hours, or employment. For employer or labor organization: Discharging, expelling, or otherwsie discriminating against person who opposed such unlawful practices, filed a charge, testified, or assisted in any proceeding under this law. Law does not apply to: Termination of employment of person who is physically unable to perform his duties; retirement policy or system which is not a subterfuge; varying of insurance coverages according to age.	No specific provisions.	No provisions.	Misdemeanor; fine of not more than $10.	No.

Provisions on older workers enacted by: Amendment to law against discrimination. Ch. 37, approved May 7, 1962, effective June 6, 1962. Rulings of division.	Over 21.	Employers of 6 or more. Labor or organizations. Employment agencies.	Family employment. Domestic service. Nonprofit social club, fraternal, charitable, educational, or religious association.	For employer: Refusing to hire; barring; discharging; discriminating in compensation, terms, conditions, or privileges of employment. For labor organization: Excluding from membership; expelling; discriminating in any way against member, employer, or other employees. For employer or employment agency: Printing or circulating of any statement or publication, using any application form, or making any inquiry which expresses limitation, specification, or discrimination. Inquiring into date of birth or age of applicant, except when information is needed to maintain a bona fide occupational qualification; necessary so as not to interfere with operation of a bona fide retirement, pension, employee benefit, or insurance plan or program. For employer, labor organization, or employment agency: Discharging, expelling, or otherwise discriminating against person for opposing forbidden practices, filing a complaint, or testifying or assisting in proceedings under this act. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of forbidden practices or attempting to do so. Law does not apply to: Bona fide occupational qualifications or apprenticeship requirements; operation of bona fide retirement, pension, employee benefit, or insurance plan; termination or change of employment of person physically unable to perform his duties.	Division on civil rights in the department of law and public safety.	If conciliation fails, the director, after hearing, may issue cease-and-desist and affirmative orders enforcible in the courts.	Willful violation of orders or interfering with the commission in the performance of its duties is a misdemeanor, punishable by imprisonment for not more than 1 year and/or more than $500.	Yes.

NEW YORK

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Amendments to law against discrimination. Ch. 738, approved Apr. 14, 1958, effective July 1, 1958, as amended. Commission rulings interpretive of the age provisions of the law against Discrimination, issued 1963.	Between 40 and 65 specified in law. However, commission has ruled that discrimination means discrimination based on "over age."	Employers of 4 or more. Labor organizations. Employment agencies. Licensing agencies.	Family employment. Domestic service.	For employer or licensing agency: Refusing to hire, employ, or license; barring; discharging; discriminating in promotion, compensation, terms, conditions, or privileges of employment. For labor organizations: Excluding from membership; expelling; discriminating in any way against member, employer, or other employees. For employment agency: Discriminating in receiving, classifying, disposing, or acting upon applications, or in referring applicants. For employer, licensing agency, or employment agency: Printing or circulating any statement, advertisement, or	State commission for human rights.	Unless a conciliation agreement is made, commission, after hearing, may issue cease-and-desist and affirmative orders enforceable in the courts.	For willfully resisting, preventing, impeding, or interfering with commission in its duties or for willful violation of orders, misdemeanor punishable by imprisonment for not more than 1 year and/or fine of not more than $500.	Yes.

				publication, using any application form, or making any inquiry which expresses any limitation, specification, or discrimination, or which is made for the purpose of barring or discriminating. (If age is asked, form must state that the law prohibits discrimination because of age.) Discharging, discriminating, or retaliating against person for opposing forbidden practices, filing a complaint, testifying or assisting in proceedings under this act. For any person: Aiding, abetting, inciting, compelling, or coercing the doing of forbidden acts or attempting to do so. Law does not apply to: Bona fide occupational qualifications in certain cases; fulfilling other statutory requirements or requirement of other governmental agencies; termination of employment of person physically unable to perform his duties; retirement policy when same not a subterfuge; varying of insurance coverage according to age.				

NORTH DAKOTA

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Separate Age Discrimination Act. H. 918, approved Mar. 15, 1965, effective July 1, 1965.	Between 40 and 65.	Employers.	None.	For employer: Refusing to hire, employ, or license; barring; discharging when the reasonable demands of the position do not require an age distinction, and provided the individual is well versed in the line of business and is qualified physically, mentally, and by training and experience to satisfactorily perform the labor. Law does not apply to: Retirement policy or system when not a subterfuge to evade the purposes of this act.	No specific provision.	No provision.	Misdemeanor; punishable by fine of up to $25 and/or imprisonment of not more than 1 day.	No.

OHIO

Provisions on older workers enacted by: H. 1080, adding a section to the provisions establishing the department of industrial relations. Approved May 27, 1961, effective Aug. 28, 1961.	Between 40 and 65.	Employers.	None.	For employer: Refusing to interview an applicant for employment, or discharging an employee without just cause if the employee is physically able to perform the duties and otherwise meets the established requirements of the industry and laws pertaining to the relationship between employer and employee.	No specific provision.	No provision.	No provision.	No.

OREGON

Provisions on older workers enacted by: Supplement to Fair Employment Practices Act. Ch. 547, approved May 25, 1959, effective Aug. 5, 1959 (as amended). Statement of policy Jan. 29, 1960.	Between 25 and 65.	Employers of 6 or more. Employment agencies. Labor organizations. Persons who recruit, select, advertise for, or screen applicants for an employer. Out-of-State employers who advertise for and recruit for employees in Oregon, whether position is in or outside of Oregon.	Family employment. Domestic service. Nonprofit social club, fraternal, charitable, educational, or religious association.	For employer: Refusing to hire; barring; reducing; demotting; suspending; discharging; dismissing. For employer or employment agency: Printing or circulating statement, advertisement, or publication, or using application form, or making inquiry expressing limitation, specification, or discrimination because of age unless based on a bona fide occupational qualification. For labor organization: Excluding; expelling discriminating in any way against members, employers, or other employees. For employer, labor organization, or employment agency: Discharging, expelling or discriminating against any person for opposing forbidden practices, filing a complaint, testifying, or assisting in proceedings under this law. For any person aiding, abetting, inciting, compelling, or coercing the doing of acts forbidden by this law, or attemping to do so. Law does not apply to: Selection of employees on the basis of relevant educational experience or physical requirements. Positions requiring extensive training program. Selection of apprentices on the basis of ability to complete the required apprenticeship training and the industry average period of employment thereafter, before attaining age 65.	Civil rights division of the bureau of labor.	If conciliation fails, commissioner of labor, after hearing, may issue cease-and-desist and affirmative orders enforcible by mandamus, injunction, or by suit in equity to compel specific performance of order.	For willful interference with administration of the law and violation of orders of the Commissioner, imprisonment for not more than 1 year and/or fine of not more than $500. (Suits for damages are also allowed after such violation).	Yes.

PENNSYLVANIA

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Original Fair Employment tactices Act. Act 222, Approved October 27, 1955, age provisions effective July 1, 1956. Rulings of the Commission.	40 to 62 inclusive.	Employers of 6 or more within the State. Labor organizations. Employment agencies. Newspapers. Applicants. Employers seeking employees for jobs outside the State.	Family employment. Domestic service in a home. Agricultural employment.	For employer: Refusing to hire; barring; discharging; discriminating in compensation, tenure, terms, conditions, or privileges of employment if the individual is the best able to perform the services required. For labor organization: Denying full and equal membership rights; discriminating in hiring, tenure, terms, conditions, or privileges or employment, or; any matter related to employment. For employment agency: Refusing to classify properly, refer for employment, or otherwise discriminating. For applicant: Specifying age when seeking employment through an advertisement or egpressing limitation or preference as to age of prospective employer. For employer, employment agency, or labor organization, prior to employment or admission to membership: Printing or publishing notice or advertisement indicating preference, limitation, specification, or discrimination based on age;	Human relations commission in the department of labor and industry	If conciliation fails commission, after hearing, may issue cease-and-desist and affirmative orders enforceable in the courts.	Willful violation of orders or willful interference with commission in the performance of its duties is a misdemeanor, punishable by fine of $100 to $500 and/or imprisonment of not more than 30 days.	Yes.

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PUERTO RICO

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Inclusion in original antidiscrimination act, as amended. Act 100, Approved and effective June 30, 1959.	Between 30 and 65.	Employers. Labor unions.	None.	For employer: Discharging; suspending; demoting; reducing the salary; imposing or attempting to impose more burdensome working conditions; refusing to employ or reemploy; publishing or circularizing advertisementt, notices, or other statements denying employment opportunities to all persons indiscriminately by reason of age or establishing restrictions excluding such persons. For labor unions: Limiting, dividing, or classifying members so as to deprive members, or persons desiring or having a right to membership, of working opportunities. Law d es not apply to: Any of the acts performed with good cause.	Department of labor.	Secretary of labor or any worker having an interest in the matter may bring suit. Court may in civil actions, issue cease-and-desist orders and direct reinstatement of employee.	(1) Civil liability for twice the amount of damages sustained, or if no pecuinary damages are determinable, not less than $100 or more than $1,000; or twice the amount of damages if under $100; (2) Misdemeanor punishable by fine of not less than $100 nor more than $500 and/or imprisonment for not less than 30 days or more than 90 days.	No.
Amendment of private employment agency law. Act 92, approved and effective June 16, 1960.	Between 30 and 65.	Employment agencies.	None.	For employment agencies: Excluding persons because of age; publishing or circulating any statement, advertisement, or notice excluding persons because of age. Law does not appy to: Age limitations or requirements established by employment agencies where because of the nature of the work, age is a determining factor of capacity for performance of the work.	Department of labor.	Secretary of labor may investigate and bring suits, and may petition the superior court to issue writs of injunction or other legal remedies.	Misdemeanor punishable by fine of $100 to $500 and/or imprisonment for 30 to 90 days for first offense; for subsequent offenses, fine of $500 to 2,000 and/or imprisonment for 60 to 180 days.	No.

RHODE ISLAND

Provisions on older workers enacted by: Separate Age and Sex Discrimination Act. Ch. 3795 approved May 2, 1956, effective July 1, 1956, as amended. Commission rules and regulations.	Between 45 and 65.	Employers. Labor organizations. Employment agencies.	Private domestic service. Farm labor. Person qualified for benefits under an employer retirement or pension plan. Nonprofit religious, charitable, fraternal, social, educational, or sectarian organizations other than labor organizations and nonsectarian organizations engaged in social service work.	For employer: Refusing to employ or rehire; dismissing; discharging an employee for furnishing evidence in connection with a complaint under this law. For labor organization: Denying full and equal membership rights; failing or refusing to classify properly or to refer for employment. For employment agency: Failing or refusing to classify properly or to refer for employment or to otherwise discriminate. For employer or employment agency: Printing or circulating any statement, advertisement, or publication, or using application form, or making any inquiry which expresses intent to dismiss or refuse to employ or rehire, or which is made for the purpose of barring or discriminating. (If age is asked on application, it must state that the law prohibits discrimination because of age.) Contracts: Discriminatory contracts which prevent employment of persons 45 to 65 are void. Law does not apply to: Bona fide occupational qualifications; freedom of employer to fix compulsory retirement requirements at less than 65; fix eligibility requirements for annuity, pension, or retirement plan on specified basis; keep age records for any such purposes.	Department of labor.	If conciliation fails, director, after hearing, may issue cease-and-desist and affirmative orders enforceable in the courts.	None specified.	No.

WASHINGTON

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Amendment of law against discrimination in employment and by a new section added to the chapter entitled "Violation—Prohibited Practices." Ch. 100 Approved Mar. 15, 1961, effective June 8, 1961.	Between 40 and 65.	Employers of 8 or more. Labor organizations. Employment agencies. Licensing agencies.	Family employment. Domestic service. Nonprofit religious or sectarian organizations.	For employer or licensing agency: Refusing to hire, employ, or license; discharging; barring or terminating from employment; discriminating in promotion, compensation or in terms, conditions, or privileges of employment. For labor organization: Denying membership and full rights and privileges; expelling from membership; discriminating against any member, employer, or employee. For employment agency: Failing or refusing to classify properly, refer for employment, or otherwise discriminating. For employer, licensing agency or employment agency: Printing or circulating any statement, advertisement, or publication, or using any application form or making any	State board against discrimination.	If conciliation fails, board, after hearing, may issue cease-and-desist and affirmative orders enforcible in the courts.	Willful interference with board in performance of its duties or violation of orders is a misdemeanor.	No.

				inquiry expressing limitation, specification, or discrimination. For employer, employment agency, or labor organization: Discharging, expelling, or otherwise discriminating against any person for opposing forbidden practices, filing a charge, testifying or assisting in proceedings under this law. For any person: Aiding, abetting, encouraging, or inciting commission of unfair practices; attempting to obstruct or prevent compliance with the law or orders issued thereunder. Law does not apply to: Bona fide occupational qualifications; termination of employment of one physically unable to perform his duties; a retirement policy or system which is not a subterfuge; varying of insurance coverage; apprenticeship programs. (Age limits may be set for certain positions on special permission. Exemptions based on physical requirements of the job may be reviewed, granted, or denied by the director of the department of industrial relations.)				

WISCONSIN

Source	Coverage of persons of ages specified	Law applies to—	Exemptions	Discriminatory employment process prohibited	Administrative agency	Enforcement		Educational program authorized
						Procedure	Penalty	
Provisions on older workers enacted by: Amendment to Fair Employment Act. Ch. 149, approved June 25, 1959.	Between 40 and 65.	Employers. Labor organizations. Employment agencies. Licensing agencies.	Family employment. Hazardous occupations, such as law enforcement; firefighting. Nonprofit social club, fraternal, or religious organization.	For employer, labor organization, or licensing agency: Refusing to hire, employ, admit, or license; barring; terminating; discriminating in promotion, compensation, terms, conditions, or privileges of employment. For employer, licensing agency, or employment agency: Printing or circulating statement, advertisement, or publication, or using application form, or making inquiry expressing limitation, specification, or discrimination. Discharging or discriminating against any person for opposing discriminatory practices, making a complaint, testifying or assisting in any proceedings under this law. Law does not apply to: Termination of employment because person physically or otherwise unable to perform duties; retirement policy or system when not a subterfuge; varying insurance coverage according to age; exercise of age distinction where the knowledge and experience to be gained might be expected to aid in development of capabilities for future advancement to supervisory, managerial, professional, or executive positions.	Fair employment practices division, State industrial commission.	If conciliation fails, commission, after hearing, may serve order requiring compliance with its recommendations. Person aggrieved by noncompliance with order entitled to have order enforced by suit in equity.	Non specified.	Yes.

AGE DISCRIMINATION IN EMPLOYMENT

THURSDAY, MARCH 16, 1967

U.S. SENATE, SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Ralph Yarborough, chairman of the subcommittee, presiding.

Present: Senators Yarborough (presiding), Morse, Pell, Williams of New Jersey, and Javits.

Committee staff members present: Robert O. Harris, counsel to the subcommittee, and Eugene Mittelman, minority counsel.

Senator YARBOROUGH. The Subcommittee on Labor of the Committee on Labor and Public Welfare will come to order.

The hearing will continue on Senate S. 830 and S. 788, bills to prohibit discrimination in employment on account of age.

Our first witness this morning is Norman Sprague, Director of the National Council on the Aging.

You may proceed in your own manner.

STATEMENT OF NORMAN SPRAGUE, DIRECTOR, COMMITTEE ON EMPLOYMENT AND RETIREMENT, NATIONAL COUNCIL ON THE AGING

Mr. SPRAGUE. Thank you. The National Council on the Aging is a national, voluntary, nonprofit organization dealing with all aspects of aging. It is a membership organization made up largely of persons who are professionally involved with aging. They come from industry, labor, education, social welfare, health and medicine, religious organizations and government. Our organization is financially supported by foundations, company and union contributions, membership dues, and community funds and councils.

The Committee on Employment and Retirement, of which I am staff director, has had a specific and special interest in the industrial problems of the older worker.

Since 1958, we have carried out a variety of activities in this area, including: A survey of State age discrimination laws; a 3-day seminar on automation, manpower, and retirement policy; a national conference on manpower training and the older worker; and demonstration projects in six communities designed to communicate some innovative techniques in job development, employment counseling, and retraining of workers in this age group. In addition, we have developed monographs and pamphlets to aid community groups, and a documentary film, "The Wise Years Wasted," to dramatize the plight of the older worker.

I have appended to this testimony a statement on "The Employment Positon of Older Workers in the United States: A Collection of Facts," drawn from the research of the National Council on the Aging and from other statistical material. I shall draw upon the information in this document and from the National Council on the Aging experience of the past decade to point to some of the most pressing problems of the older workers.

At present, there is no specific Federal legislation and financing to deal effectively with middle-aged and older workers' problems. Legislation to assist the older worker, including prohibition of discrimination in employment because of age, is long overdue. For people 65 and older there are—inadequate and uneven as they are—retirement insurance benefits under the Social Security Act, old age assistance, medicare, medicaid, and the Older Americans Act. Under the Manpower Development and Training Act, the U.S. Department of Labor and the National Council on the Aging have worked in creative ways to help the older worker, yet only 11 percent of the persons now assisted under this act are in the age 45 or older group. The Economic Opportunity Act was designed specifically to aid the poor. Thus, legislation prohibiting discrimination in employment because of age, coupled with action programs to help solve workers' and employers' practical problems, properly funded and administered, would be the first major breakthrough for this group.

This legislation, with provisions for research, educational, and information programs and increased facilities for older workers, might well be termed the "Older Worker Employment Act of 1967." It would provide a valuable addition to our human resources and manpower development programs.

The problem of age discrimination in employment is a complex one, because it is seldom a matter of the blind or arbitrary prejudice which often exists for reasons of race, creed, color, national origin, or sex. Age discrimination is a more subtle series of problems, based upon a combination of institutional factors and stereotyped thinking. For example, labor market conditions, seniority and promotion-from-within policies, pension and insurance costs, and mandatory retirement policies often make employers reluctant to hire older workers—in addition to the negative, stereotyped, and inaccurate views often held concerning the physical abilities, learning capacities, and psychological flexibility of older persons.

The hard core of the older-worker problem lies in the numbers of able-bodied persons over 45 who are unsuccessfully seeking work. In 1964 there was a monthly average of 1 million persons 45 and over unemployed, and their unemployment lasted an average of 19.4 weeks. The maze of difficulties facing the unemployed older worker should concern us because of the desire of most able-bodied persons for a decent job.

We are also concerned with the psychic consequences of failure to find employment. These certainly provide us with the humanitarian reasons for concerning ourselves with the problems of older workers. What is more to the point here, however, is that for most workers in this group, a job is essential for economic reasons. Most workers in this age group have dependents to provide for, and this is a period

in the family life cycle when basic living expenses remain high. For example, in a demonstration project sponsored by the National Council on the Aging in South Bend, Ind., among 3,000 workers aged 50 and over, there were 2,000 dependents under age 19.

A long period of unemployment means that unemployment benefits are exhausted, and after this there is no social income program until the individual becomes eligible for social security or private pension benefits. To put it plainly, without a job the over-45 worker will become financially dependent upon his family, or, more likely, the community.

At present, to repeat, there is no specific Federal legislation and financing to deal effectively with middle-aged and older workers' problems. Now under consideration are bills to prohibit age discrimination in employment. Senate bill S. 830 is a model in certain important respects, in that it focuses upon many of the problems of the older worker that we have found to be crucial and it calls for activities and programs of the sort that our experience has shown to be effective in dealing with these problems.

Our survey of State age-discrimination legislation indicated that some such legislation now exists in 23 States and Puerto Rico. "Age" is most often defined by these statutes as age 40 to 65.

In the States where there is, in addition to enforcement procedures in the statute, an active program for older worker job counseling and placement—California and Massachusetts, for example—the legislation has worked well. In some of the jurisdictions, on the other hand, no procedures or personnel are provided to carry out the law. In general, the States have been unable to provide sufficient staff to carry out well the statutes enacted. Where such a situation exists, the statute itself is obviously largely ineffective.

State experience has shown that age-discrimination legislation, backed up by adequate enforcement machinery, can assist the older worker. Most enforcement officials find value in the statutes, especially in view of their utility in eliminating discriminatory advertising and application forms, providing an opportunity for more older workers to reach the interview stage, and providing support for educational programs. It also suggests that such legislation should be applied uniformly to workers throughout the United States.

State experience has also shown that age-discrimination legislation is best administered in a separate agency; that is, an agency that is not administering or enforcing other discrimination statutes. If age discrimination is treated simply as a variation of discrimination based on race, sex, and so on, there is a real danger that its unique features will not be recognized and treated. The single-agency approach is supported by the relatively high degree of success which has been achieved with a small staff in Oregon, the one State whose age statute is enforced by a separate older worker division.

As to the question of bona fide job qualifications, there is clearly a need for studies to be made of certain occupations to determine the extent to which age is a relevant qualification. There are clearly occupations where age is a factor. For example, a study of truck-drivers indicated that 55 is a reasonable upper age limit beyond which it might be too risky to employ a man in this occupation. On the

other hand, there are many occupations which can be satisfactorily carried out without reference to age. This points to a need for studies to be made of a number of occupations, to determine the extent to which age is a relevant qualification.

This kind of research could be carried out systematically and efficiently at the Federal level, while similar studies undertaken by each State would be both costly and confusing. A compelling reason for Federal jurisdiction in this matter is the need for uniformity, in order to prevent a burden on interstate commerce. It is difficult for an employer who operates in many States or whose personnel travel among the States, to be subjected to the threat of diverse and conflicting regulation of hiring practices—for example, airline crews. At the same time, Federal guidelines, based upon a national study, could be flexible enough to allow for regional and local differences.

Research on fair job qualifications is only one example of the many kinds of information, on a national basis, that we need in order to deal with the problems of older workers. An important feature of bill S. 830 is that it specifically provides for this type of study, in section 3 (a) and (b).

One of the most dramatic examples of how older workers can be helped to find new jobs occurred after the Studebaker plant shutdown of December 1963 in South Bend, Ind. The basic core of long-term Studebaker employees consisted of about 6,800 workers, whose average age was 55—3,000 were over 50 years of age. Under the sponsorship of the community council in South Bend, the U.S. Department of Labor and the National Council on the Aging, an older worker reemployment demonstration project was established, providing intensive job counseling, intensive job development, and intensive publicity. The substantial success of this project is overcoming age barriers to employment seems to be attributable to the combination of concentrated and wide-ranging services, the very active cooperation of the community involved, and adequate funding by the Federal Government.

Section 3 (c) and (d) of Senate bill S. 830, which directs the Secretary of Labor to—

> foster, through the public employment service system and through cooperative effort, the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons; and to sponsor and assist State and community institutional and educational programs—

would establish formal procedures for expanding the kinds of activities and services—which seemed to account for the dramatic success of the South Bend project—and to provide adequate funding for the initiation of such activities on a national level.

It is our experience, in working with communities and States, industry and organized labor, that some criteria for age discrimination legislation are:

1. Enforcement procedures—the rule must have sanctions.
2. Recordkeeping provisions as to age.
3. Research, education, and public information provisions.
4. An active remedial program which provides for older workers job counseling, job development, and job placement services.

Of particular importance in S. 830 is section 5 which directs the Secretary of Labor to undertake a study of institutional and other

arrangements giving rise to involuntary retirement. The long-term consequences of retirement trends raise important questions of public policy. These trends have been toward mandatory retirement, early retirement, and retirement at higher benefit levels. Thus far, American society has been attempting to solve the economic aspects of aging through retirement rather than employment. Retirement is often a substitute for the job creation which results from healthy economic growth. Retirement frequently conceals unemployment. Early retirement is often a device to spread the number of jobs in an industry.

Do we want an ever-increasing number of older, potentially productive people not working? Do we want an aging person to have some alternatives—full-time employment, part-time employment, full-time retirement?

Economist John T. Dunlop of Harvard, speaking at the 1965 NCOA Seminar on Automatic, Manpower, and Retirement Policy, said:

> On the basis of the vast differences among the aging, policies permitting wide diversities in retirement among individuals would appear appropriate. On philosophical grounds, after a lifetime of developing an individuality, it would appear that older workers would prefer more than a few standardized options relating to the timing, form and extent of retirement.

There are currently 20 million persons aged 65 and over. Approximately one-fifth of these are employed. This one-fifth receives one-third of the total aggregate income received by all persons aged 65 and over. Many of the remaining retired four-fifths need and want jobs. They need and want jobs for economic and psychological reasons. Retirement is not the answer for all of them.

The Bureau of Labor Statistics modest but adequate budgets for older individuals and couples are met only by those persons aged 65 and over who have a private pension in addition to their social security benefits, yet only 8 percent of persons aged 65 and over are receiving private benefits. This is 1962 data.

In summary, we endorse the principle of legislation prohibiting discrimination in employment of workers age 45 to 65, particularly where that legislation provides for remedial action to assist positively the older workers, and where the legislation provides for a study of involuntary retirement.

This legislation is especially important at this time of high employment when, as the Council of Economic Advisers has told us, in order to control inflation, we must assist the hard-core unemployed through special programs rather than through any further stimulation of the national economy.

Senator YARBOROUGH. Mr. Sprague, this is a very valuable statement. In testimony yesterday, Senator Javits was the first witness followed by Secretary of Labor Wirtz and we had other testimony that ran until about 12:45, but you have brought to our attention many new facts and many new approaches to this question.

I think one witness yesterday testified as to how many Americans there were over 45 years of age.

On page 8, you say there are 20 million age 65 and above.

Do you have that statistic there about how many people are now over 45?

Mr. SPRAGUE. No, I don't have it. I believe it is 53 million, but I am not sure.

Senator YARBOROUGH. That is roughly correct. The are 37 million between the ages of 45 and 64; 37 million in addition to the 20 or so million over 65 would total 55 million. Then 55 million, more than a fourth of the population is over 45 years of age.

You say in the statement here that only one-fifth of those over 65 were employed but they received a third of all the income.

Mr. SPRAGUE. Yes.

Senator YARBOROUGH. We had one witness that estimated those employed over 65 received half of all their income from work rather than from social security and pensions payments.

Now we come to those that are far more capable of work and younger and more vigorous at 45 to 65 and see what we are losing there.

I prefer to utilize their skills and their talents and I am impressed by your statement that these actual programs ought to help solve both workers' and employers' practical problems.

I think the employer misunderstands this problem very often.

I appreciate what you say about calling this the Older Worker Employment Act of 1967. Before the work is all done on this we may change this title "To Prohibit Age Discrimination in Employment" to "The Older Worker Employment Act of 1967," except that some people who want to come under this act are so young they could not be called older workers.

Senator Morse.

We are glad to have Senator Morse here this morning. He is one of the most valued members of the Labor and Public Welfare Committee and this subcommittee, with great knowledge of labor law in America and wide experience in World War II applying the Manpower Act. He is probably the Senator with the broadest knowledge of this subject in the U.S. Senate.

He was unavoidably called away to other duties yesterday. We are very glad that he has joined us here because his work on the War Labor Board before he came to the Senate and in the more than a score of years here he has constantly worked on these labor problems bringing his valuable knowledge to this experience.

Senator Morse, we have an article in the Wall Street Journal this morning telling of the growing support for this legislation over this country.

We are very glad to see you were able to get away from your other duties and be here this morning to add your skill and your knowledge to these hearings.

Senator MORSE. Mr. Chairman, this generosity you have just extended to me has attained for you a new job. I am going to make you my campaign manager next year in view of that Texas generosity you have just extended to me.

I am sorry I could not be here yesterday to hear Senator Javits and Secretary Wirtz and the others, and, therefore, I hesitate to make any comment this morning because I think probably it would be redundant due to the fact that those men have already been on the witness stand.

I first want to tell you, Mr. Sprague, that it is an excellent statement which you made this morning.

You made reference in your prepared statement to the single agency approach that is set forth in the Oregon law, and I was pleased that you made mention of the Oregon law.

I would like to suggest, Mr. Chairman, that we ought to tap a source of information that we have right at hand. I think the staff ought to speak to Senator Hatfield who was the Governor of our State when this law was involved, and ask him either to appear as a witness before the subcommitee or file a memorandum with us bearing upon his experience when he was Governor on the development of the Oregon law.

I think that you are completely accurate, Mr. Sprague, when you point out that Oregon is the one State whose age statute is enforced by a separate older working division.

I would like to hear Senator Hatfield come before the committee or file a statement for the record bearing upon this experience with that Oregon law.

Senator YARBOROUGH. Senator Morse, will you yield a second there? I would like to take a minute to instruct our counsel to contact Senator Hatfield's staff as soon as the hearing is over this morning to tell him of Senator Morse's request.

I adopt that as a request of this subcommittee and would like for Senator Hatfield to present this information.

(The material referred to was subsequently supplied as follows:)

FACTS RELATING TO OREGON SENIOR WORKER LAWS, BY HON. MARK O. HATFIELD, A U.S. SENATOR FROM THE STATE OF OREGON

Oregon senior worker laws were enacted in 1959. The laws prohibit age discrimination in hiring practices, and other personnel actions, against any individual between the age of 25 and 65 years, inclusive. Employers of less than six persons are exempt under the law, as are police and fire departments. See appendix A for a copy of the pertinent laws.

The laws are administered by the Senior Worker Division of the Oregon Bureau of Labor. Education, conference, persuasion, and conciliation are the primary tools employed in administering the laws. Enforcement provisions are withheld as a matter of last resort. The Senior Worker Division is a separate entity within the Oregon Bureau of Labor. Its primary and sole purpose is aimed at eliminating age barriers to employment.

Detailed rules or policies for administering the senior worker laws are to be found in the "Statement of Policy" at appendix B. This statement of policy was published only after extensive and thorough study by a panel of businessmen, labor officials, and lay members of the community in late 1959. This "Statement of Policy" was explained in detail at 23 public hearings held in the major population centers of the State of Oregon during the first quarter of 1960. Seven years have elapsed since adoption of the stated policies. It has been unnecessary to amend them.

How successful have the laws been? We feel that the senior worker laws have been quite successful. Advertising on the basis of age is now nonexistent. Through the utilization of the laws as a "key to the businessman's door, and as a means to keeping his attention" we have been able to conduct a continuous educational program aimed at

lifting the age barrier. We are the first to recognize that a law will not prevent every employer from discriminating on the basis of age. But most people obey the law so the law is quite effective.

APPENDIX A

DISCRIMINATION ON BASIS OF AGE—OREGON REVISED STATUTES, CHAPTER 659

PURPOSE

The purpose of ORS 659.010 to 659.110 is to encourage the fullest utilization of available manpower by removing arbitrary standards of race, religion, color, national origin or age as a barrier to employment of the inhabitants of this state; to insure human dignity of all people within this state, and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of discrimination of any kind based on race, religion, color or national origin. To accomplish this purpose the Legislative Assembly intends by ORS 659.010 to 659.110 to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of discrimination because of race, religion, color or national origin are based.

(2) An adequate remedy for persons aggrieved by certain acts of discrimination because of race, religion, color or national origin or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of discrimination through a procedure involving investigation, conference, conciliation and persuasion; to encourage the use in good faith of such machinery by all parties to a complaint of discrimination; and to discourage unilateral action which makes moot the outcome of final administrative or judicial determination on the merits of such a complaint.

659.010 Definitions for ORS 659.010 to 659.110. As used in ORS 659.010 to 659.110, unless the context requires otherwise:

(1) "Bureau" means the Bureau of Labor.

(2) "Cease and desist orders" means an order signed by the commissioner, taking into account the subject matter of the complaint and the need to supervise compliance with the terms of any specific order issued to eliminate the effects of any unlawful practice found, addressed to a respondent requiring him to:

(a) Perform an actor series of acts designated therein and reasonably calculated to carry out the purposes of ORS 659.010 to 659.110, eliminate the effects of an unlawful practice found, and protect the rights of the complainant and other persons similarly situated;

(b) Take such action and submit such designated reports to the commissioner on the manner of compliance with other terms and conditions specified in his order as may be required to assure compliance therewith; or

(c) Refrain from any action designated in the order which would jeopardize the rights of the complainant or other person similarly situated or frustrate the purpose of ORS 659.010 to 659.110.

(3) "Commissioner" means the Commissioner of the Bureau of Labor.

(4) "Conciliation agreement" means a written agreement settling and disposing of a complaint under ORS 659.010 to 659.110 signed by a respondent and an authorized official of the Bureau of Labor.

(5) "Employe" does not include any individual employed by his parents, spouse or child or in the domestic service of any person.

(6) "Employer" does not include a club exclusively social, or a fraternal, charitable, educational or religious association or corporation, if such a club, association or corporation is not organized for private profit, nor does it include any employer with less than six persons in his employ.

(7) "Employment agency" includes any person undertaking to procure employes or opportunities to work.

(8) "Entity" includes employers, labor organizations, employment agencies, places of public accommodation, resort or amusement as defined in ORS 30.675 or vocational, professional or trade schools.

(9) "Labor organization" includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employes.

(10) "National origin" includes ancestry.

(11) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(12) "Respondent" includes any person or entity against whom a complaint or charge of unlawful practices is filed with the commissioner or whose name has been added to such complaint or charge pursuant to subsection (1) of ORS 659.050.

(13) "Unlawful employment practice" includes only those unlawful employment practices specified in ORS 659.030 and subsection (1) of ORS 659.026.

(14) "Unlawful practice" means any unlawful employment practice or any distinction, discrimination or restriction on account of race, religion, color or national origin made by any place of public accommodation, resort or amusement as defined in ORS 30.675 or by any person acting on behalf of any such place, or any violation of ORS 345.240, 659.033, 659.037, or rules and regulations adopted pursuant to subsection (5) of ORS 659.100 but does not include a refusal to furnish goods or services where the refusal is based on just cause.

659.015 Declaration of policy against discrimination in employment because of age. It is declared to be the public policy of Oregon that available manpower should be utilized to the fullest extent possible. To this end the abilities of an individual, and not any arbitrary standards which discriminate against an individual solely because of his age, should be the measure of the individual's fitness and qualification for employment.

659.024 Unlawful employment practice for private employer to discriminate because of age. (1) It is an unlawful employment practice for an employer to refuse to hire or employ or to bar, discharge, dimiss, reduce, suspend or demote any individual, because of his age if the individual is 25 years of age or older and under 65 years of age; but the selection of employes on the basis of relevant educational or experience requirements, or relevant physical requirements, including but not limited to strength, dexterity, agility and endurance, is not an unlawful employment practice.

(2) It is an unlawful employment practice for any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to age of any person who is 25 years of age or older and under 65 years of age, or any intent to make such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(3) "Employer," as used in this section, means any person who has six or more persons in his employ, but does not include the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities.

(4) The provisions of this section apply to an apprentice under ORS chapter 660 but the selection of an apprentice on the basis of the ability to complete the required apprenticeship training and the industry average period of employment thereafter before attaining the age of 65 is not an unlawful employment practice.

659.026 Unlawful employment practice for public employer to discriminate because of age. (1) It is an unlawful employment practice for a public employer or any person acting for a public employer to disqualify or discriminate against any individual in any civil service entrance, appointment or promotion examination or rating, or to refuse to hire, employ or reemploy or to bar, discharge, dismiss, reduce, suspend or demote any individual because of his age if the individual is 25 years of age or older and under 65 years of age; but the compulsory retirement of employees required by law at an age under 65 years and the selection of employes on the basis of relevant educational experience requirements or relevant physical requirements including, but not limited to, strength, dexterity, agility and endurance, are not inlawful employment practices.

(2) The complaint and appeal procedure provided under this chapter shall not apply to an employe, against whom an unlawful employment practice described in subsection (1) of this section has allegedly been practiced, to whom there applies a procedure for administrative review of the practice as provided under any other statute governing employment by a public employer.

(3) "Public employer," as used in this section, includes the state, counties, cities, districts, authorities, public corporations and entities and any of their instrumentalities organized and existing under charter or law, which employ

one or more persons, except the Oregon National Guard, the Oregon unorganized militia and the Oregon Naval Militia.

(4) The provisions of this Act do not apply to:

(a) Employes of institutions under the Oregon State Board of Control, including but not limited to, the Oregon State Penitentiary and the Oregon State Correctional Institution, whose duties, as assigned by the warden or superintendent, include the custody of persons committed to the custody of or transferred to the institution.

(b) Employes of the Department of State Police who are classified as police officers by the Superintendent of State Police.

(c) Employes of the Oregon Liquor Control Commission who are classified as enforcement officers by the administrator of the commission.

(d) Employes of the State Department of Agriculture who are classified as enforcement officers by the director of the department.

(e) Sheriffs and those deputy sheriffs who duties, as classified by the sheriff, are the regular duties of police officers.

(f) Police chiefs and policemen of a city who are classified as police officers by the council or other governing body of the city.

(g) Fire chiefs and firemen of a political subdivision of this state who are classified as fire fighters by the governing body of the political subdivision.

(h) Weighmasters employed by the State Highway Department.

659.040 Complaints of unlawful employment practices.—(1) Any person claiming to be aggrieved by an alleged unlawful employment practice, may, by himself or his attorney, make, sign and file with the commissioner a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice.

659.100 Elimination and prevention of discrimination by Bureau of Labor; employment of personnel.—(1) The Bureau of Labor may eliminate and prevent discrimination in employment because of race, religion, color or national origin or by employers, employes, labor organizations, employment agencies or other persons and take other actions against discrimination because of race, religion, color or national origin as provided in ORS 659.010 to 659.110. The Bureau of Labor hereby is given general jurisdiction and power for such purposes.

(2) Except for discrimination against employes who are described in subsection (2) of ORS 659.026, the Bureau of Labor is given jurisdiction and power over instances of discrimination in employment because of age, as prohibited by ORS 659.024 and ORS 659.026.

(3) The Bureau of Labor may eliminate and prevent violations of ORS 659.033 and may eliminate and prevent discrimination or restrictions because of race, religion, color or national origin by vocational, professional and trade schools licensed under any law of the State of Oregon, or by any place of public accommodation, resort or amusement as defined in ORS 30.675 or by any person acting on behalf of such place. The Bureau of Labor hereby is given general jurisdiction and power for such purposes.

(4) The commissioner shall employ a deputy commissioner and such other personnel as may be necessary to carry into effect the powers and duties conferred upon the Bureau of Labor and the commissioner under ORS 659.010 to 659.110 and may prescribe the duties and responsibilities of such employes. The Commissioner of the Bureau of Labor may delegate any of his powers under ORS 659.010 to 659.110 to the deputy commissioner employed under this subsection.

(5) In accordance with any applicable provision of ORS chapter 183 the commissioner may adopt reasonable rules:

(a) Establishing what acts and communications constitute a notice, sign or advertisement that public accommodation or real property will be refused, withheld from, or denied to any person or that discrimination will be made against him because of race, religion, color or national origin.

(b) Establishing what inquiries in connection with employment and prospective employment expresses a limitation, specification or discrimination as to race, religion, color, national origin or age.

(c) Establishing what inquiries in connection with employment and prospective employment soliciting information as to race, religion, color, national origin or age are based on bona fide job qualifications.

(d) Establishing rules for internal operation and rules of practice and procedure before the commissioner under ORS 659.010 to 659.110.

(e) Establishing rules covering any other matter required to carry out the purpose of this Act.

(6) In adopting rules under this subsection the commissioner shall consider the following factors, among others:

(a) The relevance of information requested to job performance in connection with which it is requested.

(b) Available reasonable alternative ways of obtaining requested information without soliciting responses as to race, religion, color, national origin or age.

(c) Whether a statement or inquiry soliciting information as to race, religion, color, national origin or age communicates an idea independent of an intention to limit, specify or discriminate as to race, religion, color, national origin or age.

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind of transaction which it contemplates.

(e) The ease with which the independent idea relating to a legitimate objective of the kind of transaction contemplated could be communicated without connoting an intention to discriminate as to race, religion, color, national origin, or age.

(7) No person delegated any powers or duties under this section shall act as prosecutor and examiner in processing any violation under ORS 659.010 to 659.110.

659.102 Enforcement divisions in Bureau of Labor.—(1) The Labor Commissioner may establish a separate division in the bureau to enforce the prohibition of the unfair employment practice described in subsection (1) of ORS 659.024.

(2) The Commissioner may establish a separate division in the bureau to enforce the prohibition of the unfair employment practice described in subsection (1) of ORS 659.026.

659.110 Wilful interference with administration of law and violation of orders of commissioner prohibited.—(1) No person shall wilfully resist, prevent, impede or interfere with the commissioner or any of his authorized agents in the performance of duty under ORS 659.010 to 659.110 or wilfully violate an order of the commissioner.

(2) An appeal or other procedure for the review of any such order is not deemed to be such wilful conduct.

APPENDIX B

STATE OF OREGON,
BUREAU OF LABOR,
Portland, Oreg., October 3, 1966.

STATEMENT OF POLICY

(Oregon Revised Statutes, Chapter 659)

PROHIBITING DISCRIMINATION IN EMPLOYMENT ON THE BASIS OF AGE

(Short Title: Senior Worker Law)

1. It is declared to be the public policy of Oregon that available manpower should be utilized to the fullest extent possible. To this end the abilities of an individual, and not any arbitrary standards which discriminate against an individual solely because of age, should be the measure of the individual's fitness and qualification for employment.

2. It is not intended that the effect of this law should reduce the quality of employees hired by Oregon employers. On the contrary, the removal of automatic, arbitrary, and unsubstantiated age limitations in employment will increase the average employer's span of selection for qualified, experienced, and stable employees, by one-third.

3. The law contemplates emphasis upon education and persuasion, backed by enforcement; therefore, the Oregon Bureau of Labor is approaching the administration of the Senior Worker Law by the adoption of a series of interpretive policies, rather than the promulgation of rigid and inflexible rules and regulations.

4. In answer to the many questions relating to this law, regarding what is proper and what is improper under the law, the appended series of questions

and answers have been prepared for the guidance of employers and those other persons, or agencies, who assist them in recruiting, selecting, advertising for and screening applicants for employment. Additional questions on this subject, or any other aspect of the Senior Worker Law, will be promptly answered upon receipt of a written communication addressed to the Senior Workers Division, Oregon Bureau of Labor, 1400 S.W. 5th Ave., Portland, Oregon 97201. The policies enumerated herein are published with the reservation that change may be necessitated by future experience factors.

5. This publication supersedes the Bureau of Labor publication on this subject, dated January 29, 1960. Policies enumerated herein were adopted after being subjected to twenty-three public hearings held in the major population centers of the State of Oregon in 1960.

NORMAN O. NILSEN,
Commissioner of Labor,
State of Oregon.

QUESTIONS AND ANSWERS PERTAINING TO THE WORKER LAW

(Oregon Revised Statutes, Chapter 659)

DISCRIMINATION ON BASIS OF AGE

A. Individuals of what age are covered by the law?

1. Any individual between ages 25 and 64 inclusive.

B. When is the law effective?

1. It is effective now, and has been since August 5, 1959.

C. Does the law give persons between ages 25 and 65 any special privileges in employment?

1. No, the purpose of the law is to afford every individual equal opportunity to compete for, or to hold, any job for which he may be qualified without regard to his age, with specific emphasis on that age group ranging from ages 25 to 65. It is aimed at establishing the consideration of the qualifications of an applicant, or employee, as the sole test in the selection of an employee and other personnel actions relating to employment.

D. Who is subject to the law?

1. Any employer who employs six (6) or more persons.

2. Any person who recruits, selects, advertises for, or screens applicants for the hire of an employer.

3. Out-of-State employers who advertise for and recruit within the State of Oregon for employees, whether the position is in or outside of the State of Oregon.

E. Does the law obligate an employer to hire only persons between ages 25 and 64 inclusive?

1. No, the selection of employees may be based on relevant education or experience requirements or relevant physical requirements, including but not limited to, strength, dexterity, agility, and endurance, provided they are applied equally to all applicants. The term "relevant" is considered to be "valid" occupational and/or job requirements.

F. Who is not subject to the law?

1. The law does not apply to a club exclusively social, or a fraternal, charitable, educational or religious association or corporation, if such club, association or corporation is not organized for private profit, nor does the law apply to any employer with less than six (6) persons in his employ.

G. What acts are prohibited by the law?

1. Refusal to hire or employ an individual because of age, if between ages 25 and 64 inclusive.

2. To bar an individual, or group of individuals, from employment because of age, if between ages 25 and 64 inclusive.

3. To demote or reduce an individual, or group of individuals, from a job, employment, or position, because of age, if between ages 25 and 64 inclusive.

4. To discharge, dismiss, or suspend an individual, or group of individuals because of age, if between ages 25 and 64 inclusive.

5. It is also forbidden for any person to aid, abet, incite, compel, or coerce the doing of any of the above acts. In this respect, an employment agency is considered to be a "person" and subject to the limitations placed by the law.

H. May an applicant's age be asked prior to employment?

1. Yes, the law does not prohibit this.

I. Are Federal agencies subject to the law?

1. The State law does not affect Federal agencies; however, it is hoped such agencies will, as a matter of policy, comply with this law.

J. What about jobs that require extensive training programs before the employee becomes productive on the job?

1. Ask the question, "Will this applicant remain with my company as long as the average person who has preceded him in a like training program?" If the answer is "yes", refusal to hire because of age could result in a complaint because of discrimination, if the applicant is otherwise qualified.

Extensive training is considered to be a period of training in excess of six months.

K. May an employer require the automatic early retirement of an employee (retirement prior to age 65)?

1. Retirement and pension plans that provide for automatic retirement, at an age earlier than age 65, solely because of age, can be the basis for complaint for discrimination on the basis of age.

L. May an employer maintain a pension plan or retirement plan under which an employee is not eligible to join if he was hired at an age beyond the maximum entrance age established for such plan?

1. Yes, such an employee could be advised that he would be excluded from such a plan, or if he were to be included that he might expect to receive a reduced amount of benefits on attainment of retirement eligibility. On the other hand, it would be unlawful for the employer to refuse to hire a person for the sole reason that his age exceeded the maximum entrance age for an established pension or retirement plan.

M. What about the employer who operates under the policy that among people who meet minimum employment qualifications, the younger applicant will always be given preference?

1. Such an employer would be inviting numerous complaints and investigations for discrimination on the basis of age.

N. How can a newspaper or employer determine whether a given phrase in advertisements is proper or improper?

1. Ask the question "does the phrase conceivably include individuals between ages 25 and 64 inclusive?" If the answer is "yes", the phrase would be nondiscriminatory. For example: "recent college graduate" could conceivably include a person between ages 25 and 64 inclusive, such a phrase would be proper. On the other hand, "young" could not conceivably include individuals within the 25 and 64 age range and is therefore discriminatory.

O. What are the principal phrases or words that are considered improper for use in advertisements?

1. Phrases or words which are considered to be clearly improper (discriminatory) under the test set forth, are: (1) "boy" (2) "girl" (3) "young" and (4) any phrase designating an exclusive age group such as "ages 25 to 35" or a preference for any age or age group such as "age 25 to 30 preferred."

All of these would exclude individuals between ages 36 and 64 inclusive.

P. What are some of the phrases which would not be discriminatory?

1. Recent college graduate, veteran, recent high school graduate, waitress, over 21, draft exempt, mature couple, beginner, apprentice, must be single, driver, over 21, retired man, typist, 10 years experience.

2. Job titles such as: office boy; telephone girl; bus boy; junior executive; etc.

In each of the above examples it is conceivable that individuals between 25 and 64 inclusive may be included.

Q. May an individual seeking employment through an advertisement specify his age?

1. Yes, an individual advertising for employment is not covered by the law.

R. Is the phrase "state age" permissible in a blind advertisement which gives a box number?

1. Yes, an employer is permitted to ascertain the age of a prospective employee.

This is entirely different from the situation where an employer makes known, by advertisement, that he will employ only persons of a certain age, or within an age group such as 25 to 35, as described in O–1, above.

S. Can an employer hire a person between ages 25 and 64 inclusive and not include that person within a group life insurance or group health and accident insurance plan maintained by the employer?

1. Yes, an applicant could be advised that he would be excluded from such a plan, or that any coverage extended could be less than that offered other employees, if there were bona fide reasons for such exclusion. Due to the numerous plans available, such cases would require individual consideration by the Bureau of Labor. It would be an unlawful employment practice to refuse employment because the age of an applicant did not permit inclusion within a company insurance coverage plan, if that individual were between ages 25 and 64 inclusive.

T. Who may file a complaint?

1. Any individual claiming to be aggrieved because of age discrimination in employment; the Oregon Bureau of Labor on its own initiative; the Attorney General of the State; or an employer when his employees hinder compliance with the provisions of the law.

U. How may a complaint be filed?

1. Anyone wishing to file a complaint must do so in writing. Such a complaint must be notarized.

V. Where should a complaine be filed?

1. In person or by mail, at the Bureau of Labor office, 1400 S.W. Fifth Avenue, Portland 1, Oregon.

W. How can employers best avoid complaints on the basis of age discrimination in employment?

1. By reviewing any employment policy that acts to automatically exclude from employment, any individual between the age 25 and 64 inclusive, because of age—and any policy that effects an automatic discharge, dismissal, suspension, reduction, or demotion of any individual between ages 25 and 64 inclusive, because of age.

Senior Worker Division

ADMINISTRATIVE RULES UNDER ORS 659.024 (4)

Take Notice: That pursuant to the authority of Chapter 659, Oregon Revised Statutes, and in accordance with Chapter 183, Oregon Revised Statutes, the Oregon Bureau of Labor hereby adopts and promulgates the following rules of administrative procedure and interpretation concerning legal maximum age limits for apprentices in apprenticeship programs registered under ORS 660. Specifically, these administrative rules concern the amendment to ORS 659.024 enacted by the 53rd Oregon Legislative Assembly in 1965, which states:

ORS 659.024 Unlawful employment practice for private employer to discriminate because of age . . . (4) "The provisions of this section apply to an apprentice under ORS 660 but the selection of an apprentice on the basis of the ability to complete the required apprenticeship training and the industry average period of employment thereafter before attaining the age of 65 is not an unlawful employment practice."

Equal opportunity standards adopted by the State Apprenticeship Council require that standards for qualification and selection of apprenticeship applicants be adopted in written form by apprenticeship committees, approved by the State Apprenticeship Council, and applied uniformly to all applicants by the committee.

These rules will inform apprenticeship committees how to determine and apply maximum age limits in their qualification and selection procedures without violating the state age discrimination laws as interpreted by the Oregon Bureau of Labor.

Rule 1. Apprenticeship committees are not required to adopt any maximum age limit in their selection procedures or standards, if they choose not to disqualify any applicants on the basis of age. It is not an unlawful practice to select apprentices on the basis of relevant physical requirements, including but not limited to strength, dexterity, agility and endurance, so long as these determinations are made independently of any considerations of age.

Rule 2. The Oregon Bureau of Labor hereby determines that the national industry average period of employment in the apprenticeable trades of crafts as a whole is 20 years.

Rule. 3. Unless an apprenticeship committee requests and receives approval of a maximum age limit for the specific trade or craft, it can legally deny an apprenticeship on the basis of age only to persons who have attained an age whereby they cannot complete their required period of apprenticeship plus 20 years employment in the industry before reaching the agt of 65.

Rule 4. A local apprenticeship committee or a local trade apprenticeship committee may request approval of a maximum age limit for their specific trade or craft in their specific area, by submitting such request in writing to the Senior Worker Division of the Bureau of Labor, Portland, and presenting such evidence as will substantiate a specific industry average period of employment for their trade.

Such apprenticeship committees may confer with the Senior Worker Division on the type of evidence that will be considered. Evidence that may be considered includes, but is not limited to: (a) pension records of those who have terminated employment in the trade or craft; (b) payroll records of those who have terminated employment in the trade or craft; (c) union membership records of those who have terminated employment in the trade or craft. Such evidence will be approved or rejected at a hearing called by the Senior Worker Division.

The determinination will be based on the following definitions: "Industry average period of employment thereafter" means (1) employment in either the jurisdictional area of the apprenticeship committee, or the state, or the region, or the United States; (2) employment of all persons employed at the trade or craft, regardless of whether they completed a formal apprenticeship; (3) employment as a journeyman or other capacity requiring prior service as a journeyman in such trade or craft, but not as an apprentice, employer, contractor, or as an employe in other trade or occupation.

Rule 5. Apprenticeship committees can adopt a maximum age limit higher than that permitted in Rule 3, based on an industry average period of employment of less than 20 years, without prior approval of the Senior Worker Division.

Rule 6. Any maximum age restriction adopted by an apprenticeship committee must be applied uniformly to all applicants for apprenticeship by the committee, except as provided in Rule 7.

Rule 7. In apprenticeable trades requiring a state license, applicants having the required on-the-job experience for the journeyman license, but requiring additional related training to pass the license examination, shall not be denied an apprenticeship on the basis of age.

Because all local apprenticeship committees and local trade apprenticeship committees are required to adopt written standards for qualification and selection of apprentices immediately under equal opportunity standards adopted by the State Apprenticeship Council, and because these rules inform apprenticeship committees of legal maximum age limits for qualification and selection of apprentices, an emergency is declared to exist, and these rules are effective on date of filing.

Adopted and filed this *18th* day of November 1965.

Senator MORSE. There is only one item that I am going to comment upon. You mention, in passing, in your paper—I think by implication—that you are interested in finding out whether the hesitancies of employers in the employment of people up to 45 is what they consider to be the extra cost that is involved in the so-called benefits to which they become liable as far as the employee is concerned; particularly as regarding pension and welfare benefits.

I think there is a corollary piece of legislation that we are going to have to deal with on this committee—I hope in this session of Congress, I know it is being worked on—and that is in regard to investments of employees in pension plans.

One of the great problems from the employer standpoint is that he hires a person 45 or older and under various pension plans he is going

to be confronted with higher pension costs with that individual than with the younger person. That is not very equitable yet at the same time the employee is entitled to protection.

One of the great problems in this field, Mr. Chairman, as you know, is that at the present time less than 50 percent of employees in the American industry ever collect any pension because they don't stay with a given employer long enough to collect pension.

Therefore, all the talk about the benefit that the employee gets by way of pension is more talk than it is fact. That is particularly true in a time when we have heavy employment in defense industries because defense industries are pirates, they pirate away from civilian production industries, peacetime industries, at much higher rates of pay and the various inducement, thousands and thousands, tens of thousands of workers in the country to go work in defense plant, and then the defense plant tapers off and then they are back on the labor market and they seek new employment and that employer has to decide whether or not he wants to hire them because of their age in regard to the pension cost.

I don't think we can discuss this problem of the employment of the aged unless we take into account the costs of so-called fringe benefits, and they really should not be classified as fringe benefits, they ought to be considered as income rights.

The employer at the later stage of the man's life if expected to assume an undue burden of these costs.

I happen to be the public member of a 25-member board, 12 employers and 12 union representatives, for the electrical industry in this country that administers the pension and trust benefit funds for the union and the employers.

We wrestled with this problem. In Salt Lake City, last year I made a report on this problem for this particular industry, a copy of which subsequently will be put in the rest of the record.

I think we have to come to grips with the investment problem, and in the setting up and in the writing, it has been called a Federal pension clearinghouse.

Well, it has to be complex in administration but with the computing development it is not going to be nearly as difficult now as it would have been 10 years ago where employee X for 4 years works for employer A and then moves to employer B. That pension interest that he accrued for the 4 years will follow him for the rest of his life and he will get a credit in the Federal pension clearinghouse for that 4 years.

Then he goes through a whole series of employers, say, during his working years, and he builds up these pensions, he does not lose them. Now he loses them. Most people don't know that.

But don't forget that the employer that employs him for the 4 years gets the benefit of the use of the money. It is one of the things that labor is constantly complaining about.

Employers who talk about the cost of the pension fund, they don't talk about what little in percentagewise they pay out from that pension fund over the years because so few of their employees qualify, but they have the benefit of the use of the money for that period of time.

In my judgment, we have to develop some controls over this whole pension program. Also, may I say we have to also have some taxpayers' investment in it, too, because you are dealing here with a pro-

gram that can involve employee contribution, employer contribution and to a degree—I don't know what, *x* percent—taxpayer investment.

If you get that kind of a pension, health, and welfare system worked out, you are going to have much less resistance from employers hiring people over 45 years of age. We are just in the beginnings of it.

I don't know whether it is appropriate, Mr. Chairman, in connection with the legislation we are considering in these hearings to get a couple authorities on pensions to come in and testify on the relationship of pensions to the employment of the aged. Maybe we ought to do it in connection with hearings on separate legislation, although I think it might be wise to do it before we finish these hearings.

Senator YARBOROUGH. Senator Morse, I think that is a valuable suggestion. As you know, we have a bill pending to amend the pension laws which has provisions for closer checking and supervision.

Many of the States have a provision regarding pensions. I think one of the big problems in the hiring of the aged is the problem of the pension rights.

Senator MORSE. That is right.

Senator YARBOROUGH. I find a lot of built-in resistance of younger people who fear that older people are going to eat up the equity in the pension fund including the amounts they are paying for pensions.

Senator MORSE. Interestingly enough, a former member of this staff and now professor of law at Ohio State University, Professor Bernstein, has specialized in this subject. His book a couple years ago on pensions received a high award for its scholarship and it was written with a great deal of sense.

We might consider whether or not he would be willing to appear and give us some testimony on this matter.

Senator YARBOROUGH. I will instruct the staff to check with him.

Senator MORSE. I wanted to raise that, Mr. Sprague, because I think those working in this field can be of help to us and I ask you to pour into us any information you can gather on this health and pension welfare fund approach because it is one of the great obstacles that stands in the way of convincing employers that they should hire employees over 55. I can understand it.

Senator YARBOROUGH. Mr. Sprague, we thank you and the National Council on the Aging that you represent. Of course, we on the Special Committee on the Aging know of the work you have done in the National Council on the Aging, appearing as a representative of the National Council before our Special Committee on the Aging a number of times.

We appreciate the contribution the National Council on the Aging always makes.

Thank you for your fine paper. We have been looking at the appendix to it. We will study that, also.

This appendix entitled "The Employment Position of Older Workers in the United States: A Collection of Facts," is longer than your statement. You have very helpfully kept your statement brief in aiding us in hearing all the witnesses this morning. We will study that statement, too.

I direct the reporter to print in the record this appendix to Mr. Sprague's statement entitled "The Employment Position of Older Workers in the United States: A Collection of Facts."

(The appendix referred to follows:)

APPENDIX

[Compiled by the Staff of the National Council on the Aging Employment and Retirement Program]

THE EMPLOYMENT POSITION OF OLDER WORKERS IN THE UNITED STATES: A COLLECTION OF FACTS

TRENDS AND PROJECTIONS

The "older American" and the "older worker" in the United States are not synonymous. Generally, the older American population refers to persons 65 years of age and older. When speaking of the labor force participation rates and the characteristics of employment and unemployment for older workers, however, the age groups 45 to 64, and 65+ are included.

In 1964, the population 45 years of age and over numbered about 56 million; 29 million of these persons were in the work force. By 1980, the population 45 and over is expected to rise by 10 million, and the labor force by about half of this number. This means that the number of older persons as projected will reach 34 million. Most of the rise will come from persons 45 to 64 years old. Those 65 and over are expected to account for only about 400,000 of the 5 million.[1]

Regarding the latter group, while the percentage of the total population of the United States aged 65 and over is steadily increasing. The percentage of the total labor force which this group forms shows no parallel increase. The trends of labor force participation during the fifteen years (1950–1965) show a rapid decrease for males 65+ (41.4% in 1950 compared with 27.8% in 1965) and only a slight increase for females 65+ (from 7.8% in 1950 to 10% in 1965).[2]

On the other hand, the percentage of labor force participation for the age group 45 to 64 since 1950 has shown slight gains for males (from 88.2% to 90.9%) and a rapid increase for females (28.8% in 1950, 46.6% in 1965).[3]

Workers 45 years of age and over now comprise about 38 percent of the total work force. The proportion of the work force is expected to decline to 33.5 percent by 1980 as the numbers continue to rise.[4]

The participation rate for men 60 to 64 is expected to drop from 77.5 percent in 1964 to 75.7 percent by 1980.[5] The sharpest drop, however, is expected among men 65 to 69 years of age. Of this group, 41.7 percent are now in the labor force; only 31.3 percent are expected to be in it by 1980.[6]

In contrast, higher percentages of older women are expected to be in the work force. The re-entry into the work force of women in their middle years accounts largely for this rise. In the age group 55 to 64, the rate is expected to rise from 39.8 percent in 1964 to 47.3 percent in 1980, with a somewhat smaller rise among those 60 to 64. A slight increase is expected even above age 65 (from 16.2 percent to 17.4 percent). Thus, women are expected to account for well over half of the total rise in the number of older workers, and by 1980 they will represent 2 out of every 5 workers 45 and over. The older worker force will then consist of about 20.5 million men and 13.5 million women.

FACTORS AFFECTING THE EMPLOYMENT OF OLDER WORKERS

Apart from population and labor force trends, other long-run economic and social changes have accentuated the employment problems of older workers:

Decline of self-employment

(1) Opportunities for self-employment where artificial age barriers are not significant have diminished. We are now a nation of wage and salary earners; according to the 1960 Census data, more than 80% of gainfully employed Ameri-

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[1] U.S. Department of Labor. The Older American Worker Research Materials (June 1965), p. 97.
[2] U.S. Administration on Aging. Useful Facts: The Older Worker in 1965.
[3] U.S. Department of Labor. *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

cans are in the hire of others. The consideration of farm ownership has been particularly important in reducing the opportunities for older men. (The number of farms in the United States, which stood at 6,448,000 in 1920, had fallen to 4,783,000 by 1954 and to 2.4 million by 1964.) Currently among males age and proportion employed in agriculture are strongly related: almost 7% of employed males age 45–49 are in agriculture; whereas at age 70+, more than 26% are farmers.[7] With fewer farmers in the middle-aged population, the percentage remaining at work in the older ages will continue to dwindle.

Dominance of large firms: Indirect age discrimination

(2) It is well known that large firms have become dominant in many industries; and these firms are more likely to have a maximum hiring age. As a result of systematic seniority and promotion from within policies, the mature worker on the inside has more protection. But, since hiring is largely restricted to low-paid entry jobs, the mature unemployed work has less opportunity even in the absence of age discrimination.

Automation and Technical Advance: Early Retirement

(3) Increasing industrialization and development of highly mechanized operations in many industrial processes have put a premium on those attributes which employers tend to think are present primarily in the younger years, such as agility and speed. Moreover, in large employment units, the adjustment of work duties to diminishing physical strength and the development of part-time work schedules become more difficult, particularly under collective bargaining. Hence, an abrupt transition from full-time regular employment to complete earlier retirement is likely.

Separated Generations

(4) Changes in family structure have accentuated the need for workers to remain employed until retirement age. Separate households are now the rule. Thus, the economic difficulties of the retired generation are not so easily absorbed in the total earning capacity of the "extended" family as they formerly were.

While there seems to be considerable feeling among the sons and daughters of older people that they should support older parents in need, these feelings do not always dictate actual behavior. Circumstances may make financial support to aged parents impossible. Also, the adult son or daughter may feel that other demands on income are more important than a parent's need for financial support . . . And, too, many older people feel that to ask their sons or daughters for financial help would threaten the affectional relationship between the generations.[8]

Shifts in Occupational Structure

(5) The pace of economic change has been increasing steadily and has accelerated particularly since the end of World War II. Occupational structure, industry mix, and the location of economic activity have all been affected. Brawn and muscle are less frequently the primary factors in job performance. The proportion of unskilled workers in the work force fell continuously from 36% in 1916 to 19.3% in 1950 and is even lower at the present time. At the same time the proportion of professional persons has advanced from 4.4% to 7.3% and is rising. At present, only 24.5% of males 65+ having less than 8 years of school are in the labor force; whereas 50.6% of the men 65+ with college degrees were still employed.[9] The percentage of professional women 65 and over who are still employed is also substantially higher than those with limited schooling (24.4% compared to 7.1%).[10]

Mandatory and Early Retirement

(6) The widespread and somewhat institutionalized age of retirement at 65 has had a notable effect on the decreasing proportion of men age 65+ in the labor force. And since 1956 (when amendments to the Social Security Act made retirement at 62 possible although with actuarially reduced benefits), the trend toward earlier retirement has tended not only to lower the ages at which

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[7] U.S. Administration on Aging, *Loc. Cit.*

[8] Ethel Shanas. Family Relationships of Older People. Health Information Foundation: Research Series 20 (1961), pp. 34 and 38.

[9] *U.S. Census of Population: 1960*, Final Report PC (2)–58, tables 4 and 5.

[10] *Ibid.*

employed older workers retire but also the ages at which unemployed workers can obtain re-employment. The lower the retirement age, the lower the hiring age is likely to be, as is indicated in the U.S. Labor Department report on "Pension Plans and the Employment of Older Workers" (pp. 21–45).

UNEMPLOYMENT

In assessments of the employment situation of older workers, their unemployment rate is sometimes dismissed as unimportant because it is usually lower than the average for the labor force. To be sure, current unemployment is highest among young men and young women, and women's rates decline with each successive age group. But the gradual increase in the men's rates that begins at age 45 means that men begin to face a higher risk of unemployment at a time when earnings are crucial to meet the heavy family expenses, to build pension credits, and to save for future supplementation of retirement incomes, which for many are far too low.

This is especially true for non-white men. Even in the age group 45–54, where the rates are lowest, the non-white rate is double that for white men—5.9 percent, compared with 2.9 percent in 1964.[11] For older non-white men, the 1964 rates exceeded 8 percent. Although the rates of non-white women decline with age, like those of white women, they run substantially higher up to age 55. Unemployed non-white workers age 45 and over numbered 443,000 men and 369,000 women in 1964.

Unemployment rates of all age groups of both men and women have been declining gradually since 1961, when they reached their highest point since before World War II. Although young people under 25 have benefited least from the gradual improvement in employment since 1961, the rates of older men have dropped somewhat less than those of men aged 25–44. In 1964, the men's rates ranged from a low of 2.9 for the 35–44 group to 3.2 for the 45–54 group, 3.9 for the 55–64 group, and 4.0 for the 65 and over group.[12]

Another dimension of the problem is concealed in the amount of part-time employment which is not a matter of choice but rather the result of lack of opportunity for full-time work. The numbers so affected have been declining since 1961, but in 1964 an average of 800,000 men and women 45 years of age and over worked on a part-time schedule of less than 35 hours a week because of "economic" reasons.

The most critical aspect of the unemployment of older workers, however, is the length of time they are likely to remain unemployed. In 1964, when a monthly average of more than one million persons 45 and over were unemployed, their unemployment lasted an average of 19.4 weeks, compared with 11.0 weeks for those under 45.[13]

Information on the length of unemployment by color and age is not available, but even if the older non-whites' experience is no worse than the average for all unemployed, they bear a disproportionate share of long-term unemployment because of their higher unemployment rates.

According to the latest annual report on work experience, more than 3.5 million workers age 45 and over who had some employment in 1963 were unemployed at some time during the year. Two-fifths of the 3.3 million age 45–64 and three-fifths of the 300,000 age 65 and over were out of work for 15 weeks or longer.[14] Only one-third of those age 25–44 were unemployed as long. One in six of those afe 45–64 and one in three of those 65 and over were out of work for 27 weeks or longer, as compared with one in eight of those 25–44.

The duration of unemployment among older workers has grown relatively worse in recent years. The burden of long-term unemployment among adult workers has been shifting away from the central age groups toward those 45 and over. Their proportion of those unemployed for 27 weeks or more has been rising since 1961, in the face of a generally improving employment situation. For both men and women, the rise has been about 2 percentage points—to 33.6 and 12.6 percent, respectively in 1964[15]—but among men it was associated with a slight decline in their proportion of the work force and among women with a

[11] U.S. Department of Labor, *Ibid.*, p. 98.
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*, p. 99.
[15] *Ibid.*

slight increase. Currently, there are some signs that this situation is improving. Whether this is a temporary improvement or the beginning of a continuing trend is uncertain at this time.

GOVERNMENT ACTION AND PROBLEMS AFFECTING OLDER WORKERS

The U.S. Department of Labor, particularly through the U.S. Employment Service and its affiliated State employment services, began giving special attention during the late 1940's to employment problems faced by older workers. In 1950, special studies were conducted in five areas to determine the specific nature of job problems facing older workers and the types of specialized services needed, and in 1951 guidelines were issued to employment service local offices providing for specialized attention and special services for these workers. Lack of funds postponed further activities of this kind until 1955, when a special appropriation enabled the Department to launch a program for dealing with the problems of older workers. It conducted seven area studies during 1956 to obtain current information about the specific problems of older workers, the assets and shortcomings of these workers as a group, and specific kinds of techniques and services that are most effective in dealing with their problems.

The studies demonstrated that the Employment Service is a major channel to re-employment for older workers. It was by far the most significant source of jobs for an experimental group of older workers who were given comprehensive service in line with their needs, accounting for 44 percent of persons placed, excluding those called back by employers and placed by unions. The comparable proportion in the control group, given only "normal" services, and again excluding those re-employed by call-back or through unions, was only 20 percent.

An auxiliary study in the Hempstead, N.Y., office of the Employment Service showed that professional staff assistance tailored to their individual needs could facilitate the re-employment of older workers who had marketable skills but had been unable to find jobs because of their age.

On the basis of these studies, the Employment Service launched a national program of expanded counseling and placement services to older workers during the fiscal year 1957. Older worker specialists were assigned to national, State, and local employment service offices to spearhead and supervise more effective activities in behalf of older jobseekers. Special materials were developed, specialized training was conducted, and an informational program to stimulate the hiring of older workers was begun.

These efforts brought some progress in breaking down age barriers in employment and job placement of older workers through the Employment Service. Special efforts were made in a few States to experiment with new approaches to promoting the employment of older workers, such as: Formation of Self-Help Groups, Training for New Occupations, Part-Time Work for Retired Skilled Workers, Consultant Work for Retired Professional Men, Employer-Labor Institutes, Job-Finding Clinics, and Employer Panels.

In a few States, some progress has been made in developing job opportunities through the formation of "self-help" organizations in which older workers help each other get jobs. Job-finding clinics have also been established to assist older workers in their job search. Several States have taken an active role in establishing training courses for homemakers, tour guides, sales personnel, and other specific jobs in cooperation with State vocational education departments. These types of activity have proven highly effective but it has not been possible to provide these services except in a few scattered areas.

Taking cognizance of the continuing problems of older workers, President Kennedy in his message to Congress in 1963 directed the President's Council on Aging to undertake a "searching reappraisal" of problems with respect to employment opportunities for older workers and to report to him on what actions were desirable and necessary. The Department undertook this responsibility for the President's Council, setting forth fifteen recommendations for action needed to enlarge opportunities for employment of older workers. The Council's report was forwarded to President Johnson on December 16, 1963.

In one of the studies on which the report was based, the U. S. Employment Service analyzed restrictive age specifications on employer orders received in May 1963 in public employment offices in eight cities. The study indicated little or no change in the pattern of age specifications as compared with the 1956 study of seven areas, re-emphasizing the need for continued and expanded efforts.

EFFORTS TO REDUCE ARBITRARY AGE DISCRIMINATION

In mid-May 1965, 20 states and Puerto Rico had legislation prohibiting discrimination in employment because of age.[16] Most of these laws have been established since 1954—three were enacted in 1965; three—Colorado (1903), Louisiana (1934), and Massachusetts (1937 as statute, 1950 law)—pioneered such legislation.[17]

Their provisions vary greatly, but most of them have a number of common features. The laws of 8 jurisdictions cover all private employment. The other 13 exempt certain occupations or organizations or both. Nine States exempt employers with small (between 5 and 25) number of employees. Ages covered generally range between 40 and 65, although a few are lower.[18]

State officials have pointed out that lack of adequate funds and personnel for widespread educational and informational campaigns and enforcement activities have been grave handicaps to the administration of these laws. A few State laws are virtually inoperative and amount to little more than declarations of policy; other laws are more fully implemented.[19]

Information on new employees hired by all employers, by age, does not exist. Therefore, it is not possible to see whether, in fact, placements of older workers have increased in these States. In effect, the judgment of informed officials is that some good has been done in the States that have been most active in promoting and enforcing their laws, but that more could and should be accomplished.[20]

Senator YARBOROUGH. I will place in the record, also, this clipping from the Wall Street Journal of Thursday, March 16, 1967, "Ban on Age Discrimination in Employment Getting Strong Bipartisan Push in Senate."

It illustrates the fact this bill is drawing strong support from both sides.

(The article referred to follows:)

[From the Wall Street Journal, Mar. 16, 1967]

BAN ON AGE DISCRIMINATION IN EMPLOYMENT GETTING STRONG BIPARTISAN PUSH IN SENATE

WASHINGTON.—A bill to outlaw age discrimination in employment is getting a strong bipartisan push in the Senate despite business opposition.

In testimony before the Senate Labor subcommittee, Labor Secretary Wirtz predicted the Administration-backed bill will be passed by Congress. Sen. Javits (R., N.Y.), who is sponsoring a similar measure, predicted the same.

The proposed Federal ban on age discrimination is supported by the AFL–CIO, but is opposed by the U.S. Chamber of Commerce. Testifying for the Chamber, lawyer Anthony Obadal said a law won't solve the problem and warned it would interfere with existing pension and retirement plans.

The Senate last year attached a Javits-sponsored ban on age discrimination to the bill increasing the Federal minimum wage, but the provision wasn't accepted by the House. Instead, House-Senate conferees agreed to ask the Administration to study the question and submit proposals this year.

President Johnson in his January State of the Union message responded by asking for a Federal prohibition against "arbitrary and unjust discrimination in employment because of a person's age."

A 1964 Government survey showed that about half of all private job openings were barred to applicants over age 55 and a quarter of the jobs were closed to those over age 45. The survey found almost no jobs were open to men over age 65.

AIMED AT AGES 45-65

The Administration's bill would attempt to protect persons between ages 45 and 65 from discrimination in hiring, promotion, pay and fringe benefits. It would apply to companies that have 50 or more employes (25 after mid-1968), to employment agencies and to labor unions.

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[16] *Ibid.*, p. 107.
[17] *Ibid.*
[18] *Ibid.*, p. 116.
[19] *Ibid.*, p. 110.
[20] *Ibid.*

An aggrieved person could take his age-discrimination complaint to the Labor Department which, after a hearing, could order the employer to stop the discrimination. Such an order could be challenged in court. The bill provides for a $500 criminal fine and, in extreme cases, a one-year jail term for those who "willfully" disobey the discrimination ban.

Federal law already forbids job discrimination because of race, religion or sex. Twenty-three states have laws of varying effectiveness banning job discrimination because of age, and a 1964 Presidential order forbids age discrimination by Government contractors. There isn't any machinery to enforce the Presidential order, however, and Mr. Wirtz concedes Federal officials have had little experience in deciding when exceptions should be made for jobs requiring youthful vigor.

The proposed bill would allow employers to discriminate "where age is a bona-fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age."

POSSIBLE EXEMPTIONS

An example of the kind of exemption that would be allowed was given by Secretary Wirtz in answering a hypothetical question by Sen. Randolph (D., W. Va.). How about a 45-year-old man applying for a job as an airline pilot, the Senator asked. After an expensive three-year training period he'd only be able to work for 12 years before compulsory retirement at age 60 under Government regulations.

Mr. Wirtz replied he "would not think it would be a violation" if the airline turned the applicant down.

The bill would authorize the Labor Department to conduct research on the degree to which age impairs job efficiency. Mr. Wirtz said studies already show that few workers begin going downhill until age 70 or so.

The most controversial aspect of the proposed age-discrimination ban involves pensions. In testifying against the Administration's bill, the Chamber's Mr. Obadal said that of 16,000 pension plans surveyed by the Government in 1965, one-third excluded workers hired after age 55 and over half treated workers hired at age 60 as ineligible. "As employers would hesitate to hire workers whose employment would upset the operations of these plans, the pending legislation, by prohibiting establishment of different terms of employment based on age, would hinder, not help, the employment of older workers," Mr. Obadal said.

The bill sponsored by Sen. Javits would try to resolve the problem by letting a company pay a smaller pension to a worker hired at age 58, for example, than to a worker who had been contributing to the pension plan since age 20. The Senator's bill differs in several minor respects from the Administration proposal but is equally firm on hiring and promoting policies based on age. Its Republican supporters range from the Liberal Sen. Javits to the Conservative Sen. Murphy of California.

Senator YARBOROUGH. The next witness is Mr. James Carbray, a board member of the National Council of Senior Citizens.

STATEMENT OF JAMES CARBRAY, BOARD MEMBER, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. CARBRAY. Mr. Chairman, members of the subcommittee, I am James Carbray, a member of the board of directors of the National Council of Senior Citizens, in whose behalf I am testifying today.

I wish to express the support of the National Council of Senior Citizens for proposed legislation to ban discrimination in employment on account of age.

Mr. Chairman, for several years, the National Council of Senior Citizens has spent much of its time mustering support for and providing evidence of the need of medicare legislation guaranteeing hospital and medical insurance benefits to the aged under social security.

Medicare has, even with its very evident shortcomings, of course, assured large numbers of elderly access to health care they could not have afforded before.

Although much of the time of the National Council of Senior Citizens has been spent on promoting medicare legislation and its improvement, we have always been vitally concerned with the many other major problems of older Americans.

The most serious problem of the elderly is financial insecurity. This is often the result of age discrimination in industry. We believe the impressive data presented by the Secretary of Labor in his report of June 1965, on the older American worker, provides convincing evidence of the widespread nature of the problem.

We of the National Council of Senior Citizens believe it is useful to look at the problem first as it relates to those age 65 or older and then as it relates to those workers below age 65.

For those 65 years of age or older, employment opportunities which could provide needed supplemental income and which could provide productive use of free time and, consequently, a relief from the loneliness and boredom suffered by many retirees, are lacking principally because of the age barrier.

With a more general adoption of pension programs in industry and the broadening of coverage and increases of social security benefits, we have become prone to believe that we have provided for relatively secure retirement living. We have, therefore, become passive to the needs for supplemental income on the part of many of our retired seniors.

Basic to secure retirement living is the nature and extent of one's employment before retirement.

We at the National Council of Senior Citizens know from our studies and contacts with our members that employment in covered industry and in industry providing pension benefits is no quarantee that every person retiring from the industry is eligible for social security and pension benefits. Limited employment in covered industry may make a wage earner ineligible for both benefits. Continued employment beyond the so-called retirement age is often necessary.

We know too that, while an older worker may be eligible for both social security and pension benefits, his length of employment and wage level may provide for benefits that are insufficient for secure retirement. Supplemental income from a full-time or part-time job is necessary.

Yet, in both situations, we know that jobs for these older workers are difficult to find. Perhaps this is largely due to the belief that we have already provided for a fairly secure retirement and that available jobs should go to others thought to be in greater need—the younger workers.

As a result, hiring policies are apparently based on a general conclusion rather than specific needs and abilities of individual job applicants.

We recognize also that, without reference to its impact on retirement needs, employment for older workers is a major problem of our society. Ours is a youth-oriented society.

There appears to be a bias on the part of employers that makes them assume a young labor force guarantees greater performance and less

overhead. This bias places the older worker seeking employment at a distinct disadvantage.

If employed at all, the older worker is often underemployed or employed in a position requiring far less than his skills. In case of layoff, the older worker may be forced into unwanted retirement before he is either financially or emotionally prepared for it.

We are particularly concerned about discrimination against the older worker in hiring since it affects mostly those with lower skills, with less opportunity to prepare financially for later life, with less job stability and therefore little or no private pension benefits, so these workers are forced to rely on inadequate social security benefits, assuming eligibility for social security.

We are concerned about the general application of hiring policies which restrict employment of the older worker—policies which for convenience sake do not permit a judgment based on individual ability.

We are concerned that the application of these policies will give more and more elderly workers the feeling that society has cast them off and has no place for them.

We cannot afford the loss of capability and know-how within the ranks of our older population. Our communities need the services of the elderly. The elderly need one another's assistance. We cannot push them aside for use only under special conditions such as an all-out war.

Our problem in the area of aging is relatively new. We can still take proper action to protect future generations of older Americans without breaking long-established customs and institutionalized ways of doing things.

A review of the Secretary of Labor's June 1965 report, concerning age discrimination in employment, reveals that arbitrary age discrimination is significantly reduced in States which have strong laws, actively administered against discrimination based on age.

The National Council of Senior Citizens believes that voluntary means of dealing with the problem of age discrimination in employment have not been effective.

We support the proposed Federal legislation which would prohibit arbitrary age discrimination in employment. We believe that such legislation would complement other legislation already passed which likewise was designed to provide more secure, healthy, and happy lives for senior Americans.

Mr. Chairman, with your consent, I would like to make one observation that was called to my attention in the last couple of days while en route from California.

Senator YARBOROUGH. Be glad to hear it.

Mr. CARBRAY. I reside in the State of California. Actually, I wear two hats. I am also an international representative for the Steelworkers International Union and I am well acquainted with the problems of industry, I think.

We have in the State of California probably one of the strongest, best equipped State apprenticeship programs in the Nation under California law and yet the department of industrial relations in the State in September of last year issued a report showing that a total—get this—a total of only 750 apprentices were taking advantage of this program.

Now 70 percent of those apprentices were taking apprenticeship programs in jobs related wholly and totally to the building and construction industry.

Twenty percent of the remaining 30 percent were taking jobs related to some other forms of manufacturing. But the 10 percent remaining were in jobs related to the area wherein there is the greatest labor shortage in the State of California; namely, the aircraft, the missile, and the electronics industry.

Now one of the problems we find in this area, and I think that California presently has some 60 percent of the total missile and airframe industry contracts with the Federal Government, is there is a shortage of highly skilled labor.

Every metropolitan newspaper carries full-page spreads looking for additional personnel in the higher skills.

There is a lack of teachers in vocational schools for the machine shop technique type of job, the tool and die man, the journeyman machinist—these are the people they are always advertising for.

There are almost an overabundance of retired skilled people who are journeymen in the machine shop trades that are unemployed that are over 65. Many of them are retired. These people have skills, Mr. Chairman, that this Nation can well utilize, that our educational processes might well utilize as instructors in the classes of vocational and training schools. They are not being utilized simply because they are in the retirement bracket of 65 or over.

Here is an abundance of skills that is going unused. It is almost an unbelievable thing to realize that while full-page ads are being carried in every metropolitan paper by such organizations as Lockheed, North American, Douglas, Aerojet General, and all these other major corporations involved in such operations of manufacturing, and yet on the outside there is any number of skilled personnel that are not available because of hiring restrictions based on age.

It would seem to me that somewhere, somehow, the committee may well apply itself to giving consideration to this fact.

Senator Morse talked a moment ago about the pirating practices in industry. This is true. Actually we find, Mr. Chairman, they are bidding against each other. Some of them are carrying ads in television commercials and radio commercials—let me give you an example. Douglas has a 10-year guarantee of 10 years employment with all kinds of fringe benefits and yet we find people on the outside looking in that are not being properly utilized.

I would like to leave this thought with you because it seems to me that there are skills here that could be utilized part time by many of these industries and also might well be utilized part time in some of the vocational classes because we are not training sufficient apprentices to replace the people who are retired.

I think that this is a sad state of affairs when the State of California with the population of its size and with a major portion of the industry has only 750 people taking advantage of the apprenticeship programs and less than 10 percent of them are related to jobs that fall within the labor market shortage area.

It would seem to me that some accent should be put on a training program, maybe under the leadership of the Secretary, that would

provide for, No. 1, the skills necessary and, No. 2, the utilization of the skills of those who have already passed the age of retirement and are now sitting on the so-called scrap pile of our society.

Thank you, Mr. Chairman.

Senator YARBOROUGH. That is a very interesting statement, Mr. Carbray, pointing out this problem.

Now in the statement about California, so far as I can detect, you were limiting yourself to discussion of the situation of workers over 65 years of age?

Mr. CARBRAY. Right.

Senator YARBOROUGH. What is the situation about the workers from 45 to 65 years of age? These missile manufacturers, aircraft manufacturers, electronic manufacturers, do they employ them fully or are they turned down?

Mr. CARBRAY. Well, I would not categorically state that they are all being rejected, but I think that a number of the industries which are on a binge—let us put it that way—of employing nothing but young blood, are rejecting at least 50 percent of the people 45 years of age or older.

If I may, I find that there is a considerable rejection of people past the 50-year mark, a very high percentage.

Now I know that the labor organizations on the coast have reported to me, and I am thinking now in terms of the International Association of Machinists, the Auto Workers International Union, and many others, including our own organization, have from time to time registered reports to us that they are having difficult times in placing people in this age bracket.

The fact of the matter is we have an office wherein we keep abreast of the availability of jobs in these categories and I would say that 75 percent of the people in excess of 45 years are being rejected, those that we refer to these industries from our office.

Senator YARBOROUGH. What percentage would you say were rejected?

Mr. CARBRAY. Around 75 percent of the people over 45 that are refererd from our office to these industries are being rejected.

Senator YARBOROUGH. I am going to order printed at this point in the record the letter from Mr. R. P. Loomba, director of the Center for Interdisciplinary Studies of the San Jose State College, San Jose, Calif., addressed to me dated March 14, 1967.

He has enclosed with his letter a study that he has made, "A Study of the Reemployment and Unemployment Experience of Scientists and Engineers Laid Off From 62 Aerospace and Electronics Firms in the San Francisco Bay Area During 1963–65."

I will order the two-page letter printed. We will order his study and findings filed for the use of the committee. This is a 22-month study of reemployment and unemployment experiences of engineers and scientists. He found that age was the most significant factor in this selection of engineers and scientists for layoff.

He found that there was no difference in the educational background, the technical publications they had published, the patents that they had filed, their membership in professional societies and the number of engineering and scientific courses completed at universities.

It was considered that those laid off were equal with those where age was the only consideration. That is, the only difference is that the laid off engineers are relatively older.

Furthermore, the study shows that the hiring practices of employers are discriminatory toward older engineers and scientists. Irrespective of their educational background, prelayoff salary, technical publications, patents, leadership in technical magazines and membership in the professional societies, older engineers and scientists remain unemployed for much longer time.

I think this is a very significant study that has been made because this is in an area where there are very critical shortages.

Mr. CARBRAY. That is right.

Senator YARBOROUGH. Not only are there full-page ads in California papers, I see column after column of ads in papers over the country advertising for engineers and scientists. And not only in California, although the last data that I saw California received contracts that totaled 46 percent and 46 cents out of every dollar spent in military research in this country.

Mr. CARBRAY. Right.

Senator YARBOROUGH. Then Mr. Loomba draws his conclusion:

Age discrimination, in my opinion, is not only causing unnecessary unemployment among older workers, it is giving rise to artificial manpower shortages. Moreover, American industries are denying themselves highly trained and experienced sources of manpower.

He offers to furnish other information.

(The letter referred to follows:)

CENTER FOR INTERDISCIPLINARY STUDIES,
SAN JOSE STATE COLLEGE,
San Jose, Calif., March 14, 1967.

Hon. RALPH YARBOROUGH,
U.S. Senator,
Washington, D.C.

DEAR SENATOR YARBOROUGH: This is in reference to the hearings that your subcommittee is scheduled to begin March 15, 1967, concerning age discrimination.

I have recently completed a 22-month study of the re-employment and unemployment experiences of engineers and scientists who were laid off by 62 defense firms in the San Francisco Bay Area. I have found that age is the most significant factor in the selection of engineers and scientists for layoffs. When educational background, technical publications, patents, membership in professional societies, and number of engineering and scientific courses completed at work are considered, there is no statistically significant difference between laid off and working engineers and scientists. The only difference is that the laid off engineers are relatively older.

Furthermore, the study has shown that hiring practices of employers are discriminatory towards older engineers and scientists. Irrespective of their educational background, pre-layoff salary, technical publications, patents, leadership in technical magazines, and membership in professional societies, older engineers and scientists remained unemployed for a much longer time.

For your information I am enclosing a copy of the final report of my study. I should like to refer you to pages: 51, 52, 53, 102, 103, and 28 of this report.[1]

Age discrimination, in my opinion, is not only causing unnecessary unemployment among older workers, it is giving rise to artificial manpower shortages. Moreover, American industries are denying themselves highly trained and experienced sources of manpower.

If I can supply any additional information on this topic, please let me know. I shall be only too happy to oblige.

Sincerely,

R. P. LOOMBA, *Director.*

[1] The report referred to may be found in the files of the subcommittee.

Senator YARBOROUGH. Minority counsel has requested me to ask this question: Has any effort been made to meet the law under California State law? They have a State law against discrimination.

Mr. CARBRAY. There has been considerable effort put forth in the past. At this time I don't know and I would not know because of the recent new administration in the State, I am not fully aware of what the legislative program is or what the enforcement program is going to be under this administration, let me assure you of that.

Senator YARBOROUGH. Now you say that of these people taking this apprenticeship training, only 750 people are taking the apprenticeship training in California?

Mr. CARBRAY. That is right.

Senator YARBOROUGH. You say only 10 percent are in the missile and electronic field?

Mr. CARBRAY. In those skills we relate specifically to that industry.

Senator YARBOROUGH. Let me ask you, aren't the skills involved in the missile and electronic industries higher paying than most other industrial jobs in the country?

Mr. CARBRAY. In the manufacturing industry, that is absolutely right, yes.

Senator YARBOROUGH. Now what is the practice of these apprenticeship training centers with reference to people 45 to 65? Are they admitted for apprenticeship training programs?

Mr. CARBRAY. If they apply, they are admitted?

Senator YARBOROUGH. Then 10 percent of 750 would be only 75 people?

Mr. CARBRAY. Right.

Senator YARBOROUGH. Are all ages in California who are receiving apprenticeship training?

Mr. CARBRAY. For those specific jobs.

Senator YARBOROUGH. Why are not the unemployed people between the ages of 45 and 65, who have the capabilities, applying for this apprenticeship training so they can get it?

Mr. CARBRAY. I think there has been some movement in that area. Let me indicate to you that some of the labor unions I know have served notice on some of these people to take advantage of these programs wherever they are.

The problem is, of course, they find themselves employed by a given employer in a given job. They may have several years of seniority to look back on.

As a result of seniority rights, Mr. Chairman, under collective bargaining agreements, they have to credit certain benefits—Senator Morse chose to call them employment rights rather than fringe benefits—which they would lose if they left to go into an apprenticeship program in another industry. They would lose those benefits as a result of this.

I think the interesting thing, Mr. Chairman, if I may, is that one of the things that is hindering us all, I think it was raised by Senator Morse with his knowledge of this field, I think the committee should appreciate it to the extent of taking a long look at this suggestion of looking forward to the day when there will be a pension clearinghouse arrangement whereas people can carry their seniority

for pension purpose from industry to industry no matter where they go.

Senator YARBOROUGH. Thank you very much. That is a very valuable suggestion.

The next witness, Mr. Al Lieberman, executive director of the Texas Council of Senior Citizens from Houston, Tex.

Come around, Mr. Lieberman.

We are glad to welcome you. We know of your work in Texas, we know you have done your work with very little financial support. You have a volunteer organization, you put in much time and effort.

We watched your work over the years. You have sacrificed a great deal for the senior citizens of our State and we want to thank you for taking the time to come up here to furnish us information that you have assembled and what you have learned in your service there as executive director of the Texas Council of Senior Citizens.

STATEMENT OF AL LIEBERMAN, EXECUTIVE SECRETARY, TEXAS COUNCIL OF SENIOR CITIZENS, HOUSTON, TEX.

Mr. LIEBERMAN. Mr. Chairman, my name is Al Lieberman. I am executive secretary of the Texas Council of Senior Citizens. We are affiliated with the National Council of Senior Citizens located here in Washington.

When the council was chartered 5 years ago, its prime purpose was to educate everyone about the medicare program. We equated the senior citizen with medicare age. We assumed social security eligibility was the milestone that marked entry into the "golden years" era. How wrong we were.

For lack of a better word, I have created one of my own, "chronocide": the extermination of age groups by American business and industry.

Senator YARBOROUGH. That is your own word?

Mr. LIEBERMAN. Yes.

Our citizens are "aging" faster because of the arbitrary age limitations being imposed upon them by employer and insurance restrictions. When are we going to call a halt to this idiocy?

We are destroying the very heart of our economy when we destroy a person's opportunity for gainful employment, for age or for any reason. We are involved with people—not statistics. People produce, people consume. People pay taxes. People serve this Nation whatever the demands.

In fact, people make our Nation. Without them, we would be only a geographical area. Unless we preserve our people, our greatest and most important natural resource, we are doomed.

Years ago, ability was equated with age. Age was equated with experience. The older worker was the valuable worker. He had mastered his craft. The industrial revolution, and now automation, has, to a large degree, relegated the older worker to obsolescence—and although the need for the older worker has diminished, the older worker's needs still remain.

The frightening aspect is that the older worker enters this artificial designation at an earlier age every year with every great stride

of mechanization. Soon we will be faced with a society too old to work. Because of the time required to complete a secondary education and fulfill military obligations, and such, a man will come to the threshold of his 30's before starting work, and our want-ads already show too many ads that say "over 35, don't apply."

If there is a weakness in this bill, it is only that it prohibits discrimination in the area of employment to those of 45 years of age and over. Americans need a bill to bar any age as a factor in securing employment. A man's ability to do the job should be the guidelines of eligibility.

We in Texas are not unique, in that we face increases in school taxes, introduction of city sales taxes and other items in living costs that translate themselves into the obvious fact that we need more money to live. Employment is the only answer to the average citizen. Few of us have amassed surpluses. We must have the guarantee of employability if we possess the ability.

I have come a long way to add my voice in support of Senator Yarborough's bill. I know I have added no new or startling facts. But my appeal for passage of S. 830 is an echo of almost 1 million Texans for whom I speak.

Senator YARBOROUGH. Mr. Lieberman, this is a short statement, it is pungent, it is full of hard-hitting sentences.

You claim that you added no new or startling facts but you caused us to consider facts in our society that by the time a man finishes his education and military obligation he is often almost 30 and industries put up signs "over 35, don't apply." That gives him about 4 or 5 working years out of a lifetime.

Mr. LIEBERMAN. Yes.

Seantor YARBOROUGH. You think even with automation and computers and all: Can society get by on 4 productive years out of a person's life?

Mr. Lieberman, thank you for this statement. It is not long but it is heard.

Mr. LIEBERMAN. Thank you.

Senator YARBOROUGH. The next witness is Dr. Harold Sheppard, social scientist, Upjohn Institute for Employment Research.

Will you come around, please, Dr. Sheppard?

STATEMENT OF DR. HAROLD L. SHEPPARD, SOCIAL SCIENTIST, UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH

Senator YARBOROUGH. Dr. Sheppard, you are a former member of the staff of this committee.

Dr. SHEPPARD. Yes, sir.

Senator YARBOROUGH. We welcome you back.

Dr. SHEPPARD. Thank you, Senator.

Senator YARBOROUGH. You have a statement here. I am sure it is a very comprehensive statement. Do you want to put the statement in the record?

Dr. SHEPPARD. If I may, sir.

Senator YARBOROUGH. You may proceed in your own manner. Your prepared statement will be printed following your testimony.

Dr. SHEPPARD. Yes, sir. I want to thank you, Senator, and the subcommittee for an opportunity to discuss the need for legislation to eliminate discrimination in employment because of age.

It is not in my statement but listening to the testimony I would like to put in a plug for the idea of calling this the Older Worker Employment Act as Mr. Sprague suggested.

Most of my testimony today is devoted to showing that such a need exists, and that the problems of older workers are just as urgent, if not more so, as the much more publicized issue of problems of teenage members of the labor force. Such teenagers are more typically seeking temporary or part-time jobs, and furthermore, are not the heads of families, in contrast to workers in their forties or higher.

In evaluating the relative position of problems of under-65 older workers, I believe it more pertinent to compare them with younger age groups starting at perhaps 20 or 25, as I have tried to do in my statement.

All of us are interested in mitigating or preventing the incidence of poverty in America. I would like to stress the point that legislation to protect workers today against age discrimination might be a major weapon in the war against poverty.

We have to wait 20 to 25 years to judge the results of today's operation Headstarts in this year. We would not have to wait that long to judge the effects of effective legislation on age discrimination.

Many Americans are not born poor; they become poor as a result of economic changes in our society—changes that affect a worker's job-finding chances, which in turn can have a bearing on his risks of becoming poor and then remaining poor.

I have provided the subcommittee with some statistics in this statement and in a supplementary section or set of tables.

One of the tables in the document shows that the older the person, the greater his or her chances of being in poverty. I won't go through the statistics. This is especially for the unrelated individuals in the census data for 1965.

The same census study shows that among heads of families in urban areas, the percent poor in each age group from 25 to 54 declines by age—from 12.5 percent of the younger population—25–34—to 6.5 of those 45–54—but then it begins to climb again, to 7.8 percent of family heads 55–64 years old, and it does to those 65 and older, but I am sticking to those under 65.

Table I is for combined data on family heads and unrelated individuals. (See p. 188.)

There has never been, to my knowledge, any systematic and comprehensive study to prove one of my main contentions, but I believe that it is quite plausible to argue that one—and only one—of the reasons for poverty might be found in the employment experiences of American workers while they are in the labor force.

One set of such experiences consists of becoming unemployed after many years of continuous employment in a given company of industry and then having to undergo the obstacle course set up by our public institutions and private employers.

This obstacle course includes, among other things, conscious and unconscious patterns of discrimination against older jobseekers.

Let me get a little more specific through some examples. Between July 1963, and June 1965—a period of 2 years—nearly 190,000 workers were involved in mass layoffs reported by the U.S. Department of Labor.

More than one-half of the companies involved in the mass layoffs went out of business altogether or moved their operations elsewhere. Many of these layoffs were in the defense industry. It is safe to assume that this process of industrial and commercial change is somewhat constant in our economy and that every year thousands of workers find themselves having to seek new jobs, either because their employer has shut down altogether, or reduces his work force for extended periods of time.

The figure of 190,000 would be larger if we added those cases which involve less than mass layoffs. It is also safe to assume that a large proportion of such workers are so-called older workers, say, 45 years or older.

Study after study has demonstrated that while the national unemployment rate of older workers may be lower than for younger workers, they have greater difficulties obtaining reemployment once they do become unemployed.

The numbers of older workers involved, however, are greater, than the numbers of teenage persons looking for full-time employment.

In case studies of mass layoffs, older workers actually have higher unemployment rates, and remain unemployed longer than the younger ones. The data on the 1961 recession, show that the incidence of long-term unemployment—more than 6 months—for older workers 45–64 was about twice the incidence among workers aged 25–44.

More important, it should cause all of us some concern that the long-term unemployed population between 20 and 64 is increasingly made up of older workers: In 1959, 41.7 percent of the long-term unemployed were 45–64. In 1962, 43.5 percent.

In 1965, 45.1 percent. It appears that as we make progress through special programs of training and counseling, and through our various fiscal and monetary policies, we are helping younger workers while leaving behind a solid core of older workers still too young to retire.

Typically our economic statistics take a given year and compare employment characteristics of older workers with younger workers; or the statistics will tell us something about the older workers of one period of time and compare this with older workers of a different period of time.

I think that these statistical kinds of approaches are not enough. They don't tell enough and can be misleading. They don't tell us the whole story, and indeed, can be misleading. They do not tell us what happens to a group of workers as they grow old.

It is possible, nevertheless, to take the Department of Labor tables in the President's manpower report and tease out from them some approximate but revealing facts about this type of question.

For example, take the male workers born during the decade 1901 to 1910. These are workers who were 45 to 54 in 1955 and then 10 years older 10 years later.

In 1955, 3.2 percent of that group were unemployed but 10 years later when they were 10 years older, the same group of men experienced a slight increase in unemployment rates moving to 3.3 percent.

But for younger workers, those born between 1911 and 1920, and 1921–1930, their unemployment rates went down.

In other words, the unemployment situation for workers aged 55–64 in the year 1965 was slightly worsened over the situation when they were 10 years younger in 1955—while the opposite was true for the others.

Something happens in the work lives of these men when they are 40 or older, something that we really haven't studied in any comprehensive fashion, something that shows up 10 years later in our aggregate, statistics about manpower and employment. Something happens that causes them to become unemployed. It might be an illness that first takes them out of being in the employed category. It might be a layoff or plant shutdown. It might be a dozen other things that happens to them. We just don't have the complete picture.

Your legislation will provide for a better picture.

There are many case studies, of course, nearly all of which reveal the greater difficulties of older workers who become unemployed through work force reductions or plant shutdowns.

With your permission, I would like to provide the subcommittee with a list of such research studies.

A selected list, it is not huge but it is illustrative.

Senator YARBOROUGH. You say you have a list?

Dr. SHEPPARD. Yes; I have it here.

Senator YARBOROUGH. I order that the list be printed in the record at the conclusion of your statement.

I also order printed along with Dr. Sheppard's statement these tables that you are discussing now and that are appended to your statement that you are discussing, there are four tables.

Dr. SHEPPARD. But even these studies are basically snapshots of the problem, instead of being motion pictures. That is, they are usually based on one-time interviews with workers and interviewed only shortly after they became unemployed.

I hope that this subcommittee might persuade the Department of Labor to conduct the type of studies I believe necessary in order to find out what happens to older workers during—not just after—a 5- or even a 10-year period following a layoff, in order to prove or disprove what is only suggested, in varying degrees, by our current information about unemployment and poverty among adults. I understand the Department may be starting one such study.

The material I have just presented about the unemployment rates in 1955 and 1965 of workers born in the decade 1901–10 can be supplemented by other types of statistical information.

For example, such as in table III. (See p. 188.)

In 1955, out of every 1,000 male white born between 1901 and 1910, 967 were in the labor force, either working or seeking work.

Ten years later, out of every 1,000 workers born in the same period, only 852 were in the labor force. For male Negroes, the 10-year decline was even greater, from 942 to 788 per 1,000.

If you look at table IV, you see an equally provocative trend. In 1955 there were 263,000 men aged 25–34 not in the labor force. (See p. 188.)

Ten years later—among men 10 years older—the numbers not in the labor force rose only 16.3 percent, to 306,000. This is the younger age group.

But take a look at those who were 35–44 in 1955, and then how many, 10 years later, were not in the labor force at ages 45–54. The size of that age cohort increased by 123 percent.

Or even more startling, look at the increase in the out-of-labor-force men born during 1901–11, from 1955 to 1965—the numbers increased by 273 percent.

Now, not all of these dramatic increases are accountable in terms of job problems. I am not arguing that. We don't know how much of this tremendous increase is due to health and other personal problems, and how much is due to employment problems due to age discrimination.

But at this point, even with our limited knowledge, we can be quite certain that problems of age discrimination were one set of causes that were involved in the sharp rates of increase from one age group to another, and from one decade to another.

When you tie together this kind of information with the information about the rise in unemployment rates from 1955 to 1965, for this same group of workers, you can begin to see that it is apparent that many workers, when they begin to be 40 to 45 years old, go through some employment crises.

Once unemployed, regardless of the reason, they have a tougher and tougher time in finding new jobs. The longer they remain unemployed, the more discouraged many of them become.

We did a study at the Upjohn Institute, and we found that the longer they are unemployed, the more sharply they decline in job-seeking behavior compared to younger workers.

And the more discouraged they become, the less they continue to search actively for new jobs, and eventually they simply stop looking. And once they stop looking, they are no longer classified as "participants in the labor force." They are no longer classified as unemployed, either.

I submit that one of the underlying conditions for this upward trend in unemployment rates for a given group of so-called older workers over a period of time, and for the downward trend in their labor force participation rate, is related to the barrier of age discrimination.

I could go on and on with more statistical facts and figures, but all they would lead to is further substantiation of the need for remedial actions to alleviate the special problems of older workers in our changing economy.

I believe that one of these remedial actions must be legislation that prohibits discrimination in employment on the basis of age.

For the past 15 years or so, during which I have been interested in this problem, our country has had all kinds of research reports and all kinds of voluntary educational campaigns seeking to highlight and solve the job problems of older workers.

I am in the research business and I am arguing against my own business in saying this. I don't think we need to research it more.

I think the time has come to be a bit more serious about the issue and to show the public, employers, and older workers themselves, just how serious and sincere we are—by passing effective legislation.

About 6 or 7 years ago, the Senate Special Committee on Unemployment Problems published a report of the study I had done when

I was professor in Detroit of what happened to the Packard workers when that plant shut down. It was called "Too Old To Work—Too Young To Retire".

I have always been struck by the fact that when the Packard plant shut down permanently in 1956, we found that the Big Three auto companies in Detroit, Ford, General Motors, and Chrysler, did not discriminate between Negro and white ex-Packard workers. Ex-Packard Negroes had just as good a chance of getting new jobs with these companies as did the whites.

One of the major reasons, perhaps the most important reason, was that the State of Michigan already had had a fair employment practices law, prohibiting job discrimination on the basis of race.

But what about age? Here, unfortunately, the picture was not a good one. In the interviews with the ex-Packard workers, 1 year after the shutdown, it was found that among younger workers—under 45—58 percent obtained new jobs with the Big Three. But among those aged 45 to 54, only 30 percent. And among those aged 55 to 64—only 15 percent.

Incidentally, among the workers at Packard who were under 65, the 45-to-64-year-old men constituted more than 80 percent of the work force at the time of the permanent shutdown.

I have often wondered what has happened to these Packard workers over the past 10 years. More important, what might have happened to them if there had been legislation, either State or Federal, which prohibited job discrimination on the basis of age?

We know already that at least among the larger companies, such as in the auto industry, racial discrimination was nonexistent, and I attribute a good part of this to the State FEPC law.

Furthermore, incidentally, Negroes hired by the Big Three obtained jobs at wage rates equal to or better than their wage rates paid while at Packard, to the same degree as did whites.

This one case study certainly suggests that the same beneficial results for older workers could be obtained if we now had laws prohibiting age discrimination in employment.

One of the arguments frequently posed against such legislative proposals is that age is not the reason for the problems of older jobseekers. And this relates to the study by Professor Loomba at San Jose State, and I am glad to hear of his study.

The argument is that the real reason is that they happen also to be less skilled than younger workers, and that employers naturally will choose the better skilled job applicants who just happen to be younger.

Like so many other issues in our society today, this is an oversimplified argument. There are dozens of reasons—not just one—for the disadvantages of older jobseekers, and lower education or lesser skills is only one of the many reasons. This is why manpower training programs must improve the proportion of older workers under MDTA, who obviously need skill upgrading.

I am the first to admit that legislation prohibiting discrimination—whether it's against Negroes, women, or older workers—will not be the total solution for all the job problems of such disadvantaged groups. There is no such thing as a total solution for any kind of problem.

But if skill level is the simple explanation for the problems of older job seekers, why is it that age was a much more important determinant of job-finding success than skill or education among the Packard workers in 1957?

Why is it that in a more recent study in 1964, by the Upjohn Institute—"The Job Hunt"—we found that among skilled workers all of the younger skilled men found new jobs, while 38 percent of the older skilled workers were still unemployed?

In this more recent study, based on interviews in Erie, Pa., we not only found that older skilled workers had more trouble getting new jobs. We also found that among those who did find new jobs, their wage rates on the new job were below the rates they were paid on their previous jobs. Here is a case, then, in which skill levels did not guarantee immunity to older workers.

And before I forget to say so, I should make clear that I am not talking about 65- and 70-year-old skilled workers when I use the term "older workers."

In our study, an older worker was anybody over the ripe old age of 38—you and me, Senator.

Senator YARBOROUGH. Make it 39.

Dr. SHEPPARD. If something else besides age is the explanation for the problems of older workers, why is it that in another recent study of hard-core unemployed in Detroit, it was found that even when every other factor was taken into account—by means of the most sophisticated type of statistical analysis (multiple classification analysis), age was still found to be significantly related to the unemployment status of the workers studies?

This same study revealed that out of a total list of eight factors, age was the fourth most important explanation for the problems of these hard-core unemployed workers.

My main point here is that age discrimination is among the important factors that cause serious economic and personal problems of unemployed workers—even among skilled persons and often among technical and professional people, too—and here again that California study is very important.

Also, my point is that intelligently designed legislation can make a major contribution toward eliminating such discrimination, and hence the economic and personal problems.

I would like also to put in a plug here for the need to advise the Department of Labor, notably through its Employment Service, to abide by the same principle embodied in the proposed legislation.

S. 830 states that it shall be unlawful for an employment agency to discriminate against any individual because of his age. S. 788 has a similar intent.

In the Upjohn study I have already referred to, we found that if the older workers went to the local employment service for help in finding a new job, more than one-half of them reported they received no help at all, in contrast to less than two-fifths of the younger workers.

By help, I mean such things as being referred to an employer for a job interview, being tested or counseled, being prepared for a job interview, or referred to a training program.

On the other hand, 36 percent of the younger workers under the age of 39—in contrast to only 14 percent of the older workers—received two or more types of help from the employment service.

Most important of all, the greater the number of kinds of help given by the employment service, the greater were the chances for a worker to find a new job.

The main point of all this is that if the personnel in a local employment service office know that there is a law against age discrimination they will be more likely to give more help to older job seekers, such as the important step of referring them to employers for a job interview.

At the present time, many employment service personnel will hesitate to refer older workers to certain employers if they know or believe that such companies will not hire older men and women.

There is also the possibility that such personnel themselves might be practicing—consciously or unconsciously—their own form of age discrimination in the course of their work.

I am happy to see that the Department of Labor is reviving its concern with the problems of older workers, and has created a staff to deal with them.

But speaking very candidly, the Department has been there before. There have been ups and downs in this type of interest.

In the early 1950's, there was a flurry of studies and the appointment of special staffs. But they weren't permanent.

In the mid-1950's, there was a special assistant for older workers but after 2 years, there was no special assistant.

In 1957, funds were made available to assign older worker specialists in every State employment service headquarters and in the local offices of more than 100 large cities. But several months later, there were virtually no such specialists to be found in these offices.

If my remarks today mean anything at all, the problems to which this subcommittee is addressing itself require more than temporary play acting, on the level of window dressing.

The proposed legislation that you are dealing with will go a long way to eliminate the here-today-gone-tomorrow pattern of attention to the older worker problem within the Department of Labor itself.

There are many other arguments against such legislation that you will not doubt hear in the testimony for these hearings—in addition to the one relating to the educational and skill obsolescence of older workers seeking employment.

They include the arguments about the cost of pensions, workmen's compensation and disability costs, costs of health insurance, and related arguments. I am no expert on these matters.

I do believe that under the proposed legislation, employers can and will find ways of solving these problems.

Furthermore, I am not yet convinced that in every case these types of stated problems are the real problems. Too frequently the real problems come down to subtle attitudes and stereotypes about older persons.

The term itself often makes people think of an 80-year-old man in a wheelchair—or at best, a rocking chair.

On the contrary, we are talking about significant segments of our labor force who are well below the age at which people ordinarily retire.

We are talking about adult men and women whose economic and personal resources while they are breadwinners and parents will be primary and direct determinants of their own future odds against long-term unemployment and permanent poverty—as well as the determinants of the future of their children.

By enactment of a law eliminating age per se as a barrier to employment, Congress will not only be assuring equal economic opportunity for the older worker of today, but also for younger workers who themselves will not remain young.

Thank you, Senator.

(The material previously ordered inserted in the record follows:)

PREPARED STATEMENT OF HAROLD L. SHEPPARD*, SOCIAL SCIENTIST, W. E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH

I want to thank the subcommittee for an opportunity to discuss the need for legislation to eliminate discrimination in employment because of age. Most of my testimony today is devoted to showing that such a need exists, and that the problems of older workers are just as urgent, if not more so, as the much more publicized issue of problems of teen-age members of the labor force. Such teenagers are more typically seeking temporary or part-time jobs, and furthermore, are not the heads of families, in contrast to workers in their forties or higher.

In evaluating the relative position of problems of under-65 older workers, I believe it more pertinent to compare them with younger age groups starting at perhaps 20 or 25, as I have tried to do in my statement.

All of us are interested in mitigating or preventing the incidence of poverty in America. I would like to stress the point that legislation to protect workers today against age discrimination might be a major weapon in the war against poverty. We have to wait twenty to twenty-five years to judge the results of today's Operation Head Starts in this war. We would not have to wait that long to judge the effects of effective legislation on age discrimination. Many Americans are not born poor; they become poor as a result of economic changes in our society—changes that affect a worker's job-finding chances, which in turn can have a bearing on his risks of becoming poor and then remaining poor.

Some special Census data for 1965 show that among unrelated individuals between the prime working ages of 25 and 64 and residing in urban areas, the older the person, the greater his or her chances of being in poverty:

Age groups:	*Percent below poverty level*
25 to 34	13.4
35 to 44	18.9
45 to 54	25.2
55 to 64	32.3

The same Census study shows that among heads of families in urban areas, the percent poor in each age group from 25 to 54 declines by age—from 12.5 percent of the younger population (25–34) to 6.5 of those 45–54—but then it begins to climb again, to 7.8 percent of family heads 55–64 years old. (See Table I for combined data on family heads and unrelated individuals.)

There has never been, to my knowledge, any systematic and comprehensive study to prove one of my main contentions, but I believe that it is quite plausible to argue that *one*—and only one—of the reasons for poverty might be found in the employment experiences of American workers while they are in the labor

*Staff Social Scientist, W. E. Upjohn Institute for Employment Research, Washington, D.C. This statement presents views which are not necessarily those of the Institute. Dr. Sheppard is a member of the National Advisory Committee on Older Americans, Administration on Aging of the Department of Health, Education, and Welfare, and formerly Staff Director, Senate Special Committee on Aging, and Assistant Administrator, Area Redevelopment Administration, Department of Commerce.

force. One set of such experiences consists of becoming unemployed after many years of continuous employment in a given company or industry and then having to undergo the obstacle course set up by our public institutions and private employers. This obstacle course includes, among other things, conscious and unconscious patterns of discrimination against older job-seekers.

Let me get a little more specific through some examples. Between July, 1963, and June, 1965—a period of two years—nearly 190,000 workers were involved in mass layoffs reported by the United States Department of Labor.[1] More than one-half of the companies involved in the mass layoffs went out of business altogether or moved their operations elsewhere. Many of these layoffs were in the defense industry. It is safe to assume that this process of industrial and commercial change is somewhat constant in our economy and that every year thousands of workers find themselves having to seek new jobs, either because their employer has shut down altogether, or reduces his workforce for extended periods of time. The figure of 190,000 would be larger if we added those cases which involve less than mass layoffs. It is also safe to assume that a large proportion of such workers are so-called "older" workers, say, 45 years or older.

Study after study has demonstrated that while the national unemployment rate of older workers may be lower than for younger workers, they have greater difficulties obtaining re-employment once they do become unemployed. The numbers of older workers involved, however, are greater, than the numbers of teen-age persons looking for full-time employment. In case studies of mass layoffs, older workers actually have higher unemployment rates, and remain unemployed longer than the younger ones. The data on the 1961 recession, show that the incidence of long-term unemployment (more than six months) for older workers 45–64 was about twice the incidence among workers aged 25–44.[2]

More important, it should cause all of us some concern that the long-term unemployed population between 20–64 is increasingly made up of older workers: In 1959, 41.7 percent of the long-term unemployed were 45–64. In 1962, 43.5 percent. In 1965, 45.1 percent.[3] It appears that as we make progress through special programs of training and counseling, and through our various fiscal and monetary policies, we are helping younger workers while leaving behind a solid core of older workers still too young to retire. Many of these men and women simply drop out from the labor force, but enough remain in it to make up an increasing portion of the long-term unemployed.

Typically our economic statistics take a given year and compare employment characteristics of older workers with younger workers; or the statistics will tell us something about the older workers of one period of time and compare this with older workers of a *different* period of time. In my opinion, such statistical approaches are not enough. They don't tell the whole story, and indeed, can be misleading. They do not tell us what happens to a group of workers as *they* grow old. It is possible nevertheless to take the Department of Labor tables in the President's Manpower Report and tease out from them some approximate but revealing facts about this type of question.

For example, take the male workers born during the decade 1901 to 1910. In 1955 when they were 45–54 years old, 3.2 percent of them were unemployed (Table II). But ten years later, in 1965, when they were 55–64 years old, the same men experienced a slight *increase* in unemployment rates, moving to 3.3 percent. But for younger workers, those born between 1911–1920, and 1921–1930, their unemployment rates went down! In other words, the unemployment situation for workers aged 55–64 in the year 1965 was slightly worsened over the situation when they were ten years younger in 1955—while the opposite trend was experienced by workers who were smart enough to have chosen to be born sometime between 1911 and 1930.

Something happens in the work lives of these men when they are 40 or older, something that we really haven't studied in any comprehensive fashion, something that shows up ten years later in our aggregate statistics about manpower and employment. Something happens that causes them to become unemployed.

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[1] Robert F. Smith, "The Impact of Mass Layoffs"; *Proceedings of the Industrial Relations Research Association* (IRRA) December 1965, pp. 204–19.

[2] See Paul J. Mackin, *Extended Unemployment Benefits* (W. E. Upjohn Institute for Employment Research, 1965).

[3] Based on table A–18, "Long-Term Unemployment Compared With Total Unemployment . . ."; *Manpower Report of the President*, March 1966, pp. 172–73.

It might be an illness that first takes them out of being in the employed category. It might be a layoff or plant shutdown. It might be a dozen other things that happens to them. We just don't have the complete picture. There are many case studies, of course, nearly all of which reveal the greater difficulties of older workers who become unemployed through work force reductions or plant shutdowns. With your permission, I would like to provide the Subcommittee with a list of such research studies.

But even these studies are basically snapshots of the problem, instead of being motion pictures. That is, they are usually based on one-time interviews with workers and interviewed only shortly after they became unemployed.

I hope that this Subcommittee might persuade the Department of Labor to conduct the type of studies I believe necessary in order to find out what happens to older workers during a five, even a ten, year period following a layoff, in order to prove or disprove what is only suggested, in varying degrees, by our current information about unemployment and poverty among adults. I understand the Department may be starting one such study.

The material I have just presented about the unemployment rates in 1955 and 1965 of workers born in the decade 1901–1910 can be supplemented by other types of statistical information. For example, take the Department of Labor's tables on participation rates in the labor force (Table III). In 1955, out of every 1,000 male white born between 1901 and 1910, 967 were in the labor force, either working or seeking work. Ten years later, out of every 1,000 workers born in the same period, only 852 were in the labor force. For male Negroes, the ten year decline was even greater, from 942 to 788 per 1,000.

If you look at Table IV, you see an equally provocative trend. In 1955 there were 263,000 men aged 25–34 not in the labor force. Ten years later—among men ten years older—the numbers not in the labor force rose only 16.3 percent, to 306,000. But take a look at those who were 35–44 in 1955 and then how many ten years later were not in the labor force at ages 45–54. The size of that age cohort increased by 123 percent! Or even more startling, look at the increase in the out-of-labor-force men born during 1901–1911, from 1955 to 1965—the numbers increased by 273 percent! Now, not all of these dramatic increases are accountable in terms of job problems. I'm not arguing that. We don't know how much of this tremendous increase is due to health and other personal problems, and how much is due to employment problems due to age discrimination. But at this point, even with our limited knowledge, we can be quite certain that problems of age discrimination were one set of causes that were involved in the sharp rates of increase from one age group to another, and from one decade to another.

When you tie together this kind of information with the information about the rise in unemployment rates from 1955 to 1965 for this same group of workers, you can begin to see that it is apparent that many workers, when they begin to be 40 to 45 years old, go through some employment crises. Once unemployed, regardless of the reason, they have a tougher and tougher time in finding new jobs. The longer they remain unemployed, the more discouraged many of them become. And the more discouraged they become, the less they continue to search actively for new jobs, and eventually they simply stop looking. And once they stop looking, they are no longer classified as "participants in the labor force". They are no longer classified as unemployed, either.

I submit that one of the underlying conditions for this upward trend in unemployment rates for a given group of so-called older workers over a period of time, and for the downward trend in their labor force participation rate, is related to the barrier of age discrimination.

I could go on and on with more statistical facts and figures, but all they would lead to is further substantiation of the need for remedial actions to alleviate the special problems of older workers in our changing economy. I believe that one of these remedial actions must be legislation that prohibits discrimination in employment on the basis of age.

For the past fifteen years or so, during which I have been interested in this problem, our country has had all kinds of research reports and all kinds of voluntary educational campaigns seeking to highlight and solve the job problems of older workers. I think the time has come to be a bit more serious about the issue and to show the public, employers, and older workers themselves, just how serious and sincere we are—by passing effective legislation.

I have always been struck by the fact that when the Packard plant shut down permanently in 1956, we found that the Big Three auto companies in Detroit, Ford,

General Motors, and Chrysler, did not discriminate between Negro and white ex-Packard workers. Ex-Packard Negroes had just as good a chance of getting new jobs with these companies as did the whites. One of the major reasons, perhaps the most important reason, was that the State of Michigan already had had a Fair Employment Practices law, prohibiting job discrimination on the basis of race.

But what about age? Here, unfortunately, the picture was not a good one. In the interviews with the ex-Packard workers, one year after the shutdown, it was found that among younger workers (under 45) 58 percent obtained new jobs with the Big Three. But among those aged 45 to 54, only 30 percent. And among those aged 55 to 64—only 15 percent. Incidentally, among the workers at Packard who were under 65, the 45 to 64 year old men constituted more than 80 percent of the work force at the time of the permanent shutdown.

I have often wondered what has happened to these Packard workers over the past ten years. More important, what *might* have happened to them if there had been legislation, either State or Federal, which prohibited job discrimination on the basis of age? We know already that at least among the larger companies, such as in the auto industry, *racial* discrimination was non-existent, and I attribute a good part of this to the state FEPC law. Furthermore, Negroes hired by the Big Three obtained jobs at wage rates equal to or better than their wage rates paid while at Packard's, to the same degree as did whites.

This one case study certainly suggests that the same beneficial results for older workers could be obtained if we now had laws prohibiting age discrimination in employment.

One of the arguments frequently posed against such legislative proposals is that age is not the reason for the problems of older job-seekers—that the *real* reason is that they happen also to be less skilled than younger workers, and that employers naturally will choose the better skilled job applicants who just happen to be younger.

Like so many other issues in our society today, this is an over-simplified argument. There are dozens of reasons—not just one—for the disadvantages of older job-seekers, and lower education or lesser skills is only one of the many reasons. This is why manpower training programs must improve the proportion of older workers who obviously need skill upgrading. I am the first to admit that legislation prohibiting discrimination—whether it's against Negroes, women, or older workers—will not be the total solution for all the job problems of such disadvantaged groups. There is no such thing as a total solution for any kind of problem, despite the naive search for panaceas on the part of many sincere people.

But if skill level is the simple explanation for the problems of older job-seekers, why is it that age was a much more important determinant of job-finding success than skill or education among the Packard workers in 1957? Why is it that in a more recent study in 1964, by the Upjohn Institute,[4] we found that among skilled workers *all* of the younger skilled men found new jobs, while *38* percent of the older skilled workers were still unemployed? In this more recent study, based on interviews in Erie, Pennsylvania, we not only found that older skilled workers had more trouble getting new jobs. We also found that among those who did find new jobs, their wage rates on the new job were *below* the rates they were paid on their previous jobs. Here is a case, then, in which skill-levels did not guarantee immunity to older workers. And before I forget to say so, I should make clear that I am not talking about 65- and 70-year old skilled workers when I use the term "older workers". In our study, an older worker was anybody over the ripe old age of 38!

If something else besides age is *the* explanation for the problems of older workers, why is it that in another recent study of hard-core unemployed in Detroit,[5] it was found that even when every other factor was taken into account—by means of the most sophisticated type of statistical analysis (multiple classification analysis), age was still found to be significantly related to the unemployment status of the workers studied? This same study revealed that out of a total list of 8 factors, age was the fourth most important explanation for the problems of these hard-core unemployed workers.

My main point here is that age discrimination *is* among the important factors that cause serious economic and personal problems of unemployed workers—

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[4] *The Job Hunt*, by H. L. Sheppard and A. H. Belitsky. Johns Hopkins Press. Baltimore. 1966. The research was largely financed by the Department of Labor's Office of Manpower Policy, Evaluation and Research.

[5] Howard M. Wachtel, "Hard-Core Unemployment in Detroit," in *Proceedings of IRRA*, op. cit., pp. 233–41.

even among skilled persons and often among technical and professional people, too—and that intelligently designed legislation can make a major contribution towards eliminating such discrimination, and hence the economic and personal problems.

I would like also to put in a plug here for the need to advise the Department of Labor, notably through its Employment Service, to abide by the same principle embodied in the proposed legislation. S. 830 states that it shall be unlawful for an employment agency to discriminate against any individual because of his age. S. 788 has a similar intent.

In the Upjohn study I have already referred to, we found that if the older workers went to the local Employment Service for help in finding a new job, more than one-half of them reported they received no help at all, in contrast to less than two-fifths of the younger workers. By help, I mean such things as being referred to an employer for a job interview, being tested or counseled, being prepared for a job interview, or referred to a training program. On the other hand, 36 percent of the workers under the age of 39—in contrast to only 14 percent of the older workers—received two or more types of help from the Employment Service.

Most important of all, the greater the number of kinds of help given by the Employment Service, the greater were the chances for a worker to find a new job.

The main point of all this is that if the personnel in a local Employment Service office know that there is a law against age discrimination they will be more likely to give more help to older job-seekers, such as the important step of referring them to employers for a job interview. At the present time, many Employment Service personnel will hesitate to refer older workers to certain employers if they know or believe that such companies will not hire older men and women. There is also the possibility that such personnel themselves might be practising—consciously or unconsciously—their own form of age discrimination in the course of their work.

I am happy to see that the Department of Labor is reviving its concern with the problems of older workers, and has created a staff to deal with them. But speaking very candidly, the Department has been there before. There have been ups and downs in this type of interest. In the early 1950's there was a flurry of studies and the appointment of special staffs. But they weren't permanent. In the mid-1950's, there was a Special Assistant for Older Workers, but after two years, there was no Special Assistant. In 1957, funds were made available to assign older worker specialists in every State Employment Service headquarters and in the local offices of more than 100 large cities. But several months later, there were virtually no such specialists to be found in these offices.

If my remarks today mean anything at all, the problems to which this Subcommittee is addressing itself require more than temporary play-acting, on the level of window-dressing. The proposed legislation that you are dealing with will go a long way to eliminate the here-today-gone-tomorrow pattern of attention to the older worker problem within the Department of Labor itself.

There are many other arguments against such legislation that you will no doubt hear in the testimony for these hearings—in addition to the one relating to the educational and skill obsolescence of older workers seeking employment. They include the arguments about the cost of pensions, workmen's compensation and disability costs, costs of health insurance, and related arguments. I am no expert on these matters. But I do believe that under the proposed legislation, employers can and will find ways of solving these problems. Furthermore, I am not yet convinced that in every case these types of stated problems are the real problems. Too frequently the real problems come down to subtle attitudes and stereotypes about older persons. The term itself often makes people think of an 80 year old man in a wheel chair—or at best, a rocking chair.

On the contrary, we are talking about significant segments of our labor force who are well below the age at which people ordinarily retire. We are talking about adult men and women whose economic and personal resources while they are breadwinners and parents will be primary and direct determinants of their own future odds against long-term unemployment and permanent poverty—as well as the determinants of the future of their children. By enactment of a law eliminating age *per se* as a barrier to employment, Congress will not only be assuring equal economic opportunity for the older worker of today, but also for younger workers who themselves will not remain young.

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TABLE I.—*Incidence of poverty among family heads and unrelated individuals in metropolitan areas, 1966, by age*

Age	Percent below poverty level	Number of poor family heads and unrelated individuals
25 to 34	12.6	907,000
35 to 44	10.6	905,000
45 to 54	9.1	739,000
55 to 64	14.2	930,000

Source: Bureau of Census (from testimony of Harold L. Sheppard, Mar. 16, 1967, U.S. Senate Subcommittee on Labor).

NOTE.—Figures on heads of families do not include family members. 45 to 64 as percent of all poor in above table, 47.8.

TABLE II.—*Male unemployment rates, 1955 and 1965, by color and by year of birth*

	All men		Whites		Nonwhites	
	1955	1965	1955	1965	1955	1965
Males born in:						
1921–30 [1]	3.3	2.6	2.7	2.3	8.6	5.1
1911–20 [2]	3.1	2.5	2.6	2.3	8.2	5.1
1901–10 [3]	3.2	3.3	2.9	3.1	6.4	5.4

[1] Workers 25 to 34 in 1955 and 35 to 44 in 1965.
[2] Workers 35 to 44 in 1955 and 45 to 54 in 1965.
[3] Workers 45 to 54 in 1955 and 55 to 64 in 1965.

Source: Table A–13, "Manpower Report of the President, 1966."

TABLE III.—*Male labor force participation rates, 1955 and 1965, by color and by year of birth*

	Whites			Nonwhites		
	1955	1965	Rate of decline (percent)	1955	1965	Rate of decline (percent)
Males born in:						
1921–30 [1]	97.8	97.7	0.1	95.8	94.2	1.7
1911–20 [2]	98.3	95.9	2.4	96.2	92.0	4.4
1901–11 [3]	96.7	85.2	11.9	94.2	78.8	16.3

[1] Workers 25 to 34 in 1955 and 35 to 44 in 1965.
[2] Workers 35 to 44 in 1955 and 45 to 54 in 1965.
[3] Workers 45 to 54 in 1955 and 55 to 64 in 1965.

Source: Table A–4, "Manpower Report of the President, 1966."

TABLE IV.—*Numbers of males not in labor force, 1955 and 1965, by year of birth*

	1955	1965	Percent increase
Men born in:			
1921–30 [1]	263,000	306,000	16.3
1911–20 [2]	209,000	467,000	123.4
1901–11 [3]	326,000	1,227,000	273.3

[1] Workers 25 to 34 in 1955 and 35 to 44 in 1965.
[2] Workers 35 to 44 in 1955 and 45 to 54 in 1965.
[3] Workers 45 to 54 in 1955 and 55 to 64 in 1965.

Source: Table A–7, "Manpower Report of the President, 1966."

LIST OF SELECTED STUDIES

Adams, Leonard P., and Robert L. Aronson: "Workers and Industrial Change," Ithaca, N.Y., Cornell University, 1957, 209 pp.
Ferman, Louis A.: "Death of a Newspaper": the story of the Detroit Times, Kalamazoo, Mich.: The W. E. Upjohn Institute for Employment Research, April 1963, 63 pp.
Ferman, Louis A., and James R. Hudson: "Job Dislocation Among Brass Workers in a Small Community," unpublished data on file in the University of Michigan-Wayne State University Institute of Labor & Industrial Relations, 1959.
Fowler, Irving, and Luke M. Smith: "Ford Relocation Followup Study," unpublished data on file in the School of Social Work, University of Buffalo, Buffalo, N.Y., 1958.
Sheppard, Harold L., Louis A. Ferman, and Seymour Faber: "To Old to Work—Too Young to Retire: A Case Study of a Permanent Plant Shutdown." Special report, U.S. Senate, Special Committee on Unemployment Problems, 86th Congress, first session, Washington: Government Printing Office, 1960, 74 pp.
Sheppard, Harold L., and James Stern: "Impact of Automation on Workers in Supplier Plants," Labor Law Journal, VIII (October 1957), pp. 714–18.
Wilcock, Richard C. and Walter H. Franke, "Unwanted Workers: Permanent Layoffs and Long-Term Unemployment," New York: the Free Press, Collier-Macmillan, 1963.
U.S. Arms Control and Disarmament Agency, "Reemployment Experiences of Martin Co. Workers Released at Denver, Colo., 1963–64" (December 1966).
——— "The Post-Layoff Labor Market Experiences of the Former Republic Aviation Corp. (Long Island) Workers" (published August 1966).

Senator YARBOROUGH. Dr. Sheppard, you have a very valuable statement. You have given us much information to raise many provocative questions. I will forgo questioning you in view of the fact we have two more witnesses who desire to be heard before noon.

One subject that you refer to I cannot help but mention and that is your statement that many, many Americans are not born poor, they become poor as a result of economic changes in our society, change of workers.

I thought back over that sitting here. In my own lifetime experience I have seen families that were affluent but later declined through the change in our economy, making obsolete the skills and knowledge they had which made them rich before.

There are many very, very stimulating comments in your statement but unfortunately we do not have time to explore them now. Thank you very much, Dr. Sheppard.

Dr. SHEPPARD. Thank you.

Senator YARBOROUGH. The next witness is Mrs. Eone Harger, director, Division on Aging, Department of State, State of New Jersey.

Mrs. Harger.

STATEMENT OF MRS. EONE HARGER, DIRECTOR, DIVISION ON AGING, DEPARTMENT OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY

Senator YARBOROUGH. Mrs. Harger, the bells are ringing over there. They might call us over at any moment, we don't know. That is a warning. If they should, we have your statement here. We can listen to it in toto, you can file it or condense it. Proceed in your own manner, any way you choose.

Mrs. HARGER. Let me talk about the main points, Senator, then you can ask me questions.

Senator YARBOROUGH. I can tell you as a judge for 5 years that those who make a cogent, forceful oral argument shorter often influence the courts more than those who read the whole brief.

Mrs. HARGER. I will see how well I can summarize.

Senator YARBOROUGH. We will order the entire statement printed into the record at this point.

Mrs. HARGER. Thank you, Senator Yarborough.

(The prepared statement of Mrs. Harger follows:)

PREPARED STATEMENT OF MRS. EONE HARGER, DIRECTOR, DIVISION ON AGING, STATE OF NEW JERSEY

I am Eone Harger, Director of the New Jersey Division on Aging. I am also President of the National Association of State Units on Aging and an officer of the Gerontological Society of the United States. As Director of the state office with the longest experience of continual attention to problems of aging within a state jurisdiction, I wish to endorse S. 830, the "Age Discrimination in Employment Act of 1967" and urge its passage. Extensive statistical data is available elsewhere to detail the dimensions of the problem of discrimination against older workers in the labor market, so I shall not repeat figures. Instead, I shall relate the proposed legislation to the information and experience in my own state as viewed from the perspective of the New Jersey Division on Aging.

During preparation for the White House Conference on Aging in 1960, it was apparent that mere figures were completely inadequate to describe the extent of the problem faced by the willing older worker, either man or woman, who had sought work in vain. Our report at that time carried numerous direct quotations that reflected the anguish of such people. Probably those most severely handicapped are those 45 to 65 covered by the proposed legislation—those who have a record of unemployment during the crucial years prior to reaching "Social Security" age. Since retirement from active work by 65, and often earlier, is more and more becoming the norm for our society, employment income on which to base finances of the non-working years becomes increasingly important.

New Jersey recommendations made for the 1960 White House Conference on Aging, resulting from our study of Economic Security and Income Maintenance, were:

RECOMMENDATIONS—EMPLOYMENT INCOME

1. The State make arbitrary *discrimination because of age an unlawful employment practice.*
2. An intensive educational program, on both State and Federal levels, be aimed at employers and employment agencies to acquaint them with the true *facts about older workers' capabilities.*
3. The N.J. State Employment Service expand its *job-counseling program for older workers.*
4. The N.J. State Department of Education offer increased opportunities for *vocational training and re-training* in those fields where there is a demonstrated shortage.

Since 1962, discrimination in employment up to the age of 65 has been illegal in New Jersey, but there have been comparatively few bona fide complaints filed under the law. Between July 1, 1966 and March 1, 1967, only thirteen formal complaints of discrimination were brought to the Division on Civil Rights of the Department of Law and Public Safety which administers the legislation. None of these complaints have gone to formal hearing. Most of the complaints filed have proven to be invalid since failure of individuals to get jobs was for reasons other than age. The law has been most effective in removal of age specifications in employment advertising and requests for age information on preliminary application forms. This has automatically opened up the opportunity for an individual to at least be given consideration for a job. Prior to passage of the law, many a job applicant was denied consideration simply because of age.

The New Jersey Division on Civil Rights has found that the cases where publications carry advertisements with age limitations are almost invariably due to ignorance of the law. As advertisements that mention age limitations come to the attention of the Division, a call to a publisher explaining the law brings quick cooperation. There has been the same cooperation from employers using a preliminary application form asking for age. The New Jersey Chamber of Commerce and the New Jersey Manufacturers Association have been helpful allies in administering the law. The New Jersey Manufacturers Association helped develop, publish and distribute a pamphlet explaining the regulations.

While the New Jersey legislation has undoubtedly opened doors to applicants who would never have been considered prior to its passage, greater gains might have been achieved with the inclusion of such additional provisions as are found in S. 830. I refer to the requirement that notices describing rights under the Act be posted in places of employment, provision for an extensive education and research program to be carried out on a continuous basis by the U.S. Department of Labor, and the requirement that opportunities for employment of older persons be promoted.

It is obvious that to achieve all of this a variety of approaches must be used, starting with the public information program. While it is good to insist that older workers can perform as well as younger workers and that they often have merits beyond younger employees, the fact remains that older workers are educationally disadvantaged in a labor market that with increasing frequency demands workers with more education. A law to eliminate discrimination in employment because of age must be accompanied by intensified efforts to remedy educational deficiencies. Opportunities to make up this deficiency should be increased and participation encouraged. In New Jersey, an ever larger number of adults have been taking advantage of the High School Equivalency Program. This program grants certificates that equal a high school diploma to those adults who pass qualifying examinations. By the end of March 1967, 3,554 will have taken the tests since January 1, 1967. The total for 1965 was 5,813. Admission of older workers without a high school certificate to manpower training courses and the offering of basic education courses for illiterates are both steps to help the older worker.

While both the general public and job applicants need suitable "education," there needs to be improved training in regard to older people for counselors of older workers in employment offices, and for personnel officers responsible for hiring. While the general training about special problem placements which is given counselors, at least in state employment offices, purportedly includes information on older workers, it is doubtful that the material used does much to change attitudes based on long held stereotypes. Because of commonly held personal feelings toward aging, it is often difficult to develop in counselors interest and enthusiasm for older applicants. The prejudice characteristic of our youth-oriented society is difficult to overcome. It is easier to develop a sympathetic enthusiasm for workers handicapped in other ways for whom a personal identification on the part of the counselor is less likely.

All successful demonstrations that have been shown to help older workers should be incorporated into nationwide employment practices with useful experience becoming general procedure. One New Jersey pilot project demonstrated that often the only help an unemployed older person needs is updating on the techniques of job finding. Obviously a person who has had a single job for several decades has lost touch with the where and how of job finding. Working on this premise, a Professional Placement Center of the New Jersey Employment Service held a series of seminars for older workers who were experiencing difficulty in finding jobs. Participants in the seminars were given training in preparing resumes and extensive information on modern hiring methods. The group method was particularly successful because the applicants became aware that there were specific techniques that could be learned, that other people were having similar problems, and that there was help available. The most frequent cause of drop-out from the seminars was success in gaining employment. It was anticipated that other State employment offices would incorporate the techniques into their procedures. However, in spite of the apparent success, these seminars have not been expanded or repeated.

With age per se removed as a reason for not hiring, age as related to pension and insurance provisions is frequently used and is accepted as an adequate rea-

son. While, undoubtedly, valid insofar as present insuring and pension policies are concerned, both of these policies need careful review as to age criteria and for the possiblity of adjustments that could eliminate discriminatory measures. Under the research and study section of S. 830, this matter should be given high priority.

While urging the passage of S. 830 and agreeing that the legislation would be of great value to many citizens, as I look at it in relationship to the total subject of aging in our society, I am more than a little uneasy. The fact that the bill limits the benefits of the legislation to those below the age of 65 seems to carry with it the tacit approval of discrimination after 65. The most superficial study of income, housing arrangements, etc., combined with the content of pre-retirement education that warns of what one can expect *not* to have after retirement, indicates that 10 per cent of our population will soon be relegated to a new kind of second class citizenship. This is an impending national crisis that cannot be solved by "band aid" legislation that treats the symptoms with token increases in social security and assistance benefits and pious statements of respect and intent to provide better nursing home and homemaker services. There must be recognition of the dimensions of this shift in our population and preventive measures developed so that such problems are eliminated for the most part.

However, I applaud short term helps so long as no one pretends these helps are long range solutions. In the short term category I would urge inclusion of the finding of part-time jobs for older workers, especially retirees, as a service of the State employment services. A real need can be filled by older people who want to experiment with some of the advantages of retirement and still work part time. New Jersey's most famous example of this is the group of part-time employees of the New Jersey Highway Authority who had been retired from full-time jobs at 65 and who work as toll collectors on the Garden State Parkway during peak times to supplement the normal staff. The Foster Grandparent program and the Green Thumb projects that emerged from the Office of Economic Opportunity have shown areas where great contributions can be made by retired older people. The employment services sponsored by non-profit groups for the sole purpose of finding part-time employment for retired men and women illustrate the same point. These agencies have found themselves with more jobs than people to fill them—real jobs rather than made jobs funded by outside grants

A 1966 report from a New Jersey Visiting Nurse Association illustrates a happy joining of a retired worker with an important job:

"Until two years ago, we had three persons in the business office, a secretary, a bookkeeper, and a registrar. No one knows better than the people here today, the upswing we have experienced in the business part of delivering professional services to people. We heard of a senior citizen who had taken an early retirement when his firm moved out of the state. He was unhappy without something to do. All of his work experience had been in an accounting department of a large firm. We employed him on a part-time basis. He does the statistical tabulation, punching the McBee cards, sorting them by program, by town or city, by age group, etc. The only part of this operation he does not do is the typing of the final reports."

I hope that S. 830 will soon become the law of the land and that all haste will be to use its potentials to the fullest. But, let this be done with full awareness that the problem of the older worker will more and more include the situation of the younger and younger "retiree" who already may be as young as 55. Immediate and serious attention must be given to the major challenge of technology combined with longer life—the situation of millions of competent people excluded from our working world with twenty, thirty or even more years of life ahead.

Mrs. HARGER. I am representing the New Jersey Division on Aging but I am also president of the National Association of State Units on Aging and an officer of the Gerontological Society of the United States, so I am bringing the experience of all these positions to this statement.

I want to endorse S. 830 and I do so on the basis of experience we have had in New Jersey which is one of the States that has a law against discrimination on account of age.

We are convinced in our State that discrimination on age in employment affects older people and feel it is very important that the

person bewteen 45 and 65, particularly, have employment because this is the period of time on which he bases his income after 65.

While there is perhaps an argument about whether 65 is the age at which people should be mandatorily retired, I think it is inevitable that we are going to have more and earlier retirement.

Technology makes it unnecessary for people to work but people still must have a meaningful existence and have adequate income.

In New Jersey our experience with our discrimination law has shown that we had comparatively few complaints between July 1, 1966, and March 1, 1967. We only had 13 formal complaints brought to the division on civil rights which is in our department of law and public safety. None of these complaints went to formal hearing and most of them proved to be invalid on the basis of age.

This law has been very effective in removing age from specifications in employment advertising and requests for age on preliminary application forms.

The advantage this has had is that people actually got in to be interviewed and had a chance to overcome initial discrimination. The civil rights division will call a newspaper where there is mention of age in advertisements and usually finds that there was ignorance of the law and that cooperation is easily gained.

We have had much cooperation from industry, both the chamber of commerce, the New Jersey manufacturers in informing people of the law. While this has undoubtedly opened doors to applicants, it could never be considered to have really solved a lot of the problems that are due to age.

There has been no mandatory requirement that there be posted notices of law in places of employment such as what would be required under S. 830.

There is no provision for education and research and no requirement that opportunities for employment of older persons be promoted, all of which need to be done if any law is to be effective.

It is obvious that to achieve all of the objectives that we have to have a very good program of public information. But while the information might be helpful, the fact remains that older workers are educationally disadvantaged in the labor market because there are often demands for more education.

We have to begin to develop methods by which we can remove other arbitrary demands which face older workers, which means there must be opportunities to make up the deficiencies. In New Jersey, we have had an increasing number of adults taking advantage of our high school equivalency program, for example, which removes another discriminatory situation.

Our high school equivalency program grants certificates to people who have not had diplomas before and who pass a qualifying examination.

By the end of March 1967, 3,054 will have taken the test. In the 3-month period since January 1, 1967. In 1965 we had under 6,000 for an entire year. Programs of this type are going to help older workers a great deal.

While we need education for other workers, I would like to submit that we need improved training in regard to older people for counselors

for older workers in employment offices and personnel officers who are responsible for hiring.

While the general training about special problem placements which is given counselors, at least in State employment offices, purportedly includes information on older workers, it is doubtful that the material used does much to change attitudes based on long-held stereotypes.

Because of commonly held personal feelings toward aging, it is often difficult to develop in counselors interest and enthusiasm for older applicants. The prejudice characteristic of our youth-oriented society is difficult to overcome.

It is easier to develop a sympathetic enthusiasm for workers handicapped in other ways for whom a personal identification on the part of the counselor is less likely.

All successful demonstrations that have been shown to help older workers should be incorporated into nationwide employment practices.

I am reporting here on a New Jersey demonstration we had in one employment office where they brought older workers in groups and taught them how to apply for a job. They just had not known how after being employed one place 30 years and then suddenly being out of work.

The chief reason people were dropping out of this was that they were employed. I would like to recommend that when there are successful demonstrations that they be incorporated in the permanent practice and not be only spot activities.

This is one of the great wastes in our country.

We are always demonstrating but we are too seldom evaluating and utilizing the benefits of these demonstrations on a broad basis.

With age per se removed as a reason for not hiring, age as related to pension and insurance provisions is frequently used and is accepted as an adequate reason.

While undoubtedly valid insofar as present insuring and pension policies are concerned, both of these policies need careful review as to age criteria and for the possibility of adjustments that could eliminate discriminatory measures.

I would think that under the research and study provision of S. 830 this might have very high priority.

While urging the passage of S. 830 and agreeing that the legislation would be of great value to many citizens, as I look at it in relationship to the total subject of aging in our society, I am more than a little uneasy.

The fact that the bill limits the benefits of the legislation to those below the age of 65 seems to carry with it the tacit approval of discrimination after 65. The most superficial study of income, housing arrangements, et cetera, combined with the content of preretirement education that warns of what one can expect not to have after retirement, indicates that 10 percent of our population will soon be relegated to a new kind of second-class citizenship.

This is an impending national crisis that cannot be solved by "band aid" legislation that treats the symptoms with token increases in social security and assistance benefits and pious statements of respect and intent to provide better nursing, home care, and homemaker services.

There must be recognition of the dimensions of this shift in our population and preventive measures developed so that such problems are eliminated for the most part.

I applaud short-term helps so long as no one pretends these helps are long-range solutions. In the short-term category I would urge inclusion of the finding of part-time jobs for older workers, especially retirees, as a service of the State employment services.

A real need can be filled by older people who want to experiment with some of the advantages of retirement and still work part time.

New Jersey's most famous example of this is the group of part-time employees of the New Jersey Highway Authority who had been retired from full-time jobs at 65 and who work as toll collectors on the Garden State Parkway during peak times to supplement the normal staff.

The foster grandparent program and the Green Thumb projects that emerged from the Office of Economic Opportunity have shown areas where great contributions can be made by retired older people.

The employment services sponsored by nonprofit groups for the sole purpose of finding part-time employment for retired men and women illustrate the same point.

These agencies have found themselves with more jobs than people to fill them—real jobs rather than made jobs funded by outside grants.

A 1966 report from the New Jersey Visiting Nurses Association illustrates the same thing where they were able to fill an important staff position with a retired person who wanted to work part time. They could not afford a full-time employee, he didn't want to work full time, and there was a very happy cooperative arrangement.

I am sure this could be repeated many times if somebody took the trouble to put the people and the jobs together.

I hope that S. 830 will soon become the law of the land and that all haste will be to use its potentials to the fullest. But, let this be done with full awareness that the problem of the older worker will more and more include the situation of the younger "retiree" who already may be as young as 55.

Immediate and serious attention must be given to the major challenge of technology combined with longer life—the situation of millions of competent people excluded from our working world with 20, 30, or even more years of life ahead.

It is a major problem of our society.

Senator YARBOROUGH. Thank you very much for this fine statement, Mrs. Harger. We are interested to have your comments generally and specifically about your experience under the New Jersey law.

I think one great contribution you have made here among others is describing the seminar to show people how to go apply for a job. It is not easy to apply for a job; different types of applications are required, different attitudes for different jobs. Yet as you note it is important to bring people together so that they get over their embarrassment by seeing other people who are having the same problem.

I also note that you stated that the main reason for fallout or dropout from the seminar is that someone found a job, that is very encouraging.

Thank you so very much for the many fine points that you have in your statement.

Mrs. HARGER. Thank you, Senator.

(The following supplemental statement was supplied at the request of Mrs. Harger:)

SUPPLEMENTAL STATEMENT OF GEORGE S. PFAUS, DIRECTOR, DIVISION ON CIVIL RIGHTS, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY, SUPPLIED AT THE REQUEST OF MRS. EONE HARGER, DIRECTOR, NEW JERSEY DIVISION ON AGING, RE PENSION EXEMPTIONS

Mr. Robert Harris, Counsel for the Senate Subcommittee on Labor conducting hearings on S. 830, requested Mrs. Eone Harger, Director of the New Jersey Division on Aging, for amplification of her testimony on the effect of pension exemptions. Since the prohibition against discrimination because of age is enforced in New Jersey by the Division on Civil Rights, Mrs. Harger has asked me to provide this information.

The experience of the Division on Civil Rights indicates that pensions are by far the most frequent reasons offered by employers in New Jersey for refusal to give equal employment opportunity to older workers. In most cases, we are not in agreement that this offered explanation is genuine, and when it is true, it still denies opportunity which could have been opened by reasonable adjustments.

We believe that the exemption of pension and retirement plans opens a wide escape hatch in anti-age discrimination which is difficult for the administering agency to overcome.

The legislation would be greatly strengthened by a direct provision making it unlawful to refuse to hire because of existence of a pension or retirement plan or policy with mandatory limits.

Senator YARBOROUGH. The next witness is Mr. James Horst, international executive vice president, and Miss Colleen Boland, president of Steward and Stewardess Local 550, Transport Workers Union, AFL–CIO. Come around, please.

All right, Mr. Horst. We are glad to have you. You may present your testimony in your own manner and file your statement or you may read it until our time is up, whatever way you desire.

STATEMENTS OF JAMES F. HORST, INTERNATIONAL VICE PRESIDENT, TRANSPORT WORKERS UNION, AND COLLEEN BOLAND, PRESIDENT OF STEWARD AND STEWARDESS LOCAL NO. 550, TRANSPORT WORKERS UNION, AFL–CIO

Mr. HORST. Mr. Chairman, my name is James F. Horst, international vice president of the Transport Workers Union of America, AFL–CIO, and director of the air transport division.

Because I understand you have a time problem I won't read my entire statement into the record.

I would appreciate, however, that it would be made a part of the record.

Senator YARBOROUGH. We are entering Mr. Horst's prepared statement, in full, to be printed at this point in the hearing record.

(The prepared statement of Mr. Horst follows:)

PREPARED STATEMENT OF JAMES F. HORST, INTERNATIONAL EXECUTIVE VICE PRESIDENT, TWU, AND DIRECTOR, AIR TRANSPORT DIVISION, TRANSPORT WORKERS UNION OF AMERICA, AFL–CIO

Mr. Chairman and members of the committee, my name is James F. Horst. I am International Executive Vice President of the Transport Workers Union of America, AFL–CIO, and Director of the Union's Air Transport Division, with offices at 1980 Broadway, New York, N.Y.

Thank you for this opportunity to speak on behalf of the 150,000 members of the Transport Workers Union of America, in favor of Senate Bill 830, which prohibits discrimination in employment because of age.

The Air Transport Division of TWU represents approximately 40,000 workers in the air transport industry—office and clerical, communications, ground service employees, mechanics, meteorologists, flight dispatchers, flight navigators and nearly 12,000 flight attendants—or as they are more commonly known, stewardesses, or hostesses who comprise almost three-fourths of the total work force in that category.

It is to the problem of age discrimination in employment faced by airline stewardesses that we address ourself to today.

Let me say first, however, that the interest of the Transport Workers Union goes far beyond this particular problem faced by our members. We support in full the goals of Senate Bill 830. Our union, always, has strongly opposed discrimination in all forms.

Founded in 1934, by the late, beloved, Michael Quill, TWU's beginnings were among Irish-American subway workers in New York, who were at that time, themselves, the victims of discrimination. For all of its history TWU has been in the forefront of the fight for the rights and privileges of all Americans. Thus, even if we were not directly involved in the issue before this Committee, we would be here today, because this is what TWU believes.

Our specific problem—which could be remedied by passage of Senate Bill 830—is the discriminatory practice by some airlines against flight attendants forcing them to retire upon reaching arbitrarily established age limits. However, these age limits are even lower than the problem ages envisaged by this bill: age discrimination against airline flight attendants begins at the universally accepted youthful years of 32 to 35.

Let me outline the problem. TWU's Local 550, known as the Air Line Stewards and Stewardesses Association, represents flight attendants on eight domestic and international airlines. Of these carriers Northwest requires flight attendants to terminate their flying careers at age 32—American at 33 and Southern Airlines and Trans World Airlines requires hostesses to retire at age 35 years.

Flight attendants on other airlines represented by TWU's Local 550 do not face such age limitations, nor do flight attendants on Pan American World Airways, who also are represented by TWU through other locals.

The airlines have never been able to provide any justification for termination of flight attendants at ages 32, 33, or 35, except that, in their opinion, stewardesses should be "young and pretty." Even if that were a logical criterion for employment, it seems somewhat arbitrary—and possibly dangerous—for airline executives to decide that at the age of 32 a female is no longer "young and pretty"—unless she works for TWA, where, evidently, she remains young and pretty until she becomes 35.

Possibly, some people mistakenly believe that in the myriad rules and regulations relating to the airline industry there is one that says that 32, 33, or 35 is the point where a stewardess is no longer able to provide the utmost care and protection for the airline passenger. But that is not the case. The Federal Air Regulations, which encompass everything down to the gauge of the escape rope required in aircraft cabins, do not set any sort of age limitations for flight attendants.

The Federal Air Regulations do set certain requirements for airline flight attendants requiring their presence in certain numbers and in terms of training and duties. And the airlines themselves set very rigid physical requirements, and provide annual medical checkups, to make sure they are in condition to continue their employment. We do not argue in the least with these requirements—in fact, the Transport Workers Union is on record as seeking even more stringent requirements in training, so that flight attendants will be even better equipped to handle the needs and provide for the safety of the air traveler.

Our argument is that a woman, once she has proved she can meet these standards, should be allowed to continue to work so long as she can continue to meet them.

Let me briefly point out the road we have followed so far in our efforts to end this discrimination. It started during the First Session of the 89th Congress, when we appeared before the Select Subcommittee on Labor of the House Committee on Education and Labor, as it was considering legislation somewhat similar to Senate Bill 830.

We, also, went before the Equal Employment Opportunities Commission. After extensive study and a full hearing, the Commission—we have reason to believe—was prepared to issue a ruling against discrimination in employment because of sex, when the airlines, smelling defeat, went into the courts to block the Commission's decision. The decision of the Equal Employment Opportunities Commission is still blocked in court.

We can report success in New York State, which has one of the nation's few really effective laws against discrimination in employment. There, the state commission did find in our favor, and we are in court now, seeking reinstatement of stewardesses who have been fired because of their age.

We attempted to get relief under terms of Executive Order 11141 in which the President declared a national policy against discrimination because of age. We were received sympathetically—the Labor Department ruled it could see no grounds for the airlines' claims that its age limitations were a bonafide occupational qualification. But, unfortunately, there were no enforcement powers attached to Executive Order 11141.

That, basically, is why we favor Senate Bill S. 830. It does provide the enforcement powers needed to end this discrimination. But we must take exception to Section 13, which would deprive us of the relief which seems so near. If Congress decides that discrimination against a worker at the age of 45 is against the best interests of the nation—as we are confident Congress will—then, surely Congress must abhor, at least as much, discrimination at the age of 32.

It is obvious that TWU has not been sitting idly by, waiting for this problem to solve itself. We have been actively seeking a remedy for this injustice for more than two years and each experience has led us to the same conclusion—that the solution lies in a clear-cut, nationwide law prohibiting discrimination in employment because of age.

No doubt, this committee will be hearing from the airline industry on this issue. Airline representatives will tell you—as they have us—that it is necessary for stewardesses to be "young and pretty" because of the airlines' "image." What does this boil down to? To this—the airlines are selling sex. Or as one of the gentlemen in the other house put it during hearings last year: "The gist of this problem seems to be to eradicate from the minds of employers and perhaps a large segment of the public, the notion that airplanes are flying bunny clubs."

Airline representatives, also, will attempt to show that only younger flight attendants can give proper service. They like to cite the enthusiasm of younger flight attendants and downgrade their "older" employees, who, they say, have become dissatisfied and bored at the age of 32, 33 or 35 years. May I point out, that it is these same so-called super-annuated employees in their early thirties who are providing the spark, the enthusiasm and the drive to achieve what we are seeking here. And may I also say that if the "older" attendants are as dissatisfied and bored with their work, as some airline companies claim, you wouldn't find them here today, fighting to keep their jobs. I am sure you will all agree that there is a lot to be said for experience in performing public service.

The airlines also like to refer to the physical demands of the job—what they call their beneficient concern for these "aging" ladies. As I noted before, we are aware of the stringent physical demands in this line of work. But as Stanley Ruttenberg, now the Undersecretary of Labor for Manpower, pointed out in a letter to the Defense Department on this issue: "There may be special situations in which younger women might have advantages as a flight attendant, but, we believe that qualifications for these selection factors are more validly determined by physical examination and other examination techniques than by setting an arbitrary age limit." He made that statement at the time the Labor Department advised that age for an airline flight attendant is not a bonafide occupation qualification.

The airline industry will, I am sure, attempt the semantic defense that the flight attendants are not really being retired at ages 32, 33 or 35—that they are only being reassigned to other work. The facts are that ground employment is offered, grudgingly, with a loss in seniority for choosing the location of employment; with the loss of the chance to travel; with the requirement of working a straight 40-hour week rather than the more lucrative 70 to 85 flying hours per month, with a job for which she may not be suited; and with a loss of status, the loss of glamour, the aura, that surrounds a woman who earns her living in the air.

If the stewardess had wanted to be a reservation clerk, or a secretary, she would have sought that as a career at the start. As a result, then, when they reach the forced termination age, most leave the airline. And significantly, their departure comes when they are nearing the top of the salary scale, and at a time when they probably are most active in labor union activities.

This is a situation in which it is difficult to cite examples. The career of airline stewardess has only been in existence for about thirty years. There have been very few who have reached the maximum age, admittedly because most stewardesses marry, have families, and no longer want to continue flying. By acting now, we can head off what could amount to a serious problem in future years—potentially ten thousand unemployed women, in the middle thirties, skilled only in this one field, thrown into the market place seeking work because they have been found to be too old at age 32 or 35 or at some other arbitrarily chosen year.

If the world situation were not what it is today—if more than twenty air carriers were not engaged in carrying men and supplies to the battlefields in Vietnam, possibly the Defense Department would have been able to do more to end this discrimination under Executive Order 11141. All the carriers involved in this discrimination have contracts with the Military Airlift Command, and the Defense Department cannot, at this time, afford to risk breaking these essential contracts in order to bring about the desired solution.

It should be noted, however, that there are other risks involved in this issue—risks that should neither be ignored nor minimized.

For however much we may agree that uninterrupted air service is of national concern, there is in the airline companies' refusal to end discrimination because of age a very real provocation to strike as a last-resort means to correct this grave injustice.

The Stewardesses whom we represent and who are being victimized for sex in the sky are determined to defend themselves. And they are joined in this determination by the entire membership of the Transport Workers Union of America, AFL–CIO, not only in the airline industry, but in city passenger transportation, on the railroads, missile and space installations, utilities, and other allied industries, where TWU is the collective bargaining representative.

What the nation's airline stewardesses demand is nothing more than what this Committee itself would, I believe, demand for itself. The stewardesses want nothing new—nothing radical—nothing more than an end to discrimination that tags them as old and unable to perform their duties at age 32!

I sincerely urge the Committee to delete Section 13 and to adopt this bill for approval by the full Senate and the Congress, or failing that, to amend S. 830 specifically to protect airline flight attendants.

Thank you.

Mr. HORST. I would take this opportunity to merely call to your attention a few of the highlights of this statement.

First of all, the Transport Workers Union has, from its very inception in 1934, under the leadership of Michael Quill and now under the leadership of President Matthew Guinan, been in the forefront of the fight against discrimination in any form and in any manner.

We bring to the attention of this committee a particular facet of the problem of discrimination, the discrimination that we have been fighting in the airline industry for over the past 4 or 5 years.

We have spent many, many hours, days, months, and in fact, years attempting to eliminate in the airline industry discrimination, whether it be in the form of sex, whether it be in the form of the married stewardess being fired, or whether it be in the form of the stewardess being fired because of her age.

Throughout this entire period there has never been a bona fide explanation of it by management other than they would like pretty young girls in the flight attendant/stewardess classification.

I might point out to you that many of the airlines that we represent do not discriminate because of age, however there are still some companies that do.

Senator YARBOROUGH. How many companies have a mandatory age requirement for stewardesses or hostesses?

Mr. HORST. I believe there are four of them, Mr. Chairman. Four that we have representation for.

Senator YARBOROUGH. I believe you state that you represent three-fourths of all the stewardesses or hostesses who work on airlines in America?

Mr. HORST. That is correct, Mr. Chairman.

I have on my left, Mr. Chairman, the director of our legislative department, Francis O'Connell, who has spent many days, weeks, and hours on this issue and who is intimately familiar with it.

Without burdening this subcommittee any further, I have on my right, Miss Colleen Boland who, herself, is a stewardess on a major air carrier, hired in as a stewardess in 1952 and has been a full-time union officer and president of our local No. 550, Airline Stewardess Association.

Miss Boland has been in the forefront of this fight, also, whether it has been on the State level, whether it has been on the Equal Employment Opportunity Commission level, whether it has been before the congressional committe hearings clear back to the 89th Congress where this problem commenced and also has participated with me and other international officers in attempting to resolve this problem on a collective-bargaining basis which so far has failed.

But there is absolutely no reason, no justification, that this discrimination be considered a bona fide qualification in terms of age.

I would like, if I may, and with your permission, Mr. Chairman, to have Miss Boland acquaint your committee with some of the problems they have in this area of age discrimination.

Senator YARBOROUGH. Thank you.

Miss Boland.

Miss BOLAND. Thank you, Mr. Chairman.

Again, understanding the time problem that exists, you have my prepared statement, I believe, before you. I will not go into a very great amount of detail except to urge you to consider our problem which is an immediate and a real one.

Senator YARBOROUGH. We are ordering Miss Boland's statement be printed in full in the record at this point.

Without objection, it is so ordered.

(The prepared statement of Miss Boland follows:)

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

Mr. Chairman and Members of this Committee: My name is Colleen Boland. I am President of the Air Line Stewards and Stewardesses, Local 550 of the Transport Workers Union of America, AFL–CIO. This is a labor organization with offices at 205 W. Wacker Drive, Chicago, Illinois, representing over 10,000 United States Flight Attendants, both male and female.

In September, 1965, we testified here in Washington in support of proposed legislation which would have brought relief to many Air Line Stewardesses who faced termination of their chosen career because of their age. Today nearly 100 of those stewardesses are no longer with us. In a matter of months another 50 or so will be gone also. By next year many, many more.

The legislation you are presently considering would bring relief from such arbitrary discrimination. However, Section 13 of the proposal limits relief to people between the ages of 45 and 65, with appropriate adjustments which, as you have heard, would probably exclude us.

We would prefer that you set no minimum age limitation and thereby include us directly for we appear to be uniquely alone as the only group which faces systematic discrimination prior to age 45. We know of no other industry or group whose employees are so little thought of that their services are dispensed with at the age of 32.

I would like to cover the areas of our problem which I feel are necessary to show the need for immediate legislation which would give the specific relief we desire.

The great majority of stewardesses voluntarily leave this job while in their 20's or early 30's, but those who desire to continue are prohibited from doing so if their employer is Southern, Northwest, Trans World or American Airlines. There is no other reason except that they have reached the arbitrary age specified by their employer. Northwest has chosen the age of 32, American 33 and Trans World and Southern age 35. In no case has the rule been applied to men, although both TWA and Northwest employ men also. The stewardess is required to terminate and begin earning a living at some other job without benefit of retraining or other assistance. Personal performance, ability, work record, efficiency suddenly have no merit. There is no consideration for the future welfare of the individual either in promotion within the Company or in retirement or severance[1] benefits. The one and only factor which is considered is their chronological age.

When retirement policies were adopted by the individual companies, the stewardesses were included and covered under the normal retirement age of 65. This retirement age continued in effect even after some airlines imposed the 32 or 35 year age limits and in fact, remained even when the retirement age was changed to 60 for pilots and the male stewards of TWA. Some stewardesses were required to join this retirement plan as a condition of employment.

Should this practice of terminating stewardesses because of age be allowed to continue, we are speaking of a potential force of unemployed, unskilled women seeking employment in their middle 30's. They will of necessity compete with those 45 to 65 years old. This is not their desire. They prefer to continue to fly.

When terminated a stewardess also forfeits the airline employee benefit of free airline transportation. The retirement plans and pass policies make no provision to extend normal retirement passes to people of 35, only to people over 50. She must forfeit her all important seniority and often even her choice of residence. If she seeks employment with a new employer, the airlines have denied or opposed her claim to unemployment on the basis that she voluntarily resigned. There is no bona fide occupational reason she cannot continue to fly. There has not been one shred of evidence ever submitted by an airline to show that age has contributed in any way to the failure to peform any requirement of the job.

All airlines have very similar hiring requirements as to ability and to physical and educational requirements. By Federal regulation, flight attendants are required on all commercial flights and are required to demonstrate their ability to carry out the necessary safety procedures. The Federal Aviation Agency and the Civil Aeronautics Board has never ruled or even indicated any feeling that there should be an age limitation for flight attendants. The fact that no such rule has ever been proposed is strong indication that none is needed.

The services and comforts they are to provide are detailed by Company regulations and are rigidly enforced. These rules range from the use of false eyelashes to making lemon peel for martinis to the evacuation of a burning aircraft. Most of the airlines require rigid yearly physical examinations and are as extensive as the employer deems advisable. She must maintain a trim figure and meet above average appearance standards. She may be required to serve up to 16 hours a day and may work nights instead of days, including holidays and weekends. They are not given regular meal periods and meals are not necessarily provided while they are on duty. She must perform her job to the satisfaction of her hundreds of passengers as well as her employer and fellow employees.

There are on our seniority rosters nearly 500 flight attendants who have performed this job well past the age of 32 or 35. They are the ones to whom the

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[1] Exception. A union negotiated severance pay in American Airlines contract. Appendix D provides choice of their employment with Company or severance pay.

rule does not apply, who are hired prior to 1953 or 1957. There are 348 on Eastern. 212 on TWA. 33 on Northwest and 45 on American.[2]

There is no question that the job is a physically demanding one but not beyond that of normal endurance. It is demanding only to the point of requiring speed, efficiency and long hours on duty. Both men and women have and continue to perform the job to the benefit of the Company, the Industry and the traveling public.

There is logic to a minimum age of 21 since it requires extensive travel, working without supervision and serving liquor as a part of the duties performed. It is interesting to note, however, that the industry has not maintained a minimum age, but rather has lowered this age to suit their needs whenever applicants are scarce. The industry has also lowered physical and educational requirements whenever the demand was greater than the supply.

Perhaps 65 does not seem a logical age when you consider the public image of an airline stewardess. The fact of the matter is that no stewardess has ever reached that age. There are, however, many currently flying who have reached 50 and who are continuing to satisfactorily perform all the functions of the job.

Should this type of job be exempt from law to the contrary? Or be excluded because of a bonafide occupational qualification? We think not. The airline industry has *proven* that none is necessary. Pan Am and Northwest fly the Pacific, the Pan Am stewardess has no age limit and continues to capably perform her duties but the Northwest stewardess does not? Nonsense! TWA and Pan Am fly identical routes across the Atlantic, many stewardesses on both lines have passed 35 years of age, both Companies lead the industry in profits, but must the employees on TWA quit at 35 to assure the stability of the future? Unless the future means trading in pure sex, this is absolutely ridiculous!

American stewardesses who reach 33 must quit their career, give up the right to fly the routes of their choice, but if they accept a supervisory job they are directed as a matter of policy of the same management to fly a trip a month—identical in all respects to a working stewardess!

There is only one aspect of life in which the youthfulness demanded of the airlines has in practice been desirable. That is when an organization hoped for profit by selling flesh and sex. In years past, the airlines hoped to give the impression of having your private nurse along—and dressed the stewardesses appropriately.

Today some airlines like American are contemplating uniforms of the miniskirt style. Last week I read the latest quip, "I hope United will follow suit—then we could really fly the friendly thighs of United." If this is to be the portent of the future, then this competitive-minded industry will soon be pleading to throw out or be exempt from such prudish laws as might prevent topless or bottomless outfits for their stewardesses. While this may appeal to the predatory male more than last years' movies, does it really warrant government subsidy? The purpose of the airline industry is supposed to be Interstate Commerce—not sex.

All of these same employers hold or benefit from Government contracts such as MAC or transportation of U. S. mail, and as such come under the jurisdiction of Executive Order 11141,[3] wherein the President has declared that ". . . it is the policy of the Executive Branch of the Government that contractors and subcontractors engaged in the performance of Federal Contracts shall not . . . discriminate against persons because of age. . . ." This Executive Order is, however, without any enforcement powers to force either compliance or contract termination.

The Equal Employment Opportunities Commission in issuing guidelines on discrimination provisions of the Civil Rights Act of 1964, stated that "the principle of non-discrimination requires that individuals be considered on the basis of individual capacities. . . ."[4]

I do not believe that any arbitrary age can be established for stewardesses that is reasonable or logical and certainly not an age of 32 or 35 as we are presently subjected to. There is only one true criterion—to judge an employee on an individual basis, on the basis of the performance of the job itself.

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[2] Eastern, seniority list dated January 1, 1967; Trans World—seniority list date January 1, 1967; Northwest—seniority list dated November 1, 1966; American—seniority list dated October 1, 1966.

[3] Executive Order 11141, dated February 13, 1964, signed by President Johnson.

[4] Release of November 22, 1965.

The New York State Commission on Human Rights recently ruled [5] that they found no evidence warranting the establishment of an arbitrary chronological age policy for continued employment of an airline stewardess and further, that evidence supported the position that termination as a stewardess should be predicated solely on the individual's ability to perform the duites of the position. The Commission went on to say that under New York law they found no support for a claim of a bonafide occupational qualification. Needless to say, this investigation met with screams of anguish from the outraged airlines, who have used every legal means available to prevent this State Body from enforcing compliance. Their first attempt was on the basis that only a Federal Ruling can be applied to an Interstate Carrier. When the Equal Employment Opportunities Commission moved to rule in our case on a Federal level, the ATA quickly tied up a decision with legal red tape, claiming "prejudice" and "conflict of interest" by a member of the Commission.[6] In recent hearings before the New York Commission, counsel for the ATA and American Airlines presented lengthy testimony [7] as to why they were not in violation of the law even if it might apply to them. They smugly submitted the history of that law and pressed the point that the law applied only to people between the ages of 40 and 65. They argued that if the lawmakers had been concerned with anyone under the age of 40 they would have said so and therefore, in the absence of specific attention to anyone under 40, the Law should now be applied in effect to condone discrimination against anyone under 40.

Having faced such argument I am sure you can understand our need and desire to be included in S. 830, with Section 13 deleted. This not only would provide relief for unique cases like ours but would insure that present and future legal magicians could not delay or abuse the intent or meaning of this Act.

We have attempted to plead our case before various Federal and State Agencies, we have asked for laws to provide us the ability to continue to work in a job we desire and are able to perform. We have met wtih violent opposition from one of the richest industries in this country today, we have faced months and years of delays and legal maneuvers. We have spent thousands of dollars hoping to find a peaceful end to this discrimination.

If we are forced to strike this industry to abolish this rule, I am sure proper binding legislation would be proposed immediately to prevent "inconvenience to the public."

Gentlemen, to us a few more months of pleading, talking, or of pouring thousands of dollars into various courts make a strike far more feasible and practical.

Senator YARBOROUGH. Proceed, Miss Boland.

Miss BOLAND. I would like to point out, Mr. Chairman, that we started appearing here in Washington pleading our case in September of 1965. Since then over 100 of our members are no longer with us.

This is happening monthly and daily and yearly. It is a problem that needs immediate consideration and immediate action.

The bill before you that is under consideration has a section 13 that limits relief of discrimination to these people between the ages of 45 and 65, and even with the appropriate adjustments would probably exclude us.

We are systematically discriminated against at the age of 32, 33, 35.

As Mr. Horst has told you, we have appeared here for subcommittee hearings; we have been before the Equal Opportunities Commission under the Civil Rights Act of 1964; we have pleaded our case

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[5] Determination after Investigation, Eloise Soots vs. American, Case No. CA–12288–65, J. Edward Conway, Investigating Commissioner, April 20, 1966.

[6] Preliminary Injunction, United States District Court for the District of Columbia. Air Transport Association of America, et al., plaintiffs, vs. Aileen C. Hernandez, et al., defendants, C.A. No. 3096–66.

[7] New York State Commission for Human Rights on the complaint of Eloise M. Soots against American Airlines, Inc., Case No. 12288–65, hearing of February 20, 1967.

before the New York Commission on Human Rights. In each and every case we have met with violent opposition to our problem.

We have spent a great deal of time in courts throughout the country and we have spent thousands and thousands of dollars attempting to resolve this problem peacefully.

We have heard stated before the various commissions like the Equal Employment Opportunity Commission that it is the desire of this huge rich industry to have walking their aisles young and pretty girls.

I believe that you have heard in testimony recently, that perhaps there are medical reasons behind this desire. We charge that this is not true.

We have taken depositions, for instance, of the president of Northwest Airlines who says—without quoting exact words—but we do have those depositions—that perhaps he had a 20- to 25-minute telephone consultation with a doctor regarding pregnancy in relation to flying.

Aside from that, we have found not one shred of proof that there was any medical or physical reason for such discriminatory practice.

Before the Human Rights Commission in the State of New York, we heard the airline industry claim that since that law provides limitation of discrimination for people of ages 40 through 65, then it must give consent to age discrimination under or above those ages.

We plead with this committee to take care to prevent legal magicians, such as these, from applying a new law that is so important for all Americans in such a manner. May I add, there is logic to a minimum age of 21 since it requires extensive travel, working without supervision, and serving liquor as a part of the duties performed.

It is interesting to note, however, that the industry has not maintained a minimum age of 21 but rather has lowered this age to suit their needs whenever applicants are scarce. The industry has also lowered physical and educational requirements whenever the demand was greater than the supply.

Senator YARBOROUGH. Do the airlines, any of them, have age 21 as a minimum or do they fix a minimum age?

Miss BOLAND. I cannot say definitely that no one does not have an age of 25——

Senator YARBOROUGH. No; 21. Minimum age of 21.

Miss BOLAND. I cannot say definitely that one has a minimum age of 21 but I will give an example of, say, American and TWA who had an age of 21 and as the demand became greater that age was lowered to 20 and then to 19. And some consideration is being given to reducing this to as low as 18½.

Senator YARBOROUGH. Now that 18, 19 down to 18, you say 18½, minimum age, what percentage of hostesses quit, either because of marriage or other reasons, before they are 30 years of age?

Miss BOLAND. I would say 90 percent of them.

Senator YARBOROUGH. Ninety percent of them quit? If the air got rough and bumpy and a good many of the passengers were losing their dinners, do you know of any reason why a hostess of 35 would be less efficient than one of 21?

Miss BOLAND. I think especially then——

Senator YARBOROUGH. Fourteen years experience.

Miss BOLAND. I think especially then the 14 years of experience indeed helps.

Senator YARBOROUGH. If they had something happen on the plane where the passengers became frightened, do you know any reason why a hostess 35 years of age would be less efficient than a 21-year-old in calming them?

Miss BOLAND. Judging from my own experience I know I am able to accept these things much more calmly now than I was at 20.

Senator YARBOROUGH. Well, if a storm closed the airport and the plane had to overfly it and passengers became so abusive that the hostess cried, some went and locked themselves up in the restroom to get away from these uncivil passengers—I have witnessed all these things—do you know of any reason why a hostess of 35 would be less able to meet that situation than a hostess age 21?

Miss BOLAND. I know from personal experience that such situations are much easier to meet later on than during the first few months.

Senator YARBOROUGH. Mr. Horst, have you completed your statement?

Mr. HORST. I would just like to say, Mr. Chairman, that we believe, as I have indicated in the end of our statement, that I sincerely urge the committee to delete section 13 and to adopt this bill for approval by the full Senate and Congress or, failing that, to amend S. 830 specifically to protect the airline flight attendant so that this particular problem is called to the attention of the committee.

I would just want to make one other comment. I can assure you as an international officer of the Transport Workers Union that after 3 years or 4 years of diligent effort to find a solution to this problem on a legislative basis—and we have met with failure to this date—we have high hopes that this will finally bring some end to this cruel injustice. The airlines have been unfair to these women who are determined to make a career of this job and for no reason other than an arbitrary age limit, throws them out in the heaps of the unemployed.

We think this is dastardly treatment by management. We have been unable to resolve this problem where it still exists among these airlines through collective bargaining.

I can assure you gentlemen that the ire of these women is rising continually to the boiling point and if they have to—and this is absolutely no threat but it is a fact of life—that if they have to meet this problem on the bricks with a strike, as much as we would want to avoid a national transportation strike, these women are determined after these many years to find a solution to this problem.

I certainly urge this committee not only to adopt the Senate bill 830 with the suggestions that we have made in our statement but the utmost haste is paramount because these girls, and as Miss Boland has pointed out to you, day in and day out they are being thrown out of work and thrown on the heap of the unemployed.

Senator YARBOROUGH. Who are those young girls in the front row there, airline hostesses?

Mr. HORST. Those attractive girls are all past the age of 32. They are all presently flying for an airline and only because they had the opportunity prior to the company putting in this age requirement are they still being able to be employed.

Miss BOLAND. Mr. Chairman, I have one other item that I would like to introduce into the record, and this is a quote from the World Journal Tribune, from Tokyo, March 10:

Showing that TWA has filed a certification document with the Labor Department for special permission to hire non-Americans to work within the United States.

They are seeking 150 Oriental girls. I am sure that part of their claim for this will be the shortage of American girls to serve the airways.

Senator YARBOROUGH. What age does TWA terminate employment?

Miss BOLAND. 35.

Senator JAVITS. Miss Boland, I apologize for being late. I am the author of one of the two bills which the subcommittee is considering but I have poverty inquiries going on at the same time. That is our life.

Senator YARBOROUGH. Mrs. Boland is protesting the poverty imposed on hostesses 32 to 35 years of age.

Senator JAVITS. That is why I rushed over.

I did want to tell you that my wife thinks I spend more time on airlines in the company of stewardesses than with her so I know a good deal about their problems and I would like to tell you that I am very sympathetic to them. We will give every consideration to this very unique problem involved here.

Now the minimum age limit of both S. 830 and S. 788 is 45. This does present a problem to you, I know. I will say that your appearing here will engender some helpful reaction and certainly I will give serious study to what can be done within the context of age discrimination legislation to meet this problem.

You have not got a more sympathetic worker than myself. I know what these young ladies do and what a high type they are and I certainly know how much experience is needed in this field.

I have seen stewardesses perform in emergencies of every conceivable character so I assure you I, for one, and I am sure my colleagues feel the same way, will give your problem the most prayerful study.

Miss BOLAND. Your words are very encouraging.

Senator YARBOROUGH. Mr. Horst, Miss Boland, this bill, S. 830, the basic bill, Senator Williams of New Jersey is one of the coauthors of this basic bill that deals with the problems of discrimination because of aging.

We had never considered anybody under 45 as among the aging and this really is not covered in the language of S. 830, but we have granted this request for hearings because we think it brings this question into the light of public consideration.

This hearing might lead to some relief of this situation; however, I must warn you as chairman of this subcommittee that this will not be easy for us to decide. These young ladies back there are closer in age to the teenagers than they are to this aging group that we have been talking about earlier during these hearings.

Senator WILLIAMS. I think you will be elected forever, Ralph.

Senator YARBOROUGH. The Senator from Rhode Island, Senator Pell.

Senator PELL. Miss Boland, you point out that there are 500 flight attendants who perform this job well beyond the age of 32 or 35. Now, does this include the line that——

Miss BOLAND. I would like to clarify one thing and I am sure the figures will prove it. This should read over 600. If you total the figures we quote, I believe they total 638. Now these are as they are broken down. Eastern does not have an age limit. They have 348 that continue to perform the job.

TWA, who instituted the rule in 1958, has 212 left.

Senator PELL. If TWA instituted the rule, why would there be as many?

Miss BOLAND. Those 212 were hired prior to 1957 when the rule went into effect and are, I believe, allowed to fly under the "Grandmother Rights" like myself.

[Laughter.]

Senator PELL. Did not everybody to whom the rule presently applies know of the rule when they took the job?

Miss BOLAND. I am sure, Senator Pell, that you, like I, never knew we would reach the old age of 30.

Senator PELL. But they would have known if they had been curious as to what would happen when they were older than the specific age; the information was available to them when they were hired, was it not?

Miss BOLAND. They were told among all other papers that they were required to sign that in order to take this job they had to sign this paper that indicated they would quit by the time they were 32.

In all sincerity, each girl who was hired at 21 did not feel that she was going to stay in the job until she was 32 or 35, it was a long way away. She was not making such far-reaching plans and it did not have any importance just as contributing or taking part in the retirement plan does not have a far-reaching importance to the boy of 18, but it does to the man of 45.

Senator PELL. But in the first place you would have to be over 21 to be hired?

Miss BOLAND. That is right.

Senator PELL. I think we are getting into dangerous territory when we say that people over 21 can accept a contract and sign it but that when they change their minds later on, we should let them change the contractual relationship.

I find such reasoning a little difficult to follow.

Mr. HORST. Senator Pell, if I may point out a factor, I think you have two problems in this area or two factors in this area.

First of all, an agreement by an individual whether there is a collective bargaining agreement between the employer and the union and that agreement is contrary to the collective bargaining union is termed a "yellow dog contract," it does not have final and binding rights.

Senator PELL. Why not take this to the courts, then?

Mr. HORST. Well, we have been through the courts, we have been through the New York State Commission on Human Rights, we have been everywhere and we still not have been able to resolve this problem.

Let me make one other point, if I may. The union has made an

effort and has been successful in a measure to—over the years—improve the job where it is now becoming close to a reasonably good job.

I think this in itself has had an effect on the determination of a young girl who was 20 or 21 and signed the so-called yellow dog contract and then found 5 or 8 years later that this job was becoming a very well paid job, with reasonably good working conditions. This, I think, has also had an effect.

Senator PELL. But the fact remains that the person who goes on board is over 21 and accepts it as a condition of employment. When you join certain branches of the military service, one of the drawbacks to doing so is that you have to quit when you reach a certain age. If that drawback is not acceptable, it seems to me they should go into some other profession.

I cannot see where it is morally wrong since the condition is laid forth. If it were not laid forth and suddenly they said that you have to get out when you are 28 or 32, it would be morally wrong.

Mr. HORST. We believe any form of discrimination is morally wrong. We believe an arbitrary age requirement is a definite form of discrimination and, therefore, it is morally wrong, whether the individual signed an agreement before or after employment, or acknowledged it or not.

Senator PELL. How old is the oldest of the flying stewardesses?

Miss BOLAND. I am not exactly sure but it is between 53 and 55.

Senator PELL. What do you think should be the retirement age for a stewardess?

Miss BOLAND. I do not believe there should be a retirement age other than the normal retirement age.

Senator PELL. You mean 65?

Miss BOLAND. Sixty-five is the retirement plan that the companies instituted and voluntarily put stewards and stewardesses under. I believe that she should have the right to prove herself capable of performing the job and maintaining the appearance that the job performance requires.

Senator PELL. But in your testimony you say that she has to meet requirements, such as, maintaining a trim figure and meet above-average appearance standards, and it would seem to me that a lady of 60 would have more problems in the regard than a lady of 30.

Miss BOLAND. Perhaps she has more problems in that regard but if she is capable of meeting that challenge, then should she not have the right to do it?

Senator PELL. Now, how do you define whether she meets the challenge or not, by the number of crows feet under the eye? You can't determine this, you have to have fairly arbitrary limits on such a thing.

How would you suggest it be done, Miss Boland?

Mr. HORST. Senator Pell——

Senator PELL. No, no. I am asking Miss Boland. You have a more forceful voice, but you go around the subject while she has the actual experience.

Miss BOLAND. I believe I have said in my statement there are over 600 that have done this. We have run some surveys on these people.

We have found that when it comes to publicity for airlines it is these very people, these older women, that are called upon to say the right thing and do the right thing at the right time.

When it is to evaluate what new services are needed or what is required to meet competition, it is these older-aged women that are called upon to see what they can come up with to do about it.

When it comes to commendations for outstanding performance, it is these "aged" girls again. When it is those that can be depended upon to be as interested in the interests of the industry as management itself is, it is the older women who assist in those jobs.

Senator PELL. What do you think would be the result if you made 65 the retirement age for stewardesses? How many would we have flying over 50?

Miss BOLAND. I feel that in the last 30 years there is a clear-cut indication of that. There, in fact, has not been a 65-year-old woman who has had an opportunity to fly.

Ellen Church, who was the first stewardess, at her death a couple of years ago, had reached only 60. It is not been an industry that has reached that age.

Women who had the opportunity to start at the beginning of this industry as stewardesses have not stayed to age 65 or to 60. We have, I would say, less than 15 who have stayed beyond their 50th birthday but those that have have individualy shown outstanding ability to do it every bit as well as the 25-year-old.

Senator YARBOROUGH. Senator Pell, would you yield to me? I am required to go to a luncheon now.

Senator Pell, I ask you to preside.

Let me make just one brief observation and I must run. Do you know, is there any mandatory age limit for actresses, singers, and dancers?

Miss BOLAND. It is not my field but I have never heard of any.

Senator YARBOROUGH. You never heard of any. Have you seen actresses or singers or dancers being successful on the stage after age 50?

Miss BOLAND. I believe I heard Ginger Rogers mentioned recently and I believe there is one that was quite famous for a feather dance or bubble dance that is still quite active around the circuit.

Senator YARBOROUGH. Do you know of any astronauts who have been out in space who were under 32?

Miss BOLAND. Under 32?

Senator YARBOROUGH. Under 32.

Miss BOLAND. I do not.

Senator YARBOROUGH. I think they are over 35.

Miss BOLAND. I would like to point out along with these girls hired at 21 there were also quite a few men hired at 21. We have had five men who retired at age 65 and kicking, I might add, because they were not ready to retire.

Senator YARBOROUGH. If you will take over, Senator Pell.

Senator PELL (presiding pro tempore). Certainly.

Senator WILLIAMS. There are men who work similar duties on the airlines, aren't there?

Miss BOLAND. That do identical duties.

Senator WILLIAMS. Are there any age——

Miss BOLAND. Their age limit is 65 on all but TWA where they and we negotiated or rewrote a retirement plan geared to age 60. That is the only exception. The others are age 65.

Senator WILLIAMS. Now that is clear, Senator.

Will you yield for one moment, Mr. Chairman?

Senator PELL. Yes.

Senator WILLIAMS. I came in late so I didn't hear all of this testimony but in skimming quickly through your testimony—this trim figure, must be above-average appearance standards—I don't want to embarrass Senator Pell and I am not trying to elicit any personal facts, but you know one of the most lovely Senate wives is Mrs. Pell.

Senator PELL. She is not yet 65.

[Laughter.]

Senator WILLIAMS. I don't know whether she is 33 or 32. You do but I don't and I am not going to ask.

Senator PELL. Nevertheless the question which bothers me is that if the employer wants to emphasize attractiveness, that is within his business needs as he sees it. Perhaps there should not be such an emphasis upon attractiveness alone. However, if the employer wants to emphasize attractiveness, is that not his right?

I have never been in one of these so-called "bunny" establishments but I am sure that they have an age limit on employees because the emphasis presumably is on the fact that the young woman is supposed to be attractive.

Under the same rule should she be allowed to be a so-called bunny until she is 65?

Miss BOLAND. We have heard quite a bit about this for quite obvious reasons. As I understand it, there is no age for bunnies but they do have to meet attractiveness and attractiveness is determined by their employer.

I believe they have had many discussions regarding whether they are attractive or not.

Senator PELL. I would agree that the more mature stewardesses here are tremendously attractive. Would you substitute an attractiveness standard for an age standard?

Miss BOLAND. I am saying that the airlines started from the time they first hired a stewardess with one of their basic qualifications being as it is today, attractiveness, a pleasing personality.

We have over 600 of these girls and men who have continued to fly year in and year out through that period of time. With a few personal exceptions each and every management has felt that those people meet the appearance and the attractiveness standards and so do their passengers.

Senator PELL. And your thought is that if we had the normal 65 retirement age there also would be some kind of a board established which would determine whether a stewardess no longer measures up to the attractiveness standard.

How could that be done?

Miss BOLAND. The airline employs a staff of supervisors for the stewards and stewardesses. They are required to submit to physical appearance checks, to weight checks, to physicals—doctor physicals—they are required to be weighed and measured and what-have-you to fit into a uniform.

They are checked on board the aircraft for their performance, for their attitude toward the job, and they are judged as to their performance on the basis of the passengers reaction, their fellow employees reaction and their supervisor's reaction.

Now, such a "board of standards" is a common practice of the airlines and they have many of the people who are well over 32—and over 40—who have never had a criticism of any kind by their employer.

They maintain a perfect record of attendance with their employer.

Senator PELL. This factor came up yesterday in the hearings, and I feel it myself, being interested in athletics. I am 48 and my reflexes are nowhere near as quick as they were 10 years ago. I think that one achieves a little more judgment and intelligence but certainly does not remain as physically acute.

I think we should accept these facts about ourselves and arduous occupations and not expect the same performance from a person 60 years of age as from one of 30.

Miss BOLAND. I believe there were a great many concerns regarding airline pilots because if they did not physically meet what was necessary for the job, they could take the lives of hundreds of people with them.

There is not quite that seriousness involved in the stewardesses job in the normal performance of her duties. True, she is required to evacuate an airplane and she has done it and many of these senior people have done it.

I would hope you would agree with me that if you swim every day of your life, you are in much better physical condition than if you have not taken a dip for the last 10 years.

Remember that the stewardess daily performs the physical requirements of this job. She must yearly, semiyearly, and often much more frequently than that, actually physically go through the exercises for evacuation.

I would most certainly agree without qualification that the average woman of 40 could not step into this job and perform it when she has not kept up the physical requirements that are necessary.

A swimmer, a very athletic woman could. It is physically demanding, it is one like a tennis player that much be kept up and must be maintained over a period of time in order to qualify. But each and every one of these girls who is asking to maintain and continue the job has been keeping these physical requirements up on a day-to-day basis.

If she goes 1 pound overweight, they remove her from schedule. You have to keep pretty physically trim in order to meet that type of a standard.

Mr. HORST. Senator Pell, if I may interrupt on this one point that you are concerned with, and keep coming back to, the question of who decides the qualifications of this so-called girl between 60 and 65.

Every single collective bargaining agreement in this industry with these airlines covering these stewardesses has a provision in it for grievance procedure. It always has a procedure for arbitration, and as is now the case in the employer discharges, if an employee and the employer feels that it is unjust or the union feels it is unjust, we have a right to grievance and go through the procedures of impartial arbitration to determine that.

This would be the same in this instance. If whatever the reason the employer terminated the employee, so long as there was no arbitrary age discrimination, then this would be a proper matter for the procedures under the contract for arbitration.

Senator PELL. Senator Williams?

Senator WILLIAMS. Yes.

Again, with apologies for not being in on the entire dialog here, since I have been with another committee, there has been a great deal of discussion with emphasis on the feminine physical form in the profession of the airline stewardess.

This I don't understand. This is a service in a sense, isn't it? It is a profession. You are basically serving people who are riding an airline, am I right?

Mrs. BOLAND. I believe that is the purpose.

Senator WILLIAMS. It seems to me any employer obviously has an absolute right to hire and fire and discharge anyone who is not performing the service.

How did we get into this physical feminine form bit?

I don't get it.

Senator PELL. Because it is apparently, from the testimony, it is one of the requirements to get hired in the beginning which they accept.

Senator WILLIAMS. Well, everybody has his own judgment on what is—I don't mean to put your profession in the same category as waitresses but I know I am in the Newark Airport at least three times a week and stop at the lunch counter.

There is a waitress there, I know her first name; Millie. Now Millie does a great job. You do a lot of waitress kind of work on the airlines, don't you?

Mrs. BOLAND. Yes.

Senator WILLIAMS. Well, I can remember Millie as a marathon dancer in the 1930's. Now that makes her, you know—that was some time ago. She does a perfect job, pleases people, serves them rapidly and does her service as a waitress.

In a sense the age is not the determining factor, it is whether you can do the job. That is the way it looks to me.

I don't blame you, Senator Pell, your advancing age, wanting to be served only by girls who might qualify as bunnies but I got other ideas.

I would rather be served than to observe, put it that way.

Senator PELL. I want to make a point here that as to the viewpoint of efficiency and performance I notice when you fly the older stewardesses usually do a better job than the younger stewardesses.

Senator WILLIAMS. Of course, they are more experienced. This is a very critical job by the way. A normal flight is a normal flight but when anything happens that is abnormal, experience counts.

Senator PELL. I, too, would much rather be flying with one having 10 or 15 years experience, but my point is: Isn't it a different profession from the average white-collar profession where you presume to stay until you are 65 and retire?

It seems to me that a stewardess has a more arduous and demanding job and there must be some other ways of finding the top limit on it.

Mr. HORST. Again, Senator Pell, you are aware from the statements that we have entered into the record that there are a number of airlines who have no age requirement and who do not discriminate against their employees because of age.

They seem to be doing as good a job, in fact, some of them are the top moneymakers in this industry.

Senator WILLIAMS. I was going to ask that. How about Pan American?

Mr. HORST. They do not discriminate because of sex, do not discriminate because of marriage, do not discriminate because of age, and they are one of the top moneymakers in the industry.

I might point out to you also that there are the overwhelming majority of foreign airlines who do not discriminate because of age. I think this has become a very distorted issue in terms of the industry because I think it is unfair, I think it is unreasonable, and I think it should be changed by passage of this legislation.

Senator PELL. You mean by amending this proposed legislation.

Senator Williams?

Senator WILLIAMS. Well, at the conclusion of this discussion I ask unanimous consent to include my statement in strong support of S. 830 and also now announce that I would support an amendment that would include nondiscrimination of the young ladies in this particular occupation.

Senator PELL. Without objection, your statement will be included in the record at this point.

STATEMENT OF HON. HARRISON A. WILLIAMS, JR., A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator WILLIAMS. Mr. Chairman, I appreciate this opportunity to speak in support of S. 830. As a cosponsor of the bill and as chairman of the Senate Special Committee on Aging, I believe that the legislation is a basic step that must be taken if we are ever to deal adequately with age barriers and related problems affecting older workers of our Nation.

Secretary Wirtz has already informed the subcommittee about the dimensions and nature of the problem. I will not repeat them, but I will note that the Secretary summed up the problem admirably in 1964 when he said the following about the policy of employment discrimination because of age:

> This is a shortsighted, cruel discrimination, which deprives our economy of much valuable skill and experience, and deprives older workers of a chance to contribute to the society of which they are a part.

The Committee on Aging—especially its Subcommittee on Employment and Retirement Incomes under Senator Jennings Randolph as chairman—has often received similar statements in its hearings on employment opportunities for older Americans and also in hearings not directly related to jobs and job placement.

One of the most spirited accounts of an individual worker's experience with age barriers was given in Detroit to the first chairman of the Aging Committee, Senator Pat McNamara. A worker described

the problems encountered by 3,000 to 4,000 employees who tried to find jobs elsewhere when their automobile plant turned to other work:

> Now in 1951, I had my first baptism of fire on this age discrimination and it hasn't improved since, so I feel free to say a word about it. During one of Hudson's slack times I thought I will go out and get a job and better myself. I went to a job for a cutter-grinder, a semi-skilled class of work. I was told, "Why, we need cutter-grinders. How old are you?" I said, "I am 52." He said, "I have got my orders. I was told to be careful about putting too many on the payroll over 45 years of age."
>
> I didn't get that job.
>
> The same day I went to another plant and asked for the same kind of work. I was greeted with open arms. I figured I had it made. He said, "We are looking for your kind of skill." A small shop hiring about 150 people.
>
> He called out the foreman and he said, "We can use you, but you will have to go on nights." I remember it because I always hated nights. He said, "Put him to work."
>
> The employment man gave me an application blank to fill out. I filled it out and handed it back to him. He didn't read down very far when he came to my age. He said, "You are 52." I knew it all the while. I wasn't surprised, but meekly said, "That is right."
>
> He says, "I can't hire you. The insurance companies frown on this sort of thing."
>
> I said, "Well, I will sign a waiver on my insurance." I figured I had him on that one.
>
> He said, "I will take your case under advisement and hold your application."
>
> He has been holding it for 10 years. You know what? I am only going to wait 5 more years and I am going to give up on him.

Other witnesses at other times have told us that older workers are needed to give us badly needed skills at a time when heavy demands are being made on our labor force. Others have said that the economy cannot sustain losses caused by idle workers. We have encountered example after example of the willingness of older Americans to work and we have had heartwarming examples of their enthusiasm and their effectiveness in public programs and in private employment.

But in spite of the evidence and in spite of the statements made against discrimination because of age, the practice persists, and it is widespread. Perhaps one of the major causes is simply a built-in attitude on the part of employers. Though many of them maintain that they have no prejudice against hiring older persons, they persist in making reflex judgments against hiring older workers. Take the following excerpt from one of our hearings as an example. It comes from the chairman of a State commission against discrimination, who was having problems with an employer who insisted upon age barriers:

> The director of that large company telephoned me and said, "Well what am I to do?"
>
> I asked, "What do you want?"
>
> He said, "We want people with keen eyesight and nimble fingers."
>
> I said, "Why don't you say so?" Which he proceeded to do.
>
> Then he called me later to say how much easier it was to get desirable employees now that he was saying what he wanted because that screened them more or less than the people who did not have keen eyesight and nimble fingers just did not apply.
>
> Youth cannot equate itself always with keen eyesight and nimble fingers. Sometimes there are middle-aged who are more blessed in those particulars than a person of 20.

In other words, the employer finally was able to get the kind of worker he wanted—and older people were able to get jobs—when the employer overcame his preconceived ideas about the limitations of older workers.

The Committee on Aging, in its report on February 11, 1963, dealt with arbitrary age policies when it said that our society has created unnecessary obstacles to employment of older people; obstacles that have no factual basis or moral justification.

I'll read two paragraphs from the report because I believe that they give some insight into the reasons and extent of the problem:

> Unfavorable beliefs and generalizations about older persons have grown up and have been translated into restrictive policies and practices in hiring new employees which bar older jobseekers from employment principally because of age.
>
> Thus the unemployed older worker finds the greatest barriers to employment at an age when he has the greatest need for employment in order to house, support, and educate his children, and to accumulate assets for his retirement years. In addition, extended unemployment at this stage of his working life can mean reduced social security pension benefits upon retirement, thus creating additional future problems not only for the worker himself, but for the economy and society in general.

It is certainly no exaggeration to say, therefore, that age discrimination is the root evil from which other evils arise.

Not only may an older person find that he must resort to welfare or work entirely inappropriate to his talents and training, he experiences a fundamental shock when he finds suddenly that he is at odds with the values of society. He is not old. He does not feel old. But, he is told that, as far as job getting is concerned, he has nothing or little to offer. He has committed the economic offense of having had too many birthdays.

Certainly, this Nation must act against such discrimination and it must act in the manner proposed by S. 380. We must give facts to change employers' attitudes, as proposed in the bill, and we must conduct research and projects intended to demonstrate the employability of older persons.

But fundamentally and foremost we must prohibit age discrimination in employment. We must make it clear that Congress clearly recognizes the heavy economic and psychological consequences of present practices, and that Congress is very concerned about such consequences.

I would also like to have included in the record at this point an article entitled: "Nondiscrimination in Hiring the Elderly" from the Banking magazine dated March 1967.

Senator PELL. Without objection, that will also be made a part of the record at this point.

(The article referred to follows:)

[From Banking Magazine, March 1967]

NONDISCRIMINATION IN HIRING THE ELDERLY

To find out more about a new bill on nondiscrimination in hiring the elderly, BANKING's Washington correspondent, Herbert Bratter, asked Assistant Secretary of Labor Stanley H. Ruttenberg a number of questions. Here are the questions and the answers that were given to them:

The President has recommended legislation, now embodied in H.R. 3651, providing for nondiscrimination in hiring and employment on grounds of age. Are banks within the scope of this legislation?

Yes.

What are the main features of the bill?

The bill would:

Establish as a matter of national policy the elimination of arbitrary age discrimination in employment;

Provide minimum standards barring arbitrary age discrimination for workers between the ages of 45 and 65, with authority in the Secretary of Labor to adjust these limits upward or downward in order to effectuate the purposes of the act; and

Preserve and encourage state legislation for coping with this problem.

Is discrimination because of age general today in the American economy?

Yes. The setting of specific age limits beyond which an employer will not consider a worker for a vacant job, regardless of ability, has become a characteristic practice in those states which do not prohibit such action, to the extent and with the result that in these states:

Over half of all employers are presently applying such limitations, using age limits typically set at from 45 to 55; and

Approximately half of all job openings which develop in the private economy each year are closed to applicants over 55 years of age and a quarter of them are closed to applicants over 45.

What do state laws provide on this subject?

The purpose of these laws is to eliminate such practices as refusing to interview persons over a certain age regardless of their ability; refusing older employees on-the-job opportunities; discharging employees when they reach a certain age; expelling older workers from a union; and refusing to refer older applicants to employment opportunities.

This type of legislation has developed rather recently—the laws in all but three of the jurisdictions have been passed within the last 10 years. In general, the laws follow a pattern. Fourteen of them include a prohibition on the basis of age in their fair employment practice acts, which also prohibit racial or religious discrimination in employment. Most of the laws apply to employers, labor unions, and employment agencies. Usually they cover persons between the ages of 40 and 65, although some cover persons in their 20s and 30s.

Most of the laws provide for attempts to eliminate discrimination through informal methods of conference, conciliation, and persuasion; and, if such efforts fail, for the issuance of court-enforceable orders requiring that the discriminatory practice be discontinued and affirmative action taken, such as hiring, reinstating, or upgrading the employee. They also require the administrative agency to set up an educational program to foster the employment of older workers.

How will the proposed law be administered? Who will judge compliance? What penalties will there be for noncompliance? Will there be an appeals procedure?

The legislation (Section 10) provides that "The Secretary of Labor may issue such rules and regulations as he may consider necessary or appropriate for carrying out this act, and may establish such reasonable exemptions to and from any or all provisions of this act as he may find necessary and proper in the public interest."

Criminal penalties are covered in Section 11. Whoever shall (1) forcibly resist, oppose, impede, intimidate, or interfere with a duly authorized representative of the secretary while he is engaged in the performance of duties under this act or (2) willfully commit a practice made unlawful by this act shall be punished by a fine, by imprisonment for not more than one year, or by both. However, no person shall be imprisoned except when there has been a prior conviction under this section.

Yes, there will be an appeals procedure.

Do you expect to have large-scale enforcement machinery?

No, we would hope not. In the first place, the majority of American employers are law abiding. And we believe that most people will be in sympathy with the objectives of the legislation. We expect to put major stress on educational programs first, and on conciliation second. Further, prohibition of arbitrary age discrimination is not the only objective. The primary objective is "to promote employment of older persons based on their ability." There are barriers other than arbitrary age discrimination. We will be working to reduce these through research and education and other measures. After all, we are urging the employment of those who have the qualifications necessary for job performance.

Have you any suggestions, particularly for banks?

Qualified older persons make stable, dependable, and trustworthy employees. Years ago the hiring specifications of most banks were unrealistically rigid. They

looked for young men just out of school who, it was assumed, would stay to climb the ladder to a vice-presidencey. This did not happen often enough. In recent years, banks have found substantial modifications of age and sex criteria both necessary and desirable in building an adequate, stable work force.

The prestige of banks in the community can help greatly to promote business acceptance of a policy of nondiscrimination in employment based on age. Not only can they set an example—and banks are very much in the public eye—but bank officers as members of local chambers of commerce and other organizations of business leaders can be most influential in promoting the right attitudes and a proper climate for achieving the objectives of the legislation without resorting to enforcement procedures.

In the present employment situation, where will the qualified older workers be found?

First, there are many job seekers who could fill many job openings if selection factors unrelated to job performance were dropped. The local offices of the U.S. Employment Service can do the job of selection and matching the man and the job requirements. We can do much more than that. If desirable, the older men and women can be trained at no expense to the employer, either in schools or on-the-job or by a combination of methods, if there is a reasonable expectation that paid employment will result. Individual banks can arrange to use this resource under the Manpower Development and Training Act, or the A.B.A. could make over-all arrangements for training to meet a variety of banking needs. It would be advantageous to use these resources so that middle-aged men and women can support themselves through productive contributions to the economy.

Senator PELL. At the request of Senator Yarborough, I think it is indeed appropriate at this time to include in the record a statement from the Air Transport Association on this matter.

Without objection, the statement and cover letter are included in the record at this point.

(The prepared statement with covering letter of the Air Transport Association follows:)

AIR TRANSPORT ASSOCIATION,
Washington, D.C., March 14, 1967.

Re Bills Against Age Discrimination: S. 830 and S. 788.

Senator RALPH YARBOROUGH,
Chairman, Subcommittee on Labor, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with your hearings on bills against age discrimination, we submit a statement on behalf of the scheduled airlines for the Committee's consideration.

As an industry marked by tremendous growth, the airlines have been fortunate in being able to employ people at an early age and offer them employment in a lifetime career. Through transfers and training programs, we have been able to offer career development to people who, because of age, may have become disqualified for certain jobs but who are capable of other work. "Arbitrary" discrimination does not exist in the airlines.

Our statement contains a summary and discussion of amendments we believe should be considered by the Committee to improve the proposed legislation.

Thank you for your consideration.

Cordially,

S. G. TIPTON, *President.*

PREPARED STATEMENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

The Air Transport Association of America, representing virtually all of the United States certificated scheduled air carriers, wishes to place before you, on behalf of its members, this statement containing specific suggestions and proposals affecting the air transport industry which, in our judgment, would improve the bills being considered by your committee (S. 830, introduced by Senator Yarborough, and S. 788, introduced by Senator Javits) to eliminate unjustifiable arbitrary discrimination in employment because of age which deprives older workers of opportunities for employment when they have the capacity to be productive participants in the national economy.

Our principal proposals are as follows:

1. The proposed legislation, if enacted, should cover the air transport industry on a uniform nationwide basis free of multiple, and perhaps inconsistent, state or local restrictions, at least as far as operating employees are concerned.

2. The age bracket to which the legislation is to apply should be fixed by Congress and the Secretary of Labor's authority to vary the ages should be deleted.

3. Any such legislation should provide the same kind of enforcement procedures now provided under the Fair Labor Standards Act.

Our reasons are as follows:

1. The practical necessity for uniformity of regulation

Our first recommendation is that, because of the very nature of the air transportation business, any age legislation applicable to the air transport industry should provide for uniform national regulation as to operating employees, such as flight crews of air carriers engaged in interstate and/or foreign air transportation who, in the performance of their duties, regularly and frequently cross state boundaries. Ever since the celebrated case of *Gibbons* v. *Ogden*, at the outset of our national history, it has been recognized that uniformity of treatment is peculiarly appropriate to the transportation industry and that, conversely, subjection to a multiplicity of state or local restrictions relating to a susceptible to uniform rule is an inappropriate and undesirable burden upon interstate commerce not compatible with the public interest.

Whatever may be the merits of concurrent Federal and State age discrimination jurisdiction over employers and employees generally, when it comes to interstate air transportation, multiple overlapping and conflicting laws concerning conditions of employment create nothing but jurisdictional chaos and operating confusion. We therefore recommend the addition of the following proviso at the end of Section 14 of S. 830 which otherwise would contravene the usual practice and specifically preserve multiple state jurisdiction over all employees in interstate air transportation:

"*Provided*, That operating employees who in the normal performance of their duties are required regularly to cross state or national boundaries in the employ of a carrier subject to the Railway Labor Act, the Civil Aeronautics Board, the Interstate Commerce Commission, or other agency of the Government of the United States, with respect to the transportation of persons or products in interstate and/or foreign commerce shall not be subject to any state or local legal prohibition or restriction with respect to discriminatory employment practices on account of age if the said carrier is subject to this Act."

The scheduled airline industry, subject to the Civil Aeronautics Board, is a totally interstate or international industry. The various airlines have bases in different states, serve cities in many states, fly over a variety of states, have flight personnel throughout the country and regularly transfer such flight personnel to bases in different states. Subject to the Federal Aviation Agency and the Civil Aeronautics Board, the air carriers must apply their rules and regulations on a uniform basis. Further, by virtue of the Railway Labor Act and rulings of the National Mediation Board, airlines must recognize and deal with duly designated representatives of their employees in appropriate classes or crafts *on a system-wide basis* in making and maintaining agreements embodying rules, rates of pay, and working conditions affecting such employees.

Almost without exception, certificated air carriers have such systemwide agreements covering their flight crew employees. Pursuant to those agreements, flight crew members are initially assigned to bases in different states and to flights serving various states and are thereafter relocated at other bases and re-assigned to other flights serving perhaps different states, such relocations and re-assignments being determined either on the basis of flight crew preferences in order of seniority or on the needs of the particular company at any given time. Thus, not only are these operational employees in constant movement across State and national borders in the course of fulfilling their flight duties—mostly in the air—but their places of residence, assignment, performance of duties, and even of eventual retirement, cannot be forecast at any given time and are by their nature subject to unforeseen change. In these circumstances, national uniformity of regulation is a practical necessity in view of the undesirability and impracticality of differing regulations of the same subject by

one or more States applicable to the employees of an air carrier moving constantly as above-described into, out of, and above a wide variety of States.

Out of the 50 States and the District of Columbia, 27 presently have no laws prohibiting age discrimination in employment. Of the remaining 24, some apply to any age, but most apply to specific age brackets—by far the larger number specifying different ages between 40 and 65, constituting the category known as "the older worker" to whose employment problems the bills before this Committee are addressed. The need for multiple proceedings, the posibility, indeed the inevitability of inconsistent rulings by the enforcement agencies of these various States, and the uncertainty of the effect of one State's rulings in other States, including those without age statutes, on employees such as air flight crews, clearly justifies Federal pre-emption in this area.

One major airline provides a typical illustration. It has bases in the States of Illinois, Tennessee, Texas, and Virginia. It serves points within the District of Columbia and the States of Arizona, Arkansas, Illinois, Kentucky, Missouri, Oklahoma, Tennessee, Texas, Virginia, and West Virginia. It has pending applications to serve points in Alabama, Florida, Georgia, Mississippi, Nevada, and Utah. None of these States has an age statute.

The same airline also has bases in California, Massachusetts, and New York. It is certificated to serve points within those States and also within the States of Connecticut, Delaware, Indiana, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Rhode Island. It has pending applications to serve points in Alaska, Colorado, Hawaii, Louisiana, Nebraska, Oregon, and Washington. Each of those States has an age statute differing one from the other in various ways.

Some of those statutes specifically provide that an employer may lawfully refuse to hire or may discharge an employee because of age where age is a bona fide occupational qualification for the position. The agencies administering the statutes of such States may or may not determine that, as to a particular position, age is such a bona fide occupational qualification. So that an airline might find an age regulation applicable to a flight crew member valid as to such employees in some States where it operates and invalid as to such employees in some other State or States as to identical employees in the latter Sates, or *perhaps* even to the very same employees during occasional duty in the latter States or, if temporarily located there by virtue of bidding or company assignment.

Similarly, some of the States specifically provide exemptions for certain types of retirement plans which qualify under their age statutes. But an airline could find a re-assignment or retirement plan valid in one State where it operates but invalid in another as to similarly circumstanced employees who rights would thus be subject to change depending upon changes in base or route assignments—although the airline's collective bargaining agreements covering its flight crews are required by law to be system-wide and should be uniformally applied throughout its system.

Further problems arise from the different ages covered by the various State statutes and from the uncertainty as to the territorial effects to be given to the law of a particular State or the determination of a particular State Commission. Do they apply only to persons hired within the State, or residing within the State, or working within the State, or terminated within the State? Do they, or can they constitutionally apply to non-resident employees flying in and out of the State? How much of the person's working time must be within the State to make its law and rulings applicable to that employee? Does the law of one State follow the travelling employee into another State, and, if so, for what purposes and for how long? Is a carrier subject to liability for treating one employee one way in one State and identical employees other ways in a second or third or fourth State? Or for treating the same employee differently depending upon changes in the State of hire or base or flight service?

Suppose an airline has a rule for reasons of safety or economics that a flight engineer on jet aircraft will not be retained to qualify as a pilot on age 42. Should that rule be valid in all the States that have no age statutes or whose statutes only apply to higher ages and invalid, or possibly invalid, in various other States depending on the bona fide occupational qualification determination of the particular State involved?

Suppose an airline has a rule that stewardesses shall uniformly be reassigned to ground service at a specified age with no loss of pay. Should that rule be valid in all the States that have no age statutes or whose statutes only apply to

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higher ages and invalid, or possibly invalid, in various other States depending on the bona fide occupational qualification or retirement plan determination of the partcular State involved?

Suppose an airline adopts a rule for reasons of safety or economics that a pilot will not, after a certain age, be trained for service on new equipment such as the coming supersonic transport. Should that rule be valid in all the States that have no age statutes or whose statutes apply only to higher ages and invalid, or possibly invalid, in various other States depending on the bona fide occupational qualification determination of the particular State involved?

Must an airline having such a rule secure a bona fide occupational determination in every State in which it operates? Would a Federal ruling be binding nationwide? Can a New York decision bind the airline in California or employees flying back and forth between them?

Would the law of the base State, or the residence State, or the assignment State, apply to the flight engineer or pilot? Or the law of the State where he might choose to put in his request? Or all? Or none? Would the law of the State where the stewardess was originally hired apply? Or the law of her first base? Her present base? Or the law of the State to which she most recently requested transfer? Could she keep flying by transferring to another State while a colleague of less seniority would be subject to reassignment?

If required to hire some one in Massachusetts, for example, would assignment or transfer to Pennsylvania, permit termination of the employment because of the difference in laws or commission determination between those States? How can an airline uniformly apply its policies if there are different rules in different States applicable to an employee who works in two or perhaps as many as half a dozen or more of them every day of the week?

There is little likelihood of the need for multiple proceedings or of such conflicts and overlaps in the average business enterprise where employees are essentially static and work primarily in one place. But in our industry, our flight crews have no single location of employment and their mobility is not only a hallmark of the occupation but a jealously guarded privilege of seniority.

We hire our flight crews from every State, not to work in the State where they are hired, but to work in every State. They may be interviewed in one State, hired in another, trained in a third, and initially assigned in a fourth, only to be re-assigned again and again—either on the basis of their exercise of seniority bidding rights or on the basis of the carrier's business needs, but in either case, pursuant to collective bargaining agreements which, under the law, are system-wide both in negotiation and application.

The air transportation industry is inherently highly mobile and multi-State. Existing Federal legislation recognizes the need for uniform systemwide application of regulations. The Federal Aviation Agency and the Civil Aeronautics Board regulations follow this pattern. The Railway Labor Act clearly envisages uniform system-wide employment conditions. Age discrimination regulation should be no different. At least to the limited extent covered by the proposed proviso, uniform national treatment is the only practical procedure.

2. The Secretary of Labor's Authority to vary the ages covered by the proposed legislation should be deleted

Section 13 of S. 830, entitled "Limitation," provides that the coverage of the proposed Act shall be limited to "individuals who are at least forty-five years of age, but less than sixty-five years of age," thus covering the "older workers" who have been the subject of each report of the Secretary of Labor to the Congress on the question of age discrimination in employment.

If Federal age legislation is to be enacted to protect the employment opportunities of such "older workers," the proposed age brackets (found in both bills) are clearly appropriate.

However, S. 830 goes on:

"*Provided*, That in order to effectuate the purposes of this Act the Secretary may by rule or regulation issued under Section 10 of this Act provide for appropriate adjustments, either upward or downward, in the maximum and minimum age limits provided in this Section."

We recommend that this proviso be stricken in its entirety and that there be substituted therefor an amendment to the bill, comparable to the provisions of Section 4(d) of the Fair Labor Standards Act, requiring an annual report to the Congress by the Secretary of Labor covering enforcement activities under the Act, "including such information, date, and recommendations for further legis-

lation in connection with the matters covered by the Act as he may find advisable."

The proposed proviso constitutes an unprecedented abdication of Congressional authority to set the limits of statutory application by authorizing the Secretary of Labor unilaterally to adjust the age limitations specified in the bill. As drafted, it would appear to enable the Secretary to single out special businesses for special treatment, a proposal of dubious fairness and certain undesirability. The proviso should be wholly omitted and the policy-making power retained by the Congress. At the very least, the power of adjustment should be limited to uniform and comprehensive nationwide application after specified procedures designed to establish the need for such adjustment to resolve the employment problems of the "older worker" to which the proposed legislation is specifically addressed.

This is a new area of Federal involvement presenting a whole range of new and complicated problems never faced before by the Department of Labor. It is no doubt true that the Congress cannot anticipate every problem which may arise. But that is no reason for the Congress to abdicate its responsibility to legislate definitely to resolve the national problem presented on the basis of facts before it.

The Secretary of Labor has found that the need for Federal action is in the field of "the older worker" between the ages of 45 and 65. If subsequent experience indicates that the problem of employment requires broader action, the appropriate course is to require the administrative agency to report to the Congress so that the Congress can review the matter and the desirability of further Federal action in the light of Executive experience, just as the Congress in 1964 and 1966 required the Secretary of Labor to make the reports on which the two bills now before this Committee are based.

3. Enforcement procedures should be similar to those in the Fair Labor Standards Act

The two bills being considered by this Committee have two radically different enforcement procedures. S. 830 gives the Secretary of Labor power to issue cease and desist orders after an administrative hearing, and to have those orders enforced in a United States Court of Appeals, where the Secretary's findings will be final and binding. S. 788, on the other hand, follows the traditional enforcement pattern of the Fair Labor Standards Act—indeed, it operates as an amendment to the Fair Labor Standards Act—giving investigatory power to the Labor Department, but providing for enforcement by the Secretary of Labor, or a private party, through suit on an alleged discriminatory practice in a United States District Court which would have jurisdiction to make its own findings of fact in accordance with usual judicial rules subject to far more adequate judicial review. We strongly support an amendment to the Administration bill to provide the *same kind* of enforcement procedures as those now provided under the Fair Labor Standards Act and thus part and parcel of S. 788. All that is required is to strike Section 7 of S. 830 and to substitute therefor the substance of Section 16 and 17 of the Fair Labor Standards Act appropriately modified to fit the special needs of this legislation.

There are several advantages to such an amendment:

First, it would permit enforcement by the Wage and Hour Division of the Department of Labor, thereby making it unnecessary to establish a whole new bureau just to enforce age discrimination legislation. The Wage and Hour Division already has a complete staff of investigators, regional offices and regional attorneys, fully capable of enforcing this legislation in addition to its already existing jurisdiction.

Second, the bill would then separate functions of rule-making and prosecution from the responsibility for adjudication subject to full judicial review, thereby enhancing the objectivity and impartiality of the decision-making process.

Third, the bill would provide an enforcement procedure which is already familiar to labor, to managment, and to the regional offices of the Wage and Hour Division, thereby expediting the effective enforcement of the Act.

Also, in connection with the mechanics of enforcement, we recommend a limitation on the time within which complaints of age discrimination must be made. It is also suggested that provisions be made for the confidentiality of any conciliation discussions.

S. 830, as drafted, contains no time limitation on the filing of age complaints and, S. 788, as drafted, would apparently employ the two-year statute of limita-

tions contained in the Fair Labor Standards Act. Since any alleged unlawful discrimination in employment because of age is apparent at the time of such alleged discrimination and should be protested immediately, if at all, we urge that any bill enacted on this subject require that any charge of unlawful discrimination in employment because of age must be filed within 90 days of its alleged occurrence.

In attacking the problems of unacceptable discrimination, conference, conciliation, and persuasion have always played a paramount part. To promote to the utmost the effectiveness of such procedures, we recommend that any age discrimination legislation contain a provision that nothing said or done in the conciliation process should be permitted to be used as evidence in a subsequent enforcement proceeding. Failure to provide such a safeguard could destroy the usefulness of the entire conciliation process by causing the parties to adopt rigid positions, whereas, true conciliation requires flexibility and confidentiality in order to fully explore the possibilities for settlement not only of the particular complaint at hand, but perhaps also of more far-reachnig employment policies.

CONCLUSION

In his 1965 Report, entitled "The Older American Worker—Age Discrimination in Employment," a report requested by the Congress pursuant to Section 715 of the Civil Rights Act of 1964, the Secretary of Labor made it clear that the primary purpose of Federal age legislation should be to provide *employment* opportunities for "older workers." While that Report called for Federal anti-discrimination legislation to ensure such employment opportunities, it also recognized the place of re-assignment and "re-training opportunities for older workers."

If a Federal age discrimination statute is to be enacted, we respectfully submit that this primary purpose should remain paramount. It should be drafted so as to accomplish the Government's legitimate objective of full employment of "older workers" without involving the Government in guaranteeing the job preferences of individual employees unwilling to accept proffered re-training and re-assignment to jobs with comparable pay. If the national interest in employment of our "older workers" does, indeed, require legislation of the sort here proposed, the scope of the action should be directed to the resolution of the actual problem presented and the means tailored, where possible, to fit legitimate business needs.

Our recommendations are directed to that end, and we shall be glad to cooperate with the Committee and its staff in enlarging upon or implementing them.

Senator PELL. Any more questions? If not, we thank you, Mr. Horst, Mrs. Boland, for your testimony here today.

Mrs. BOLAND. Thank you, gentlemen.

Senator PELL. The Subcommittee on Labor will recess until 10 o'clock tomorrow morning.

(Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 10 a.m., Friday, March 17, 1967.)

AGE DISCRIMINATION IN EMPLOYMENT

FRIDAY, MARCH 17, 1967

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 10:15 a.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Ralph Yarborough (chairman of the subcommittee) presiding.

Present: Senators Yarborough, Randolph, Pell and Griffin.

Committee staff members present: Robert O. Harris, counsel to the subcommittee; Eugene Mittelman, minority counsel; and Peter C. Benedict, minority labor counsel.

Senator YARBOROUGH. The Subcommittee on Labor will come to order.

We will continue the hearings on the bills on discrimination and employment on account of age, being Senate bill 830 and Senate bill 788.

The first witnesses listed this morning are Judge Edward Conway, commissioner, and Mr. Milton Rosenberg, director of the Division of Employment of the New York State Commission on Human Rights. Mr. Conway.

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

Mr. CONWAY. Senator, I am Commissioner J. Edward Conway of the New York State Commission for Human Rights. I have been a commissioner of this agency since 1954.

The New York commission is charged with the administration of the New York law against discrimination (art. 15 of the New York executive law).

I am appearing here today to assist in your consideration of bills prohibiting discrimination in employment because of age.

I am accompanied, as you noted, Mr. Chairman, by Mr. Milton Rosenberg, the director of the commission's division of employment.

I propose to direct my oral and written statements to two points:

1. The experience of the New York commission with the administration of the New York law prohibiting arbitrary discrimination in employment on account of age, including a summary evaluation of the New York experience.

2. The need for clarifying the Federal-State relationship which will arise in the event of the passage of any Federal law directed to the prevention and elimination of age discrimination.

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

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

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

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

I was appointed to the Civil Service Commission of the State of New York in 1943, was reappointed in 1949 and served throughout as president of the commission.

In this capacity I was required to interpret and administer the prohibitions against age discrimination in the New York civil service law—formerly section 25–A and presently section 54.

A. POLICIES AND PROCEDURES

The State commission for human rights began and has continued the administration of the age provisions of the New York law against discrimination under two plain principles:

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

(2) That no worker who can do the job may be barred simply because he is "too old."

In its 8½ years of experience with the age provisions of the law, the commission has encountered and dealth with a variety of special situations.

Its experience has also confirmed, however, the basic concept initially expressed by the above principles, that there are many older workers who are ready, willing, and able to give full and complete work performance who seek only to have the employer consider them on their merits, without any arbitrary assumptions as to work ability based on chronological age.

B. DISCRIMINATION BASED ON "OVERAGE" UP TO AGE 65

Discrimination because of age, as used in the Commision's governing statutes and in its ruling, is construed to mean discrimination based only on overage; that is, barring a person because he is too old, not because he is too young.

A charge of arbitrary discrimination because of chronological age may be filed by any person claiming to be aggrieved, up to age 65.

It is to be noted that age 65 is simply the statutory cutoff date for the filing of sworn complaints under the regulatory provisions of the law.

The existence of a cutoff date does not, however, reflect any view by either the legislature or the commission that the State of New York is without interest in the employment problems of persons who have reached or passed age 65.

The exact opposite is the fact—as demonstrated by the cooperation, support, and interrelationships among the New York State Employment Service, and such other coordinative groups as the State's interdepartmental committee on problems of the aging and the State's office for the aging, created by the 1965 legislature.

Now, in the interest of allowing the maximum amount of time for answering such specific questions as you may have, I am abbreviating the oral presentation of my statement.

The written statement which I am submitting to you summarizes the regulatory provisions of the law against discrimination and the general procedure followed by the commission.

There is reference to the various terms of conciliation which the commission has used and an 8-year statistical analysis of age complaints filed with the commission.

Senator YARBOROUGH. All of that, Judge Conway, will be ordered printed in the record, all the appendixes and the matter that you stated in your file.

Mr. CONWAY. Thank you.

Senator YARBOROUGH. That will be part of our hearing record.

(The material referred to follows:)

PREPARED STATEMENT OF COMMISSIONER J. EDWARD CONWAY, NEW YORK STATE COMMISSION FOR HUMAN RIGHTS

I am Commissioner J. Edward Conway of the New York State Commission for Human Rights. I have been a Commissioner of this agency since 1954. The New York Commission is charged with the administration of the New York Law Against Discrimination (Article 15 of the New York Executive Law). I am appearing here today to assist in your consideration of bills prohibiting discrimination in employment because of age. I am accompanied by Mr. Milton Rosenberg, the Director of the Commission's Division of Employment.

I propose to direct my oral and written statements to two points:

1. The experience of the New York Commission with the administration of the New York Law prohibiting arbitrary discrimination in employment on account of age, including a summary evaluation of the New York experience.

2. The need for clarifying the federal-state relationship which will arise in the event of the passage of any federal law directed to the prevention and elimination of age discrimination.

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

The Age Provisions of the New York Law Against Discrimination have been in effect since July 1, 1958. My own interest in and administrative experience with this subject, however, antedates the New York Law Against Discrimination. I was appointed to the Civil Service Commission of the State of New York in 1943, was re-appointed in 1949 and served throughout as President of the Commission.

In this capacity I was required to interpret and administer the prohibitions against age discrimination in the New York Civil Service Law (formerly Section 25–A and presently Section 54).

A. POLICIES AND PROCEDURES

The State Commission for Human Rights began and has continued the administration of the Age Provisions of the New York Law Against Discrimination under two plain principles:

1. That no employer can be compelled to hire or keep anyone who cannot do the job.
2. That no worker who *can* do the job may be barred simply because he is "too old."

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

B. DISCRIMINATION BASED ON "OVER-AGE" UP TO AGE 65

Discrimination because of age, as used in the Commission's governing statutes and in its Rulings, is construed to mean discrimination based only on *over-age;* that is, barring a person because he is too old, not because he is too young. A charge of arbitrary discrimination because of chronological age may be filed by any person claiming to be aggrieved, up to age 65. It is to be noted that age 65 is simply the statutory cutoff date for the filing of sworn complaints under the regulatory provisions of the law. The existence of a cutoff date does not, however, reflect any view by either the Legislature or the Commission that the State of New York is without interest in the employment problems of persons who have reached or passed age 65. The exact opposite is the fact—as demonstrated by the cooperation, support and inter-relationships among the New York State Joint Legislative Committee, the State Commission for Human Rights, the New York State Employment Service, and such other coordinative groups as the State's Interdepartmental Committee on Problems of the Aging and the State's Office for the Aging, created by the 1965 Legislature.

C. SUMMARY OF REGULATORY PROVISIONS

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

The Law covers four general groups:

1. Employers,
2. Employment agencies,
3. Labor organizations,
4. Licensing agencies.

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

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

D. GENERAL PROCEDURE

A primary responsibility of the Commission continues to be the disposition of individual complaints.

Briefly, the procedure involves the filing of a complaint in the form of a sworn statement, by a person claiming to be aggrieved, setting forth a charge and the

particulars in support of the charge; the assignment of the complaint by the Chairman to one of the Commissioners, who is designated the "Investigating Commissioner"; the making of an investigation by the Commissioner with the assistance of the Commission's staff; and a determination by the Investigating Commissioner as to whether there is *probable cause* to credit the complaint.

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

E. COMMISSION-INITIATED ACTION

Particular reference may be made to the fact that under legislation enacted during 1965, the Commission now has the right to initiate complaints on its own motion. The Commission has repeatedly noted its belief that there are substantial areas in the field of employment in which equal opportunity cannot be assured by sole or even major reliance upon the individual complaint case process. The flow of individual complaints may or may not reflect those employment situations which present the more pressing needs and concerns of the State and all its people in the prevention and elimination of employment discrimination.

The Commission, therefore, has been giving increasing emphasis and attention to regulatory work with broader aspects than the individual complaint case in order to make possible that combination of regulatory and educational techniques which provides the best chance for success. For example, in connection with claims for bona fide occupational qualifications for specified job categories in particular industries, the Commission is now moving into the field of developing techniques for standard-setting which will include an opportunity for all interested parties to present data and argument for evaluation by the Commission.

I am attaching to this statement my report following an open hearing in connection with bona fide occupational qualification claims relating to the airline stewardess position, which indicates one phase of this type of activity.

F. PATTERNS OF CONCILIATION AGREEMENTS

As part of this statement there is included as eight-year summary of age complaints. This summary shows that through the medium of individual complaints by persons claiming to be aggrieved, the Commission found and adjusted some unlawful practice or pattern relating to age discrimination in thirty-six percent (36%) of the age cases which have been closed since July 1, 1958, the initial effective date of the age law.

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

G. REGULATORY AND EDUCATIONAL PROGRAMS

The Commission's programs, particularly with reference to the field of discrimination because of age, seek to achieve the purposes of the law by a combination of regulatory and educational activities. The emphasis here is not that

regulatory activities should be subordinated to educational activities or that educational activities alone without the backing of regulatory powers can be effective. The Commission is convinced of the need for regulatory powers and procedures. Its educational activities are designed to inform those covered by the law of the existence of the regulatory provisions, to clarify any misunderstandings as to scope and general purpose, to provide advisory interpretations and to bring about voluntary compliance to the greatest extent possible.

The content and detail of the Commission's combination of regulatory and educational activities are set forth in the Commission's Annual Reports, which describe its on-going and projected programs in the area of "age." The most active current programs relate particularly to state and local civil service; employers; public and private agencies; newspaper advertising; and bona fide occupational qualifications.

Summary Evaluation of the New York Experience

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

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

Federal-State relationship

It is of particular importance that careful attention be given to the Federal-State relationship which will arise from the enactment of federal legislation in a field of human rights where existing state legislation has been administered successfully over a period of years. This factor was taken into account by the Congress upon its consideration and enactment of the Civil Rights Act of 1964.

The experience under those provisions would appear to confirm the need for avoiding any implications of preemption of the field under the federal statute. This requires a clear and specific saving clause which will not only save the jurisdiction of the state agencies, but will avoid to the greatest extent possible the coming into being of unnecessary duplications of effort. I am aware that a number of federal bills dealing with discrimination in employment because of age either already include provisions bearing on this problem or have in prospect amendments which will be directed to the problem. The point of my emphasis is principally to express our appreciation of the fact that careful attention is being given to this area of our concern and to urge that no bill be deemed acceptable without an adequate saving clause.

STATE OF NEW YORK, NELSON A. ROCKEFELLER, GOVERNOR

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STATE COMMISSION FOR HUMAN RIGHTS

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REPORT OF FINDINGS AFTER INVESTIGATION

In the Matter of Airlines Industry—Maximum Age Requirements (Stewardesses)

On December 17, 1964, the Commission authorized an informal investigation on a statewide basis into the age ceilings for employment of airline stewardesses. I was designated by the Chairman of the Commission as the Investigating Commissioner with respect thereto.

The plan of the investigation has been, generally, to determine the policy and practice in this area of age ceilings for stewardesses on an industrywide and statewide basis by affording to the airlines, individually and collectively, and to the stewardesses, individually and collectively, opportunities to present facts and arguments in support of their positions; and, finally, to report as to whether granting of an industrywide bona fide occupational qualification is warranted under the New York State Law Against Discrimination.

This report is confined to age ceilings for continued employment as stewardess; a separate report will be made as to age ceilings for initial hire of stewardesses.

While the Commission has before it individual verified complaints by stewardesses and applicants for stewardess positions charging specific airlines with discrmination based on age, the merits of these complaint cases are not the subject of this inquiry; they will be dealt with separately, upon the facts and the law pertaining to each complaint.

This investigation, as conducted by me with the assistance of the Commission's Employment Division, consisted of three main phases:

Phase 1: A field investigation, conducted during the first half of 1965, which included interviews by Commission staff with key personnel representatives of three airline companies (American Airlines, Trans World Airlines, and United Airlines) and with officers of the two major stewardess unions (Air Line Stewards and Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO, and Air Line Pilots Association, Steward and Stewardess Division, AFL-CIO).

Phase 2: A mail questionnaire, sent in July 1965 to the presidents of the seventeen other airline companies flying into the State of New York, to which all but one responded. (Attachment A includes copies of the questionnaire and covering letter, and a list of the airlines to which these were sent.)

Phase 3: An informational hearing, held on December 7, 1965, at the Commission's offices at 270 Broadway, New York City, to which were invited each of the twenty airlines flying into the State of New York, the Air Transport Association, and the two major stewardess unions.

At the informational hearing, representatives of the two unions testified orally, submitted written evidence, and responded to the Commission's questions—all relating to the issues raised by the specification of age ceilings.

Each union appeared by counsel: Herbert A. Levy, Esquire (of Cohen & Weiss of New York City), on behalf of the Air Line Pilots Association, Steward and Stewardess Division, AFL-CIO; and Asher W. Schwartz, Esquire (of O'Donnell and Schwartz of New York City), on behalf of the Air Line Stewards and Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO. The union representatives testifying included the following: Colleen Boland, President, Air Line Stewards and Stewardesses Association, Local 550; Francis A. O'Connell, Legislative Director, Transport Workers Union; Deloros Kidder, Vice President, Air Line Pilots Association, Steward and Stewardess

Division; and Marjorie Cooper, Regional Vice President, Air Line Pilots Association, Steward and Stewardess Division.

None of the airlines accepted the invitation to present testimony or argument on the merits through their own executive or staff personnel. Jesse Freidin, Esquire (of Poletti, Freidin, Prashker, Feldman & Gartner of New York City) noted his appearance on behalf of thirteen airlines and the Personnel Relations Conference of the Air Transport Association.

Counsel for the airlines challenged the Commission's jurisdiction on various grounds; his request for an adjournment to December 15, 1965, in order to afford the airlines a further opportunity to decide whether to appear and submit evidence or argument on the merits, was granted. On December 10th, Mr. Freidin informed me that he would not avail himself of the opportunity to appear before the Commission on December 15th but would instead seek to challange the Commission's jurisdiction in court; and he requested a reasonable period of time within which to prepare to do so, which was granted. It is noted that on December 7th Mr. Freidin, stating he had full authority to speak for the airlines in this regard, rejected my suggestion that the airlines which fly into the State of New York and have a maximum age policy for airline stewardesses refrain from dismissing any person from the position of stewardess on the basis of age pending the resolution of this problem.

To date, no action in court has been taken by Mr. Freidin; and it is my opinion that no further extension of time is warranted. Accordingly, and based on the facts and arguments before me, I am herewith issuing my report and recommendations.

The three phases of the investigation combined to yield the following background information and basic facts relating to the use of age ceilings by the airlines for continued employment of stewardesses:

(1) Background information

(a) On the airlines, the job titles of "stewardess" and "hostess" are interchangeable; those of "flight service attendant" and "cabin attendant" cover both stewards and stewardesses; those of "purser" and "senior flight attendant" cover both males and females in a higher classification.

(b) The 38 United States airline companies currently employ some 15,000 stewardesses, and this number is expected to increase during the next few years. There is a high turn-over rate in the stewardess classification; the average length of service is about two years; each year over 5,000 new stewardesses are hired from an estimated 100,000 applicants. Despite this high turn-over rate, there are currently in active flight service several hundred stewardesses who have been flying between ten and thirty years and whose ages range between 30 to over 50 years.

(c) Of the 38 United States airlines, 20 fly into the State of New York and 9 of these have stewardess bases in the State of New York. "Stewardesses based in New York State" start and end their flight duties at airports within the State (for example, at John F. Kennedy International and LaGuardia airports). Attachment B identifies these airlines.

(d) Pursuant to regulations of the Federal Aviation Agency (FAA), airline stewardesses are required to pass, at least annually, various examinations relating to their continued ability to perform their duties in flight service; these include examinations for emergency evacuation procedures, familiarity with the airplanes in service, and personal health.

(2) Age ceiling for continued employment as Stewardess

(a) The first airline stewardess was hired in 1935. Until the 1950's, no airline had set an age ceiling for continued employment as stewardess. A few airlines introduced such an age ceiling in the 1950's—setting it at age 32 or 35; others introduced it as recently as 1964.

With but few exceptions, the policy has been instituted unilaterally by the company and not as part of its contract with the union. With but two exceptions, the policy when instituted was not made retroactive, those employed prior thereto being permitted to continue flying until the employer's mandatory retirement age (generally 60 or 65).

The first application of a special maximum age ceiling (age 32) to produce discharge of a stewardess occurred in 1963; since then, others have been discharged or removed from flight duty because they reached the special maximum age ceiling (age 32 or 35) for continued employment as stewardess.

(b) The setting of an age ceiling for continued employment as stewardess is *not* a "general industry practice." Of the 38 airlines in the United States, 24 do *not* have this policy.

Pan American World Airways, the major United States international airline, does not have this policy. Of the group of domestic airlines frequently referred to as the "Big Four"—namely, American Airlines, Eastern Airlines, Trans World Airlines and United Airlines—only 2 (American Airlines and Trans World Airlines) had this policy at the time of the Informational Hearing. [The Commission is more recently in receipt of information that United Airlines is now seeking to establish an age ceiling for continued employment of its new stewardesses.]

In 1963–1964, Airlift International and Central Airlines, both of which had had such an age policy, discontinued it.

Available information on foreign airlines is that on seven of them the age ceilings generally fall in the 40's and 50's, up to a maximum age of 67 in Norway.

(c) No similar age ceiling for continued employment for stewards exists on any airline. According to the information on hand, the job duties of stewards and stewardesses are the same.

SUMMARY

(1) None of the evidence on hand gives warrant for the establishment of an industrywide policy setting a special arbitrary chronological age for continued employment of airline stewardesses—whether age 32 or 35, or any age below that of the standard mandatory retirement age for company employees.

(2) The evidence on hand does support the opposite position; namely, that termination as an airline stewardess prior to the employer's standard mandatory retirement age should be predicated solely on the individual stewardess' continued ability to perform the duties of the position at the level of performance required by each airline company for its stewardesses.

(3) On the basis of the evidence before me as Investigating Commissioner, I do not find that, under the New York State Law Against Discrimination, there is support for a claim that a bona fide occupational qualification based on age for continued employment properly applies to the airline stewardess position on an industrywide basis.

Reported age ceilings for continued employment as airline stewardess on the 38 airlines listed in the World Aviation Directory as A–1 or U.S. air carriers certificated by the Civil Aeronautics Board

Group	No age ceiling			With age ceiling			
	No.	Airline	Number of stewardesses	No.	Airline	Number of stewardesses	Age ceiling (years)
A [1]	1	Airlift International	48	1	American	1,800	32
	2	Eastern	1,773	2	Mohawk	141	32
	3	New York Airways	14	3	TWA	2,200	35
	4	North East	171				
	5	Pan American	2,085				
	6	United	2,352				
B [3]	7	Delta	[2]	4	Allegheny	116	32
	8	Flying Tiger	62	5	Braniff	342	32
	9	Lake Central	72	6	North West	800	32
	10	National	423	7	Slick	37	32
	11	Pan Am-Grace	[2]				
	12	Seaboard	60				
	13	Trans Caribbean	[2]				
C [4]	14	Alaska	21	8	Bonanza	52	32
	15	Aloha	22	9	Continental	320	32
	16	Caribbean-Atlantic	50	10	Frontier	91	32
	17	Central	68	11	Ozark	112	32
	18	Hawaiian	33	12	Southern	80	35
	19	Mackey	19	13	Trans Texas	80	35
	20	North Central	125	14	Western	393	32
	21	Pacific	50				
	22	Pacific-Northern	42				
	23	Piedmont	96				
	24	West Coast	62				

[1] Group A: Airlines with stewardess bases in New York State.
[2] Information not available.
[3] Group B: Airlines flying into New York State, no stewardess bases in New York State.
[4] Group C: Other airlines.

NEW YORK STATE COMMISSION FOR HUMAN RIGHTS

Eight-Year Summary of "Age" Complaints—July 1, 1958–June 30, 1966

The Commission's experience with the age provisions of the New York Law Against Discrimination is indicated by the following statistical analysis:*

Number

During the eight-year period from July 1, 1958 through June 30, 1966, the Commission has received 755 "age" complaints. This represents about 14 percent of the total number of employment cases presented to the Commission throughout those eight years.

Geographic location

New York City has been the site of 62 percent of all age complaints. The region with the next highest proportion, where 10 percent of the complaints have been registered, is Buffalo.

Occupation of complaints

About three out of five complaints (57 percent) were submitted by people seeking employment in professional, clerical and sales positions. Approximately 10 percent were craftsmen or persons in the skilled trades and 32 percent represented semi-skilled, unskilled, and service positions.

The remaining 1 percent did not report their occupations.

Age and sex of complaints

Almost three out of four complainants in the age cases (74 percent) have been men. The median age of all complainants was 53 and the largest number of complaints (nearly one quarter of the total) was filed by persons between 51 and 55 years or age.

Respondents

For the entire eight-year period, 80 percent of all complaints involved employers, while labor unions and employment agencies where the respondents in 5 percent and 14 percent of the complaints respectively. One percent involved organizations aiding and abetting discrimination. The industries most frequently represented by the respondent employers were: manufacturing—durable goods (20 percent); non-durable goods (16 percent); transportation, communication and public utilities (13 percent); finance, insurance and real estate (11 percent); and retail trade (10 percent).

Acts of alleged discrimination: findings

The distribution of "age" complaints from July 1, 1958 to June 30, 1966 by act of alleged discrimination is as follows: refusal to hire, 54 percent; dismissal, 20 percent; employment agency refusal to refer, 14 percent; labor union action, 6 percent; terms and conditions of employment, 5 percent; other, 1 percent. The Commission found and adjusted some unlawful practice or pattern relating to age discrimination in 36 percent of the age cases settled since July 1, 1958.

Distribution of age complaints filed July 1, 1958–June 30, 1966

Year	Total employment complaints filed	Age complaints filed	Percent of total
Jan. 1–June 30:			
1966	367	57	15.5
1965	761	93	12.2
1964	609	77	12.6
1963	650	66	10.2
1962	612	80	13.1
1961	669	104	15.5
1960	651	91	14.0
1959	791	119	15.0
July 1–Dec. 31, 1958	456	68	14.9

*The age provisions of the law were enacted on July 1, 1958, and the statistics relate to the law's prohibition against discriminatory employment practices based arbitrarily on chronological age. The complaints which are the subject of the analysis are the sworn complaints which the Commission receives, investigates and passes upon pursuant to its statutory powers and duties. The statistical summary, accordingly, does not take note of such aspects of the Commission's administration of its law as are involved in questions relating to bona fide occupational qualifications which may be presented outside the context of an individual's complaint.

Placements of applicants over 40 years of age and placements of applicants in the 40–44-year age group, January–December 1966

	Total nonagricultural placements	Nonagricultural placements 40-plus applicants	Nonagricultural placements 40-plus as percent of total nonagricultural placements	Nonagricultural placements 40–44 years	Nonagricultural placements 40–44 as percent of total nonagricultural placements
New York State	780,203	313,463	40.2	86,529	11.1
New York City	511,453	228,312	44.6	60,107	11.8
Remainder of State	268,750	85,151	31.7	26,422	9.8
Upstate districts:					
Albany	31,339	9,333	29.8	2,726	8.7
Utica	13,209	3,541	26.8	976	7.4
Syracuse	21,606	7,293	33.8	2,192	10.1
Rochester	43,199	16,534	38.3	5,749	13.3
Buffalo	39,746	13,201	33.2	3,924	9.9
Binghamton	20,013	6,370	31.8	1,765	8.8
Long Island	53,932	15,829	29.3	5,034	9.3
Suburban	45,706	13,050	28.6	4,056	8.9
New York City offices:					
Professional	84,247	36,456	43.3	9,700	11.5
Office personnel:					
Manhattan	30,030	11,729	39.1	2,962	9.9
Brooklyn	4,479	1,402	31.3	374	8.4
Sales and merchandising	8,880	1,550	17.5	409	4.6
Manhattan, Bronx, and Queens service	63,351	35,301	55.7	8,376	13.2
Brooklyn service	13,801	8,169	59.2	2,627	19.0
Manhattan and Bronx industrial	39,256	6,374	16.2	2,836	7.2
Brooklyn industrial	30,442	5,123	16.8	2,108	6.9
Queens industrial	13,123	2,862	21.8	1,105	8.4
Manhattan, Bronx, and Queens apparel	36,582	17,099	46.7	3,542	9.7
Brooklyn apparel	10,526	3,250	30.9	963	9.1
Household	150,024	97,499	65.0	24,620	16.4
Staten Island	3,641	1,217	33.4	362	9.9

Mr. CONWAY. There is a statement field with the commission which will be incorporated, Senator, as you just mentioned.

I will conclude my oral presentation with an evaluation of the New York experience, and comment on the subject of Federal-State relationship in connection with "age" laws.

EVALUATION

It is the judgment of the commission, after 8½ years of experience with the age provisions of the law against discrimination, that the administration of a statute with enforcement provisions is entirely feasible and does expedite and make more effective the public policy of the State to eliminate automatic and mechanical assumptions as to job ability based solely on chronological age.

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

The law recognizes the possibility of age as a bona fide occupational qualification in special circumstances.

At the same time, the bona fide occupational qualification provision is, in context, an exception to the law's general coverage.

FEDERAL-STATE RELATIONSHIP

It is of particular importance that careful attention be given to the Federal-State relationship which will arise from the enactment of Federal legislation in the field of human rights where existing State legislation has been administered successfully over a period of years.

This factor was taken into account by the Congress upon its consideration and enactment of the Civil Rights Act of 1964.

The experience under those provisions would appear to confirm the need for avoiding any implications of preemption of the field under the Federal statute.

This requires a clear and specific saving clause which will not only save the jurisdiction of the State agencies, but will avoid to the greatest extent possible the coming into being of unnecessary duplications of effort.

I am aware that a number of Federal bills dealing with discrimination in employment because of age either already include provisions bearing on this problem or have in prospect amendments which will be directed to the problem.

The point of my emphasis is principally to express our appreciation of the fact that careful attention is being given to this area of our concern and to urge that no bill be deemed acceptable without an adequate saving clause.

Thank you.

Senator YARBOROUGH. Judge Conway, this is an important matter, the matter of the Federal-State relations.

We have had other testimony in here that the Federal law should be all encompassing because of the conflict in the different State laws. This would insure that the employer would have the same rule applicable in one State as another.

This problem is particularly acute, of course, in the transportation industry.

I think we must give careful study and consideration to the problem of the Federal-State relationship. The experience of those 23 States which have laws against discrimination on account of age must be carefully analyzed and the effect a Federal law would have on State jurisdiction must be considered if we are to pass S. 830.

Do you have any further specific recommendation that you wish to make?

Mr. CONWAY. The only thing that occurs to me in reference to this, Senator, is the fact that already a provision is set forth in the Civil Rights Act of 1964 that seems to work quite effectively and in respect to this matter it is not unlike the situation that you present.

That is to say, the Federal Government does have jurisdiction under the 1964 act but does defer to State agencies with power of enforcement and also provides for a time limit within which action must first be taken by the State where such cases are so deferred.

It would seem to me that this may be the answer. I am not here, nor would I be so presumptious as to dictate in respect of that, but I suggest that that is a possible manner in which any conflict could be avoided.

Senator YARBOROUGH. I notice in the appendixes first here the matter of the airlines' inquiry into the maximum age requirement of stewardesses.

Your commission has made a finding on that. Is that case final? Is that case final with your commission, has it been appealed to the courts by anyone?

Mr. CONWAY. The present status of that is as follows: An attack was made upon the jurisdiction of the New York State Commission

in the Federal courts. The determination was made by the courts in favor of the commission continuing and that matter was then referred to public hearing and a public hearing is underway at the present time.

Senator YARBOROUGH. I notice that in the findings, and to save time I am not asking you to read them, they will be placed in the record, you have findings of age ceilings for continuing employment for stewardesses.

You have this for both domestic and foreign airlines. In the case of the foreign airlines, seven of them have ages 40's and 50's up to the maximum age of 67 years of age, and that quite a few U.S. airlines have no age at which stewardesses cease to serve but would consider the matter of individual competence of each employee.

Of the 38 domestic airlines in the United States, your finding was that 24 have no policy of arbitrary limitation of service of stewardesses on account of age, is that correct? Twenty-four of the 38 have no age limitation.

Mr. CONWAY. Yes; this is set forth, Senator, in the report.

Senator YARBOROUGH. The entire document is filed and is part of all of the findings, it is part of the record.

Senator Randolph?

Senator RANDOLPH. Mr. Chairman, earlier this week, as you recall, it was my privilege to discuss some of the problems that are very real to the airline industry, both in the operation of scheduled aircraft within the United States and also in the international field.

Judge Conway, you have had an enviable record in your State. I know of this. And you have a background in the subject matter that I am going to discuss rather definitively with you. I think that we can perhaps serve the record well, Mr. Chairman, by a discussion at this point.

In your testimony, Judge Conway, which I have read, of September 2, 1965, you said, when you appeared before a Select Subcommittee on Labor in the House of Representatives, these words, and I read:

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

Now, that was your statement then.

Mr. CONWAY. That is correct.

Senator RANDOLPH. That was your statement then; that is correct.

I am attempting now to understand why in your statement, and I quote, you have said the following:

> A charge of arbitrary discrimination because of chronological age may be filed by any person claiming to be aggrieved up to age 65.

Now it seems to me, and I want to be completely candid with you—and also I want to be, Mr. Chairman, eminently fair as we discuss this matter—that this is a change of viewpoint.

There seems to me to be a difference between the expression you stated in the hearing in 1965 and the statement that you have made today.

Mr. CONWAY. Well, let me clarify it for you then, Senator, if I can.

What I recited in the former hearing to which you refer was the factual matter of the legislation. The fact is that I view it as the

Legislature's intent to have us concerned with specifically those people who fall in the group originally 45 to 65 and and subsequently 40 to 65 where the greatest burden falls. This required greater concern for these particular people who fall within those age brackets.

This did not, however, intend, in my opinion, to exclude those who would be under age 40. In other words, if an employer refuses to appoint somebody or to employ somebody at age 44 or 39, he certainly refuses to employ anyone between the ages of 40 and 65.

Senator RANDOLPH. Judge Conway, I appreciate your desire to clarify. This will allow us to go forward by discussing the general provisions of the New York State law against discrimination, as amended.

I have that here and we know that when we go to the portion which is labeled "Age discrimination in employment," that is section 296–3(a), we find the following, and I quote:

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

Now that seems to me quite explicit. Frankly, the wonderment that I have, in a way, is why you submitted your finding with respect to stewardesses in reference to this hearing.

Mr. CONWAY. Well, of course, Senator, fortunately, in America we all have a right to disagree.

Senator RANDOLPH. Why, certainly.

Mr. CONWAY. And this is a matter of disagreement in interpretation. I do not feel free to discuss the airline hostesses' case while there is pending before my commission and before three of my colleagues a public hearing and where there is litigation pending in the matter.

I feel that where an employer does in fact discriminate against persons at any age below the floor of 40 that he necessarily and automatically discriminates against all persons between the ages of 40 and 65, and that is my interpretation for what it is worth.

Senator RANDOLPH. I am grateful, because as you say, persons do interpret differently.

Let's take Governor Rockefeller, of New York. I read on this point the statement which he made in reference to this in the 1961 McKinney's Session Laws, page 2116. I quote:

> This bill, L. 1961, c. 609, extends to persons between the ages of 40 and 45 the protections of the law prohibiting discriminatory employment practices based upon age.

Now, do you agree or disagree with Governor Rockefeller?

Mr. CONWAY. With all due respect, Senator, I must refrain from answering this because this is one of the issues that is raised in the pending litigation in the interpretation of that.

Senator RANDOLPH. I certainly understand. I would not press the point. You are certainly correct in stating what you have with reference to a pending matter.

Mr. Chairman, I shall hurry.

I wish to read from the memorandum filed by the New York State Commission on Human Rights in the Southern District of New York in this airlines case. [Reading:]

Commissioner Conway's report is that of a single Commissioner and is not binding on any other Commissioner.

Is this true?

Mr. CONWAY. This is true.

Senator RANDOLPH (continues reading):

Although it has been followed by one other investigating Commissioner in one of the four pending complaint cases, Commissioner Bessie A. Buchanan, if any of these cases go to public hearing, Commissioners Conway and Buchanan will be ineligible by virtue of Executive Law section 297 to sit as Hearing Commissioners.

Commissioner Conway has not said that he or the Commission as a whole will never under any circumstances recognize the right of a specific airline to discharge a specific stewardess for over-age at 32 or 35 under the bona fide occupational qualification exception.

Mr. CONWAY. That is a perfect statement of the fact, Senator.

Senator RANDOLPH. I appreciate that.

Now I shall read from the initial decision in the courts, the opinion of Judge Brown in the case of Allegheny Airlines versus Fallen. [Reading:]

First, there is considerable doubt whether the airlines will ultimately be subjected to the provisions of the Executive Law at all. Despite the preliminary findings of probable cause—made without the submission of evidence by the airlines—the Commission may well decide after a hearing that age is a bona fide occupational qualification for stewardesses.

Now perhaps you can comment on this. I am not sure that you will want to but in the light of the Governor's statement which I read and the statement of the commission, do you feel it is proper for you to perhaps comment as I close this colloquy?

Mr. CONWAY. Senator, I feel that what I have said is already in the record in the determinations that I have made and upon that I stand.

It is the fact that this is my opinion as one of the nine commissioners of the State commission and that the matter now pending before a public hearing. I feel that I should not go further in any comments or expand my comments because I would not want to endeavor in any way to influence my colleagues or to be cast in the position where my testimony might be so interpreted.

Senator RANDOLPH. I thank you, Judge Conway, very, very much, and I do know of your qualifications. I know of your education.

I am not now speaking as a pleasantry, but I have checked this matter very thoroughly because of a certain knowledge that I have of the industry involved.

May I add that I am delighted to cosponsor your bill, and say again, as I have said before, I appreciate your leadership in this matter and your desire to bring this legislation to the subcommittee, perhaps with changes to the committee and then to the Senate for action.

Senator YARBOROUGH. Thank you very much, Senator Randolph. I appreciate the cosponsorship of this bill. You have put forth great effort on behalf of the aging over the years and all the many matters of the committee.

Senator Griffin.

Senator GRIFFIN. Commissioner Conway, I would like you, if you would, to take a little time to educate me concerning some of the procedural aspects of the enforcement of the New York law.

Does your commission have the authority to issue cease-and-desist orders?

Mr. CONWAY. After a public hearing they do, Senator.

Senator GRIFFIN. After a public hearing?

Mr. CONWAY. Yes.

Senator GRIFFIN. I notice you say that—

The procedure which follows is in the form of the usual quasi-judicial hearing with all attending safeguards to all parties.

What safeguards are you talking about?

Mr. CONWAY. The right of all parties to be represented by counsel, to examine and cross-examine witnesses, to produce such witnesses or documents as may be relevant, to obtain subpenas necessary to accomplish that purpose.

Senator GRIFFIN. When a charge of discrimination is filed, who bears the burden of proving the discrimination?

Mr. CONWAY. In the first instance, Senator, normally a complaint arises from an individual who feels himself aggrieved. He sets forth the facts and files a verified complaint with us.

This is then assigned by our Chairman to one of the commissioners who thereafter conducts in depth the investigation. That commissioner is the first instance makes a determination that there is or is not probable cause to credit the allegations of the complaint.

This is a little different than a finding of an outright violation of the law. If he finds that there is probable cause to credit the allegations of the complaint, he is then under the necessity of conferring with the respondent in order to reach satisfactory conciliation terms that will dispose of the matter appropriately and prevent the future occurence of whatever the investigating commissioner finds to have been out of line with complete compliance with the letter and the spirit of the law.

Now, sometimes he is unable to do that, of course, and in this case he then refers the matter to a public hearing and steps out of the case.

Obviously, he has already made his own mental commitment as to what the facts are and he could hardly be deemed to be an appropriate judge of the issue.

At that point, the chairman of the commission appoints three other commissioners who have no knowledge of this case and who hear the case ab initio—right from the beginning.

Senator GRIFFIN. Who assumes the role of prosecutor at that point?

Mr. CONWAY. The counsel for the commission, although with the permission of the hearing commissioners counsel may also be retained by a complainant if complainant desires, and that has sometimes happened, but there is no obligation on the complainant to come forward with his own counsel.

Senator GRIFFIN. Is the burden of proof on the counsel for the commission to prove discrimination?

Mr. CONWAY. It is.

Senator GRIFFIN. Or is the burden on the charged party to prove he did not discriminate?

Mr. CONWAY. No, the burden is always upon the commission in proving discrimination.

Senator GRIFFIN. What about the rules of evidence?

Mr. CONWAY. The rules of evidence as in all quasi-judicial proceedings are not, theoretically at least, as rigid as those in a court of law.

For example, under the quasi-judicial proceedings in the State of New York hearsay evidence is not barred. However, hearsay evidence cannot be of such volume and such importance as to leave no residuum of legal proof, you see.

So while it is the fact that there is greater leeway in the production of evidence, realistically we have a number of lawyers on our commission and generally one of these lawyers presides over the hearing.

Senator GRIFFIN. How many commissioners are there?

Mr. CONWAY. Nine.

Senator GRIFFIN. How many of them are lawyers?

Mr. CONWAY. Five. Now as I say, as a lawyer myself, I know how we resist the idea of the introduction of hearsay evidence, so I think our records generally show that the cases have been thoroughly tried so far as legal evidence is concerned.

Senator GRIFFIN. When it is appealed to a court, is the court bound to accept findings of fact made by the commission if there is substantial evidence in the record?

Mr. CONWAY. Yes, that is the rule, Senator. If there is substantial evidence, the court may not substitute its judgment.

Senator GRIFFIN. And that substantial evidence may or could be 90 percent hearsay evidence?

Mr. CONWAY. No, this is why I mentioned residuum. Of course, one now talks of before what judge is this, but I would assume that a record that showed any such thing as this would be probably not sufficient to warrant the approval of the court at special term.

Senator GRIFFIN. There is no right to a hearing de novo before a court where the rules of evidence are observed?

Mr. CONWAY. No, the power of the court would be to remand.

Senator GRIFFIN. Under the New York law, how do you deal with the problems of the increased costs of pensions and economic considerations which bear on this problem of age discrimination?

Mr. CONWAY. The benefits which may ultimately be derived by the worker who is employed late in life may be diminished under a pension plan. We feel that this is, in itself, by operation of the plan, not by design to deprive an older person.

Senator GRIFFIN. Who determines what the benefits will be in a situation hiring an older employee?

Mr. CONWAY. Well, this would be set forth in the pension plan. We would not presume to step in on a pension plan and tell them you must do this, that or the other thing and change its terms; it is a contract.

Senator GRIFFIN. I don't know if I understand you. The employer can have reduced benefits and a pension plan for an employee who is hired at an older age; is that right?

Mr. CONWAY. If this is the design of the pension and retirement plan.

Senator GRIFFIN. And you do not review or judge in any way what those benefits shall be?

Mr. CONWAY. No; not unless this in its very nature would give rise to the suspicion that it was something that was set up for the purpose

of avoiding the employment of older people. If, in good faith, it is an existing plan, established in good faith and operated uniformly, we would not then presume to say what the benefits should or should not be.

Senator GRIFFIN. Thank you, Mr. Chairman.

Senator YARBOROUGH. Judge Conway, in your findings that you made in the matter of airline hostesses or stewardesses you found that these 38 U.S. airlines, domestic airlines, currently employ some 15,000 stewardesses at a high turnover rate, average length of service about 2 years and with each year 5,000 new stewardesses are hired from an estimated 100,000 applicants and that they are still in service.

Despite this high rate of turnover, some several hundred stewardesses between the ages of 30 and 50 years would have been flying from 10 to 30 years each.

Mr. CONWAY. Yes.

Senator YARBOROUGH. Further, one of the findings was that, pursuant to the regulation of the Federal Aviation Agency, airline stewardesses are required to pass, at least once a year, various examinations related to their continued ability to perform their duties in flight service and these include examinations for emergency evacuation procedures, familiarity with the airplanes in service, and personal health.

Now I note also from your finding that the first application of the special maximum age, which had been age 32, to produce discharge of the stewardess occurred in 1963.

Is that correct? That is the first year in which an airline said that the stewardess must quit at this age?

Mr. CONWAY. As I recall, I have not the details fixed in my mind now as to specific dates but you have the report before you, this is what our investigation showed.

Senator YARBOROUGH. I don't know whether you went into that or not but do you recall whether if the airline, say, hired a lady, 21, and she is worn out and finished at 32 and not able to work any more, do they have a pension plan beginning at age 32 for stewardesses?

Mr. CONWAY. Not to my knowledge.

Senator YARBOROUGH. Just declared decrepit and old and cannot perform duties at age 32?

Mr. CONWAY. It does not appear that, by and large, they have any obligation to be overly concerned about what happens to them.

Senator YARBOROUGH. Thank you very much. No further questions.

Mr. CONWAY. Thank you, Senator.

Senator YARBOROUGH. Senator Javits could not be here this morning but has some written question to be answered by Judge Conway, and he wants the answers put in the record.

Judge Conway, will you take Senator Javits' written questions and answer those for the record?

Mr. CONWAY. I would be glad to.

Senator YARBOROUGH. Thank you.

Mr. CONWAY. Thank you for the opportunity to appear before you.

(The questions and answers referred to were subsequently supplied for the record, along with a pamphlet from the New York State Commission for Human Rights, which follow:)

QUESTIONS PREPARED BY SENATOR JAVITS FOR COMMISSIONER CONWAY, NEW YORK STATE COMMISSION FOR HUMAN RIGHTS, AND ANSWERS SUBMITTED BY COMMISSIONER CONWAY

Question 1: How does the exemption provided for bona fide retirement and insurance plans apply in the case of a plan which does not, by its terms, exclude newly hired employees over a certain age, but under which the premium payable for an older employee is substantially higher than that payable for a younger employee? Is the employer permitted to hire the older worker on the condition that he receive no benefits or lesser amount of benefits than would be received by a younger worker?

Answer: The Commission has not made any ruling on precisely the set of facts which you present in Question No. 1. It would be my own interpretation, however, that Rule I of the Commission's Rulings Interpretive of the Age Provisions of the Law would furnish an analogy. Under this Rule, I would feel that an employer could be permitted to hire an older worker with the condition that such employee receive no insurance benefits or a lesser amount of insurance benefits than would be received by a younger worker where the employer can establish that the premium payable for an older employee is substantially higher than that payable for a younger employee.

Rule I, entitled "Maximum Entrance Age", provides:

> "The existence of a provision in a retirement plan stating a maximum eligibility age for entrance into a retirement plan shall not in itself authorize rejection of an applicant who is over the maximum eligibility age for the retirement plan, provided, however, that the compulsory retirement age provision set forth in the retirement plan may be made applicable to such employee.
>
> "Examples:
>
> "1. An employer has a bona fide retirement plan or system which provides for a maximum entrance age of 40 and a compulsory retirement age of 65. A qualified applicant for employment, age 41, is rejected for employment on the basis that he is ineligible for the employee's retirement plan. The employer asserts that he does not choose to employ anyone who is not eligible for such plan, although the employer could do so without causing the plan to become disqualified under the Internal Revenue Code.
>
> "This is unlawful"
>
> "2. An employer has a bona fide retirement plan or system which provides for a maximum entrance age of 40 and a compulsory retirement age of 65. A qualified applicant for employment, age 41, applies for employment. The employer advises such applicant that he will be accepted for employment but that the terms of his employment must provide for exclusion from the retirement plan and compulsory retirement at 65 (or that the employee will receive some form of reduced benefits upon retirement at age 65 based on his entrance age).
>
> "This is lawful"

Question 2: Has any study been made by the Commission, or any other New York agency, to determine the significance of pension and insurance considerations as a factor causing discrimination against older workers? If so, what were the general conclusions of the study?

Answer: No formal study has been made by the Commission to determine the significance of pension and insurance considerations as a factor causing discrimination against older workers. During the course of the preparation of the Commission's initial rulings there were, however, a series of informal conferences with representatives of various groups interested in pension and insurance considerations. It appeared from these conferences that there was then a generally held belief that pension and insurance considerations did have "some significance" as factors causing discrimination against older workers. It was reported at that time that such factors had not infrequently been mentioned to older applicants as reasons for not employing them. On the other hand, it was also frequently suggested in the course of such informal conferences that the remark "too old for our pension fund" was being used simply as a softer way of saying that the interviewer thought the applicant was "too old"; and any conclusion that pension and insurance considerations were both valid and significant was at least open to considerable doubt.

Question 3: Has the Commission developed any rules for determining when age is a bona fide qualification for a job? If so, what is the substance of these rules? Do they apply generally, on an industry wide basis, or with reference to specific jobs?

Answer: It is the Commission's general policy to determine bona fide occupational qualifications relating to age with reference to specific jobs and not to grant so-called "blanket" bona fide occupational qualifications on an industry-wide basis. The Commission does, however, engage in a continuing and current review of its policies and procedures and is doing so in the field of bona fide occupational qualifications as well as in other aspects of its activities. I call to your attention in this connection the report I made, after an informal investigation on a state-wide basis into the age ceilings for employment of airline stewardesses, which is included in the written statement submitted as part of my testimony before your Committee.

It may also be noted that the Commission has a general guideline in connection with bona fide occupational qualifications and a procedure for the initial steps in connection with a claim of the existence of a bona fide occupational qualification based on age. These are contained in the Commission's Rule D of its Rulings Interpretive of the Age Provisions of the Law Against Discrimination and provides as follows:

"D. Bona fide occupational qualifications

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

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

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

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

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

"2. The Law does not require an employer to obtain prior certification by the Commission of the existence of a bona fide occupational qualification based on age. He may make this determination himself and act on it. In so doing, however, the employer risks committing an unlawful discriminatory practice if the Commission does not later sustain his claim to a bona fide occupational qualification. In order to minimize an employer's risk in incurring penalties under these circumstances, the Commission has established the following procedure:

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

Question 4: Have any complaints been filed against labor unions under the New York law? If so, how many, what was the general nature of the discrimination involved, and what was the disposition of the complaint?

Answer: The following response to your Question No. 4 has been supplied to me by Dr. John Bushnell of the Commission's Division of Research.

The age provisions of the New York State Law Against Discrimination have been in effect since July 1, 1958. From that date thru December 31, 1966, there have been 39 vertified complaints based on age filed against labor unions. The ages of the complainants ranged from 35 to 86. Thirty-one of the complaints were filed in New York City; two in Westchester; four in Erie County which includes Buffalo; one in Albany County, and in one instance the alleged act of discrimination took place outside New York State.

Seven of the complaints were closed with a finding of "probable cause." In four of these cases, the terms of conciliation accepted by the union respondents provided for a change in their constitution which had limited the age of applicants for membership to persons not over 45 years of age. In two cases the constitutions of the respondent unions, which had limited applicants to persons not over 50 years of age, were revised. In the final case, the respondent union agreed to amend its pension plan so that persons over 40 might be considered for employment if they agreed to take a reduced pension (based on age) upon retirement.

Of the seven complaints closed for "lack of jurisdiction," four were filed by complainants who were over 65 years old; two were filed where the retirement age was based on Age–65 and the other was based on Age–68.

See attached table.

"Age" complaints filed against labor unions July 1, 1958, to Dec. 31, 1966

BY YEAR

1958	5
1959	11
1960	2
1961	2
1962	4
1963	4
1964	3
1965	4
1966	4
Total	39

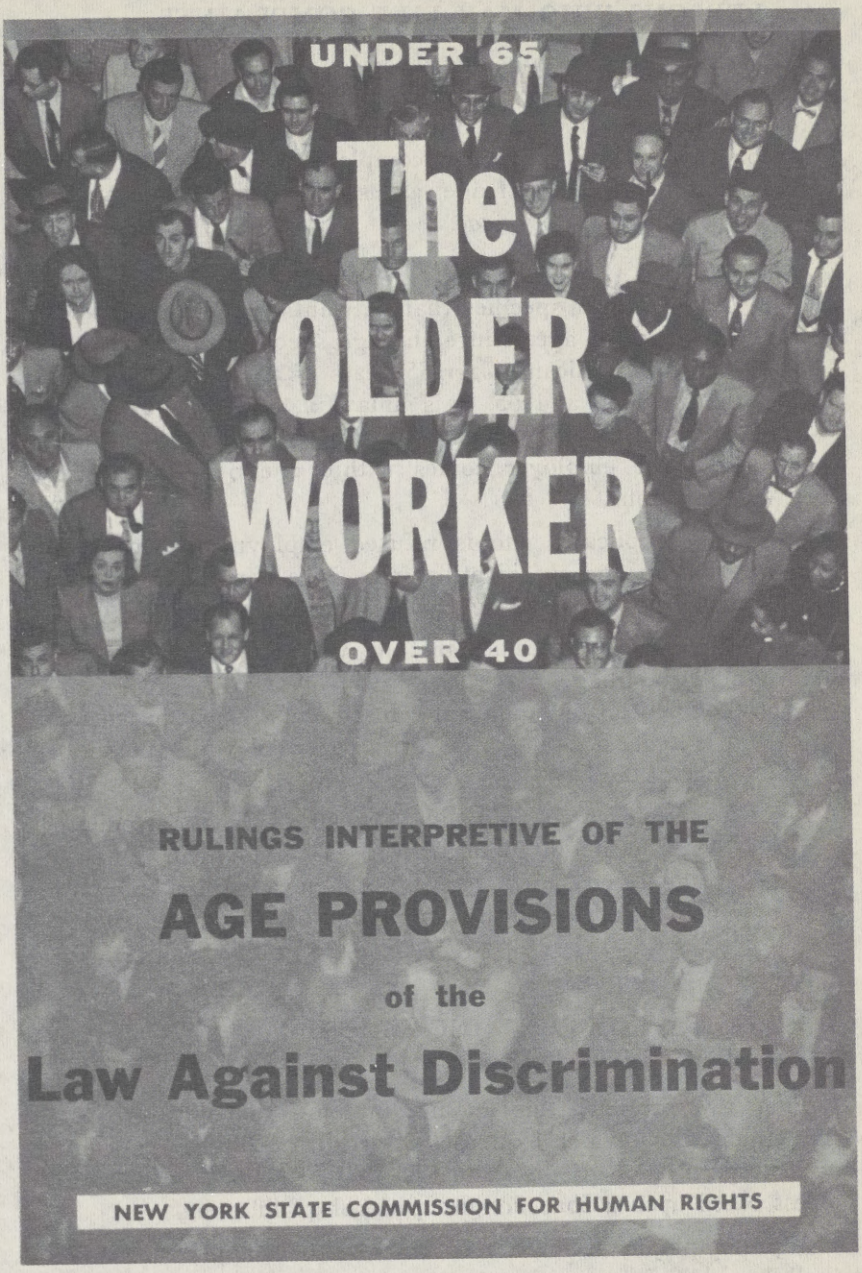
BY DISCRIMINATORY ACT

Forced retirement	3
Referral	14
Membership denied	[1] 13
Did not properly represent union member	8
Apprenticeship	1
Total	39

[1] Three complaints involved transfers from another local.

BY CLOSINGS

Lack of jurisdiction	7
No unlawful practice	23
Probable cause	7
No probable cause for this complaint but other discrimination found	2
Total	39


UNDER 65
The
OLDER
WORKER
OVER 40
RULINGS INTERPRETIVE OF THE
AGE PROVISIONS
of the
Law Against Discrimination
NEW YORK STATE COMMISSION FOR HUMAN RIGHTS

A. PERSONS WHO MAY FILE COMPLAINTS

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

Examples:

1. An employer specifies that he wants a bookkeeper *under* 35 years of age. Since the age specification necessarily bars all applicants *over* 35 years of age, including those between 40 and 65, it is unlawful, under subdivision 1 and under subdivision 3-a of section 296 of the Law, unless the employer comes within one of the statutory exceptions.

   Any applicant who is refused employment because of such an age specification may file a complaint with the Commission as an aggrieved person.

2. An employer specifies that he wants a bookkeeper *over* 35 years of age.

   A 29 year old applicant refused employment because he is *under* 35 is *not* an "aggrieved person" within the meaning of the Law.

3. An employer specifies "15 years of experience required."

   A 25 year old applicant refused employment is not an "aggrieved person" within the meaning of the Law, although the specification would bar him from employment.

B. PRE-EMPLOYMENT INQUIRIES: APPLICATION FORMS

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

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

Example:

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

THIS IS UNLAWFUL

* * *

A pre-employment inquiry as to age on an application form will not be deemed to express a "limitation or specification" and will not be in violation of the Law when (1) the inquiry is made in good faith for a non-discriminatory purpose and (2) the application form states that the New York Law Against Discrimination prohibits discrimination because of age.

Examples of the lawful use of an application form with inquiry "state age" or "state date of birth" accompanied by the statement "The New York Law Against Discrimination prohibits discrimination because of age":

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

b. An applicant is required to give his age to a medical examiner in connection with a pre-employment medical examination.

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

C. PRE-EMPLOYMENT SPECIFICATIONS AND ADVERTISEMENTS

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

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

Example: "Wanted—Handyman between 30 and 40."
"Wanted—Stenographers, under 35."

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

Example: "Wanted—Young man."
"Wanted—Young woman."

D. BONA FIDE OCCUPATIONAL QUALIFICATIONS

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

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

a. Where age is a bona fide factor in connection with job performance.
b. Where age is a bona fide factor in an apprentice training or on-the-job training program of long duration.
c. Where age is a bona fide factor in fulfilling the provisions of other statutes (e.g. laws regulating employment of minors and females).

2. The Law does not require an employer to obtain prior certification by the Commission of the existence of a bona fide occupational qualification based on age. He may make this determination himself and act on it. In so doing, however, the employer risks committing an unlawful discriminatory practice if the Commission does not later sustain his claim to a bona fide occupational qualification. In order to minimize an employer's risk in incurring penalties under these circumstances, the Commission has established the following procedure:

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

E. EMPLOYMENT AGENCIES

An employment agency undertaking to fill a job order containing an age specification will share responsibility with the employer placing the job order if it is determined upon complaint or otherwise that the age specification was not based upon a

bona fide occupational qualification. The employment agency, however, will not be deemed by the Commission to be in violation of the Law, regardless of the determination as to the employer, if the employment agency acts in good faith to comply with the Law and does the following:

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

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

F. PRE-EMPLOYMENT PHYSICAL EXAMINATIONS

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

G. TERMINATION OF EMPLOYMENT BECAUSE OF INABILITY TO PERFORM DUTIES

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

Examples:

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

THIS IS LAWFUL

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

THIS IS LAWFUL

* * *

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

THIS IS UNLAWFUL UNLESS THE EMPLOYER CAN ESTABLISH (a) THAT HIS GENERAL BELIEF HAS A SUBSTANTIAL BASIS IN FACT AND (b) THAT IT IS NOT PRACTICABLE TO PASS UPON EACH INDIVIDUAL EMPLOYEE'S QUALIFICATIONS.

* * *

4. An employer establishes the policy of terminating at age 60 the employment of every employee in a highly specialized occupational category demanding a high level of physical qualification, without reference to the actual physical condition at terminal age of the particular employee in such job category.

THIS IS LAWFUL IF THE EMPLOYER CAN ESTABLISH THE SPECIALIZED CHARACTER OF THE JOB CATEGORY AND THE REASONABLENESS OF THE COMPULSORY TERMINATION AGE (e.g., AN AIRLINE WHICH REQUIRES THE AUTOMATIC TERMINATION OF THE EMPLOYMENT OF ALL PILOTS AT AGE 60, WITHOUT REFERENCE TO THE INDIVIDUAL'S PHYSICAL CONDITION AT TERMINAL AGE.)

H. RETIREMENT POLICY OR SYSTEM

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

Examples:

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

THIS IS LAWFUL

* * *

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

THIS IS LAWFUL

* * *

(b) Where a compulsory retirement age, below age 65, is part of a retirement policy, plan or system, which provides for retirement benefits but was established after June 30, 1958, the employer will be called upon to justify the reasonableness of the specified compulsory retirement age in relation to (1) the em-

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ployer's over-all employment policy and (2) the particular occupational category to which it applies.

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

1. The date of the establishment of the policy;

2. The history of the administration of the policy;

3. Whether and when the policy was reduced to writing and made known to existing employees and applicants for employment;

4. The reasonableness of the specified compulsory retirement age in relation to (1) the employer's over-all employment policy and (2) the particular occupational categories to which it applies.

I. MAXIMUM ENTRANCE AGE

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

Examples:

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

THIS IS UNLAWFUL

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

THIS IS LAWFUL

* * *

J. COSTS

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

K. INSURANCE COVERAGES

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

Example:

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

THIS IS LAWFUL

Senator YARBOROUGH. The next witness is Frederick Finigan, director of personnel, Allied Stores Corp., for the American Retail Federation.

STATEMENT OF FREDERICK FINIGAN, DIRECTOR OF PERSONNEL, ALLIED STORES CORP., FOR THE AMERICAN RETAIL FEDERATION; ACCOMPANIED BY DONALD WHITE, EMPLOYEE RELATIONS COUNSEL, AMERICAN RETAIL FEDERATION

Mr. FINIGAN. Mr. Chairman, my name is Frederick Finigan. I have with me Donald White, employees relations counsel of the American Retail Federation.

I am director of personnel of Allied Stores Corp. I appear before you today as chairman of the Task Force on Equal Employment Opportunity of the American Retail Federation.

The American Retail Federation is composed of 45 State and 28 National retail associations who, in turn, number among their membership retailers of all types and sizes.

One of these member national groups is the National Retail Merchants Association; I am chairman of its employee relations committee.

At the outset, let me state that the federation supports legislation which would protect the employment opportunities of the older worker.

We have made a careful study of the proposals before this committee, in the light of our policy, which states as follows:

> The American Retail Federation has, and will continue to support equal employment opportunity for all persons, and reasonable and practicable measures to achieve that end.

RETAIL POSITION ON THE OLDER WORKER

Before making certain specific recommendations regarding age-discrimination legislation, I would like to briefly review retailing's record in the areas of equal employment opportunity, both before and since passage of the Civil Rights Act of 1964.

That record has been a good one. Also, through the federation, as well as through many of its member State and National retail associations, our relationships with governmental agencies involved with discrimination have reflected a positive, constructive, and practical, approach to fair practices in employment.

We actively seek out these people without regard to age; also, it should be noted that there is a substantial percentage of people 45 years of age or older employed in retailing on a part-time basis. The performance of such employees is generally excellent; in fact, they have a certain stability about them which makes them valued and long-term employees.

To the extent figures are available, the relatively large proportion of older people employed in our industry is borne out in "The Older American Worker—Age Discrimination in Employment," the Secretary of Labor's report to Congress, Research Materials, June 1965, page 53.

In this report, table 16 shows occupations which are poor performers, that is, in which 10 percent or less of the men's jobs in 1960 were filled by men 55 years old or older; table 17 indicates those occupations wherein the proportion was 30 percent or better in 1960. Retailing is in the latter category, showing a performance figure of 30 percent.

Changes in retail employment patterns have occurred since the industry was covered by the Fair Labor Standards Act of 1961, particularly in the increased employment of women on a part-time basis. Nevertheless, I am confident that there has been no change in the age level of the employee.

FEDERATION SUPPORTS POLICY ON AGE DISCRIMINATION

So let the record speak for itself. This is what we mean when we say that we do not believe that a Federal legal remedy is necessarily required for retailing in the sense that it will correct discriminatory injustices.

However, as an expression of the public interest, the federation agrees with Secretary Wirtz when he transmitted his above-mentioned 1965 report to Congress which states in part that, for American industry, in general:

> A clear-cut and implemented Federal policy against arbitrary discrimination in employment on the basis of age would provide a foundation for a much needed vigorous, nation-wide campaign to promote hiring on the basis of ability rather than age. (P. 22.)

SENATOR JAVITS' PROPOSAL

We observed with great interest, therefore, Senator Javits' bill—introduced last year—the first age-discrimination measure to pass this body.

As the committee is well aware, his new bill, practically identical to that passed last year, S. 788, amends section 6 of the Fair Labor Standards Act, thus placing enforcement with the Wage and Hour Administrator.

Senator Javits reminded the Senate during debate on his bill that the Wage and Hour Division of the Department of Labor has had the important experience gained in enforcing two other antidiscrimination statutes: child labor and, more recently, the Equal Pay for Women Act—the latter measure also amends section 6 of the Fair Labor Standards Act.

I would like to quote Senator Javits' concluding argument during last year's debate—because it makes good sense—and because it gets right to the heart of administering and enforcing an age-discrimination bill:

> I think what I have proposed is the best type of administration for this type of statute. It is congenial. It does not go into the sociological grounds of discrimination on account of race or color. (P. 19940, Congressional Record, Aug. 26, 1966.)

The federation's task force, in its study of Senator Javits' approach, has concluded that an amendment to section 6 of the Fair Labor Standards Act in a form which we will propose, is not only compatible, but is consistent with the antidiscriminatory provisions of the Equal

Pay Act, which immediately precedes the age bill in the Fair Labor Standards Act.

ADMINISTRATION'S PROPOSAL

Before discussing in detail our suggestions, which should simplify—and therefore facilitate general understanding of and compliance with such a measure, let me briefly comment upon the administration's proposal.

It has much to commend it—for instance, the comprehensive scope of section 3, "Education and Research Program." This section clearly enunciates, in the Secretary's own words, which I quoted earlier, "* * * a foundation for a much needed vigorous, nationwide campaign to promote hiring on the basis of ability rather than age."

We also find merit in the exemptions contained in section 4(f) (1), (2), and (3) which, briefly, permit an employer to consider age as a bona fide occupational qualification (also in the Javits bill); to separate an employee under a retirement policy or system and to discharge for good cause.

FEDERATION OPPOSES ENFORCEMENT POWER GIVEN TO DEPARTMENT OF LABOR

However, we are categorically opposed to placing administration and enforcement with the Secretary of Labor, which implies another enforcement agency, division, commission—call it what you will—within the Department of Labor.

I must emphatically express the federation's opposition to the proliferation of such enforcement agencies.

The public interest—and the real goals of an age discrimination law—would be more than adequately protected by administration and enforcement within an already existing agency, in Senator Javits' words, "* * * which has the staff, the attorneys, and the experience to deal with this problem without the necessity of creating a whole new bureaucracy for this single statute * * *" (p. S1236, Congressional Record, Feb. 1, 1967).

Senator Javits' bill, like the administration measure, contains provisions for positive steps to make studies and recommendations to achieve the goals of his bill, though it is perhaps not spelled out in as much detail.

We would leave the nature and type of cooperative agencies to the judgment of the members of this committee, and hope that you would seek our expertise before proceeding to establish cooperative-type organizations or plans. You will find retailing most willing to cooperate.

AMERICAN RETAIL FEDERATION PROPOSAL

I would now like to describe the major thrust of a draft bill, which the federation's task force developed, and which should have appeal in terms of further simplifying the current Javits proposal, while preserving its intent.

The language has been borrowed to some extent from the Equal Pay Act and the President's Executive Order 11141, pertaining to those employers who have contracts with the Federal Government.

The pertinent sections of our draft bill (following sections which cover labor unions as defined in section 6(d) (2) and (4) of the equal pay provisions of the FLSA) read as follows:

(f) No employer having employees subject to any of the provisions of this section shall, within any establishment in which such employees are employed, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against employees because of their age except upon the basis of (i) a bona fide occupational qualification, (ii) a retirement or insurance program, (iii) a statutory requirement or (iv) on any other factor other than age, provided that this paragraph shall be limited to persons who are at least 45 years of age but shall not have attained the earliest age at which any individual is eligible to receive full old age benefits under the Social Security Act.

EXPLANATION OF FEDERATION PROPOSAL

There are four provisions upon which I would like to concentrate in explaining our proposal; we believe that all others are both self-explanatory and noncontroversial.

1. Exception (ii): "A retirement or insurance program"—both the administration bill and the President's Executive order make similar provisions. I submit that the pertinent parts of the Secretary's June 1965 report can—and have been—read to show that retirement programs, pension plans, insurance systems or health plans either do or do not have a significant and justifiable effect upon the hiring of older people. We know that they do. While our proposed exception may lack necessary technical details it must be recognized as practical and necessary in an age discrimination law.

2. Upper age limit: Defined in terms of eligibility for social security benefits—permits flexibility in the event of the inevitable changes in the law which will permit early eligibility. Ever-increasing social security benefits intended to provide specifically and for something more than subsistence income, and liberalization of the earnings test, can change the concept and the practical effect of social security payments. Thousands of older people now work in retailing—but limit their earnings by choice to the present test.

3. Coverage: S. 788 covers establishments which employ 50 or more employees. Our version would cover any employer subject to the FLSA—and with the new "dollar test" now at $500,000—it can be expected that coverage will be extended to a large number of establishments with fewer than 50 employees.

4. The section 13(a)(1): Exemption of so-called white collar employees iis retained in our bill. These executive, administrative and professional employees are the potential top echelon executives in retailing. S. 788 has, in effect, removed this exemption—which has always existed in the Fair Labor Standards Act—including the Equal Pay Act. Retailing maintains that there is nothing to be gained by carving this exemption out of the present law and placing these employees under an age discrimination statute. In the first place, they are usually hired and are trained, transferred, promoted, and further trained, transferred and promoted in a long-range program, in which they are eligible for the top jobs in the company where they started out. Therefore, they are generally hired long before age 45—although when otherwise qualified, a store would certainly look for tal-

ent at any reasonable age. Where the problem is greatest, however, is in the area of promotion. The ascendancy of these people within an organization assumes a pyramidal shape: There are just fewer jobs up toward and at the top than there are further down. In the services not everyone can be a general; so too in retailing, not all executives can be presidents and vice presidents, nor can every accountant be company comptroller, nor every staff lawyer become company counsel.

FEDERATION CONCLUSION

On balance, there is much more to be said for leaving section 6 as it now stands and has stood for many years.

In conclusion, let me reemphasize what I have said here today: That the federation supports legislation which would protect the employment opportunities of the older worker.

I appreciate the opportunity you have given the federation to express its views. I will be pleased to try to respond to whatever questions you may have.

Senator YARBOROUGH. Mr. Finigan, I compliment the members of your organization on the higher percentage of people in this age bracket of 45 to 65 that they employ, higher than virtually any other industry.

You have 30 percent, I believe, in that age bracket.

Mr. FINIGAN. That is correct, Senator.

Senator YARBOROUGH. Now in this statement you indicated that you approve of the provision of S. 830, my bill here, which would allow for educational and research programs; that is section 3.

Mr. FINIGAN. Most emphatically.

Senator YARBOROUGH. Yet in this proposal you make there is no provision for such a program.

Would you care to comment on that?

Mr. FINIGAN. I feel that provision should be most definitely contained in the final bill. The provision that we have proposed merely goes to that section which would define coverage and exemption provisions rather than the other sections such as your section 3 which I feel are very worth while.

I would leave it up to the committee to include that provision in the final draft of the bill.

Senator YARBOROUGH. Thank you for that clarification.

Senator Griffin?

Senator GRIFFIN. In your prepared statement, the first exception in the proposed language that you have suggested, will you elaborate as to what would be the effect of that exception?

Mr. FINIGAN. You are speaking of the exception for retirement or insurance program, Senator?

Senator GRIFFIN. Yes.

Mr. FINIGAN. We sincerely feel that the established pension and programs that are in effect currently should be maintained. If there is a mandatory retirement age of 65 or whatever the plan contains, that it should be maintained and not have an open end limit; that if there is not an established plan it should be maintained and it should not be considered a violation or a discriminatory practice to retire

someone under an established plan as long as that plan on its face was not discriminatory.

Senator GRIFFIN. I see. Is that the only significance of that language?

Mr. FINIGAN. That would be the only significance I would attach to it at this particular moment unless you have something that you feel goes further.

Senator GRIFFIN. Thank you very much.

Senator YARBOROUGH. Any further questions?

Counsel for the minority desires to ask you a question.

Mr. MITTELMAN. Mr. Finigan, I am minority counsel to the committee, I congratulate you on your fine statement.

I just would like to explore one matter with you. In your statement you urged an exemption for executive or administrative employees. I don't quite understand why promotion—even to an executive position—should be based on age considerations alone. Should not promotion be based on competence rather than merely on age?

Mr. FINIGAN. Yes, sir.

Mr. MITTELMAN. Why should a company be permitted to say that no one over 55 can assume an executive, position which I think your proposal would permit?

Mr. FINIGAN. No. Perhaps if I can clarify my own proposal it might be helpful to everyone.

First of all, we do not propose that the exemption would run to the hiring of executives. Section 13(a)(1) in and of itself would assume that the person would have to be an employee before the exemption ran to it. We are not proposing by any stretch of the imagination that a person not be hired because of age regardless of what position he is coming into, executive or rank and file position; but your basic question on why should age be the sole factor I could not agree more, it should not be the sole factor.

I think that there are other factors that go into a decision when you are promoting a person to an executive capacity that might well have a bearing on the age of that individual or how long perhaps he is going to be able to remain on that job. If you were promoting a person into a high executive position, perhaps you would like to have him there a few more years than a person going in at 62 or 63 years old might be able to stay.

I think that Secretary Wirtz on Wednesday answered to a great extent this question when he answered the question about the airline pilot. If you brought him in at age 45 and he only had 12 more years to work because of compulsory retirement under Government regulation, he, I believe, said at that time that he did not feel that the failure to hire that person would be a violation of this discrimination law.

Mr. MITTELMAN. Mr. Finigan, I believe Secretary Wirtz answered that question in terms of whether age would then be a bona fide occupational qualification. I certainly agree that in executive positions as well as any other positions age may be a bone fide occupational qualification.

There is an exemption in the statute for such bona fide occupational qualifications. What I was wondering was why any problem that you raise could not be answered under that provision without the necessity of completely eliminating the coverage of executive positions.

Mr. FINIGAN. Well, I would gladly accept that if bona fide occupational qualification would run to that exemption but if it were a case of a 59-year-old person doing an excellent job and the case of a 43-year-old person doing a good job or an excellent job, being placed in a position where it might take 2 or 3 years of training before he became productive in this executive capacity, I think that an organization should be allowed some sort of leeway in making the decision to put that 43-year-old person into that position where you know you are going to have long tenure in office rather than be changing that executive job in the next 3 or 4 years. That was my only thought.

Mr. MITTELMAN. Thank you.

Senator YARBOROUGH. Thank you very much, Mr. Finigan, for your statement here. You call to the attention of this subcommittee facts that will be considered in our consideration for legislation, stimulating questions all along the line. Thank you very much.

Mr. FINIGAN. Thank you, gentlemen.

Senator YARBOROUGH. The next witness is Miss Iris Peterson, vice president, Steward and Stewardess Division, Air Line Pilots Association.

Miss Peterson, you may proceed in your own way.

STATEMENT OF MISS IRIS PETERSON, VICE PRESIDENT, STEWARD AND STEWARDESS DIVISION, AIR LINE PILOTS ASSOCIATION; ACCOMPANIED BY HERBERT LEVY, COUNSEL

Miss PETERSON. Mr. Chairman and members of the subcommittee, I would like to introduce Mr. Herbert Levy who is counsel for the Steward and Stewardess Division of the Air Line Pilots Association.

My name is Iris Peterson. I am a vice president of the Steward and Stewardess Division of the Air Line Pilots Association, International. I am also currently employed as an active flight attendant for a large U.S.-flag airline.

There are, at the present time, some 16,000 flight attendants—stewards and stewardesses—employed by the airlines of the United States.

My organization currently provides representation for the employment rights of approximately 8,000 flight attendants working for 26 airlines and providing in-flight service in virtually all of the States of the Union and in many foreign countries.

These airlines are: Airlift, Alaska, Allegheny, Aloha, Bonanza, Braniff, Continental, Central, Frontier, Hawaiian, Lake Central, Mohawk, National, New York Airways, Northern Consolidated, North Central, Overseas National, Ozark, Pacific Northern, Piedmont, Slick, Trans-Texas, United, West Coast, Western, and Wien-Alaska.

I am here not as a spokesman for my airline or its flight attendants, but as a representative of the flight attendants in the employ of all of the airlines that I have named.

I appear before this subcommittee to speak against discrimination and in support of Senate bill S. 830 with a modification that we wish to suggest. We have serious concern for discrimination in employment based upon age and sex, not simply when the age in question is between 45 and 65, but any age or sex where age and sex are not a bona fide occupational qualification.

Virtually all of the several thousand people for whom I speak are female and a substantial number are targets of discrimination based upon sex and chronological age. The public policy that supports Senate bill S. 830 as it applies to persons between 45 and 65 is equally applicable to people who suffer discrimination at age 32 or 35.

A flight attendant may serve her airline for 10 years or more only to find herself suddenly without a career at age 32 or age 35. She cannot then meet the hiring qualifications for a flight attendant position on another airline which has no such policy. All the occupational skills which she has carefully developed during these 10 or more years, are no longer usable in employment which is open to her.

Yet, many have much the same financial and other obligations as the person in the age group which are expressely covered by bill S. 830 in its present form.

I would like to outline briefly for the subcommittee the training and duties of the female flight atendant. The trainee will spend about 6 weeks at a school maintained by the airline exclusively for the training of flight attendants.

When she leaves school, she must be prepared not only to serve meals to the passenger, but she must understand and allay his fears, sooth the first rider, recognize and care for any number of various ills, care for the completely incapacitated or semi-incapacitated passenger, care for unaccompanied children and recognize and evaluate emergencies in order to effect immediate and rapid action for the safety of the passenger.

Finally, she must keep herself qualified on emergency routines and procedures so that she can instantaneously swing into action while working on any one of as many as 17 different cabin interiors. To handle either land or water emergencies, she must be able to activate and deploy emergency items on each type of aircraft operated by her company as well as other types of airplanes used by her company on interairline interchanges.

In addition to these unseen qualifications, each time she goes aloft in today's modern jet she will do the equivalent of acting as a gracious and considerate hostess for a house party of 100 guests or more, including advance preparation, serving as hostess, cleaning up afterwards, and keeping a diary of everything that happens within her jurisdiction during the flight.

All facets of her job depend on capability, alerness, discernment, and evaluation of situations as well as graciousness and empathy toward her passengers—qualifications that once learned and practiced do not suddenly disappear at age 32.

The Federal Aviation Agency in its capacity as the Government regulatory body has deeply involved itself in prescribing training procedures and requirements for flight attendants, yet it has never suggested that an arbitrary retirement age cutoff was either necessary or justified.

Flight attendants are even-tempered people, who usually take unusual situations in stride. However, if the airlines succeed in their current efforts to cancel the career of numerous flight attendants at age 32 or 35, the result could be explosive.

Not all airlines follow a policy of compelling female flight attendants to resign at a stated chronological age. Some have never had

such a policy; other have had an age restriction, but have rescinded such policy. Still others implement the policy of age discrimination in the form of a preemployment statement which a candidate for employment as a flight attendant must sign as a condition of employment.

One airline, for example, has each potential employee for this position sign a document entitled "Notice of Stewardess Employment Conditions," before she can begin serving in that capacity.

It is apparent that the purpose is to permit the company to terminate her regardless of her desire to remain in her career once she reaches the arbitrary age of 32. The document is framed as an agreement in advance to resign at 32, and the signing of this document is a condition of employment. If the applicant does not sign it she does not get the job.

This particular company has used the preemployment written statements for approximately the past 18 months. However, flight attendants hired by the company prior to that time are not affected by this policy.

Of the 26 airlines whose employee groups are represented by the steward and stewardess division of the Air Line Pilots Association, International, eight have no compulsory retirement policy for flight attendants, five have a policy of compulsory retirement at age 32, two have policies for compulsory retirement at age 35, and the remaining 11 cannot be categorized on the basis of information currently in our possession.

One of these 26 airlines recently postponed its compulsory retirement for female flight attendants from age 32 to age 35 when some of the attendants neared age 32 and an open confrontation seemed likely. While there have been cases in which the airlines have retired flight attendants against their will, the number of such cases is not the best measurement of the effect of the policy, because it is likely that an added number of employees who might otherwise have remained in this interesting and rewarding career were intimidated by the company policy and resigned before any confrontation occurred.

The problem of age discrimination in respect to female flight attendants is simultaneously a problem of discrimination on the basis of sex. This is true because many airlines employ male flight attendants who perform the same inflight function as their female counterparts, but who are not subjected to the policy of compulsory retirement at a stated chronological age.

This type of discrimination is not a figment of the imagination, but is disseminated to the flight attendant group by this well-documented language that appears in a number of labor contracts. And I quote:

> There shall be no discrimination between employees covered by the agreement because of race, creed, color, or national origin.

Age and sex are noticeable by their omission from this equal employments clause. Such an omission is a glaring testament to the intended and purposeful discrimination by the airlines industry against their female flight attendants.

As a woman and as a flight attendant, I am qualified to tell you that I am deeply grieved and I deeply regret the industry's attitude as

reflected in their attempts to capitalize and exploit what they term "youthful beauty and sex appeal" of the young ladies of this country.

Often the airlines have masked their true reasons for the age discrimination policy by arguing that a female flight attendant beyond the age of 32 is no longer sufficiently agile nor physically capable of performing a flight attendant's duties. This is not the case.

It has been stated by the New York State Human Rights Commission among others, that age is not a bona fide occupational qualification for the position of flight attendant that would support a rule of compulsory retirement.

These statements have been made with full awareness that a female flight attendant is subjected to strict and continuous requirements respecting physical condition as well as appearance and if, regardless of age, she satisfies these requirements, she is fully capable of performing the duties of her career.

Twelve airlines operating into New York have joined as plaintiffs in an action to enjoin the New York State Human Rights Commission from proceeding in this area of human rights, by arguing that such action by a State agency amounts to unconstitutional interference with the activities of interstate air carriers. Their suit was dismissed by the U.S. District Court in New York and they have appealed.

When the U.S. Equal Employment Opportunities Commission sought to act in this area, the Air Transport Association representing all U.S. airlines, sued to enjoin it upon the grounds that one of the members of the Equal Employment Opportunities Commission should have been disqualified from participating in its decision. An injunction was granted and further proceedings will now be necessary.

How do airline passengers feel about the age of a flight attendant? This question was put to approximately 25,000 frequent and regular airline passengers who comprise the membership of the Airways Club. The response was an overwhelming and resounding rejection of (1) chronological age as a criterion for evaluating the performance of flight attendants, and (2) the theory that sex appeal and youthful beauty are the flight attendant characteristics most important to their passengers.

Most placed a premium upon maturity and the vast majority of regular airline passengers emphasized courtesy and competent service as the qualities most desirable in a flight attendant.

The prospect of compulsory retirement based upon age and sex is a serious threat to aspirations of many of the several thousand flight attendants who are represented by the Air Line Pilots Association. While some of these women intend to remain in this employment only briefly, others fully intend to pursue this career indefinitely.

Though two of our 26 employment agreements with the airlines formerly contained provisions permitting compulsory retirement based on age, these provisions have recently been negotiated out of the contracts.

As a result, none of our 26 agreements with the airlines now contain provisions for compulsory retirement.

Despite the fact that our agreements give the airlines no right to insist on such compulsory retirement for female flight attendants, they continue to insist that, having utilized us during the years when

they consider us most attractive, they may, at age 32, terminate our careers without further concern or responsibility, even though we remain fully capable of performing our duties as flight attendants, probably with even greater skill because of our experience in this work.

Experience has shown that airlines are particularly sensitive to possible action by Congress in this area and are most responsive to the view of this respected body.

For example, on April 19, 1966, Congressman James G. O'Hara, of Michigan, speaking on the floor of the House of Representatives, quoted from that portion of Executive Order 11141 which provides that "it is the policy of the executive branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not in connection with the employment, advancement or discharge of employees, or in connection with the terms, conditions or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan or statutory requirement."

At approximately the same time, we received word that two of the airlines with whom we have agreements, and who deal with the U.S. Government as contractors, had stated that, in their opinion, compulsory retirement for female flight attendants on the basis of chronological age is contrary to the Executive Order 11141, and contrary to public policy as well. These two airlines accordingly revoked their policies for compulsory retirement at age 32 effective immediately, and stated that any outstanding pre-employment statements that had previously been signed by female flight attendants and that made age a condition of continued employment were thereafter void and of no effect.

This position, we are informed, has been endorsed by the Office of the Deputy Chief of Staff, Materiel, Department of the Air Force.

Though nearly all major airlines make provisions for retirement benefits for other classes of employees, there is no airline that I am aware of that provides retirement benefits for flight attendants at age 32 or 35.

These same airlines, while providing no retirement benefits for their young ladies, apply compulsory and discriminatory early retirement policies to the flight attendant group. This is completely unfair.

The steward and stewardess division of the Air Line Pilots Association, International, earnestly requests that the Congress take prompt and effective action by enacting legislation that will clearly prohibit the discrimination that we have discussed.

We recognize that Senate bill S. 830 permits the Secretary of Labor to issue rules or regulations that would protect us by adjusting downward the chronological age provisions of the legislation should he deem such action necessary to effectuate the purposes of the act.

We also recognize that the bill in its present form vests in the Secretary of Labor the power to exempt the airline industry, by petition, from all coverage of the statute should he deem it appropriate.

We do wish to be protected from the possibility of a single or collective airline petition for relief against all or part of the coverage of the act, with particular reference to the female flight attendants.

Mr. Chairman, I would like to note that this statement was prepared before Secretary of Labor Wirtz testified to the committee.

In his testimony I understand that he indicated there was some question of his authority to adjust coverage age upward or downward in the bill in its present form.

His testimony strengthens our conviction that flight attendants must let the Congress itself provide for express protection on age and sex discrimination in employment.

So we very strongly urge that you modify this bill in a way that it would even reduce the age, now 45 to 65, to 25 to 62 or in the alternative to delete all reference to specific ages and apply this public policy to persons of all age groups.

We strongly urge that the growing problem of compulsory retirement for flight attendants in the rapidly expanding air transportation industry is of such magnitude and so seriously and so immediately threatens a sufficiently great number of people to warrant amendment of the legislation itself to protect us so that our problem will not be left to the uncertainty of the future.

Senator YARBOROUGH. Mrs. Peterson, in your very interesting statement, very informative to the committee, you note that one of the duties of the stewardess is keeping a diary of everything that happens in her jurisdiction during the flight.

How extensive is the diary required? Is that more extensive than the brief diary that the pilots usually keep? The pilot usually keeps about a one-line diary of the flight.

Miss PETERSON. It would encompass meal services, pertains to any aspect of the meal service whether good or bad, any injuries——

Senator YARBOROUGH. Complaints of passengers?

Miss PETERSON. Yes, any injury or reaction of passengers, anything that would happen in flight that the company should be apprised of.

Senator YARBOROUGH. Probably it is not a very long diary of each flight.

Miss PETERSON. In some instances, it would be quite lengthy and in other instances it could be quite short. If it were considered a normal routine flight, it would perhaps entail a paragraph or two.

Senator YARBOROUGH. And you enumerate the numerous types of training duties that the trainees and stewardesses receive and want to recognize on a number of various ills.

I assume that strokes or heart attacks or emergency illnesses—that hostesses receive some rudimentary training in medicine or as medical attendants in order to know what to do in case of heart attack or stroke?

Miss PETERSON. Yes, the girls are fairly well versed in heart attack although this encompasses almost anything from a headache to a birth on board that the girls are supposed to be familiar with.

Senator YARBOROUGH. You have had all those happen?

Miss PETERSON. No, not all, really. I have had a number but not each and every circumstance that could arise.

Senator YARBOROUGH. I didn't mean you personally.

Miss PETERSON. Yes, there have been circumstances—deaths, births, and the complete gamut in between have occurred in aircraft.

Senator YARBOROUGH. Thank you for this statement.

Counsel for the minority has questions they desire to ask at this time. The minority members having been called away from the committee, I will permit counsel to ask their questions for them.

Mr. BENEDICT. I am Peter C. Benedict, Miss Peterson, minority labor counsel.

You testified that at age 32, or 35 on certain airlines, these flight attendants will find themselves out of a career.

Miss PETERSON. That is true.

Mr. BENEDICT. I believe there was earlier testimony that these stewardesses find themselves without employment. I wondered, if you know, whether you could tell us to what extent are they let go by these airlines, and to what extent is there an attempt made by these airlines to find employment for them in other capacities?

Miss PETERSON. No, I could not specifically state any figures. I am informed that some airlines offer other employment to stewardesses who are terminated at age 32 or 35, while others do not make other employment available to them. I would say it has been since 1960 or around that period of time when the airlines have been releasing girls because of the age.

Many of the carriers say that once a girl reaches age 32 or 35 they will transfer her to another position for which she is qualified. This precludes most of the flight attendants because they are not qualified, by the sheer nature of having been flight attendants, to perform a secretarial job or a job such as this, or nursing or anything of that nature, it precludes the lateral transfer of many, many flight attendants because they are not qualified.

Mr. BENEDICT. You have no statistics for any of the airlines as to the extent this has or has not been done?

Miss PETERSON. No, sir, no specific statistics.

Mr. BENEDICT. Now, again directing the question to the airlines which have this 32 or 35 compulsory retirement age, are the flight attendants who work for these airlines required to participate in pension and retirement programs?

Miss PETERSON. That varies from airline to airline. On one airline that I know of, every employee who goes into the airline I understand—and let me put quotes—"I understand this to be a fact," that those employees are required as a term of employment to participate in the retirement plan.

Another airline that I am fairly well acquainted with—well, I am very well certain that this is a fact—once you sign up for the plan you may not then terminate your participation in the plan until such time as you leave, and I think that this applies to several airlines.

With some of the airlines the employee does not have to participate but if he passes a certain age of participation or a certain length of service without participation, he cannot join it.

The girls at age 32 or 35 will then get back their initial contribution with probably 1½ or a 2 percent interest which is contributing to a dead fund, in my opinion, because nothing is gained from it.

Mr. BENEDICT. Would they have the option at that time of leaving this money in the retirement program so that when they reach whatever retirement age the plan specifies they could receive some type of financial benefit?

Miss PETERSON. I would say probably no. The cases with which I am familiar, the money is immediately given back to the employee. Now there could be exceptions but if there are I am not aware of which ones or where they might be because I know of one where you cannot

specifically leave money in with the idea of money coming back to you at age 65 or 62.

Mr. BENEDICT. I think you testified that your organization has contracts with 26 airlines.

Miss PETERSON. Yes, sir.

Mr. BENEDICT. Perhaps your counsel could answer this question.

Has there been any attempt made in your collective bargaining agreements to rectify this situation so that, where there is compulsory retirement, these flight attendants could have the option of leaving their money in the pension plan and, at whatever age the plan calls for, receiving some type of benefit?

Miss PETERSON. Sir, I think that I can answer that for you. There has been an attempt; it has not been successful. There is one exception that perhaps could be considered in this category and that is that the male flight attendant does have a prerogative of participating in the plan but, by the same token, he does not have to retire at age 32. He can fly until he is 62 or normal retirement age specified by his company.

Mr. BENEDICT. Thank you.

Thank you, Mr. Chairman.

Senator YARBOROUGH. Miss Peterson, I could not follow one answer you gave. I think it was covered in that question that was to what extent is this other employment offered these stewardesses with a mandatory retirement at age 32 or 35.

Miss PETERSON. Well, I feel that the airlines would make a lateral transfer of a stewardess to another type of employment, No. 1, provided there was an opening, and No. 2 provided she were qualified.

But after you fly for 10 or 12 or 13 years, you are not qualified, by and large, to perfrom any other job function, your skills have been channeled specificially into fllight attendant work.

Senator YARBOROUGH. Are the young ladies that you often see at airports that walk up the line and ask of what service they can be to expedite tickets former stewardesses?

Miss PETERSON. They could be. I think it would be a small percentage. That would be one type of job that a flight attendant would be qualified for. However, they would not remove a present employee to give that job to a cabin attendant or a flight attendant.

There has to be, No. 1, an opening for which the cabin attendant is qualified. Those jobs are so few there might be eight or ten at a given airport on a given airline would be maximum and some airlines don't even have this particular type of employee.

Senator YARBOROUGH. Would not take many people to fill that position.

Miss PETERSON. No. The airlines have a tremendous application from stewardesses who are by necessity leaving the airline because of marriage who are also applying for a ground job and this would further cut into jobs that would be available to the flight attendant over 32.

Senator YARBOROUGH. Do you know if any of the 26 airlines with which your organization has employment contracts have a retraining program to train stewardesses at ages 32 or 35, depending on the mandatory retirement age of that airline, for retraining them for other service to the airline, counter service for example?

Miss PETERSON. Any employee, I believe, who would come into an airline job category would have to get certain training whether it was a lateral transfer or a new employee coming in.

If you are going to be a reservation agent regardless of from whence you came, you would be trained as a reservation clerk but beyond the normal standard there is nothing, no.

Senator YARBOROUGH. How long does it take to train someone to fill the position as a ticket salesman at the counter?

Miss PETERSON. I am sorry, sir, I could not answer that. I don't know what the training programs on any of the airlines would be for reservations or ticket sales, either.

Senator YARBOROUGH. I think my own travel—most of the places that I have been—airlines have only men serve at the counter selling the tickets. Some have both men and women, and one airline I know they hire predominantly women to sell the tickets.

Miss PETERSON. It would probably depend on their baggage check-in arrangement. In some States, it is illegal for woman to lift, I believe, over 25 pounds, and this, in certain States, would preclude women from holding that type of job.

Senator YARBOROUGH. Thank you very much, Miss Peterson.

Miss PETERSON. Senator, may I make just one more comment. I would not want to leave the impression with this committee that lateral transfer is the answer to the problem or finding of other employment.

We are in a career that we enjoy very, very much and the answer to the problem is to permit us to continue so long as we are capable of performing the functions required by the job.

Senator YARBOROUGH. In other words, your plea is not to be fired as stewardesses and put off on some other job?

Miss PETERSON. That is correct.

Senator YARBOROUGH. You are seeking to continue as stewardesses?

Miss PETERSON. Yes.

Senator YARBOROUGH. Thank you very much.

Miss PETERSON. Thank you very much, Senator.

(The following supplemental statement was subsequently received for the record:)

SUPPLEMENTAL STATEMENT OF IRIS PETERSON, VICE PRESIDENT, STEWARD AND STEWARDESS DIVISION, AIR LINE PILOTS ASSOCIATION

As a Vice President of the Steward and Stewardesses Division of the Air Line Pilots Association, I presented a statement before the Senate Labor Subcommittee on Bill S. 830 regarding age discrimination. My statement applied to Bill S. 830 as it would affect flight attendants.

I would like to suggest the following revision in the language of Bill S. 830:

First, my suggestion is that Section 13 be completely eliminated and provision be made that the Bill would be completely encompassing with regard to age discrimination.

Second, if Section 13 remains in the Bill, it is suggested that it read as follows:

"Section 13: The prohibitions in this Act shall be limited to individuals who are at least 21 years of age, but less than sixty-five years of age: Provided, that in order to effectuate the purpose of this Act the Secretary may, by rule or by regulation issued under Section 10 of this Act, provide for appropriate adjustment upward in the maximum age limits provided in this Section."

Senator YARBOROUGH. The next witness is Mr. John W. Willard, first vice president of the National Employment Association.

Mr. Willard, will you come around, please?

STATEMENT OF JOHN W. WILLARD, FIRST VICE PRESIDENT, NATIONAL EMPLOYMENT ASSOCIATION; ACCOMPANIED BY A. BERNARD FRECHTMAN, GENERAL COUNSEL, AND DAN MOUNTAIN, LEGISLATIVE REPRESENTATIVE IN WASHINGTON

Mr. WILLARD. Good morning. I would like to introduce Mr. A. Bernard Frechtman, general counsel for National Employment Association. I might say that he has a bad case of laryngitis this morning so we may not hear from him very much.

My name is John W. Willard. I am the first vice president of the National Employment Association, the single nationwide trade association which is the spokesman for the approximately 6,000 private employment agencies in the United States.

I am also the owner and operator of a private employment agency in Syracuse, N.Y., since 1957.

I might state also, parenthetically, I have prior to this been a director of personnel for several manufacturing companies for 20 years.

I appear before this committee to express the support of the private employment agency industry for S. 830.

We who are engaged in the day-to-day referrals of applicants for employment and the seeking out of employees on behalf of employers, know only too well of the unfair, unnecessary, and unrelated age requirements sometimes imposed on positions of employment.

We have also shared, on occasion, in the unnecessary experience of frustration while attempting to place an otherwise qualified applicant and seeing him rejected because of an arbitrary age qualification unrelated to the job requirements.

While our motives are influenced by the economic desire to enlarge our own opportunities, our observations clearly substantiate the need for this type of legislation.

In the experiences of private employment agencies operating under laws in the 21 States having age-discrimination prohibitions, we have found that the stronger the law and the better administered it is, the greater the economic opportunity offered to employment applicants.

Although this is the type of statute better enacted in the States and administered locally, it has become quite apparent, as with title VII, that it is time for the Congress to act in this area.

And while it is always more desirable to proceed on the basis of educating the public to the need for this type of legislation to eliminate arbitrary age discrimination, it is also our judgment that this bill meets the test reflected in the report of the Secretary of Labor of June 1965, in which he said, "* * * an educational program to promote living on the basis of individual merit is far more effective when provided for by statute."

Thus, private employment agencies, too, operating under existing State laws are more effective in overcoming arbitrary and artificial age barriers.

In connection with the enforcement of this law, we would like to suggest that you consider placing it, with its proposed enforcement provisions under the authority of the Equal Employment Opportunity Commission, as it is generally in the States, so that there can be both a unified and uniform effort directed to all areas of arbitrary discrimi-

nation in employment. While this may require some changes in title VII, it would appear that those changes would be desirable.

In any event, you are assured of the support of the private employment agency industry in your efforts in this connection.

The Secretary of Labor in the beginning of his report, quoted the poet Browning on growing old, and I think it appropriate to reiterate it here as my conclusion:

> The best is yet to be
> The last of life, for which the first was made.

Thank you.

Senator YARBOROUGH. Thank you, Mr. Willard, for your statement.

I practiced law for about 20 years and hired legal secretaries. I found after 2 years practice that had I utilized a private employment association to obtain my secretaries I would have saved much time and effort. The private employment agency renders very valuable service. It found out what level of education I wanted, what level of competence and pay. I consulted with them on the pay necessary to get these qualifications. They saved me a lot of time in interviewing applicants because they screened them and sent out to me only applicants who could fill the bill.

I think they fill a very important role in our society. It is very important to have your view on this legislation because you see the employer and the employee, both of them. That is your job between employer and employee.

Mr. WILLARD. I appreciate your saying so, Senator.

Senator YARBOROUGH. Senator Pell, any questions?

Senator PELL. No, I was reading the testimony. I apologize for being late.

Senator YARBOROUGH. Any questions from minority?

Minority counsel asked leave to ask questions. Since minority members having been required to go to other meetings, counsel will be allowed to ask the questions.

Mr. BENEDICT. Mr. Willard, I take it that your experience has been that there are still a substantial number of employers who impose arbitrary age restrictions as job requirements?

Mr. WILLARD. Yes, this is true, Mr. Benedict, and I will tell you how it comes about I think very frequently. We get into certain habits of thinking. Our business, as Senator Yarborough suggested, is to find out from the employer the kind of job he has and the type of person that he visualizes will do it.

When we ask an employer about this and what do you visualize this person should have, almost immediately he is likely to say, "Well, he should be perhaps 25 to 35," and go on with the description of an individual. But if you pursue this farther, you find that is almost an analyzed way of thinking, it is almost a habit to think this way.

If you call it to his attention that he might find people outside this age range that could do the job, he often will agre that he could.

Mr. BENEDICT. You say in your statement that "there are many unnecessary, unrelated age requirements imposed sometimes on positions of employment."

Could you think of a few examples offhand?

Mr. WILLARD. Yes. I would pose one that comes up quite frequently in this 25 to 35 category. Somehow or another this seems to be a prime age. I have often said you know, sometimes it seems that we are too young to do what we want to do and then all of a sudden we are too old.

But this is a very common specification for a middle-aged salesman, for example, and you can find many other examples, I think, in such things as the man that this individual will work for is only 40 so we should not have a man over 30 or something of this sort. They are fairly common.

Mr. BENEDICT. How does an employment agency handle a job order containing an arbitrary job restriction?

Mr. WILLARD. This question is also asked of us by some of our fellow NEA members in other States where they do not have the provisions.

First of all, we call the attention of the employer to the fact of the age discrimination law in New York State and he will usually respond and say, "Yes, we know this and we don't discriminate on the basis of age," but in this particular case there is some reason as I suggested before.

The New York State law permits us to make a record of the reasons stated without judging its validity and to observe this requirement in the event that we have made the record of it.

Mr. BENEDICT. Have you ever had the experience of persuading a company to change its age policy?

Mr. WILLARD. Yes, we have had a number of experiences in this direction. I think of one, again, in connection with recruiting of territory sales people. It is quite customary of employment in our area when a representative is needed to be arranged for by somebody out of the area, a sales manager in Wisconsin, for example.

Customarily, he will plan to come to our city at a given time, tell us the type of man he is looking for and all the requirements and all the things that go with the job and ask us to arrange a panel of interviews. Whether or not he has given us age specifications we in arranging these interviews for him will, if we have a person who is outside the age requirements that he has said, arrange to have him interviewed anyway.

In a case just recently, a man at age 45 was hired when presumably the top limit was 35. So this does happen.

Mr. BENEDICT. Do you believe that eliminating age discrimination seriously handicaps a company in its corporation planning?

Mr. WILLARD. There is no doubt that a law of this nature can make it more difficult for an organization to do its legitimate planning for the future.

When a person is hired there really are two elements to the thing. One is his qualifications for doing the present job and the second, of course, is his capacity or promoteability. When a company has a chief engineer at age 55 and they want to hire an assistant chief engineer, it seems perfectly logical and reasonable to them to want a man at least 10 or 15 years younger so that they can provide for orderly succession. So this can very well be a factor.

On the other hand, in the fluid and dynamic state that our business economy is in at the present time, the chances of that man who per-

haps, let's say, is age 35 or 40, staying until he is age 65 are not great. He may leave the company five years later for a chief engineer's job that he has developed in another company where the one in his own is not available.

So I think the law has to be administered with judgment and with full appreciation for some of the problems that arbirtary application would provide.

On the other hand, as said in our statement, it is desirable to remove the "arbitrary" features of discrimination so that we can break down some of the barriers.

Mr. BENEDICT. Your members operate in some States that have State laws against age discrimination and some that do not, is that what you said?

Mr. WILLARD. Yes, this is so.

Mr. BENEDICT. Do you have any opinion, based on the experiences with the various State laws, as to whether a Federal law in this area should contain a criminal enforcement section?

Mr. WILLARD. I am not familiar, of course, with the legalities of things, but I think that it ought to be possible to carry out the purpose of the law, and where there is great resistance, to have criminal enforcement authority.

The law in New York State, and I think in other States, is administered first on a conciliatory basis trying to arrange an accommodation outside punitive measures but when such fail, there should be.

Mr. BENEDICT. I understand from you statement that you feel, or that your organization feels, that this legislation should be handled under the civil rights law rather than under the Fair Labor Standards Act.

Mr. WILLARD. Yes, that is correct.

Mr. BENEDICT. Would you explain that a little further.

Mr. WILLARD. This is the way it is in all of the States. The commission on human rights administers all of the features of discrimination.

It seems to us that they are best equipped to do it, both through prior experience and through dealing with things that are quite similar. While age and, let us say, a racial discrimination may seem to be different, nevertheless, both indicate a prejudice, indicate a prejudgment.

Consequently, the people who are dealing in these areas all the time, it seems to us, are most competent to do this.

It would involve setting up another administrative activity in order to handle this one single area of discrimination.

Mr. BENEDICT. I have nothing further, except to tell you that Senator Prouty is very sorry not to have been here, particularly in view of the fact that you are a part-time resident of Vermont.

Mr. WILLARD. Thank you very much. I think I said I have three Senators on this committee, Senator Prouty being one of them.

I might like to point out, because Mr. Frechtman has not had an opportunity to speak, he is the author of a very good booklet on the subject of title VII as it applies to employment agency practice, and

I think some of the members of this committee have been presented with copies of this. This is most helpful to us.

(The booklet referred to may be found in the files of the subcommittee.)

Mr. WILLARD. I notice in the meantime Mr. Dan Mountain, our legislative representative in Washington, has joined us. I introduce him belatedly.

Senator YARBOROUGH. Thank you.

Senator Pell?

Senator PELL. I have no questions.

Senator YARBOROUGH. I offer at this time for the record a table from the 1966 Manpower Report to Congress showing the work-life expectancy for men in different age brackets and how it goes down with age.

For example, those in the age bracket 20 to 24 years of age, their work-life expectancy is some 42 years in addition. When you get down to those 55 to 64 years of age, their work-life expectancy then is about 12 years, and when I get to 65 and over their work-life expectancy workable years is some 6 or 7 years.

However, to illustrate what you were saying about a change in jobs, the number of years they stay on the job remains high. In the 20- to 24-year age bracket employees stay on the job less than 6 years, but when you get up to 55- to 64-year age bracket, the table goes up and employees stay on the job longer; some 7, 8 years. Even at age 65 and over, employees stay on the job some 4 years.

So as people get older, they tend to stay on the job more years though their work-life expectancy, of course, is going down. The older they are, the more stable they are for employment.

At this point I order the chart placed in the record.

(The chart referred to appears on p. 274.)

Senator PELL. That would apply to Senators, too.

Senator YARBOROUGH. Minority counsel desires to ask one more question.

Mr. MITTELMAN. Mr. Willard, do you find that when you receive job openings from employers who specify age limits, that one of the reasons given is because of increased pension costs for older employees?

Does this happen very frequently?

Mr. WILLARD. Yes; this is a reason that is stated at times and I would say that probably it is posed with the higher age, 50 or 55, something of this sort. This might come about mostly as we are proposing an individual for their consideration in describing him and a part of his personal description, and this might be posed at that time.

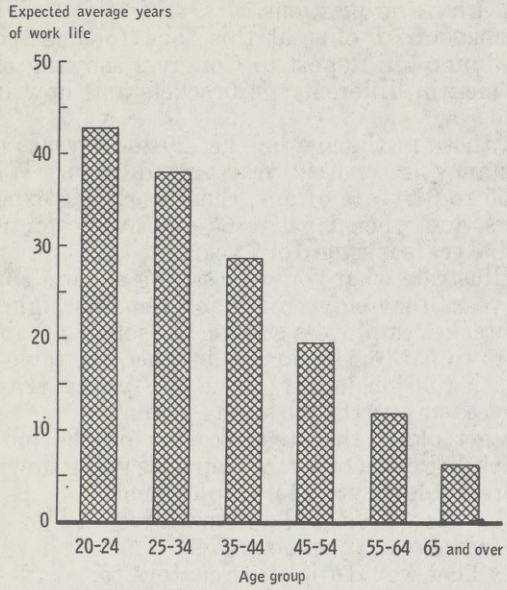
"Well, we would like to, but our pension plan won't permit it," or something of this sort.

Senator YARBOROUGH. This hearing will be adjourned subject to the call of the Chair if further oral testimony is deemed desirable and necessary.

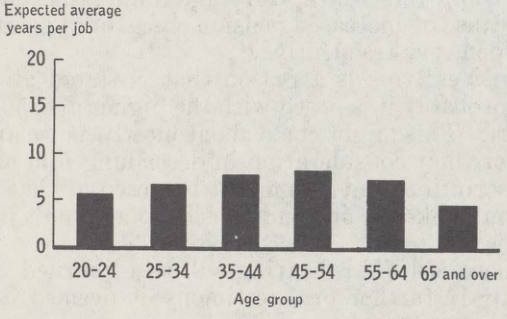
The written record will remain open until midnight, March 31, 1967, for any additional recommendations or written statements or answers to questions that any of the past witnesses or prospective witnesses desire to file with the committee.

Chart 13 **Job training is useful at all ages.**

Although work life expectancy for men decreases with age...



Number of years they stay on a job remains high.



Source: U.S. Department of Labor.

(The following material was subsequently supplied for the record:)

PREPARED STATEMENT OF JUANITA M. KREPS, ASSOCIATE PROFESSOR OF ECONOMICS, DUKE UNIVERSITY, DURHAM, N.C.

JOB PERFORMANCE AND JOB OPPORTUNITY

[By Juanita M. Krebs*]

Discrimination against any group—older workers, racial minorities, women—is a luxury available to employers only when the number of job seekers exceeds the number of jobs available. Any time faster growth tightens the labor market, formerly disqualified workers will be hired and found to be altogether acceptable employees. But since the American economy has suffered significant levels of unemployment during the past two decades, employers have used various screening devices to reduce the number of applicants; one of the most commonly used is that of maximum hiring age. The practice is then explained, ex post, on the basis of age-related declines in job capacity due primarily to loss of short-term memory and to reduced speed of learning.

Further analysis of the relation between the working capacity and the job status of the older male is clearly basic to considerations of employment creation or its alternative, income maintenance. Specifically, the following questions are posed: One, how do aged-related changes in learning and memory affect the older worker's productivity on the job? Two, how important is this productivity in determining his actual job status? Three, what steps can be taken to counteract (or at least minimize) any diminishing work capability that appears with age? Finally, are there discernible economic trends that will influence the proportion of future elderly who will hold jobs?

The primary purpose of this note is to develop a conceptual framework for relating age, job capacity, and job opportunity. Before turning to the model it is well to refer to some of the recent studies of work performance in relation to age.

I. THE PROBLEM OF MEASUREMENT

Studies attempting to measure productivity change with age have not been consistent in findings, which is not surprising since these attempts have differed markedly in methodology, in groups of workers studied, even in definitions of productivity. After reviewing the literature in this area, Stephen Griew points out that

> These data neither support nor refute the suggestion that productivity decreases with advancing age. Such evidence as is available from output studies contradicts that which derives from studies of labor turnover, and the results of studies of accidents and absenteeism are so contradictory as to prevent any conclusion from being drawn.[1]

What is apparent from these seemingly conflicting conclusions is the necessity for studying each occupational group separately. Ideally, the occupation would be defined at least as narrowly as it was in the early studies Wackwitz made of four groups: engineers, glassblowers, semiskilled and unskilled workers.[2] It is equally important to agree on the definition and the method of measurement of productivity. A worker's output may vary significantly, depending on whether absenteeism and accident rates are taken into account, and whether losses in output due to labor turnover are charged against him. The term productivity has come to have a somewhat restricted meaning that does not embrace these related aspects of the worker's capacity; it is perhaps preferable, therefore, to

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*This comment follows an earlier paper prepared for a symposium on memory and learning, and published in the *Gerontologist* in March 1967.

[1] Stephen Griew, "Job Redesign," *Employment of Older Workers*, I (Paris: OECD, 1964), p. 16. For references to earlier studies, see the bibliography included in the above article, particularly Welford, A. T., "Methodological Problems in the Study of Changes in Human Performance With Age," in G. E. W. Wolstenholme and C. M. O'Connor, *Ciba Foundation Colloquia on Ageing*, Vol. 3 (London: Churchill, 1957) and *Ageing and Human Skill* (London: Oxford University Press, 1958).

[2] Wackwitz, J. D., *Het Verband Turschen Arbeidsprestatic en Leeftyd* (Delft: Waltman, 1946); see the discussion of this work in Griew, *op. cit.*

speak of "job performance," meaning overall work capacity, rather than limiting the question simply to productivity per manhour.[3]

II. AGE, JOB PERFORMANCE, AND JOB OPPORTUNITY

In order to illustrate the interrelationships between age, job performance, and the level of demand for workers, we may take as examples two markedly different occupations: semiskilled operatives and professional men. Although the exact shape of the curve relating performance and age is not known for either job, it is safe to generalize that the certain differences exist. The semiskilled worker, entering the labor force at an earlier age and with less education, reaches his peak performance at a fairly young age; by definition, his is a job requiring only minimum skills. Generalizations as to the length of time he is able to maintain this level of work without retraining are difficult, but factory jobs that demand speed or physical stamina, or are hot or noisy—likely characteristics of the semiskilled man's work—become difficult for the man over fifty.

By contrast, the man who has studied for a profession will not begin fulltime work till he is in his middle twenties, perhaps later. Depending on the profession, he will not achieve his maximum level of output till middle-age, possibly his fifties, and he may continue to perform at something close to this level on into his retirement years.

But the variation in potential performance with age is only one of the factors dictating whether a man has a job. It may not even be the most important determinant. How long he will continue to render adequate work performance turns in large measure on society's demand for his services. This market demand is not related to individual work capacity nor in fact to any generalized ability of a given occupational class; it merely specifies how many workers in that classification are currently being utilized at going wage rates.

1. *Semiskilled Workers.*—In Figure A, the curve P relates job performance to age for semiskilled operatives. By assumption, workers enter this occupation at age 20 and achieve peak performance at age 25. Thereafter, they continue to maintain a maximum level of capacity until about age 55, after which their overall performance declines. The rate of decline in the MP segment of the performance curve is faster than that of the curve MR, which is the performance curve when action is taken to offset deterioration in skill levels—retraining, redesign of jobs, improved working facilities, etc. Hence the distance NN^1 indicates the extent of improvement in performance of 65-year-olds made possible by such programs.

Assume an initial demand D for semiskilled workers. All men aged 55 or younger seeking jobs of this type can then find work, but there is no reason for employers to hire men older than 55, which in this instance would mean resorting to workers of lower capabilities. It is not this threat that deters them from hiring the older men, however; rather, there is simply no market demand for additional workers of this category, whether or not their performance declines. For illustration, assume the demand for semiskilled workers decreases (perhaps because of a technological improvement which temporarily, at least, displaces a large number of semiskilled workers of all ages) to D^1. Then the tendency of employers is to restrict the hiring of workers to those aged 45 and younger, even though the performance level shows no decline for another 10 years. In summary, age-related job performance places no constraints on the hiring of men in this classification when the demand for workers is D; when demand shrinks to D^1, employment of older men (and younger, as well) is restricted by employer policy, but this policy is not based on job performance. The inability of middle-aged semiskilled men to find jobs is of course a result of overall economic conditions.

Only when the labor market tightens to shift the demand for these workers to D_2 does job performance become relevant. Since work capacity declines beyond the age of 55, but employers need to hire workers up to the age of 65, there are three alternatives: one, older workers can be hired even with their performance P. Their wage rates would presumably have to reflect this decline

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[3] In computing productivity (output per manhour) the total number of hours worked is divided into total output. But job performance (which might be thought of as output per man) would reflect the number of hours worked per man, and hence would be higher the lower his rate of absenteeism, job turnover, or accident. In an unskilled job, for example, a high output per manhour for teenagers may be offset by frequent absences from the job, resulting in undistinguished overall job performance.

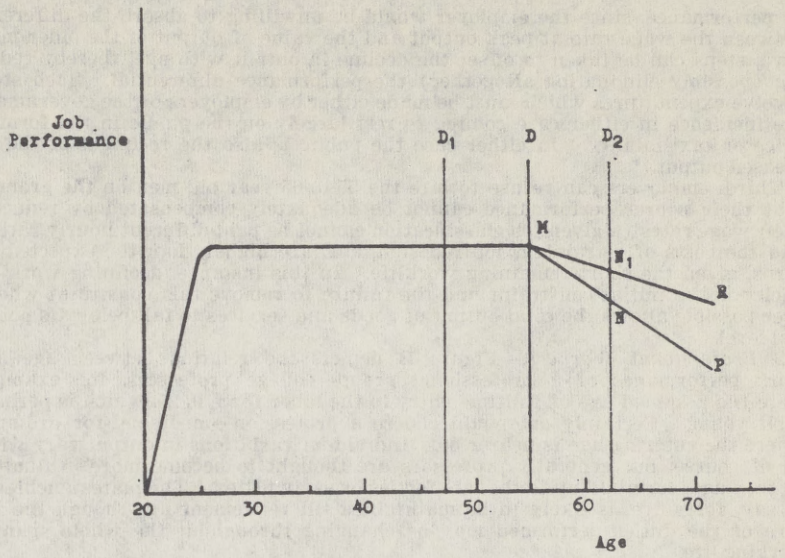


Figure A

Semiskilled Workers

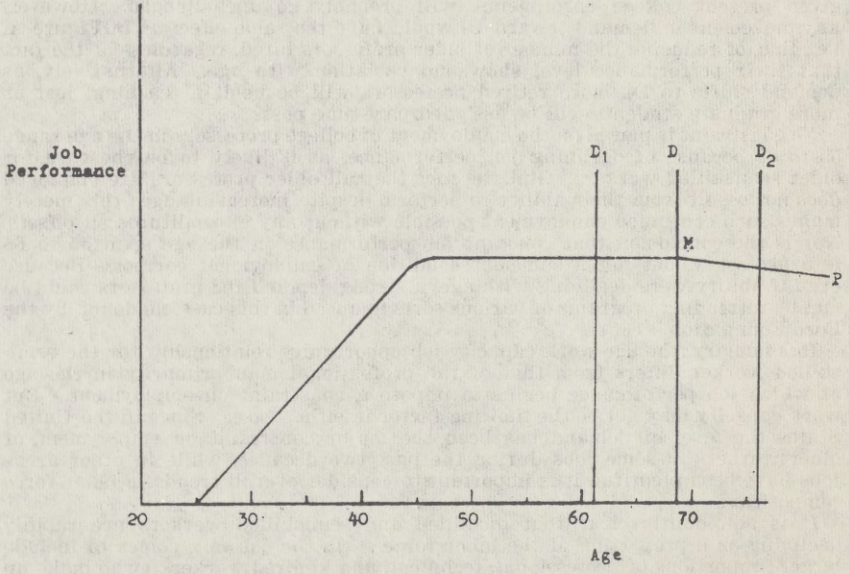


Figure B

Professionals

in performance, since the employer would be unwilling to absorb the difference between the wage rate at peak output and the value of output of the older man. Two, steps can be taken to offset the decline in output with age, thereby reducing (possibly eliminating altogether) the performance differential. Such steps involve expenditures which must be made either by employers or the government, the incidence in either case coming to rest largely on the public in the form of price or tax liability. In either case the public is also the recipient of the increased output.

Third, employers can refuse to hire the 55-to-65 year old men on the grounds that their poorer performance cannot be adequately compensated by reducing their wage rates (a given job classification cannot be paid different hourly rates), and the costs of retraining, job redesign, etc., are higher than the expected returns, given the short remaining worklife. In this instance, declining work capacity is the initial constraint and the failure to remove this constraint wherever possible allows the total output of goods and services to fall below its potential level.

2. *Professional Workers.*—Figure B depicts the relation between age and work performance of a professional group—college professors, for example. Here the assumed age of fulltime entry to the labor force is 25, which is perhaps a bit young. Certainly one could choose a profession—medicine, for example, where the entering age is nearer 30. Individual variations in output vary widely, of course, but generally professors are thought to become more "valuable" as they age, certainly up to the late forties or early fifties. The plateau achieved at say, forty-five, is likely to be maintained till retirement age though the nature of the duties performed may be changing throughout the whole span of working life.

The hypothetical performance curve P thus begins at a later age than that for semiskilled workers, rises more slowly, then flattens out at age forty-five and remains at approximately this level till retirement age, which is assumed to be 68. Observe as a starting point that the assumed demand D absorbs all professors seeking jobs at the age of 68. The validity of assuming such a demand, given present college enrollments, will probably go unchallenged. However, any movement in demand toward D_1 would have the same effect as in Figure A, i.e., that of reducing the number of older professors hired, regardless of the fact that their performance level shows no variation with age. Alternatively, as demand shifts to D_2, more retired professors will be held in teaching, just as more graduate students will be assigned part-time posts.

No constraint is placed on the employment of college professors in the age range 55 to 68 because of declining job performance, as is likely to be the case for older semiskilled workers. But the fact that all older professors are employed does not result from their ability to perform despite increasing age; this merely makes such continued employment possible without any expenditures on offsets. Nor is the conclusion that constant job performance in the age span 55 to 68 is a necessary, but not a sufficient condition of employment correct. Because even if ability were declining with age, a strong demand for professors could be met by retreading programs of various sorts financed in this case, no doubt, by the Ford Foundation.

In summary, the age-work capacity-job opportunity relationship for the semiskilled worker differs from that of the professional man primarily in the age at which job performance begins to impose a constraint on employment. But work capacity may not be the limiting factor in either case. Since in the United States the level of demand has been the major constraint on employment of older workers in some jobs during the past two decades, while in other areas jobs have been plentiful, it is important to consider overall trends in labor force composition.

It is abundantly clear that unskilled and semiskilled workers are rapidly declining as a proportion of the labor force. As the job mix comes to include larger proportions of professional, technical, and kindred workers (who make up the fastest-growing occupational groups), the work capacity constraint will be applicable to a smaller proportion of older men. The question of what limitations will be placed on job opportunities by virtue of overall economic conditions is obviously a central one, and the answer will be a much more significant determinant of total output and income than will age-relate changes in job performance.

III. CONCLUSIONS

The purpose of this note has been to demonstrate one, the relationships between age, job performance, and the demand for jobs; two, the role of age in setting constraints on job performance in different types of work; three, the range within which the age constraint is relevant and the range within which the demand for labor of a given type is the true determinant of employment; and finally, the role of offsets to declining job performance.

The overriding importance of economic conditions in setting the limits to older worker employment has been demonstrated throughout the postwar era of unemployment and underemployment in the United States. By contrast, the nations of Western Europe have experienced high growth rates and ever-accelerated demands for workers of nearly all types. Confronted with acute labor shortages, these nations have developed extensive programs designed to maintain high levels of performance on the part of all workers. Our own willingness to improve human resources via similar methods may have to await the appearance of similar shortages in this country. In the interim, the fact that job performance does decline at some age level should not be confused with slack job opportunity. The latter, leading to the setting of maximum hiring ages, reflects the need for a screening device rather than the problem of a decline in work capacity.

As long as this need continues, there is likely to be discrimination against particular groups, unless such discrimination is prohibited. Under present circumstances, a large part of the unemployment burden rests on the older worker, whose vulnerability to technological change, plant relocations, and shifts in labor force composition is well known. There is probably no group more in need of help than today's older unemployed workers; nor is there a greater source of unused productive potential.

PREPARED STATEMENT OF CHARLES S. MANNING, EXECUTIVE VICE PRESIDENT, TOWERS, PERRIN, FORESTER & CROSBY, INC., PHILADELPHIA, PA.

According to the Congressional Record your Subcommittee is holding public hearings on S. 830, the "Age Discrimination in Employment Act of 1967." Although we do not plan to testify in person at the hearings on provisions of this bill, we should like to take this opportunity to file our comments relating to it.

We present our views not only as an employer administering our own employee benefit plans but also as consultants and actuaries in employee benefits, direct compensation, actuarial matters, organization, personnel administration and communications. We have been actively engaged in consulting work for almost 50 years, having done our first pension consulting as early as 1917. We presently serve over 800 clients.

COMMENT ON SECTION 4(f)(2)

We are pleased to note that section 4(f)(2) of the bill (page 6, line 7) exempts from unlawful employment practices the compulsory retirement of an employee under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of the act. However, we suggest that the exemption does not go quite far enough to encompass two other reasonable and long established practice of employers in the administration of their employee benefit plans.

(1) The Act should clearly state that it is not unlawful to require an employee to work a minimum number of years with the employer to become entitled to a pension at retirement and for the continuation of all or part of the death, medical or other employee benefits after retirement. Many employers are not averse to hiring elderly employees who are close to the normal retirement age. For good business reasons, however, they are reluctant to provide lifetime benefits after retirement for "short service" employees. "Short service" is commonly defined as less than 10 years of service.

(2) Many employee pension plans allow or require employees to retire prior to age 65. Normal retirement ages of 60 or 62 are not uncommon today. The Act should make clear that under such circumstances it shall not be unlawful to provide different employe benefits, such as group life insurance, medical benefits, etc. to retired employees than may be provided to active employees at the same ages.

RECOMMENDATION

Accordingly, we respectfully suggest that subsection (f) of section 4 of the bill be amplified not only to exclude application of the act to the compulsory retirement of an employee under a bona fide pension or retirement plan but also

(1) to exclude application of the act to the operation of the terms or conditions of any other bona fide employee benefit plan, and

(2) that it shall not be unlawful to require a minimum period of service to be entitled to benefits after retirement under any bona fide employee benefit plan.

In the absence of such exclusions, we fear that hundreds of long established, bona fide pension, group life insurance, medical and other employee benefit plans may be in violation of section 4(a)(1) if it is assumed that these plans come within the purview of "conditions or privileges of employment" specified in that section. Incidentally, the Pennsylvania Human Relations Act provides for such exemptions.

PREPARED STATEMENT OF JAMES E. MEALS, DIRECTOR, GOVERNMENTAL AND LEGISLATIVE AFFAIRS, AIR LINE PILOTS ASSOCIATION

Our Association is vitally interested in the hearings now taking place before your Committee on S. 830. We were more than interested in the question and answer session, as a part of these hearings, between the Honorable Jennings Randolph, a member of the Committee and The Honorable Willard Wirtz, Secretary of Labor, concerning the question of hiring or denying employment to an individual as a flight deck crew member for a certificated air carrier, when the person in question was forty-five years of age. The question was asked by the very capable Senator from West Virginia, with an eye on the costs to the company for pilot training. Secretary Wirtz answered that refusal to hire such an individual due to age would not be a violation of Section 4(f)(1).

As to initial hiring polices on behalf of any company, our Association, as far as operating crew members are concerned, has never contested such hiring policies, nor have we ever, to date, had any voice in same. We, herefore, view the problem of initial employment with a company to be a matter between the individual and the company.

We are concerned, however, with Secretary Wirtz' opinion, in that, the same might be applied to a pilot who is forty-five years of age, already in the employment of an air carrier and the company uses his age, tied to cost of training, to refuse him the opportunity to upgrade himself on newer equipment.

Our Association takes strong exception to even such tentative position. While we realize that there is an economic consideration on behalf of the Air Transport Company, most certainly, this same consideration must be taken into account on behalf of the individual. We further urge that the refusal to furnish further training or training on new equipment just for the fact that the individual would only be able to utilize these additional skills for a period of twelve years, twelve month, twelve weeks, twelve days, or even one day, would clearly be discrimination based on age and age alone and would fall within the purview of the above stated Section. If this is not discrimination based on age and age alone, then we ask, what is it?

The pilot of a certificated air carrier is the most regulated individual employed in private enterprise and we don't believe that he should be subjected to further deprivation of freedom in job opportunities based on strictly economic factors viewed from only one side, with no consideration from his viewpoint and with a complete disregard of such legislation as is before your Committee at this time. We further believe that the present mandatory retirement by rule of the Federal Aviation Agency compelling an air line pilot to retire at age 60 is discriminatory and should be subjected to an intensive look on behalf of your Committee.

We would like the above views to be made a part of the record of the hearing now taking place before your Committee.

PREPARED STATEMENT OF FRANCIS W. STOVER, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Discrimination against older veterans seeking employment has always been a primary concern of the Veterans of Foreign Wars of the United States.

The delegates to our National Conventions have called for legislation which would prohibit discrimination against the hiring of older veterans and have ap-

proved resolutions asking the Congress and the Administration to increase and intensify services to older veterans with necessary funds to carry out such a program.

This, therefore, is to indicate the interest and support of your bill, S. 830, which you introduced on February 3 and is co-sponsored by nine of your colleagues and is now pending before the Committee on Labor and Public Welfare. The position of the Veterans of Foreign Wars concerning this legislation is contained in our Resolution No. 117 entitled "Intensified Employment Service To Older Veterans", a copy of which is enclosed.

Another mandate approved by the delegates, which is related to your bill, is found in one of the provisions of our Resolution No. 35, which calls for "enactment of legislation to end discrimination against older veterans in Federal government".

It is the hope of the Veterans of Foreign Wars that the Committee will go forward with this legislation, at which time our organization stands ready to lend its support to its favorable consideration and report to the full Senate.

Thank you for introducing this most important legislation which will help older veterans.

RESOLUTION No. 117

Adopted at the 67th National Convention of the Veterans of Foreign Wars of the United States held at New York, New York, August 21 through 26, 1966

INTENSIFIED EMPLOYMENT SERVICE TO OLDER VETERANS

Whereas the Veterans of Foreign Wars of the United States is vitally concerned with the employment problems of all veterans but particularly with the problems of the older veteran and the disabled veteran; and

Whereas the advancing age of World War II veterans and the incidence of disability creates serious employment problems for individual veterans; and

Whereas the GI Bills now codified under Title 38, U.S. Code, Veterans Benefits, provided by law for an effective counseling and placement service through the U.S. Department of Labor, the Bureau of Employment Security and the Veterans Employment Service: Now, therefore, be it

Resolved by the 67th National Convention of the Veterans of Foreign Wars of the United States, That the U.S. Department of Labor, the Veterans Employment Service, and the Bureau of Employment Security along with the various State Employment Services, be urged to increase and intensify services to older veterans and disabled veterans; and that we petition Congress for necessary funds to carry out an intensified employment service to older veterans and disabled veterans through Federal and State agencies charged with this responsibility.

PREPARED STATEMENT OF JOSEPH P. TONELLI, PRESIDENT-SECRETARY, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, AFL–CIO, CLC

My name is Joseph P. Tonelli. I am the President-Secretary of the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL–CIO, CLC, an international trade union of over 175,000 members employed in the paper mills of the United States and Canada. I appreciate this opportunity to present the views of my organization on the vital legislation now before this Committee.

We wholeheartedly endorse the objectives, the philosophy and the Federal approach of S. 830, the proposed "Age Discrimination in Employment Act of 1967". We urge this Committee to give it favorable consideration as still another important and constructive step forward in the building of a society in America, were every person who wants to work will have employment.

Experience has demonstrated in almost all areas of our industrial life that the aging worker encounters barriers in obtaining and holding a job. President Johnson's message of January 23, 1967, recommending legislation in this connection referred to a vast reservoir of unused and wasted skills of the aging workers which the country urgently needs and which it is blocked from utilizing because of these arbitrary age discriminations. We earnestly believe this to be a situation which calls for prompt and effective remedial action.

The aging workers fall into no single pattern. A receptionist will encounter these barriers at age 30, a stenographer at 35, a salesperson at 40, an airplane pilot at 45, a printer at 65. These varying inequities obviously require a flexible approach which S. 830 recognizes by its early recourse to conference, conciliation and persuasion before the administrative and judicial sanctions may be invoked under Section 7.

Statistical studies of our working population underscore the grim nature of the problem which confronts us in growing dimensions. Each year we have 400,000 more men and women over 65; by 1975 we will have 20 million. Our population of 45 years and over is growing 2 and ½ times as fast as the population as a whole; by 1975 this age group will number 64 million or 30% of our total population.

The ominous concomitant of this increase is the decline of the proportion of these workers in our total labor force. In 1890 the proportion was 68%; this has been going down steadily to an estimated proportion of 46% in 1975. A sharp decline has been registered in the case of workers aged 65, a decline which became catastrophic in the depression decade 1930–1940.

While the population in this age group increased 36% in this decade, the number of jobs held by this group declined more than 3%, bringing about a new loss in labor force participation of 40%. Some increase in labor force participation was demonstrated by this age group during World War II, but it is uncontestable that the deterioration has continued since.

With the older workers' longer unemployment he is far more likely to exhaust his unemployment insurance benefits. In one year under the Temporary Unemployment Insurance Program, for example, 45% of those drawing benefits were 45 or over. This is highly significant in view of the requirement that an applicant for such benefits may not qualify until he has exhausted his benefits under state law.

Another study found that a striking percentage of unemployed men over 55 (23% of those 55–64 and 62% over 65) had withdrawn from the labor market within a year after the exhaustion of benefit rights. There is a social loss as well as an individual tragedy in most of these figures.

But aside from this factor, we are required to face the prospect of a growing army of displaced workers that need to be fed, clothed and housed and yet are barred from productive membership in our labor force. Their support in the form of spiralling welfare costs, old age assistance payments and social security pensions will necessarily impose an increasingly burdensome toll on the production of our young producers.

There must be a limit to the number of non-workers that can be supported by a given number of workers. For stereotypes to the contrary, studies in depth have incontrovertibly established that aging workers display an affirmative attitude toward their work, that the lower performance level of the aging workers has not been factually demonstrated, and that in other relevant areas (accident proneness, absenteeism, etc.) he is at least as dependable a member of the labor force as his younger brother.

The economic loss suffered by the nation, albeit large and growing, should not cause us to overlook the personal consequences of the unemployed. Especially in the case of the aging workers, the psychological shock of unemployment is often severe. It corrodes his morale, shatters his family life, and undermines his psychological and physical well being. For as Tennyson says:

> "How dull it is to pause, to make an end, to rust unburnished, not to shine in use . . ."

As the unemployment period lengthens, his self-confidence wanes. A man who has become depressed and bitter tends to lose aggressiveness and interest in his surroundings. Inherent in the loss of economic status and the humiliating experience of successive rebuffs are many social and psychological problems, which themselves tend to decrease employability.

Employers are likely to conclude, simply on the basis of the length of unemployment, that there must be something wrong with the worker and the reluctance to hire continues to mount. Eventually, he may stop applying for work, despite his great need to support himself and his family. At this point the loss becomes irreversible and the deterioration from productivity to paralysis is complete.

We read numerous accounts of the many opportunities for workers in new industries or new enterprises. The facts fall short of justifying optimism. For we now know that the replacement of skilled workers by machines, the com-

plete close out of business activity by old establishments and the relocation of plants strike older workers hardest. With roots sunk deep in a locality, movement to a new section becomes particularly difficult for aging workers. Many are not prepared to learn a new skill or accept a downgrading in job status.

The experience of New England and New York cities since World War II is particularly revealing. Many of the textile mills had been declining for years. There was limited employment opportunity for even the younger workers, and the older ones formed a disproportionate part of the work force. The final shut-down and removal to new locations meant that the older workers bore the major burden of the change. This was also brought out in studies of the aging unemployed former workers of the Brooklyn Daily Eagle, a daily newspaper and the Wanamaker and McCrory Department Stores, all in New York City.[1]

In our expression of support for S. 830, we do not overlook areas in which the measure might be redrafted to augment its scope and effectiveness. Coverage under Section 12(b) is limited at the outset to firms of 50 employees and beginning with June 30, 1968, 25 employees, in each working day in at least 20 weeks in the current or preceding calendar year. We regard this as an unnecessary delimitation of coverage.

It should be compared with the substantially wider coverage in those states which have already enacted laws prohibiting discrimination in employment because of age. In Pennsylvania, the limitations are 12 workers; Washington 8; California, New York, New Jersey and Oregon 6; Connecticut 5; and in other states there is no limitation whatever.

Our jurisprudence which condemns discrimination in hiring on the basis of union membership or race, creed or national origin, is not limited in its scope by the number of employees in an enterprise (to say nothing of the regularity of their employment). We would suggest further inquiry before such exclusory limitations are permitted to remain in S. 830.

We also point out that subject to the power of the Secretary of Labor to adjust the age limits under Section 13, the prohibitions against discrimination apply to individuals between 45 and 65 only. Bitter experience has made it clear and expert documentation has established that age discrimination starts well before 45 and appears in its most exacerbated form after 65.[2] Finally, we would call attention to Section 4(f)(2) of the proposed Act which would privilege an employer "to separate involuntarily an employee under a retirement plan or system where such policy or system is not merely a subterfuge to evade the purposes of this Act, . . ." We urge this Committee to make a careful study of this exemption proviso; it appears to be drawn with dangerous imprecision which is sure to invite litigation and possible judicial limitation. Who can prophesize that no subterfuge will be found in a compulsory retirement plan at age 60 providing one or two weeks' severance pay?

A generation ago this Congress undertook to eradicate the human and economic waste brought about by discrimination in employment on account of union membership. Before and since that time we have extended this policy to discrimination on account of race, creed or national origin. In all this we have sternly committed ourselves to the principle that in the interests of human dignity and national welfare all who deserve and care to wrok should be permitted to do so. We should now extend the guarantees of equality at the factory gate to our aging citizens who are willing and able to continue their contributions to the economic life of the nation.

Thank you once again for your kind attention to these views of our International Union. We trust that the facts presented will be of some value in securing favorable action on a strengthened S. 830 by this distinguished Committee. A Federal statute banning discrimination based upon age is overdue.

PREPARED STATEMENT OF REV. GORDON E. WATT, SPRINGFIELD, MASS.

In this day and age, I believe the bills to prohibit age discrimination in employment can be very important.

Even though a man or woman retires because of age, they are still able to work and sometimes can do better than younger people. They have had experi-

[1] Statement of J. W. McConnell, consultant to the Subcommittee on Employment of the N.Y. Governor's Conference on the problems of the aging.

[2] Report by Secretary of Labor, *The Older American Worker;* Age Discrimination in Employment, p. 3

ence and are more settled and will give the employers a full days work for the pay received.

Also with the high prices that exist today, the older people need the income in order to live decently.

Age should not be a barrier to employment. Also older people who retire and have no interests get lonesome and bored around the house and they have so much time to think that it shortens their life. If older people could get employment they would have more peace of mind and a happier life.

All of us get older if we are permitted to live, it comes to every man and woman and I am sure no wants to be considered useless and put on the shelf.

We should have bills passed that prohibit age discrimination in employment because in this country all discrimination should be eliminated.

As I have worked with the poor people for 30 years, I have found that many of our older citizens have lived from hand to mouth and in bringing up families had no chance to save any money so the Social Security or old age funds are not enough for a comfortable living so they still need an income if it is only part time. As most industries retire people at a certain age they have nothing to do. When they seek some employment and tell their age, that's it. If a person is well and healthy they should be permitted to work in spite of age.

So I am making this appeal to you to stop this discrimination because of age.

I cannot get to Washington at this time so I am sending this Statement.

SUPPLEMENTAL STATEMENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

This supplemental statement is submitted in opposition to proposals made by several witnesses during the hearings before this Subcommittee on March 15–17, 1967, to alter radically the character and scope of S. 830 and S. 788 by extending their coverage far beyond the problem which prompted the introduction of those bills and the studies which support them. We refer to proposals to transform them from bills addressed to the problem of age discrimination in employment against "The *Older* American Worker"—basically those 45 to 65—into bills also covering the *younger* American worker—those below 45.

I. THE GENESIS OF OLDER WORKER LEGISLATION

S. 830 and S. 788 are themselves the product of considerable study of the specific problem to which they are addressed, and of some significant legislative history. That history explains why their coverage was basically limited to persons 45 to 65.

Pursuant to Section 715 of the Civil Rights Act of 1964, the Secretary of Labor prepared and delivered to the Congress in 1965 a report entitled "The Older American Worker," defined by that report as persons 45 and over. The report recommended four types of action to increase employment opportunities for such older workers.

In the 89th Congress, largely at the initiative of Senator Javits and other members of this Subcommittee, the Senate included in its version of the 1966 amendments to the Fair Labor Standards Act (Public Law 89–601) a provision outlawing age discrimination against those persons covered by the Secretary's 1965 report—those 45 to 65. That provision was deleted in Conference, but a substitute provision was enacted directing the Secretary of Labor to submit to the 90th Congress, not later than January 1967, "specific legislative recommendations for implementing the conclusions and recommendations" contained in his 1965 report (Public Law 89–601, Section 606).

On January 23, in a Special Message to the Congress on "Older Americans" the President proposed legislation prohibiting arbitrary and unjust discrimination in employment in respect of persons 45 to 65. S. 830 is presented as carrying out the terms of the President's Special Message and presumably represents the Secretary of Labor's proposed implementation of his 1965 report, as contemplated by the 1966 Act. S. 788, Senator Javits' bill, follows the lines of his 1966 proposal to add prohibitions against age discrimination to the Fair Labor Standards Act. Both bills, as noted above, are basically confined to persons 45 to 65 years of ago, like the Senate bill of 1966 and the Secretary of Labor's 1965 report.

II. UNION PROPOSALS TO ALTER THEORY OF "OLDER WORKER" LEGISLATION

During the Subcommittee hearings, it was proposed by representatives of several labor organizations that the provisions of the new legislation be made applicable to all persons regardless of age, or at least to a very substantial category of persons under 45. According to the Department of Labor's statistics, there are almost twice as many persons in the civilian labor market who are below 45 years of age (46 million) as there are in the 45–65 age category (26 million). Thus, the proposed extension of the legislation to cover persons of all ages would roughly triple the number of persons included within its provisions and increase the employees subject to its coverage by several tens of millions.

The proposals to effect this radical change in the scope and coverage of the legislation do not even pretend to be based upon any general examination or study comparable to "The Older American Worker" report of the very different questions raised by the new proposals in respect to younger workers. As far as we are aware, there is no significant age discrimination problem affecting younger workers requiring remedial legislation. Furthermore, nobody appears to have inquired whether the adoption of a statute outlawing age discrimination at ages below 45 would have undesired effects upon apprentice training or other programs designed to provide special employment opportunities to very youthful or deprived groups.

III. UNIONS' GENERAL PROPOSAL TO SERVE SPECIAL INTEREST OF VERY SMALL GROUP

It is clear from the testimony before this Subcommittee that the sweeping proposals to revolutionize the theory and character of the "Older Worker" legislation are prompted, frankly and overtly, to answer the special demands of a relatively small handful of employees in a unique situation—those few airline stewardesses who are unwilling at age 32–35 to accept ground employment with the airlines which employ them. Because this is the source of the proposals the Air Transport Association feels a special interest in opposing them.

As it happens, this tiny group is already represented under the Railway Labor Act by powerful unions skilled in collective bargaining techniques, and are thus not in need of special legislation to meet their special problem. Moreover, the employees on whose behalf this sweeping legislation is sought are persons (1) who specifically agreed at the time they were hired as stewardesses that they would cease being flight stewardesses at some specified age; (2) who have already agreed, in the collective bargaining process, that their union contract shall not bar their termination as flight stewardesses at that age; (3) who are generally offered, at or about the age for expiration of their assignment as flight stewardesses, other employment on their airline, at no reduction in pay.

IV. NO JUSTIFICATION FOR ALTERING THEORY OF "OLDER WORKER" LEGISLATION TO COVER AIRLINES' STEWARDESSES REASSIGNMENT POLICIES

This Subcommittee has been told by a leading union representative of those few stewardesses that they do not *want* the other "straight 40-hour week" ground jobs at ages 32 or 35 because those jobs would mean the "loss of glamour, the aura that surrounds a woman who earns her living in the air." The Air Transport Association respectfully suggests to this Subcommittee that the fear of a small number of young women that they are going to lose some of their glamour at ages 32–35 if they accept airline employment in a position other than as flight stewardesses, hardly requires national legislation. It clearly does not justify adding tens of millions to the coverage of the proposed statute.

Some of the union testimony before this Subcommittee may have left the impression that stewardesses who reach a certain age have their employment terminated at that age without regard to their future employment status. That is far from the fact. The airlines who have age restrictions generally recognize a responsibility to find alternative employment with the airlines at no loss of pay or seniority. That obligation is formally recognized on American Airlines and on Trans World Airlines, in agreements reached in collective bargaining which are applicable to all stewardesses who reach the reassignment age during the term of the contract, as shown by Attachments A and B. We also attach evidence of the alternate employment policy of the two other largest airlines with age restrictions: Attachment C shows the history of Northwest

Airlines' offers of alternate employment from 1962 to 1966; and Attachment D represents United Air Lines' alternate employment policy.

We also submit, as Attachment E, a copy of a determination of the New York State Unemployment Insurance Appeals Board in a case involving American Airlines which described how American's alternate employment policy works and which, in practice, finds that a stewardess who failed to accept assignment to different work under that policy had quit her employment without good cause. That finding emphasizes, we think, the fact that the proposals for sweeping changes in the age discrimination law because of the so-called "airline stewardess age problem" are unsupported by a single case in which the airlines' stewardess reassignment policies have resulted in forced unemployment.

The stewardess representatives have also suggested to this Subcommittee that stewardesses should not be required to transfer to other jobs at age 32–35 because they are not trained for the other employment. For that reason, it is said that they should be permitted to remain as stewardesses "as long as they can."

It must be obvious, however, that most stewardesses can not physically expect to continue as stewardesses to or past middle age, and that they must stop flying as stewardesses long before normal retirement at age 65. If a woman of 35 would have difficulty adjusting to ground employment because, having been a stewardess for 15 years, she is not trained for anything else, she is likely to be in a far worse position if she is permitted to continue flying until 45 by which time chances are overwhelming that she will physically *have* to stop. Obviously, readjustment to other employment will be far more difficult at 45 than at 32 or 35. In sum, a policy of reassigning stewardesses to other employment provided by the airlines during the stewardesses' early 30's is in the interest of the stewardesses as well as the airlines. The policy does not create a problem; it is an attempt to solve one.

The airlines who have stewardess age regulations have them because they have been found necessary to maintenance of a satisfactory level of stewardess service under the conditions applicable to the particular airlines. Those airlines have studied their own problems carefully and can demonstrate that strength, ability, resilience, attractiveness, and high motivation—all natural attributes of youth—are characteristics necessary under the particular conditions of their operation to quality performance of the stewardess function.

However, following as it does, the close of the hearings on S. 830 and S. 788, this is not the occasion to argue the merits of the airlines' stewardess age policies. S. 830 and S. 788, to which these hearings relate, are applicable to the Older Worker and are not addressed to the airlines' stewardess age policies. This Subcommittee, we believe, simply has not an adequate basis to reach any conclusions on that matter as a result of these hearings.

V. CONCLUSION

Any effort to extend the pending bills to younger workers so as to cover stewardesses raises significant questions which would require serious study of the situation of younger workers generally, and of airline stewardesses in particular. Nobody has conducted or suggested such a study for the obvious reasons that (a) there is *no* real problem of age discrimination against the younger worker justifying such a study; and (b) in respect to airline stewardesses in particular, those who know the airline industry know that a serious study would reveal there is no "stewardess age problem" requiring remedial legislation by the Congress.

We strongly believe that present airline policies and the processes of free collective bargaining afford the stewardesses, on this question as on so many others, more than sufficient assurance of fair dealing.

ATTACHMENT A

AMERICAN AIRLINES—TWU STEWARDESS REASSIGNMENT AGREEMENT

MEMORANDUM AGREEMENT BETWEEN AMERICAN AIRLINES, INC. AND AIR LINE STEWARDESSES IN THE SERVICE OF AMERICAN AIRLINES, INC. AS REPRESENTED BY THE AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION LOCAL 550, TWU, AFL–CIO

This memorandum agreement is made and entered into in accordance with the provisions of Title II of the Railway Labor Act, as amended, by and between American Airlines, Inc. (hereinafter known as the "Company") and the Air

Line Stewardesses in the service of American Airlines, Inc. as represented by the Air Line Stewards and Stewardesses Association, Local 550, TWU AFL–CIO (hereinafter known as the "Association").

It is hereby mutually agreed:

1. A stewardess employed by the Company as a stewardess on or after December 1, 1953 shall be transferred to other employment within the Company effective with the first day of the month following the month in which her thirty-second (32nd) birthday falls unless she elects the alternative provided in Paragraph 8 below.

2. In the month in which her thirty-first (31st) birthday falls and again in the sixth (6th) month following the month in which her thirty-first (31st) birthday falls, a stewardess shall be interviewed by her supervisor and informed of her rights and obligations under the provisions of this Memorandum Agreement. On the occasion of the latter interview, she shall elect in writing her choice of other employment as provided in Paragraph 3 below, or the alternative provided in Paragraph 8 below.

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

(b) In the event that no job vacancies exist at the time of the interview provided under 3 (a) above, the stewardess shall be so informed.

As soon as possible thereafter, but in any event not later than the first day of the month in which her thirty-second (32nd) birthday falls, the Company shall make available a job to be effective on the first day of the month following. The Company will make every effort to make available to such stewardess a job in the city in which she is presently based, if such is her desire. The stewardess and the appropriate member of management shall be notified of the job made available.

4. A stewardess who is interviewed under the provisions of paragraphs 2 and 3 above shall not be required to give up her scheduled duty-free days to accomplish these interviews. If it is necessary to remove such stewardess from a regularly scheduled trip in order to accomplish such interviews, she shall be given flight time pay and flight time credit for such missed trip. If such stewardess is required to travel to a job interview, she shall be furnished a Class "C" pass and shall be reimbursed for expenses incurred in such travel in accordance with applicable Company regulations.

5. When a stewardess, under the provisions of this Memorandum Agreement, selects and is awarded a job in a city other than the city in which she is based at the time of her thirty-second (32nd) birthday, the Company shall pay her full travel and moving expenses (in accordance with AA Regulations) to the city where the job selected or made available, as the case may be, is located.

6. A stewardess who is transferred to other employment under the provisions of this Memorandum Agreement shall be guaranteed:

(a) Her accredited Company seniority;

(b) Time equivalent to her length of service with the Company to be credited to her new job.

(c) Effective October 1, 1965 a monthly rate of pay not less than the base pay applicable to her final month of service as a stewardess plus five (5) hours' incentive pay at jet equivalent rates.

(d) Effective June 1, 1966 a monthly rate of pay not less than the base pay applicable to her final month of service as a stewardess plus seven (7) hours' incentive pay at jet equipment rates.

7. In the event of a layoff involving employees in her new job classification, Company seniority shall govern in determining her relative position among the groups of employees concerned. During her first year and one half of service in her new job, proficiency alone will not be considered grounds for termination, in that this period of time shall be considered a training period in the type of work assigned. After the first year and one half in her new job, seniority and ability shall be considered as applicable to all employees in the group(s) concerned.

8. A stewardess who desires not to transfer to other employment with the Company under the provisions of this Memorandum Agreement may elect instead to terminate her employment relationship with the Company. In the event such stewardess elects to terminate, she shall be permitted to defer her termination date to but not beyond the last calendar day of the twelfth (12th) month following the month in which her thirty-second (32nd) birthday occurs, at which time she shall be terminated in any event.

9. A stewardess who terminates her employment in the month in which her thirty-second birthday occurs or in any of the succeeding twelve (12) months shall be entitled to severance pay in the amount of two hundred and fifty dollars ($250.00) for each year of compensated service as a stewardess with the Company, prorated from her date of hire as a stewardess up to her date of termination or the last day of the month in which her thirty-second (32nd) birthday falls, whichever first occurs.

10. The provisions of this Memorandum Agreement shall not apply to any stewardess who was in the service of the Company as a stewardess (including a stewardess on leave of absence) on November 30, 1953.

11. Each stewardess employed on or after the effective date of this Memorandum Agreement shall, at the time of employment, be informed of the provisions of this Agreement are invalidated during the terms of the Agreement by (i) the such employment.

12. The following provisions shall apply in the event the foregoing provisions of this Agreement are invalidated during the term of the Agreement by (i) the enactment of federal legislation, or (ii) the finding of a federal administrative agency, and (iii) a final judicial determination that such legislation or finding, as the case may be, is applicable to stewardesses in the employ of the Company:

(a) Within thirty (30) days following entry of such final judicial determination, the Company shall give written notice (mailed to the last known address as shown by Company records) to each former stewardess who after the effective date of this Agreement left the Company's employ or is employed in another position in the Company pursuant to the terms of this Agreement of her right to re-employment as a stewardess upon the following terms and conditions:

(1) She must file with the Company a written application for re-employment within sixty (60) days following the date of the Company's notice;

(2) She must meet all qualifications required by the Company of its stewardesses;

(3) If reemployed as a stewardess she will be assigned the Company and stewardess seniority that she would have had if her employment as a stewardess had not been terminated;

(4) Upon such reemployment she will have the right to return to the base at which she was last employed or, if she desires, to such other base to which she would have been entitled by the Basic Agreement;

(5) If her election of a base pursuant to subparagraph (4) hereof requires a change of residence, the expenses necessitated by such move will be paid by the Company;

(6) Her rate of pay upon reemployment shall be the rate of pay to which she would have been entitled under the Basic Agreement had her employment as a stewardess not been terminated, provided that if the amount of severance pay she received upon termination under the provisions of Paragraph 9 of this Memorandum Agreement exceeds the amounts she would have earned on the basis of seventy-five hours per month on jet equipment during the period between her date of termination and her date of restoration to the Company's payroll, the difference between such severance pay and such potential earnings shall be deducted from her pay, in equal monthly installments, during the first six (6) months following her restoration to the Company's payroll;

(7) She will be entitled upon reemployment to the same vacation privileges as other stewardesses of comparable seniority, and she will be entitled to such sick leave as would have accrued had she continued her employment as a stewardess;

(8) Any former stewardess who is unable to meet the qualifications required by the Company for its stewardesses within sixty (60) days following the date of her application for reemployment shall not be entitled to reemployment as a stewardess.

(b) Any dispute as to whether an applicant for reemployment as a stewardess meets the qualifications required by the Company for its stewardesses shall be settled by arbitration at New York, New York in accordance with the rules then obtaining of the American Arbitration Association. The arbitration panel shall consist of one member appointed by the Company, one member appointed by the Association, and one member, who shall act as Chairman, appointed by the American Arbitration Association. Any other dispute concerning the interpretation or application of this Agreement shall be settled in the manner provided in the Basic Agreement for the settlement of similar disputes under the latter contract.

13. While this Memorandum expresses the voluntary agreement of the parties, it is not intended that the Association in behalf of any employee be precluded from testing the validity of any aspect of this Agreement under the laws of the State of New York, but a decision in New York shall not affect this Agreement in other states.

14. This Memorandum Agreement shall remain in full force and effect concurrently with the Basic Agreement between the Company and the Association effective October 1, 1965 covering rates of pay, rules and working conditions, subject to the provisions of the Duration of Agreement clause of such Basic Agreement.

In witness whereof, the parties hereto have signed this Memorandum of Agreement this 12th day of October, 1965.

Witness:
E. J. Mahon
F. C. Bonner
E. J. Trapp
M. T. Downing

For American Airlines, Inc.
Kenneth L. Meinen
Vice President—Personnel
A. Di Pasquale
Assistant Vice President
Labor Contract Administration

Witness:
Nancy Jane Collins
Margaret Norris
Joetta S. Cunningham
Mabrey Byrnes

For Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL-CIO
James F. Horst
International Vice President
Subject to Ratification
Colleen Boland
President—ALSSA
Fredric A. Simpson
International Representative

ATTACHMENT B

TRANS WORLD AIRLINES—TWU STEWARDESS ALTERNATE EMPLOYMENT AGREEMENT

FEBRUARY 27, 1965.

MR. JAMES F. HORST,
Transport Workers Union of America,
Elmhurst, N.Y.

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

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

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

Sincerely,

D. J. CROMBIE,
Vice President, Industrial Relations.

ATTACHMENT C

Stewardesses affected by Northwest Airlines transfer policy

Name	Date hired	32d birthday	Date of transfer	Pay at transfer [1]	Base at transfer	Position accepted	Pay in new position
G. A. Post	Apr. 20, 1957	Apr. 4, 1962	Mar. 8, 1962	$410	MPL	In flight supervisor, effective Mar. 8, 1962	$435
B. J. Rutledge	Apr. 25, 1958	Sept. 26, 1962	Oct. 1, 1962	410	MPL	In flight supervisor, effective Oct. 1, 1962	425
A. Lonergan	Nov. 22, 1958	June 2, 1963	June 30, 1963	410	DCA	Offered reservations agent position; not accepted	
B. Rainer	Dec. 20, 1957	Sept. 1, 1963	Sept. 30, 1963	420	SEA	Reservations agent, effective Mar. 1, 1965 [2]	490
O. L. O'Brien	Nov. 22, 1958	Feb. 26, 1964	Feb. 29, 1964	420	MPL	Reservations agent, effective Mar. 16, 1964 [2]	420
D. Nelson	May 29, 1958	Sept. 23, 1964	Sept. 30, 1964	470	SEA	Reservations agent, effective Mar. 1, 1965 [2]	470
M. Doe	June 9, 1956	Nov. 25, 1964	Nov. 30, 1964	470	MPL	Offered reservations agent position; not accepted	
D. L. McLeod	Aug. 15, 1958	June 8, 1965	June 30, 1965	490	SEA	Reservations agent, effective July 12, 1965 [2]	490
M. A. Smith	June 12, 1959	May 24, 1965	Apr. 26, 1965	455	MPL	Reservations agent, effective Apr. 26, 1965 [2]	455
M. J. Doroschuk	May 11, 1956	May 7, 1965	May 31, 1965	520	MPL	Crew scheduling clerk	520
K. A. Fitzgerald	Mar. 22, 1958	July 20, 1965	July 31, 1965	505	MPL	Reservations agent, effective Sept. 7, 1965 [2]	505
C. C. Kirwan	Aug. 7, 1959	Sept. 16, 1965	Oct. 1, 1965	475	MPL	Ground hostess, effective Oct. 1, 1965	475
A. M. McCabe	Dec. 21, 1956	Oct. 9, 1965	Oct. 31, 1965	520	SEA	Reservations agent effective Apr. 25 1966 [2]	520
P. A. Lyons	Sept. 23, 1960	Oct. 9, 1965	Oct. 31, 1965	460	SEA	Reservations agent effective Nov. 29, 1965 [2]	460
W. L. Baum	July 1, 1957	Oct. 10, 1965	Nov. 2, 1965	505	MPL	Reservations agent effective Jan. 3, 1966 [2]	505
P. M. Helme	Aug. 15, 1958	Dec. 17, 1965	Dec. 31, 1965	505	SEA	----do [2]	505
K. J. Nelson	Nov. 22, 1958	Dec. 30, 1965	Dec. 31, 1965	490	SEA	Reservations agent effective Jan. 31 1966 [2]	490
J. A. Brandt	Dec. 15, 1958	Feb. 4, 1966	Feb. 28, 1966	490	SEA	Reservations agent effective Mar. 2 1966 [2]	490

[1] Does not include foreign flying override where applicable.

[2] Denotes beginning of 3-week training program in reservations sales.

ATTACHMENT D

UNITED AIR LINES—NOTICE OF STEWARDESS EMPLOYMENT CONDITIONS

COMPANY REGULATIONS PERTAINING TO DURATION OF STEWARDESS EMPLOYMENT

1. It is a condition of stewardess employment that stewardesses remain unmarried. Marriage of a stewardess automatically disqualifies her from the stewardess job. It is the Company's practice to consider stewardesses who give advance notice of marriage for ground jobs with the Company; however, such other employment is not guaranteed.

2. It is a condition of stewardess employment that applicants who enter training after October 1, 1965 may not continue in employment as stewardesses beyond the end of the month in which they reach their thirty-second birthday. The Company at that time will transfer such stewardesses, Company seniority unbroken, into other employment with the Company.

Such stewardesses will be paid in their new position an amount equal to their average monthly earnings during their last six months as a stewardess.

If no positions are available at the location at which the stewardess is domiciled when she reaches her thirty-second birthday, she will be transferred at Company expense to another location where a position exists.

I acknowledge that I have read and understand the foregoing summary of regulations pertaining to the duration of stewardess employment.

Date _____ Signed _____
Applicant for Stewardess Employment

Witness _____

ATTACHMENT E

NEW YORK STATE DEPARTMENT OF LABOR, UNEMPLOYMENT INSURANCE APPEAL BOARD, NEW YORK, N.Y.

Eloise N. Soots
150 East 49 Street, Apt. #9E
New York, New York

LO 511
Division of Employment
3 Carlisle Street
New York, New York 10006

American Airlines
633 Third Avenue
New York, New York
Att: Richard A. Lempert, Esq.

O'Donnell & Schwartz, Esqs.
501 Fifth Avenue
New York, New York 10017
Att: Clayton Sinclair, Jr.

Employer #. Appeal # 131,143A.

S. S. # [redacted] Referee # 511–576–65.

Please take notice that the decision set forth below was mailed and filed in the Department of Labor on September 26, 1966.

Please take further notice that within thirty days after the mailing of this decision, the Commissioner or any other party affected thereby who appeared at the appeal before the Board may appeal questions of law involved in such decision to the Appellate Division of the Supreme Court, Third Department. Written notice of such appeal should be mailed to the Appeal Board, 500 8th Ave., N.Y. 18, N.Y. within the time above stated.

DECISION OF THE BOARD

Present: Louis J. Naftalison, Isidore Schechter, John A. Rogalin, James R. Rhone, Philip F. Wexner, Members.

Claimant applies, pursuant to Section 534 of the Law, to reopen and reconsider the decision of the Board filed March 3, 1966 (Appeal Board, 128,115), affirming the decision of the referee filed November 3, 1965 sustaining the initial determination of the local office disqualifying claimant from receiving benefits effective September 1, 1965 on the ground that she voluntarily left her employment without good cause.

A hearing was held before the Board at which all parties were accorded a full opportunity to be heard and at which claimant, her attorney and a representative of the employer and its attorney and a representative of the Industrial

Commissioner appeared and testimony was taken. The Board considered briefs submitted by the attorneys for claimant and for the employer on this application.

After due deliberation having been had on claimant's application, the Board determined to reopen and reconsider its decision.

Now, therefore, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT

Claimant was employed as an airline stewardess by the employer herein from February 27, 1956 to August 31, 1965. Prior to such employment, she had worked for about five and one-half years in an insurance and real estate office in North Carolina, where she had perfermed general office work, including typing and the handling of insurance policies.

Claimant was sent to a training school for stewardesses maintained by the employer in Fort Worth, Texas, prior to the actual commencement of her employment. While in training on August 2, 1955, she signed a statement in which she acknowledged that she had been informed that according to the terms of the collective bargaining agreement between the employer and the stewardess' union, (of which she had to become a member), her employment as a stewardess would not continue beyond the end of the month during which her 32nd birthday falls. This policy of the employer is more fully set forth in the collective bargaining agreement between the employer and the Airlines Steward and Stewardesses Association, Local 550, TWU–AFL–CIO, which provides in substance:

> That upon reaching her thirty-second (32nd) birthday, a stewardess would be transferred to other employment within the Company unless she elected one of the following alternatives:
>
> (a) If she did not desire to transfer to other employment within the Company, she could elect to either terminate her employment at such time or be permitted to defer her termination date to, but not beyond, the last calendar day of the twelfth (12th) month in which her thirty-second (32nd) birthday occurs, at which time she would be terminated, in any event, or
>
> (b) If a stewardess elected to terminate her employment in any of the succeeding six (6) months following her thirty-second (32nd) birthday, she would be entitled to severance pay in a stipulated amount, but a stewardess who terminated her employment after the said six (6) month period, would not be entitled to severance pay.
>
> (c) When she reaches her thirty-first (21st) birthday and again six (6) months later the stewardess is to be interviewed and informed of her rights to transfer or the termination of her employment on reaching her thirty-second (32nd) birthday. At this time, the stewardess shall elect in writing her choice of accepting other employment or the alternative options granted her.

This agreement reserves to a stewardess her right to sue in the courts of the State of New York, in an action to test the validity of any portion of the collective bargaining agreement.

On August 13, 1963 when claimant reached her thirty-first (31st) birthday, she was interviewed by her supervisor and informed of her rights of election and options regarding her status upon reaching her thirty-second (32nd) birthday. Claimant was told she was required to make her choice by February 16, 1964. She then specified a desire to be assigned either to the "Admirals' Club" or to any position utilizing her secretarial skills and some public relations work but limited to the New York area. On February 9, 1964, claimant was again interviewed and repeated her willingness to accept a transfer to other employment with the Company upon reaching her thirty-second (32nd) birthday and she signed a statement to that effect.

Between June 3 and July 10, 1964, claimant was offered six office jobs with the employer, all in the New York area, which were in the following classifications: two jobs were in the general and executive offices, a job involving clerical work in a public relations office; a job as a passenger service representative at the La Guardia Airport or at a local ticket office; a job of reservation salesman at the Company's 42nd Street office and a job as a stenographer-clerk at the La Guardia Airport in New York City. All of these jobs were at claimant's regular salary as a stewardess and preserved her seniority rights. Claimant refused all of these assignments and on January 10, 1964 she signed a statement that

she was not willing to accept any ground job, that she desired only the job of a stewardess. The statement read:

> The stewardess has elected to not accept transfer, but rather to terminate her employment in the twelve (12) month period following her thirty-second (32nd) birthday (which is August 16, 1964).

Pursuant to claimant's election, her employment was terminated by the employer on August 16, 1965. Claimant filed a claim for benefits effective September 1, 1965. An initial determination was made disqualifying her from receiving benefits on the ground that she voluntarily left her employment without good cause, because she could have continued her employment with her employer by accepting a ground job. The initial determination was sustained by the referee and his decision was affirmed by the Board in Appeal Board, 128.115 filed March 3, 1966, which decision incorporated by reference our decision in Appeal Board, 118,040 (*Matter of Arnold*). This case (Appeal Board, 118,040) involved a stewardess who was employed by the same employer as was this claimant and who lost her employment under the same facts and circumstances as in this case on appeal. In that case, the Board held that the stewardess brought about her own loss of employment by her deliberate action in refusing to accept a transfer to ground employment with her employer upon reaching her thirty-second (32nd) birthday. No appeal was taken from the Board's decision in that case.

Thereafter and prior to December 16, 1964, claimant's union filed a complaint with the State Commission for Human Rights on behalf of claimant and other stewardesses similarly situated, alleging that this employer and other airlines were discriminatory in compelling stewardesses to cease flying upon reaching their thirty-second (32nd) birthday and that their discharge because of such age limitations was in violation of Section 296.1(a) of the Executive Law. This section provides:

It shall be an unlawful, discriminatory practice:

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

Section 297 of the Executive Law provides that upon the filing of such complaint, the chairman of the Commission shall appoint one of the Commissioners as an Investigating Commissioner, who shall make a prompt investigation of the facts and determine whether or not probable cause exists for crediting the allegations of the complaint that the respondent was engaged in unlawful discriminatory practices. If the investigating Commissioner finds that probable cause does exist, then he shall try to have the discriminatory practice eliminated through conference, conciliation or persuasion. If this fails, then the Investigating Commissioner shall cause to be issued and served upon the respondent a written notice with a copy of the complaint, directing him to answer the charges of the complaint at a hearing to be held before three members of the Commission (of which the Investigating Commissioner may not be a member) at a time and place to be fixed by the chairman of the Commission. The hearing to be held upon the complaint and answer of the respondent shall result in findings of fact and the issuance of a proper order of the Commissioner directing the respondent to desist from discriminatory practices. The validity of such ruling may then be tested in the State Courts in a proper action.

Upon the filing of the complaint by claimant's union, an Investigating Commissioner was appointed by the chairman of the Commission for Human Rights on December 17, 1965. An investigation of the charges made by the union was then held by the Investigating Commissioner. Claimant was one of the stewardesses who appeared and testified during the investigation. At the conclusion of such investigation, the Investigating Commissioner filed his report dated March 23, 1966, in which he made the following conclusions:

SUMMARY

> (1) None of the evidence on hand gives warrant for the establishment of an industrywide policy setting a special arbitrary chronological age for continued employment of airline stewardesses—whether age 32 or 35, or any age below that of the standard mandatory retirement age for company employees.

(2) The evidence on hand does support the opposite position; namely, that termination as an airline stewardess prior to the employer's standard mandatory retirement age should be predicated solely on the individual stewardess' continued ability to perform the duties of the position at the level of performance required by each airline company for its stewardesses.

(3) On the basis of the evidence before me as Investigating Commissioner, I do not find that, under the New York State Law Against Discrimination, there is support for a claim that a *bona fide* occupational qualification based on age for continued employment properly applies to the airline stewardess position on an industrywide basis.

He later filed a separate report on April 20, 1966 in connection with this claimant's complaint in which he concluded:

"Accordingly, based on the evidence before me, I find probable cause in the above-entitled case and will now go forward with the further procedures authorized by the Law Against Discrimination."

On July 28, 1966, the Investigating Commissioner filed a direction for the issuance of a notice of hearing to be held before three members of the Commission on the claimant's complaint and the respondent's answer thereto, because he did not succeed in eliminating the unlawful, discriminatory practices complained of by the claimant, through the means of conference, conciliation and persuasion.

On the basis of the proceedings held before the Investigating Commissioner appointed by the Commission for Human Rights and on the basis of his report and recommendations, the attorneys for the claimant made this application to reopen and reconsider the decision of the Board. Thereupon a hearing was held before the Board at which claimant and her attorney and representatives of the employer and its attorney and a representative of the Industrial Commissioner appeared and further testimony was taken and the reports of the Investigating Commissioner were submitted in evidence. At this hearing claimant and her attorney conceded that no steps had been taken by her to institute any grievance procedure set forth in the collective bargaining agreement which provides:

ARTICLE 25—GRIEVANCE PROCEDURES

(c) *Grievance—Appeal:*

(1) A stewardess, or group of stewardesses, having a grievance concerning any action of the Company affecting her, may present her grievance in person or through her representative within seven (7) days to the appropriate Manager—Flight or his designee who shall evaluate the grievance and render his decision as soon as possible but not later than seven (7) days following receipt of said grievance.

Since the termination of her job as a stewardess, claimant has been employed as a free-lance script supervisor in theatrical and television productions. She has succeeded in obtaining three engagements in this field.

OPINION

We give full respect and consideration to the report of the Investigating Commissioner of the State Commission for Human Rights. However, such report is not a final determination of the matters concerned in the complaint against the employer.

Section 297 of the Executive Law provides that if the Investigating Commissioner finds probable cause exists to entertain the complaint, the matter is then referred to a panel of three commissioners (from which the Investigating Commissioner is excluded) and formal hearings are held and a determination made as to the existence of the discriminatory practice. Following such decision of the Commission, the aggrieved party may obtain a judicial review of the order of the Commission in the State courts. Since the Commission has not as yet scheduled hearings or rendered its decision on the complaint brought against the employer airline by the claimant and other stewardesses, this matter is still pending before it and consequently reliance cannot be had solely on the report of the Investigating Commissioner. Such report is exploratory and part of the preliminary steps in the procedure provided by the Executive Law. Therefore, the claimant's application to reopen the decision of the Board based upon the report of the Investigating Commissioner is premature.

We hereby incorporate by reference our decision in Appeal Board 118,040 (*Matter of Arnold*) which is made part of this decision with the same force and effect as if fully set forth herein, and from which decision no appeal was taken by the claimant therein. For the reasons set forth therein we adhere to our previous conclusion that the initial determination of the local office be sustained.

It must be emphasized that in the case on appeal, the claimant was not discharged because she reached a specific age. The employer offered to transfer her to several ground jobs and she was given the choice to accept anyone of them or terminate her employment. Claimant first made her choice to accept such transfer, but then withdrew her election and insisted on continuing only as a flight stewardess, even though she knew that the agreement under which she was hired and accepted her employment provided that she would not be permitted to fly after attaining thirty-two years of age.

It is significant that claimant has not invoked the grievance procedure afforded her by the collective bargaining agreement.

Inherent in the procedures followed by the employer pursuant to the collective bargaining agreement is the right and prerogative of management to assign workers to other jobs within their training, experience and competence. We hold that the employer herein afforded claimant the opportunity to continue in its employment at various jobs at the election of claimant and which would carry with them no loss in remuneration or seniority status.

We conclude that claimant voluntarily left her employment without good cause.

DECISION

Claimant's application to reopen and reconsider the decision of the Board filed March 3, 1966 (Appeal Board, 128,115) is granted and the said decision of the Board is rescinded.

The initial determination of the local office disqualifying claimant from receiving benefits effective September 1, 1965, on the ground that she voluntarily left her employment without good cause, is sustained.

The decision of the referee is affirmed.

LOUIS J. NAFTALISON, *Member.*
ISIDORE SCHECHTER, *Member.*
JOHN A. ROGALIN, *Member.*
JAMES R. RHONE, *Member.*
PHILIP F. WEXNER, *Member.*

PREPARED STATEMENT OF ALABAMA LEAGUE OF AGING CITIZENS, INC., MONTGOMERY, ALA.

We want to take this opportunity to urge favorable consideration of the above-numbered Bill. Every step should be taken to make it possible for our senior citizens who want to work and are able to work to do so. Today, a person past 40 often finds it difficult to get work. The problem intensifies with each birthday.

It is especially important in this age of automation when many jobs are being phased out that recognition be given to the reliability, the eagerness to do a good job, and the years of experience which combine to make older people valuable employees. They should have the right to work and the opportunity to work as long as they can contribute to the labor market.

It is our belief and that of my associates that most old people want to be independent as long as their physical capacities make it possible.

When retirement comes, benefits should be available to make their sunset years comfortable and secure.

We urge your favorable consideration of Senate Bill 830.

JOINT PREPARED STATEMENT OF THE AMERICAN LIFE CONVENTION, THE HEALTH INSURANCE ASSOCIATION OF AMERICA, AND THE LIFE INSURANCE ASSOCIATION OF AMERICA

The American Life Convention, the Health Insurance Association of America and the Life Insurance Association of America appreciate this opportunity to express our views with respect to the legislative proposals introduced by Senator Ralph Yarborough (S. 830) and Senator Jacob Javits (S. 788) which would

prohibit arbitrary discrimination in employment on the basis of age. Our Associations have an aggregate membership of 509 companies in the United States and Canada which have in force approximately 93 percent of the life insurance, and 87 percent of the accident and health insurance, written in the United States. These companies also hold 99.9 percent of the reserves of insured pension plans in the United States. These plans cover more than seven million participants or 99.7 percent of those under insured pension plans.

The bills presently under consideration by this Subcommittee would make unlawful age discrimination in employment except where age is a bona fide occupational qualification. S. 830 would also exempt compulsory retirement arrangements. The primary purpose of the bills would be to alleviate the difficulties which many workers over age 45 encounter in finding and maintaining satisfactory employment. We share the interests of the sponsors of this legislation and support the objective of encouraging the employment of older individuals.

This is an age group for whom a number of our member companies have, over a long period of time, developed recruiting programs to specifically attract their talents and experience. In general the results of these efforts have been excellent not only in terms of the interest of the companies, but the interests of the older worker. The stability and judgment of these mature employees are qualities sought by many of our companies. The education and research programs envisioned by the proposed legislation would be constructive and further encourage the employment of older workers. These positive programs appear to represent a most promising approach to reduce the employment difficulties faced by unemployed individuals over age 45.

We are concerned, however, that this proposed legislation goes beyond matters related to the hiring and discharging of older workers and would affect the terms, conditions and privileges of their employment. As presently written the legislation could be disruptive of traditional and legitimate underwriting practices in accident and health insurance, life insurance, and welfare and pension plans. Specifically we suggest that the legislation be amended to make it clear that it would not affect the establishment or operation of the terms or conditions of any bona fide retirement, pension, employee benefit or insurance plan. Similar exemptions have been adopted in most of the states which have laws prohibiting discrimination in employment on the basis of age. A summary of these statutory provisions is attached for your information.

The age of employees is a necessary and important factor in the design and underwriting of all insurance and pension plans. The age at which a worker enters a pension plan affects the cost of providing a given pension benefit because it governs the duration of time over which contributions, including interest, can be accumulated to fund his pension. The age distribution of the covered employees also governs the premium rate of group life insurance just as it does with individual life insurance.

In accident and health insurance the age related cost factors are less substantial but nevertheless real. Demonstrable increases in morbidity inherent with advancing age are partially, but not fully, offset by decreasing maternity benefit costs. A slower rate of recuperation for older individuals also tends to increase costs.

These inherent age-related factors in employee benefit plans have, over the years, let to a variety of practices designed to produce equitable treatment among the various employees and to help stabilize costs whether paid by the employer or employee. In pension plans, contributions by older employees may be increased for those hired after a certain age; normal retirement age may vary with age of entry. Similarly, for employee life insurance plans, benefits are generally reduced after a particular age. Although this is usually related to the normal retirement age it can occur prior to age 65. In group life insurance plans the waiver-of-premium provision for disabled employees is usually effective only for disabilities occurring prior to age 60.

In the accident and health insurance field there are various age-related terms and conditions. For example, since the advent of Medicare, medical and hospital coverage under an employee benefit plan is generally adjusted to the Medicare benefits to which an employee and his spouse becomes entitled.

In brief, virtually all employee benefit plans involve numerous age-related provisions. These provisions vary greatly dependent upon many factors including: the benefits provided, whether the plan is contributory or entirely

financed by the employer, whether the plan is negotiated with a union or unilaterally developed by the employer, whether the plan or portions of it are insured or uninsured, the age structure of the group and the nature of the employment.

These differentiations related to age are accepted practices and procedures. If enacted without appropriate exemptions, the bills under consideration could deter the establishment or continuance of some employee benefit plans due to the uncertainty as to which age-related provisions could be held to be discriminatory. Or alternatively, since age-related differences can be eliminated in either of two ways, cost pressures might lead to less liberal provisions for all.

These problems would be particularly troublesome to the small firm. Moreover, the small firm traditionally lacks the expertise to rearrange its fringe benefits so as to accomodate a new set of government requirements and would therefore seek to avoid the problems by not employing the older workers.

In summary, we believe it is extremely important that employers and labor organizations be allowed to continue to make differentiations based on age in the broad spectrum of employee benefit programs. Without an exemption for pensions and insurance programs, the proposed legislation will tend to be self-defeating and additionally will be disruptive of the fringe benefit programs which are becoming increasingly important each year to the maintenance of income for disabled and retired employees and their dependents and survivors. We urge you to consider the possible undesirable effects that could flow from taking such a step.

As always, our Associations stand ready to assist the Committee or its staff with further information or such other assistance as may be needed.

SUMMARY OF STATUTORY PROVISIONS RE DISCRIMINATION IN EMPLOYMENT BECAUSE OF AGE

Twenty-five jurisdictions have statutes prohibiting discrimination in employment because of age.

A

The New York Law (§ 296, Executive Law) contains language specifically exempting bona fide pension policies or systems and the varying of insurance coverages as follows:

> "But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; or shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age."

The statutes of the following fourteen (14) states contain exemption language similar to that of the New York statute:

California: § 2072, Unemployment Ins. Code.
Connecticut: § 31–126.
Delaware: Title 19, § 712.
Hawaii: § 90A–8.
Idaho: § 44–1602.
Maine: Title 26, § 852.
Maryland: Art. 100, § 79.
Montana: HJR 12, Laws 1961.
Nebraska: § 48–1003.
New Jersey: § 18:25–2.1.
North Dakota: § 34–01–17.
Pennsylvania: Title 43, § 955, Purdon's Stats.
Washington: § 49.44.090.
Wisconsin: § 111.32(5)(c).

B

The statutes of the following three (3) states contain a provision exempting pension or retirement plans:

Indiana: § 40–2327, Burns' Stats.
Louisiana: § 23:893.
Rhode Island: § 28–6–5.

C

The following six (6) jurisdictions have enacted age discrimination statutes with no exemption for pensions or insurance:

Alaska: § 18.80.220.
Colorado: § 80–11–16.
Massachusetts: Chapter 151 B, § 4.
Ohio: § 4101.17.
Oregon: § 659.024.
Puerto Rico: §§ 146–152, Ch. 7, Part I, Title 29.

D

Texas has enacted such a statute applicable to public employees only.

[Connecticut General Statutes, § 31–126]

CHAPTER 563.—FAIR EMPLOYMENT PRACTICES

Sec. 31–126. Unfair employment practices. It shall be an unfair employment practice (a) for an employer, by himself or his agent, except in the case of a bona fide occupational qualification or need, because of the race, color, religious creed, age, national origin or ancestry of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against him in compensation or in terms, conditions or privileges of employment; (b) for any employment agency, except in the case of a bona fide occupational qualification or need, to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, any individual because of his race, color religious creed, age, national origin or ancestry; (c) for a labor organization, because of the race, color, religious creed, age, national origin or ancestry of any individual to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless such action is based on a bona fide occupational qualification; (d) for any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any unfair employment practice or because he has filed a complaint or testified or assisted in any proceeding under section 31–127; (e) for any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts herein declared to be unfair employment practices or to attempt to do so; (f) for any employer, employment agency, labor organization or person, except in the case of a bona fide occupational qualification or need, to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against individuals because of their race, color, religious creed, age, national origin or ancestry. The provisions of this section *as to age* shall not apply to (1) termination of employment where the employee is thereupon entitled to benefits under the terms or conditions of any bona fide retirement or pension plan or collective bargaining agreement between the employer and a bona fide labor organization, (2) operation of the terms or conditions of any bona fide retirement or pension plan, (3) operation of the terms or conditions of any bona fide group or employee insurance plan or (4) operation of any bona fide apprenticeship system or plan. (1963, P.A. 261.)

[Delaware Code, Title 19, §§ 710, 712]

§ 710. Unlawful discriminatory practices

It shall be unlawful employment practice or unlawful discrimination, as the case may be,

(a) for an employer or employment agency to refuse to hire, employ or license, or to bar or discharge from employment, any individual because of his race, creed, color or national origin, or because such individual is between 45 and 65 years of age;

(b) for an employer or employment agency to discriminate against any individual in compensation or in the terms, conditions or privileges of employment because of race, creed, color or national origin, or because such individual is between 45 and 65 years of age;

(c) for any employer or employment agency to print, circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination, unless based on a bona fide occupational qualification;

(d) for any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employers or employees because of race, creed, color or national origin, or because any such person, member, employer or employee is between the ages of 45 and 65 years;

(e) for any employer, labor organization or employment agency to discharge, expel, penalize or otherwise discriminate against any person because he has opposed any practice forbidden by this subchapter or because he has filed a complaint, testified or assisted in any proceeding respecting the employment practices and discrimination prohibited under this subchapter;

(f) for any person, whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the practices forbidden by the act, or to attempt to do so. Added 52 Del. Laws, Ch. 337, § 1, eff. July 9, 1960.

§ 712. Preservation of employment rights, practices and benefits

Nothing contained in this subchapter shall be construed to conflict with the laws relating to child and female labor, nor to prohibit the establishment and maintenance of bona fide occupational qualifications, nor to prevent the termination or change of the employment of any person who is unable to perform his duties, nor to interfere with the operation of the terms or conditions of any bona fide retirement, pension, employee benefit or insurance plan. Added 52 Del. Laws, Ch. 337, § 3, eff. July 9, 1960.

[California Unemployment Ins. Code. § 2072]

§ 2072. Prohibited acts; rejection or termination of employment; physical and medical examinations; promotions

It is unlawful for an employer to refuse to hire or employ; or to discharge, dismiss, reduce, suspend, or demote any individual between the ages of 40 and 64 solely on the ground of age, except in cases where the law compels or provides for such action. This section shall not be construed to make unlawful the rejection or termination of employment where the individual applicant or employee failed to meet bona fide requirements for the job or position sought or held, or to affect bona fide retirement or pension programs; nor shall this section preclude such physical and medical examinations of applicants and employees as an employer may make or have made to determine fitness for the job or position sought or held.

Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities and trade schools shall not, in and of themselves, constitute a violation of this chapter.

This section shall not limit the right of an employer, employment agency, or labor union to select or refer the better qualified person from among all applicants for a job. The burden of proving a violation of this section shall be upon the person or persons claiming that the violation occurred. (Added Stats. 1961, c. 1623, p. 3518, § 1.)

[Hawaii 1965 Supplement, §§ 90A–1—90A–A–9]

CHAPTER 90A—EMPLOYMENT PRACTICES

PART I. DISCRIMINATORY PRACTICES

[§ 90A–1.] Discriminatory practices made unlawful; offenses defined. It shall be unlawful employment practice or unlawful discrimination:

(a) For an employer to refuse to hire or employ or to bar or discharge from employment, any individual because of his race, sex, age, religion, color or ancestry, provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question;

(b) For an employer to discriminate against any individual in compensation or in the terms, conditions or privileges of employment because of race, sex, age, religion, color or ancestry;

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

(d) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer or employees because of race, sex, age, religion, color or ancestry;

(e) For any employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practice forbidden by this part or because he has filed a complaint, testified or assisted in any proceeding respecting the employment practices and discrimination prohibited under this part;

(f) For any person whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the practices forbidden by this part, or to attempt to do so. [L. 1963, c. 180, s. 1.]

[§ 90A–1.5.] Definitions. As used herein:

(a) "Person" means one or more individuals, and includes partnerships, associations or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(b) "Employment agency" means any person undertaking to procure employees or opportunities to work.

(c) "Labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(d) "Employer" means any person having one or more persons in his employment, and includes any person acting as an agent of an employer, directly or indirectly.

(e) "Employment" means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered into. [L. 1964, c. 44, s. 2a.]

[§ 90A–2] Enforcement jurisdiction; power of department to prevent unlawful discrimination. The state department of labor and industrial relations, hereinafter referred to as "department", shall have jurisdiction over the subject of employment practices and discrimination made unlawful by this part. When it shall appear to it that an unlawful employment practice or discrimination may have been committed, the department shall make a prompt investigation in connection therewith. If it is determined after such investigation that further action is warranted, the department shall immediately endeavor to eliminate the unlawful employment practice or discrimination complained of by conference, conciliation and persuasion. [L. 1963, c. 180, s. 2.]

[§ 90A–3.] Complaint against unlawful discrimination. Any person claiming to be aggrieved by an alleged unlawful employment practice or discrimination may file with the department a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice or discrimination complained of and which shall set forth the particulars thereof and contain such other information as may be required by the department. The state attorney general may in like manner, make, sign, and file such complaint.

No complaint shall be filed after the expiration of ninety days after the alleged act of unlawful employment practice or discrimination. [L. 1963, c. 180, s. 3.]

[§ 90A–4.] Proceeding on complaint. After the filing of any complaint, any complaint, investigation shall be made and an attempt to eliminate such practice or discrimination shall be made as provided in section [90A–2] unless such attempt has previously been made.

In case of failure to eliminate such practice or discrimination, or in advance thereof if in the judgment of the department circumstances warrant, a written accusation, together with a copy of such complaint, as the same may have been amended, shall be issued and served requiring the person, employer, labor organization or employment agency named in such accusation, hereinafter referred to as "respondent", to answer the charges of such accusation at a hearing. [L. 1963, c. 180, s. 4; am. L. 1964, c. 44, s. 2b]

L. 1964 substituted "complaint" for "accusation" in first par.

[§ 90A–5.] Same: hearings under administrative procedure act. Hearings held under the provisions of this part shall be conducted in accordance with the Hawaii administrative procedure act, chapter 6C. [L. 1963, c. 180, s. 5; am. L. 1964, c. 44, s. 2c.]

L. 1964 substituted "act" for "part".

[§ 90A–6.] Same: findings and orders thereon; requirement that order show rights of appeal. If the department finds that a respondent has engaged in any unlawful employment practice of discrimination as defined in this part, the department shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or discrimination and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in any respondent labor organization, as, in the judgment of the department, will effectuate the purpose of this part, and including a requirement for report of the manner of compliance. If the department finds that a respondent has not engaged in any such unlawful employment practice or discrimination, the department shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the accusation as to such respondent. A copy of its order shall be delivered in all cases to the attorney general, and such other public officers as the department deems proper.

Any other issued by the department shall have printed on its face references to the provisions of the Hawaii administrative procedure act which prescribe the rights of appeal of any party to the proceeding to whose position the order is adverse. [L. 1963, c. 180, s. 6; am. L. 1964, c. 44, s. 2c.]

L. 1964 substituted "act" for "part".

[§ 90A–7.] Rules and regulations. The department shall make such rules and regulations, not inconsistent with this part as in the judgment of the department seem appropriate for the carrying out of the provisions of this part and for the efficient administration thereof. [L. 1963, c. 180, s. 7.]

[§ 90A–8.] Exceptions. Nothing contained in this part shall be deemed to:

(a) repeal or affect any law or ordinance or government rule or regulation having the force and effect of law which prohibits, restricts or controls the employment of minors;

(b) prohibit or prevent the establishment and maintenance of bona fide occupational qualifications;

(c) prohibit or prevent the termination of or change the employment of any person who is unable to perform his duties;

(d) affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit or insurance plan;

(e) prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained;

(f) conflict with or affect the application of security regulations in employment established by the United States or the State of Hawaii. [L. 1963, c. 180, s. 8; am. L. 1964 c. 44, s. 2d.]

L. 1964 amended section generally.

[§ 90A–9.] Penalties. Whoever shall willfully resist, prevent, impede or interfere with the department or any of its agents or representatives in the performance of duties pursuant to this part, or who shall in any manner willfully violate an order of the department, shall be fined not more than $200 for the first offense and for the second and any subsequent offense, shall be fined not more than $500, or imprisoned for not more than ninety days, or both. [L. 1963, c. 180, s. 9.]

[Idaho Code, § 44–1602]

44–1602. Unlawful employment practice—Exceptions—Employee over 60—Age discrimination in employment prohibited.—It shall be an unlawful employment practice, except where based upon a bona fide occupational qualification, or retirement or pension plan, or upon applicable security regulations established

by the United States or the state of Idaho, and except where the employee is 60 years of age or older, for any employer because of the age of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required. [1965, ch. 154, § 2, p. 299.]

[Maine Revised Statutes, § 852]

§ 852. Unlawful employment practices

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of Maine, for any employer because of the race, color, religious creed, ancestry, age or national origin of any individual to refuse to hire or employ, or to bar or to discharge from employment such individuals, or to otherwise discriminate againt such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required. This section shall not apply to:

1. Termination. Termination of employment because of the terms or conditions in any bona fide retirement or pension plan;

2. Retirement plan. Operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement;

3. Insurance plan. Operation of the terms or conditions of any bona fide group or employee insurance plan.

[Maryland 1964 Cumulative Supplement, Art. 100, §§ 78–79]

DISCRIMINATION

§ 78. Discrimination because of age.

(a) It is harmful employment practice:

(b) For an employer, because of the age of any person, to refuse to hire or employ or to bar or discharge the person from employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment, because of his age, unless based upon a bona fide occupational quailification.

(c) For an employer or employment agency to print or circulate, or cause to be printed or circulated, any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which directly or directly, expresses any limitation, specification, or discrimination as to age, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification. (1964, ch. 186.)

§ 79. Definitions.

(a) For the purposes of this subtitle,

(b) The term "employer" does not include a club exclusively social, or a fraternal, charitable, educational or religious association or corporation, if the club, association or corporation is not organized for private profit or any person, company or corporation engaged in interstate transportation whose employment practices are regulated by federal statute or regulation.

(c) The term "employment agency" includes any person, firm or corporation undertaking to procure employees, or opportunities to work.

(d) The term "age" applies as to any person who is forty years of age or over and not more than sixty-five years of age. However, the use of the term "age" in this subtitle is not (1) to prevent the termination of the employment of any person who is physically unable to perform his duties, or (2) to affect the retirement policy or system of any employer if such policy or system is not merely a subterfuge to evade the purposes of this subtitle, or (3) to preclude the varying of insurance coverages according to an employee's age. (1964, ch. 186.)

[Montana H.J.R. 12, Laws 1961]

Whereas, the legislature of the State of Montana finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is

incompatible with the constitution, deprives the State of Montana of the fullest utilization of its capacities for production, and endangers the general welfare; and

Whereas hiring bias generally against workers over forty (40) years of age deprives the State of Montana of its most important resource of experienced and skilled employees, adds to the number of persons receiving public assistance, tosses away our investment in trained, able people, and deprives older people of the dignity and status of self-support; and

Whereas in the colossal struggle with communism, America cannot afford to arbitrarily diminish its reservoir of skills and knowledge, and to waste it may be fatal to freedom: Now, therefore, be it

Resolved, That the thirty-seventh legislative assembly of the State of Montana hereby declares it to be against the public policy of the State of Montana, and an unfair employment practice, for an employer, by himself or his agent, except in the case of a bona fide occupational qualification or need, because an individual is between the ages of forty (40) and sixty-five (65) years, to arbitrarily refuse to hire or employ, or to bar or to discharge from employment such individual or to discriminate against him in compensation or in terms, conditions or privileges of employment, or to fail or refuse to classify him properly or to refer him for emloyment, or to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against such individual; however, be it further

Resolved, That nothing herein shall be construed to apply to employees or prospective employees who are physically or mentally unable, or otherwise incapacitated, to perform the duties of such employment, or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this resolution, nor shall anything in this resolution be deemed to preclude the varying of insurance coverages according to an employee's age.

[Nebraska Revised Statutes, §§ 48–1002—48–1006]

48–1002. Unjust discrimination in employment; act; definitions. As used in sections 48–1001 to 48–1006, unless context otherwise requires:

(1) Person shall include one or more individuals, partnerships, associations or corporations;

(2) Employer shall mean a person in this state having in his employ one or more individuals, and any person acting in the interest of an employer, directly or indirectly; and

(3) Labor organization shall mean any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment.

48–1003. Unjust discrimination in employment; construction of act; practices not prevented or precluded. The provisions of sections 48-1001 to 48–1006 shall not be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of sections 48–1001 to 48–1006; nor shall the provisions of sections 48–1001 to 48–1006 be deemed to preclude the varying of insurance coverages according to an employee's age.

48–1004. Unjust discrimination in employment; unlawful employment practices; enumerated. (1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to his terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against such individuals, because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive such individual of otherwise lawful employment opportunities, or would limit such employment

opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, or would affect adversely his wages, hours, or employment.

(3) It shall be an unlawful employment practice for any employer or labor organization to discharge, expel or otherwise discriminate against any person, because he opposed any unlawful employment practice specified in this act or has filed a charge, testified, participated, or assisted in any proceeding under sections 48–1001 to 48–1006.

48–1005. Unjust discrimination in employment; violations of act; penalty. Any person who violates any provision of sections 48–1001 to 48–1006 shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined in a sum not to exceed ten dollars.

48–1006. Act Prohibiting Unjust Discrimination in Employment Because of Age; citation. Sections 48–1001 to 48–1006 may be cited as the Act Prohibiting Unjust Discrimination in Employment Because of Age.

[New Jersey Revised Statutes, § 18:25-2.1]

§ 18:25–2.1 General construction

Nothing contained in this act or in the act to which this is a supplement shall be construed to require or authorize any act prohibited by law, nor to conflict with the provisions of chapter 2 (child and female labor) of Title 34 (Labor) of the Revised Statutes, nor to require the employment of any person under the age of 21, nor to prohibit the establishment and maintenance of bona fide occupational qualifications or the establishment and maintenance of apprenticeship requirements based upon a reasonable minimum age nor to prevent the termination or change of the employment of any person who in the opinion of his employer, reasonably arrived at, is unable to perform adequately his duties, nor to preclude discrimination among individuals on the basis of competence, performance, conduct or any other reasonable standard, nor to interfere with the operation of the terms or conditions and administration of any bona fide retirement, pension, employee benefit or insurance plan or program. L. 1962, c. 37, § 8, supplementing chapter 169, Title 18.

[New York Executive Law, § 296]

§ 296. Unlawful discriminatory practices

1. It shall be an unlawful discriminatory practice:

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

(b) For an employment agency to discriminate against any individual because of his age, race, creed, color or national origin, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

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

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

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

1–a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review;

(b) To deny to or withhold from any person because of his race, creed, color or national origin or sex the right to be admitted to or participate in a

guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program:

(c) To discriminate against any person in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color or national origin or sex;

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

2. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color or national origin, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed, color or national origin is unwelcome, objectionable or not acceptable, desired or solicited.

3. It shall be an unlawful discriminatory practice for the owner, lessee, sublessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

(a) To refuse to rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color or national origin of such person or persons.

(b) To discriminate against any person because of his race, creed, color or national origin in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilites or services in connection therewith.

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color or national origin of a person seeking to rent or lease any publicly-assisted housing accommodation.

(d) Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

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

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

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

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

But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy

or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age.

[North Dakota Century Code, § 34–01–17]

34–01–17. Unlawful to discriminate because of age.—No person, persons, firm, association or corporation, carrying on or conducting within this state, any business requiring the employment of labor, shall refuse to hire, employ, or license, or bar or discharge from employment, any individual between the ages of forty and sixty-five years, solely and only upon the ground of age; when the reasonable demands of the position do not require such an age distinction; and, provided that such individual is well versed in the line of business carried on by such person, persons, firm, association or corporation, and is qualified physically, mentally and by training and experience to satisfactorily perform the labor assigned to him or for which he applies. Nothing herein shall affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of that section. Any person or corporation who violates any of the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not to exceed twenty-five dollars or by imprisonment in the county jail for not to exceed one day or by both such fine and imprisonment.

[Purdon's Pennsylvania Statutes, § 955, Title 43]

§ 955. Unlawful discriminatory practices

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania.

(a) For any employer because of the race, color, religious creed, ancestry, age or national origin of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required. The provision of this paragraph shall not apply, to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or employe insurance plan.

(b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to

(1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, religious creed, ancestry or national origin of any applicant for employment or membership.

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, religious creed, ancestry, age or national origin.

(3) Deny or limit, through a quota system, employment or membership because of race, color, religious creed, ancestry, age, national origin or place of birth.

(4) Substantially confine or limit recruitment or hiring of individuals with intent to circumvent the spirit and purpose of this act, to any employment agency, employment service, labor organization, training school or training center or any other employe-referring source which services individuals who are predominantly of the same race, color, religious creed, ancestry, age or national origin.

(c) For any labor organization because of the race, color, religious creed, ancestry, age, or national origin of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

(d) For any employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has

opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

(c) For any person, whether or not an employer, employment agency, labor organization or employe, to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be unlawful discriminatory practice.

(f) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, color, religious creed, ancestry, age or national origin.

(g) For any individual seeking employment to publish or cause to be published any advertisement which specifies or in any manner expresses his race, color, religious creed, ancestry, age or national origin, or in any manner expresses a limitation or preference as to the race, color, religious creed, ancestry, age or national origin of any prospective employer.

[Washington Revised Code, § 49.44.090]

CHAPTER 49.44—VIOLATIONS—PROHIBITED PRACTICES

49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions. It shall be an unfair practice:

(1) For an employer or licensing agency, because an individual is between the ages of forty and sixty-five, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: *Provided*, That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the director of labor and industries through the division of industrial relations.

(2) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination respecting individuals between the ages of forty and sixty-five; *Provided*, That nothing herein shall forbid a requirement of disclosure of birth date upon any form of application for employment or by the production of a birth certificate or other sufficient evidence of the applicant's true age.

Nothing contained in this section or in RCW 49.60.180 as to age shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; not shall anything in this section or in RCW 49.60.180 be deemed to preclude the varying of insurance coverages according to an employee's age; nor shall this section be construed as applying to any state, county, or city law enforcement agencies, or as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors. [1961 c 100 § 5.]

Element of age not to affect apprenticeship agreements: RCW 49.04.910.
Unfair practices, discrimination because of age: RCW 49.60.180–49.60.200.

[Wisconsin Statutes, §§ 111.31–111.32]

SUBCHAPTER II. FAIR EMPLOYMENT

111.31 Declaration of policy

(1) The practice of denying employment and other opportunities to, and discriminating against, properly qualified persons by reason of their age, race, creed, color, *handicap*, sex, national origin or ancestry, is likely to foment domestic strife and unrest, and substantially and adversely affect the general welfare of a state by depriving it of the fullest utilization of its capacities for production.

The denial by some employers and labor unions of employment opportunities to such persons solely because of their age, race, creed, color, *handicap*, sex, national origin or ancestry, and discrimination against them in employment, tends to deprive the victims of the earnings which are necessary to maintain a just an ddecent standard of living, thereby committing grave injury to them.

(2) It is believed by many students of the problem that protection by law of the rights of all people to obtain gainful employment, and other privileges free from discrimination because of age, race, creed, color, *handicap*, sex, national origin or ancestry, would remove certain recognized sources of strife and unrest, and encourage the full utilization of the productive resources of the state to the benefit of the state, the family and to all the people of the state.

(3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified persons regardless of their age, race, creed, color, *handicap*, sex, national origin or ancestry. * * * This subchapter shall be liberally construed for the accomplishment of this purpose.

111.32 Definitions

(3) (a) The term "employer" shall not include * * * a social club, fraternal or religious association * * * not organized for private profit.

(5) (a) * * * "Discrimination" means discrimination because of age, race, color, sex, creed, national origin or ancestry, by an employer individually or in concert with others against any employee or any applicant for employment, in regard to his hire, tenure or term, condition or privilege of employment and by any labor organization against any member or applicant for membership, and also includes discrimination on any of said grounds in the fields of housing, recreation, education, health and social welfare *as related to a condition or privilege of employment.*

(b) It is discrimination because of age:

1. For an employer, labor organization, or person in the fields of housing, recreation, education, health and social welfare, or any licensing agency, because an individual is between the ages of 40 and 65, to refuse to hire, employ, admit or license, or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment;

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

3. For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any discriminatory practices under this section or because he has made a complaint, testified or assisted in any proceeding under this section.

(c) Nothing in this subsection shall be construed to prevent termination of the employment of any person physically or otherwise unable to perform his duties, not to affect any retirement policy or system of any employer where such policy or system is not a subterfuge to evade the purposes of this subsection, nor to preclude the varying of insurance coverage according to an employee's age; nor to prevent the exercise of an age distinction with respect to employment of persons in capacities in which the knowledge and experience to be gained might reasonably be expected to aid in the development of capabilities required for future advancement to supervisory, managerial, professional or executive positions.

(5) (d) *Exceptions in sex discrimination.* The prohibition against discrimination because of sex does not apply to the exclusive employment of one sex in positions where the nature of the work or working conditions provide valid reasons for hiring only men or women, or to a differential in pay between employes which is based in good faith on any factor other than sex.

(5) (e) The prohibition against discrimination because of age shall not apply to hazardous occupations including, without limitation because of enumeration, law enforcement or fire fighting.

(5) (f) The prohibition against discrimination because of handicap does not apply to failure of an employer to employ or to retain as an employe any person who because of a handicap is physically or otherwise unable to efficiently perform, at the standards set by the employer, the duties required in that job. An employer's exclusion of a handicapped employe from life or disability insurance coverage, or reasonable restriction of such coverage, shall not constitute discrimination.

[Burns' Indiana Statutes, §§ 40–2318—40–2328]

40–2318. Age discrimination—Definitions.—For the purpose of this act [§§ 40–2318—40–2327]; "discrimination" shall mean dismissed from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty [40] years and has not attained the age of sixty five [65] years;

"person" shall mean and include an individual, partnership, corporation, or association, and

"employer shall mean and include any person in this state employing one or more individuals, labor organizations, the state and all political subdivisions, boards, departments and commissions thereof, but does not include religious, charitable, fraternal, social, educational or sectarian corporations or associations not organized for private profit, other than labor organizations and nonsectarian corporations or orgainizations engaged in social service work. [Acts 1965, ch. 368, § 1, p. 1154.]

40–2319. Dismissal—Refusal to employ.—It is declared to be an unfair employment practice and to be against public policy to dismiss from employment, or to refuse to employ or rehire, any person solely because of his age if such person has attained the age of forty [40] years and has not attained the age of sixty-five [65] years. [Acts 1965, ch. 368, § 2, p. 1154.]

40–2320. Discrimination by labor organizations.—It is hereby declared to be an unfair employment practice for any labor organization to deny full and equal membership rights to any applicant for membership or to fail or refuse to classify properly or refer for employment any member solely because of the age of such applicant or member if such person has attained the age of forty [40] years and has not attained the age of sixty-five [65] years. [Acts 1965, ch. 368, § 3, p. 1154.]

40–2321. Discriminatory contracts void.—Any provision in any contract, agreement or understanding entered into on or after October 1, 1965, which shall prevent or tend to prevent the employment of any person solely because of his age, who has attained the age of forty [40] years and has not attained the age of sixty-five [65] years shall be null and void. [Acts 1965, ch. 368. § 4, p. 1154.]

40–2322. Investigative powers of commissioner.—The commissioner of labor shall investigate all complaints of discrimination, and for such purpose the commissioner shall have full power and authority:

(1) to receive, investigate and pass upon charges of discrimination against any person employed within the state; and

(2) to enter any place of business or employment within the state for the purpose of examination and making a transcript of records in any way appertaining to or having a bearing upon the question of the age of any person so employed. [Acts 1965, ch. 368, § 5, p. 1154.]

40–2323. Employers' records—Investigation—Conciliation—Complaint—Hearing.—Every person shall keep true and accurate records of the ages of all persons employed by him as reported by each employee, and shall upon demand furnish to the commissioner of labor, or his authorized representative, a true copy of any such record, verified upon oath. Such record shall be open to investigation by the commissioner at any reasonable time. If on all the testimony taken, the commissioner of labor shall make a preliminary determination that the employer has engaged in or is engaging in unfair employment practices the commissioner shall endeavor to eliminate such unfair employment practices by informal methods of conference, conciliation and persuasion. If voluntary compliance cannot be obtained, the commissioner of labor shall be empowered to issue a complaint stating the charges and giving not less than ten [10] days' notice of hearing before the commissioner of labor at a place therein fixed. Any complaint issued pursuant to this section must be so issued within four [4] months after the alleged unfair employment practices were committed. The

respondent shall have the right to file an answer to such complaint and may appear at such hearing with or without counsel to present evidence and to examine and cross-examine witnesses. Upon the completion of testimony at such hearing, if determination is made that unfair practices were committed, the commissioner of labor shall state his findings of fact and, if satisfied therewith, may issue his finding that the employer has ceased to engage in unfair employment practices. [Acts 1965, ch. 368, § 6, p. 1154.]

40–2324. Written findings of fact by commissioner.—If the commissioner of labor shall find no probable cause exists to substantiate the charges, or, if upon all the evidence, he shall find that an employer has not engaged in unfair employment practices, the commissioner of labor shall state in writing his findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such employer. [Acts 1965, ch. 368, § 7, p. 1154.]

40–2325. Discharge for furnishing evidence unfair.—It shall be an unfair employment practice for any employer to discharge an employee because he has furnished evidence in connection with a complaint under this act [§§ 40–2318—40–2327]. [Acts 1965, ch. 368, § 8, p. 1154.]

40–2326. Proceedings not publicized—Facts published.—No publicity shall be given to any proceeding before the commissioner of labor, either by the commissioner of labor or any employee thereof, provided that the commissioner may publish the facts in the case of any complaint upon which a determination has been made. [Acts 1965, ch. 368, § 9, p. 1154.]

40–2327. Employees excepted.—These provisions shall not apply to a person employed in private domestic service or service as a farm laborer nor to a person who is qualified for benefits under the terms or conditions of an employer retirement or pension plan or system. [Acts 1965, ch. 368, § 10, p. 1154.]

40–2328. Effect of other laws—Certain rights unaffected.—Any law inconsistent with any provision hereof shall not apply. Nothing contained herein shall be deemed to repeal any of the provisions of any law of this state relating to discrimination because of age, race or color, religion, or country of ancestral origin. Nothing herein shall be deemed to limit, restrict of affect the freedom of any employer in regard to (a) fixing compulsory retirement requirements for any class of employees at an age or ages less than sixty-five [65] years; (b) fixing eligibility requirements for participation in, or enjoyment by employees of, benefits under any annuity plan or pension or retirement plan on the basis that any employee may be excluded from eligibility therefor who, at the time he would otherwise become eligible for such benefits, is older than the age fixed in such eligibility requirements or (c) keeping age records for any such purposes. [Acts 1965, ch. 368, § 11, p. 1154.]

[Louisiana Revised Statutes, § 893, Title 23]

§ 893. Age limits for employment; fixing or by employers prohibited; penalty

It is unlawful for any person employing labor in Louisiana, and having twenty-five or more employees, to adopt any rule for the discharge of said employees and for the rejection of applications for employment of new employees upon any age limit under fifty years, except where the employer has adopted a system of old age pension for the pensioning of employees with periods of service no greater than thirty-five years and with pension allowances of no less than forty-five dollars per quarter.

Whoever violates the provisions of this Section shall be fined no more than five hundred dollars or imprisoned for not more than ninety days, or both.

[Rhode Island General Laws, §§ 28–6–1—28–6–5]

28–6–1. Age discrimination—Definition of terms.—For the purposes of §§ 28–6–1 to 28–6–16, inclusive:

"Discrimination," shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years, unless based upon a bona fide occupational qualification;

"Person" shall mean and include an individual, partnership, corporation or an association, as the case may be;

"Employer" shall mean and include any person in this state employing one (1) or more individuals; labor organizations; the state; and all political subdivisions, boards, departments and commissions thereof, but does not include a religious, charitable, fraternal, social, educational, or sectarian corporation or association not organized for private profit, other than labor organizations and nonsectarian corporations or organizations engaged in social service work;

"Employment agency" shall mean and include any person undertaking to procure employees for opportunities to work.

Words employing the masculine gender shall mean and include the feminine gender, as the case may be.

History of Section.
P.L. 1956, ch. 3795, § 1; P.L. 1962, ch. 96, § 1.

28–6–2. Age discrimination by employers and/or employment agencies.—(a) It is declared to be an unlawful employment practice and to be against public policy for an employer, by himself or by his agent, to dismiss from employment, or to refuse to employ or rehire any person because of his age if such person has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years, unless based upon a bona fide occupational qualification;

(b) It is declared to be an unlawful employment practice and against public policy, for any employment agency, except in the case of a bona-fide occupational qualification, to fail or refuse to classify properly or to fail or refuse to refer for employment, or otherwise to discriminate against any individual because of his age if such person has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years.

(c) It is declared to be an unlawful employment practice and against public policy for any employer or employment agency to print or circulate, or cause to be printed or circulated, any statement, advertisement or publication, and to use any form or application for employment, or to make any inquiry in connection with employment, which expresses directly or indirectly, any intent to dismiss from employment, or to refuse to employ or rehire any person because of his age if such person has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years, unless based upon a bona fide occupational qualification.

28–6–3. Age discrimination by labor organizations.—It is hereby declared to be an unlawful employment practice for any labor organization to deny full and equal membership rights to any applicant for membership or to fail or refuse to classify properly or refer for employment any member because of the age of such applicant or member if such person has attained the age of forty-five (45) and has not attained the age of sixty-five (65) unless based on a bona fide occupational qualification.

History of Section.
P.L. 1956, ch. 3795, § 3.

28–6–4. Discriminatory contracts void—Any provision in any contract agreement or understanding entered into on or after October 1, 1956, which shall prevent or tend to prevent the employment of any person because of his age who has attained the age of forty-five (45) years and has not attained the age of sixty-five (65) years shall be null and void, unless based on a bona fide occupational qualification.

History of Section.
P.L. 1956, ch. 3795, § 4.

28–6–5. Employment exempt.—The provisions of §§ 28–6–1 to 28–6–16, inclusive, shall not apply to persons employed in private domestic service or service as a farm laborer, nor to a person who is qualified for benefits under the terms or conditions of an employer retirement or pension plan or system.

[Alaska Statutes § 18.80.220]

Sec. 18.80.220. Unlawful employment practices.

It is unlawful for:

(1) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color or national origin, or because of his age when the reasonable demands of the position do not require age distinction;

(2) a labor organization, because of a person's age, race, religion, color or national origin, to exclude or to expel him from its membership, or to discriminate in any way against one of its members or an employer or an employee;

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

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because he has opposed any practices forbidden under §§ 200—280 of this chapter or because he has filed a complaint, testified or assisted in a proceeding under this chapter; or

(5) an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business or type of work in the same locality. (§ 6 ch 117 SLA 1965)

[Colorado Statutes, § 80–11–16]

80–11–16. Age of employee not ground for discharge.—No person, firm, association or corporation, carrying on or conducting, within this state, any business requiring the employment of labor, shall discharge any individual between the ages of eighteen and sixty years, solely and only upon the ground of age; provided that such individual is well versed in the line of business carried on by such person, persons, firm, association or corporation, and is qualified physically, mentally and by training and experience, to satisfactorily perform and does satisfactorily perform the labor assigned to him, or for which he applies.

[Massachusetts General Laws, Ch. 151 B, § 4]

§ 4. Unlawful Employment Practices.

It shall be an unlawful employment practice:

1. For an employer, by himself or his agent, because of the race, color, religious creed, national origin, age, or ancestry of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.

2. For a labor organization, because of the race, color, religious creed, national origin, age, or ancestry of any individual to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless based upon a bona fide occupational qualification.

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

3A. For any person engaged in the insurance or bonding business, or his agent, to make any inquiry or record of any person seeking a bond or surety bond conditioned upon the faithful performance of his duties or to use any form of application, in connection with the furnishing of such bond, which seeks information relative to the race, color, religious creed, national origin or ancestry of the person to be bonded.

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

5. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.

Notwithstanding the foregoing provisions of this section, it shall not be an unlawful employment practice for any person, employer, labor organization or employment agency to inquire of an applicant for employment or membership as to whether or not he or she is a veteran or a citizen. (1946, 368 § 4; 1947 424; 1950, 697, §§ 6–8; 1955, 274.)

[Ohio Revised Code, § 4101.17]

4101.17 Interview with, or discharge of, person in certain age group.

No employer shall refuse opportunity of interview for employment of applicants or discharge without just cause any employee between the ages of forty and sixty-five who are physically able to perform the duties and otherwise meet the established requirements of the industry and laws pertaining to the relationship between employer and employee. (120 v 1803. Eff. 8–28–61)

[Oregon Revised Statutes, §§ 659.015–659.026]

659.015 Declaration of policy against discrimination in employment because of age. It is declared to be the public policy of Oregon that available manpower should be utilized to the fullest extent possible. To this end the abilities of an individual, and not any arbitrary standards which discriminate against an individual solely because of his age, should be the measure of the individual's fitness and qualification for employment. [1959 c.547 § 2 and 1959 c.689 § 2]

659.020 Declaration of policy against discrimination; opportunity to obtain employment without discrimination recognized as a civil right. (1) It is declared to be the public policy of Oregon that practices of discrimination against any of its inhabitants because of race, religion, color or national origin are a matter of state concern and that such discrimination threatens not only the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

(2) The opportunity to obtain employment without discrimination because of race, religion, color or national origin hereby is recognized as and declared to be a civil right.

659.022 Purpose of ORS 659.010 to 659.110. The purpose of ORS 659.010 to 659.110 is to encourage the fullest utilization of available manpower by removing arbitrary standards of race, religion, color, national origin or age as a barrier to employment of the inhabitants of this state; to insure human dignity of all people within this state, and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of discrimination of any kind based on race, religion, color or national origin. To accomplish this purpose the Legislative Assembly intends by ORS 659.010 to 659.110 to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of discrimination because of race, religion, color or national origin are based.

(2) An adequate remedy for persons aggrieved by certain acts of discrimination because of race, religion, color or national origin or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of discrimination through a procedure involving investigation, conference, conciliation and persuasion; to encourage the use in good faith of such machinery by all parties to a complaint of discrimination; and to discourage unilateral action which makes moot the outcome of final administrative or judicial determination on the merits of such a complaint. [1963 c.622 § 2]

659.024 Unlawful employment practice for private employer to discriminate because of age. (1) It is an unlawful employment practice for an employer to refuse to hire or employ or to bar, discharge, dismiss, reduce, suspend or demote any individual because of his age if the individual is 25 years of age or older and under 65 years of age; but the selection of employees on the basis of relevant educational or experience requirements or relevant physical requirements, including but not limited to strength, dexterity, agility and endurance, is not an unlawful employment practice.

(2) It is an unlawful employment practice for any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to age of any person who is 25 years of age or older and under 65 years of age, or any intent to make such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(3) "Employer," as used in this section, means any person who has six or more persons in his employ, but does not include the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities.

(4) The provisions of this section apply to an apprentice under ORS chapter 660, but the selection of an apprentice on the basis of the ability to complete the required apprenticeship training and the industry average period of employment thereafter before attaining the age of 65 years is not an unlawful employment practice. [1959 c.547 § 3; 1963 c.622 § 5; 1965 c.575 § 1]

659.026 Unlawful employment practice for public employer to discriminate because of age. (1) It is an unlawful employment practice for a public employer or any person acting for a public employer to disqualify or discriminate against any individual in any civil service entrance, appointment or promotion examination or rating, or to refuse to hire, employ or reemploy or to bar, discharge, dismiss, reduce, suspend or demote any individual because of his age if the individual is 25 years of age or older and under 65 years of age; but the compulsory retirement of employes required by law at an age under 65 years and the selection of employes on the basis of relevant educational or experience requirements or relevant physical requirements, including but not limited to, strength, dexterity, agility and endurance, are not unlawful employment practices.

(2) The complaint and appeal procedure provided under this chapter shall not apply to an employe, against whom an unlawful employment practice described in subsection (1) of this section has allegedly been practiced, to whom there applies a procedure for administrative review of the practice as provided under any other statute governing employment by a public employer.

(3) "Public employer," as used in this section, includes the state, counties, cities, districts, authorities, public corporations and entities and any of their instrumentalities organized and existing under charter or law, which employ one or more persons, except the Oregon National Guard, the Oregon unorganized militia and the Oregon Naval Militia.

(4) The provisions of this Act do not apply to:

(a) Employes of institutions under the Oregon State Board of Control, including but not limited to, the Oregon State Penitentiary and of the Oregon State Correctional Institution, whose duties, as assigned by the warden or superintendent, include the custody of persons committed to the custody of or transferred to the institution.

(b) Employes of the Department of State Police who are classified as police officers by the Superintendent of State Police.

(c) Employes of the Oregon Liquor Control Commission who are classified as enforcement officers by the administrator of the commission.

(d) Employes of the State Department of Agriculture who are classified as enforcement officers by the director of the department.

(e) Sheriffs and those deputy sheriffs whose duties, as classified by the sheriff, are the regular duties of police officers.

(f) Police chiefs and policemen of a city who are classified as police officers by the council or other governing body of the city.

(g) Fire chiefs and firemen of a political subdivision of this state who are classified as fire fighters by the governing body of the political subdivision.

(h) Weighmasters employed by the State Highway Department.

[Puerto Rico Fair Employment Practice Act]

TITLE 29, PART I, CHAPTER 7

§ 146. Any employer who discharges, suspends or demotes his employee, or reduces the salary of, or imposes or attempts to impose more burdensome working conditions on, his employee, or who refuses to employ or re-employ any person by reason of advanced age, as the latter is hereinafter defined, or

by reason of the race, color, creed, birth or social position of the employee or applicant for employment: (a) shall incur civil liability (1) for a sum equal to twice the amount of the damages sustained by the employee or applicant for employment on account of such action; (2) or for a sum not less than one hundred (100) dollars nor more than one thousand (1,000) dollars, in the discretion of the Court, if no pecuniary damages are determinable; (3) or twice the amount of the damages sustained if it were under the sum of one hundred (100) dollars; and, (b) he shall, also, be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not less than one hundred (100) dollars nor more than five hundred (500) dollars, or by imprisonment in jail for a term not less than thirty (30) days nor more than ninety (90) days, or by both penalties, in the discretion of the Court.

The court may, in the judgment passed on civil actions brought under the preceding provisions, direct the employer to reinstate the employee in his former employ and to stop and desist from the act involved.

[Vernon's Texas Civil Statutes, § 6252–14]

Art. 6252–14. Denial of right to work because of age

Section 1. It is hereby declared to be the policy of the State of Texas that no person shall be denied the right to work, to earn a living, and to support himself and his family solely because of age.

Sec. 2. No agency, board, commission, department, or institution of the government of the State of Texas, nor any political subdivision of the State of Texas, shall establish a maximum age under sixty-five (65) years nor a minimum age over twenty-one (21) years for employment, nor shall any person who is a citizen of this State be denied employment by any such agency, board, commission, department or institution or any political subdivision of the State of Texas solely because of age; provided, however, nothing in this Act shall be construed to prevent the imposition of minimum and maximum age restrictions for law enforcement peace officers or for fire-fighters; provided, further, that the provisions of this Act shall not apply to institutions of higher education with established retirement programs. Acts 1963, 58th Leg., p. 857, ch. 827.

PREPARED STATEMENT OF AMERICAN TELEPHONE & TELEGRAPH CO.

The American Telephone and Telegraph Company makes this statement on behalf of the Bell System.

First, the Bell System does not oppose the objective of this bill that there should not be discrimination on account of age practiced by employers, labor unions or employment agencies. Indeed the Bell System companies have complied with the laws of the many States dealing with discrimination in employment on account of age and, to the Company's knowledge, none of the System companies has ever been held in violation of any of those laws.

In its present form, S. 830, even though not so intended, could adversely affect the pension and retirement plans of the Bell System companies and those of many other employers in the country.

The Bell System consists principally of the American Telephone and Telegraph Company, 21 regional telephone operating companies, Western Electric Company and Bell Telephone Laboratories. Each company has a separate pension plan and separate funds separately administered. These plans cover approximately 800,000 active employees and about 95,000 employees retired on service pensions. There are 30 banks as trustees. Since the plans are substantially identical, a description of certain of the features of the American Telephone and Telegraph Company plan will suffice.

Although the Plan was established by Company action, since 1947 union agreements have contained provisions relating to the Plan. The union can and does submit grievances of individual employees as to treatment under the Plan, and it bargains with the Company on changes in the Plan.

The Company has had in effect since July 1, 1930 a rule requiring the retirement at age 65 of all officers or other employees, whether or not eligible for pension. Exceptions require the approval of the Board of Directors in each case, and are almost never made. No exception has even been made in the case of an officer.

Retirement with an undiscounted pension at an employee's request, or in the discretion of the Employees' Benefit Committee is provided at the following minimum wages and terms of service:

Minimum service	Minimum age	
	Men	Women
15 years	65	65
20 years	60	55

Undiscounted service pensions are also available at the following minimum ages and terms of service but require the approval of the Employees' Benefit Committee:

Minimum service	Minimum age	
	Men	Women
25 years	55	50
30 years	None	None

All of the above are service pensions payable for life from the Pension Fund. Once granted, they cannot be revoked.

The annual pension to which an employee is entitled is an amount equal to 1% of his average annual pay during the 5 years next preceding retirement (or the 5 consecutive years in which he received higher pay), multiplied by the number of years of service, subject to adjustment, as provided in the Plan, on account of specified minimum pension levels and Social Security Benefits.

Minimum pension amounts are:

	Before age 65	From age 65 on
Service 20 to 29 years	$85	$115
Service 30 to 39 years	85	120
Service 40 years and over	85	125

The bill under consideration makes it unlawful to "discriminate against any individual with respect to his compensation, terms or conditions or privileges of employment because of such individual's age." (Section 4(a)(1)). "Age" is at least 45 but less than 65 but these limits can be varied up or down by the Secretary as necessary.

As noted, Bell System plans specify service pension eligibility on a formula in which both service and age are determinative. This is also typical of a great many other pension plans. Also the amount of the minimum pension varies with the retired employee's age and service and this is not uncommon. The only provision in the bill relating directly to retirement plans is Section 4(f)(2) which permits employers "to separate involuntarily an employee under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this Act." We have no quarrel with this provision but submit it does not prevent the adverse effects this legislation could otherwise be interpreted to have on pension and retirement systems.

For example, if persons age 60 are entitled to retire on an immediate pension at their own request after 20 years of service, could not it be held a discrimination because of age if employees 45 with 20 years' service are not given the same privilege? Also, should the Secretary increase the limit to 65 or above, claims to immediate pension could be presented by 45-year old employees with as little as 15 years of service since employees with that amount of service are entitled to pensions at age 65.

There is, of course, no way of knowing just how many people would attempt to take advantage of such an interpretation but it can be expected that many capable employees would take abnormally early pensions either to withdraw from the labor market or seek what may appear to be greener pastures. In either case, the cost to the employer would be substantial.

The Company is certain that the Bell System pension plans are well designed to serve its employees and its business. They have been modified and amended over the years to meet the changing requirements of the business and the needs of its employees. They are soundly and properly financed. The companies have an unconditional obligation to pay the pensions under the plans and they are in a position to do so.

It is doubtful that the proposed bill is intended to have the effects outlined here. However, it is felt that an amendment is needed and to that end it is suggested that consideration be given to substituting for subparagraph (2) of Section 4(f) the following:

> "(2) to observe the terms and conditions of a retirement policy or system where such policy or system is not merely a subterfuge to evade the purpose of this Act or to provide varying insurance coverage according to an employee's age."

This language is taken from Section 296, Article 15 of the New York Labor Law which prohibits discrimination in employment on account of age.

Reference might also be made to the declared policy of the Government against age discrimination in employment under federal contracts as expressed in Executive Order 11141 dated February 12, 1964. This order bans discrimination on account of age but excludes retirement plans as well as situations where age is a bona fide occupational qualification.

PREPARED STATEMENT OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (AAR) asks that the railroad industry be excepted from the provisions of S. 830 and S. 788, which would make unlawful, discrimination in employment because of age.

The AAR is an unincorporated, voluntary association of Class I railroads which operate 96 percent of the railroad mileage in the United States, whose revenues amount to 96 percent of railroad revenues in the United States, and whose employees constitute 95 percent of the total number of railroad workers in the United States.

The purpose of this statement is to succinctly set forth the compelling reasons which cause the railroad industry to seek an exemption from age discrimination legislation as embodied in S. 830 and S. 788. Since the railroads' concerns stem basically from considerations which particularly apply to the railroad industry but may or may not be true of other industry segments, the AAR limits its requests for relief of the Committee to an exclusion of the railroads from these particular proposals and age discrimination legislation in general. As the following comments demonstrate, a rail industry exclusion is a matter of over-all public interest, for a statute which would force the railroads to accept older new hires would impair the capacity of the industry to service, now and in the future, the nation's over-all transportation requirements.

There are two fundamental concepts which support these general statements. First, because of a combination of circumstances which will be outlined in more detail subsequently, the rail industry has a work force which is disproportionately over age. To prepare for the demands which are sure to come from all portions of the economy as it expands in virtually every calculable respect, the railroads are attempting to remedy this age imbalance. S. 830 and S. 788 would nullify these remedial efforts by increasing the percentage of older workers in the total work force.

Since it may not be readily apparent why an age imbalance factor is undesirable, a brief explanation at this introductory stage may be helpful. With a transportation mode where public convenience and necessity are at stake, an experienced work force is important. Since experience comes from years of service, employee turnover, that is, the rate at which the various decremental factors remove experienced incumbents from the working rolls, should be fairly uniform on a year-to-year basis. If for any reason an especially high turnover occurs over a relatively short period of time, the quality of the work

force will be affected. A work force heavy with age turns over more rapidly than one in age balance and in so doing changes the composition of the work force. It is for this reason that an age distribution balance should be struck. S. 830 and S. 788 would feed the present age imbalance in the rail industry and its byproducts.

A key concept, the significance of which must be appraised in changing any personnel policy in the railroad industry, is the seniority principle. All of the collective agreements between rail management and the various unions have adopted it and the assignment of the work force depends on it. It is firmly embedded not only in the labor agreements but in the working philosophy and everyday thinking of the railroad worker. Principles of the seniority system are (1) hiring of young new entrants and (2) progression from the least desirable jobs (including the element of physical demands[1]) to the more desirable ones as years of service are acquired. Age discrimination legislation, unless accompanied by clear and concise exceptions and qualifications, is diametrically opposed to these principles for it would bring elderly new entrants without any accredited years of service or experience into the bottom of the seniority spectrum working on the least desirable, most physically taxing assignments.

The principle of indiscriminate hiring, regardless of age considerations, is an important personnel policy change. It should not be precipitately thrust upon the railroad industry whose work force by agreement with its employees revolves around the seniority concept.

The foregoing comments briefly summarize the two general considerations which prompt the Association to seek an exclusion from the coverage of S. 830 and S. 788. A more detailed, although not unduly lengthy, explanation of these two central points, follows:

Industry in general, and the transportation modes in particular, must have effective manpower. Manpower is the work force, the make-up of which is determined by many factors, all of which are interrelated and dependent on each other. In origin the work force structure of the basic industries was management-designed, but as organized labor gained power its influence on the structure and composition of the working forces became more apparent. The end products are an accommodation of one to the other and as a result work force composition varies from industry to industry.

In the railroad industry the structure and composition of the work force revolves around one of these end products, namely, the key concept of seniority which is incorporated in all labor agreements. Because the rail seniority concept is so pervading, no fundamental change in personnel policy, and the legislation under discussion unquestionably is of that character, should be attempted without a careful appraisal of what effect it will have on a work force which operates on the seniority principle. In that respect, a cursory appraisal illustrates that legislation which would discriminate against the preferential hiring of younger workers is opposed to the principles which make the rail seniority-oriented work force operable.

To illustrate, between 1940 and 1965 total railroad employment declined from 1,450,000 to 790,000—almost 50 percent. Since seniority preserved the employment rights of the worker with more service time, the layoffs were concentrated among junior emloyees. The end result, of course, is a surviving work force heavily weighted with older workers. Declining employment opportunities coupled with the application of seniority could produce no other result, and with the railroads both of these factors were active. Employment declines were steep; the seniority principle controlled; and the industry is saddled with the disproportionately over-age work force.[2] While the railroads have made some

[1] In the words of the Presidential Railroad Commission: "These operating employees have had to adjust to a way of life which is in many ways different from the pattern of employees in 'outside' industry. They are subject to call at irregular hours, round the clock; many of them cannot accommodate their time away from duty to the normal family program of free Sundays and evenings. Many of them must spend considerable time at distant terminals, away from their families and communities. They work out of doors regardless of weather, in the desert heat, or pouring rain, or amid snow and ice. Until they have achieved very considerable seniority they are subject to irregularity of employment and often to extensive furloughs." (Report of the Presidential Railroad Commission, February 1962, p. 23).

[2] In 1964, 67% of the industry's employees were 40 years of age or over; 42% were 50 or over; 30% 55 or over; and 18% 60 or over (table D–7, 1965 Annual Report of the Railroad Retirement Board.)

progress by hiring younger new entrants, uneven distribution is one of the industry's personnel problems. Passage of this legislation without a rail industry exclusion would only accentuate it.[3]

In 1961, after a full year of extensively studying the rules and practices which govern the working conditions of railroad operating employees, the Presidential Railroad Commission found that the rail work force is older than that of manufacturing industries generally and recommended that rail management and the rail unions adopt a compulsory retirement program. (Report of Presidential Railroad Commission, pp. 28, 32–33). Such findings and recommendations were unquestionably influenced by a desire to strengthen the nation as well as the railroads, for as the Commission said, 'The manpower of the railroad industry represents one of our national assets. The industry's work force is a key resource composed of employees of varied skills and occupations, including those who man the trains." (Report of the Presidential Railroad Commission, p. 23.)

These remarks, even more valid in 1967, highlight the importance of keeping the industry's work force in top-notch condition. This request of the AAR for an exemption is in keeping with that theme.

In its consideration of certain changes in railroad organizational structure and the effect of such changes on employment in the industry the Interstate Commerce Commission has recognized the age factor and encouraged "the establishment of a retirement allowance to stimulate early retirement by senior employees." [4]

The problem of putting the industry's work force in age balance is the first practical factor which causes the Association to seek exclusionary relief. The second stems from the seniority system in operation.

Within the spectrum of jobs available to most of the individual rail job classifications and particularly to the operating classes such as road trainmen and yard switchmen, work requirements, including physical efforts, differ. In short, some are more taxing and demanding than others, even though the job titles and rates of pay may be identical. The seniority system permits the employees with the most years of service best selection of available jobs, and this principle repeats itself through the entire selection process. In theory and practice, advancing age diminishes the human physiological capacities, including the important factors of coordination and ability to withstand exposure to the elements, but where the seniority principle is applicable it compensates by allowing the older worker to select the physically less taxing jobs. Application of the system, therefore, would be impaired by placing older new hires at the bottom of the seniority roster.

The work of the operating crafts, that is, the people who run the industry's trains and yard engines, is such that their know-how is acquired at a time when the body is physically best able to absorb the mistakes that inexperience spawns. Older new hires would suffer from their relative inability to withstand the lapses that inexperience breeds but for which the younger man is better prepared to withstand and learn from.

Instead of being able to select their jobs, the compensating factor of a seniority system, or have management pick the proper jobs for them, the older new hires would be saddled with the most undesirable positions, those they would be the least capable of performing. The inexorable results when a mismatch of man and job occurs on any large-scale basis would happen. More specifically, older new hires doing the same physically taxing work means reduced productivity, a less efficient over-all operation and a much higher employment turnover with all of its incidental disadvantages.

A final pragmatic consideration which the proposed legislation overlooks is the amount and kind of training which new hires must receive before they can perform the tasks for which they are hired. On the railroads many of the crafts do require training, and this is usually at railroad expense, with the employee under pay during the training period. The wherefore of maximum age requirements for every apprentice or training program is well illustrated by the law of diminishing returns. Obviously, the age of the new hire and the intensity

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[3] While the number of employees with less than 10 years of service is now on the rise after a long period of decline, in 1964 there were 239,000 rail employees with between 20 and 29 years of service and 164,000 with over 30 years of service; 109,000 of those with 30 or more years of service were over 60 years of age. (1965 Report of the Railroad Retirement Board, p. 52.)

[4] Chesapeake and Ohio—Control—Western Maryland Railway, 328 I.C.C. 684, 716 (Feb. 21, 1967).

and length of each training period determines to a great measure the return which can be expected from the training. Subjecting the railroads or any other industry, for that matter, to indiscriminate hiring regardless of age, where many of the employees require extensive training, is unfair and itself distriminatory.

Both S. 788 and S. 830 contain the following or similar language:

> "It shall not be unlawful for an employer, employment agency or labor organization to take any action otherwise prohibited . . . where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age."

It may well be that these exculpatory provisions would allow the railroads to continue to hire younger new entrants because of the current work force age imbalance, the seniority concept, and by reason of the nature of railroad work in general. Perhaps that is the intention of the exceptions. If so, in the railroads' case at least, it is earnestly submitted that such an intention should be made more definite and certain by expressing it in terms of an over-all industry exceptions, thus avoiding the uncertainty and possible vagaries of administrative interpretation.

While the AAR's position as outlined above is that the rail industry should be excluded from age discrimination legislation, we wish to bring to the attention of the Committee what we think are deficiencies of the pending bills:

1. The general prohibitory paragraph of S. 788 and of Section 4 of S. 830 would make unlawful age discrimination and does not include the qualifying term "arbitrary." This is a departure from the concept of eliminating only "arbitrary" discrimination which is the concept set forth throughout "The Older American Worker," the Report of the Secretary of Labor upon which the legislation is based.[5] In the Report it is concluded that all age restrictions cannot be conceived as arbitrary and that there should be concentration on the arbitrary aspects of discrimination which could and should be stopped:

> "The firmest conclusion from this year long study is that the most serious barriers to the employment of older workers are erected on just enough basis of fact to make it futile as public policy, and even contrary to the public interest, to conceive of all age restrictions as 'arbitrary' and to concentrate on the prohibition of practices which include this element."[6]

Since the Report, as well as the declared purposes of S. 830 (Section 2(f)), establish that it is only "arbitrary" discrimination which is intended to be proscribed and recognize that there is a difference, the substantive provisions of the bills should be amended to specifically apply only to arbitrary discrimination. This distinction has not been made in the one place where it is most important, *i.e.*, the provisions of S. 788 and S. 830 which would make discrimination unlawful.

2. It would be particularly inappropriate to impose criminal enforcement provisions as S. 830 would do. A determination of whether arbitrary discrimination had been committed would be a highly subjective one. Where criminal penalties are involved, citizens are entitled to some specific indication of what is unlawful. Whether a specific act or course of conduct amounts to arbitrary discrimination will frequently involve hairline distinctions. The imposition of criminal penalties is totally unjustified in these circumstances.

3. Section 13 of S. 830 would limit the prohibitions in the bill to individuals who are at least forty-five years of age but less than sixty-five years of age but would grant the Secretary of Labor unlimited discretion to adjust these maximum and minimum age limits either upward or downward as he may deem appropriate. This broad discretion to adjust the applicable age limits should be eliminated. There are no standards provided to direct the Secretary in exercising such authority. The bill and all of the supporting statements made in its behalf are directed toward the problem of older workers. The Secretary's Report, on which S. 830 is based, deals solely with the problems of older workers. There has been no justification whatever for permitting the age minimum to be lowered. The consequences of raising the maximum age limit would be far reaching. They would be such that Congress itself should make any later adjustment if any is to be made and if any could be shown to be essential.

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[5] The Older American Worker—Age Discrimination in Employment, Report of the Secretary of Labor to the Congress Under Section 715 of the Civil Rights Act of 1964 (June 1965).

[6] Ibid., p. 21.

4. Consideration must be given to how the pending legislation would affect private pension and retirement plans in industry. Section 4 of S. 830 would make unlawful any private pension or insurance plan which specifies a maximum age limit after which new employees are not covered by such plans, *i.e.*, maximum participation ages. In his testimony the Secretary stated (Hearings, Transcript of Record, pp. 39–40) that the effect of Section 4(f)(2) would be to protect almost all private pension plans of which he is aware. This is not the case as we understand and read that section of the pending bill. That section would protect only a mandatory retirement policy or system which is not a subterfuge to evade the purpose of the Act and would provide little or no protection for the ordinary private pension plan. It would appear from the Secretary's testimony that the bill intends, at least that private pension and insurance plans would be protected. If this is the case, there should be no objection to amending the legislation to avoid any harmful effect upon such pension plans. The proviso recommended by the United States Chamber of Commerce[7] should take care of this problem. It reads as follows:

> "Nothing in this Act shall be deemed to affect, prohibit or prevent the establishment, maintenance or operation of any retirement pension, employee benefit or insurance plan."

This is an important consideration in the railroad industry since a number of railroads provide employee pension plans which have maximum participation ages. Most such plans include maximum ages of 50 or 55. Among the reasons for establishing maximum participation ages are cost and actuarial considerations. If the railroads, and other industries, are required to eliminate these provisions the result could well be to make it more difficult for aged workers to obtain employment rather than to assist them.

5. There are 23 States which have laws which attempt to deal with the problem of discrimination in employment because of age. Section 14 of S. 830 provides that nothing therein shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age. It seems clear to us that if there is to be Federal legislation it should preempt the various and sundry State laws on the subject rather than superimpose another set of administrative regulations, notice-posting, record-keeping, report-making and enforcement requirements and standards upon industry. If the State laws have been ineffective, as most apparently have, and for this reason Federal legislation is deemed necessary, there is no justification for continuing the authority and jurisdiction of State bodies in this regard. This kind of double jeopardy has no beneficial effect and simply adds another layer of governmentally prescribed obstructions to the efficient operation of a business.

6. S. 788 is preferable to S. 830 since it would be administered within the framework of an existing agency and would not subject industry to criminal penalties. On the other hand, S. 830 includes a very important section (4(f)(2)) which should be incorporated in S. 788. That section would permit compulsory retirement programs.

In conclusion, it is respectfully requested that the Committee recognize the unusual age and other circumstances which exist with respect to the work force in the railroad industry and that the industry be excepted from the provisions of S. 830 and S. 788.

Prepared Statement of the National Association of Manufacturers

INTRODUCTION

The National Association of Manufacturers is pleased to present its views on S. 830, S. 788, and related bills pertaining to age discrimination in employment. The NAM is a voluntary organization of member companies located in every state and representative of industry of all sizes from the smallest to the largest. It is dedicated to the economic and social well-being of the nation and to the freedom and progress of the American people.

For more than forty years, the Association has been encouraging manufacturers to make the best possible use of the experience, knowledge, and skills

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[7] Statement of Anthony Abadal, p. 107.

which older people possess. Over the years a wide range of meetings and conferences have been conducted with numerous groups and organizations, to stimulate the evaluation of management policies and practices dealing with older job applicants, and to educate management personnel as to the economic desirability of utilizing the reservoir of talent represented by the older worker.

NAM has had a long-standing policy of encouraging employment of older workers. Currently, our policy position reads as follows:

> "Older workers offer seasoned experience, judgment and stability, and constitute a valuable asset in the nation's work force. Employers are urged to observe hiring practices which give consideration to skills and abilities rather than to any age factor."

In furtherance of this policy, NAM has done a great amount of work to promote the hiring of older workers.[1] Partly as a result of the wide distribution given NAM publications on this subject, most employers are aware today that hiring older pepole makes economic good sense.

REVIEW OF THE PROBLEM

Our work in this field convinces us that the long-term, permanent solution to this problem can best be attained through further education, rather than through legislation, especially at the federal level. Excellent progress is being made by the voluntary route. Many firms have dropped bans on hiring older people. They have learned to place high value on older men and women, particularly so in this labor-short period.

Educational programs are the most important and effective way to increase the employment of older workers, according to those state officials who are responsible for the administration of state age discrimination laws.

The legislative approach tends to induce a false sence of accomplishment and leaves people with the impression that the problem has been solved. Because of this it may retard progress rather than accelerate it.

Twenty-three states and Puerto Rico have already adopted laws prohibiting age discrimination. All but three of these laws have been passed since 1955, most of them since 1960. This legislation exists in the major industrial states and covers more than half of the nation's industrial workers. Additional state legislation is probable. It would seem neither wise nor necessary to pass a federal law on this subject at a time when the states are taking affirmative action to resolve this problem at the state level.

We do not suggest that all problems pertaining to older workers have been solved. Mergers, shutdowns, moves to new locations, expansion, automation, elimination of unneeded jobs—these are frequent occurrences in the business world, with important consequences for all employees regardless of age. The result may be the unemployment of older people. This does not mean, however, that a federal law will solve the problem any more than age discrimination laws have completely eliminated the problem in those states which have such such laws.

Companies can and should step up efforts to help displaced workers find jobs sooner, local and state agencies should put their efforts to assist such people in high gear, and voluntary agencies can also contribute to the team effort.

Programs to train, retrain, and upgrade the skills of the older worker should be intensified to qualify him for available job openings. In today's market, many jobs go unfilled because of the lack of qualified applicants *of any age.* Education and training of the older worker are essential to a solution of the problem. Job-matching techniques and job vacancy inventories, together with better coordination with training programs, will prove much more constructive in filling vacant jobs than the approach proposed in the pending bills.

Secretary of Labor Wirtz recognized a fundamental truth when he said:

> "A strong and viable economy is the most important single factor improving employment prospects for middle-aged and older workers who lose their jobs. The more vigorous the economy—the higher the level of activity and the more rapid the rate of growth—the better the employment opportunities for workers of all ages."[2]

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[1] This effort is reflected in some degree by the publications *Employment of Mature Workers* (1960) and *The Productive Years—Ages 45–65* (1963), copies of which are submitted to the Subcommittee herewith.

[2] *The Older American Worker,* Report of the Secretary of Labor to the Congress under Section 715 of the Civil Rights Act of 1964, p. 67 (June 1965).

It is often easy, when attempting to solve a problem of this kind, to forget conflicting, competing considerations which represent equally desirable objectives in the total economy. The United States is faced with the need to absorb more than a million young workers into the labor force each year. From 1950 to 1965, the labor force grew by five and a half million workers, most of whom were young people just entering the labor market. From 1965 to 1970, the growth will be almost two million new workers per year.

Massive efforts have been launched of late to assimilate young people into the labor force. Yet to the extent that available jobs go to older workers, solving the problem of new entrants into the job market becomes more difficult. Our national programs can work at cross purposes with one another.

In fact, there is a growing body of opinion that discrimination is unfair at any age—that any legislation attempting to deal with the problem of age discrimination in employment should outlaw all age discrimination rather than attempt to provide protection for specific age groups.

Nor should we overlook the tremendous—and relatively unrecognized—contribution toward stability of the work force represented by industry's policy of promoting from within. Few people will argue with the desirability of this basic business practice. Yet such a practice relies to a considerable extent upon hiring workers at relatively young ages and training them within the company for ever increasing levels of responsibility over the years.

In our free competitive system, especially now when there are critical labor shortages in many parts of the country, employers recognize the importance of hiring older workers with skills and valuable experience. The law of the marketplace is inexorable in employment practices as well as in other things. Our growing economy is an enormously complex mechanism. Placing an additional legislative restriction on employment practices, no matter how desirable the social goal, can effectively reduce the very job opportunities it seeks to create by diverting energies which would otherwise be devoted to the maintenance of full production.

COMMENTS ON SPECIFIC PROPOSED LEGISLATION

Now let us look briefly at the kind of problems which S. 830 and S. 788 would raise. Employment and layoff should be entirely without regard to age, except in those situations recognized in S.830 where age is a bona fide occupational qualification or all employees are covered by a bona fide retirement policy.

It is imperative, however, that there be no conflict with either new or established retirement policies. Pension plans and insurance plans should be excluded from the coverage of this proposed legislation; otherwise, the measure could create have with such private plans. Any law should specify clearly that bona fide pension and insurance plans, and similar types of employee benefits, are *not* to be considered "terms or conditions of employment" with respect to which it is unlawful to include differentiations based on age. Because of the far-reaching implications, any such significant revision of pension and insurance plans in this country should be accomplished knowingly and intentionally, not inadvertently by legislation designed to resolve an entirely different matter.

It is also important that any act not apply to persons "45 years of age *or older*" as provided in S. 788, because of the possibility that although an employer would be permitted automatically to retire employees at age 65 under a bona fide retirement policy, he might someday be construed to be in violation of the law for refusing to hire new employees at ages above 65.

Further, we believe it is undesirable to include criminal penalties in such a proposed law. This is, at best, a very difficult area in which to enact intelligent and workable legislation. The addition of criminal sanctions, even for second offenders, can obstruct rather than assist in the resolution of the sensitive social problem which this legislation seeks to reach. The various ability and skill factors which have to be assessed in interviewing and placing an applicant make the problem one which should not be subject to the threat of criminal penalties. The very existence of criminal sanctions could militate against success of the "informal methods of conference, conciliation, and persuasion" envisioned by both S. 830 and S. 788.

Nor should such prohibitions be enforced by an administrative determination of guilt as provided by S. 830. Individuals responsible for day-to-day administration of a particular statute tend to become advocates of the cause which the

statute seeks to promote. They soon become less than objective when individual cases are presented to them. These provisions will be susceptible to sharply varying interpretations.

Enforcement must be objective and impartial; it must not unduly hamper an honest employer just because his judgement and evaluation of the ability and skill factors involved happen to differ from those of Department of Labor employees. A better procedure than administrative hearings would be for matters in dispute to be resolved by a new trial of the issues in a United States district court, as proposed by S. 788.

In order to avoid a further increase in the number of administrative agencies within the executive department of the federal government, we strongly support the view that this measure, if enacted, be administered by the Wage and Hour Division rather than by an entirely new agency. Accordingly, should this legislation be enacted, we urge that it be in the form of an amendment to the Fair Labor Standards Act as proposed in S. 788. The Wage and Hour Division, which presently enforces the age provisions of the child labor laws and the wage discrimination provisions of the Equal Pay Act, would doubtless have the staff and experience to deal with the problems of age discrimination.

Finally, in order for the act not to discriminate in favor of workers in any particular age bracket, such as 45–65, it should contain the exception "where the differentiation is based on reasonable factors other than age" and the exception of a "bona fide occupational qualification reasonably necessary to the normal operation of the particular business," both of which are proposed in S. 830.

SUMMARY

Voluntary efforts offer the best means for continued advancement against arbitrary age discrimination in employment.

No matter with what skill the proposed bills may be improved, legislation will not resolve the problem of arbitrary age discrimination. But voluntary efforts *can*. With the cooperation of employers and employees alike, great strides can be made against whatever barriers still exist.

In furtherance of its long-standing policy, NAM will continue its efforts to encourage manufacturers to avail themselves of the skills and experience of older people who have so much to offer as employees. We continue to believe that more significant progress can be made through voluntary efforts, at both the national, state, and local levels, than by national edict.

Report on

EMPLOYMENT OF MATURE WORKERS

"Our nation now must learn to take advantage of the full potential of our older citizens—their skills, their wisdom and their experience. We need these traits fully as much as we need the energy and boldness of youth."

DWIGHT DAVID EISENHOWER

NATIONAL ASSOCIATION OF MANUFACTURERS

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OFFICIAL NAM POLICY ON EMPLOYMENT PRACTICES FOR OLDER WORKERS

"Older workers represent countless years of rich and seasoned experience, judgment and stability, and constitute an immensely valuable asset in the nation's work force.

"Employers are urged to observe voluntary hiring practices which give consideration to skills and abilities rather than to any arbitrary age factor."

INDUSTRIAL RELATIONS DIVISION

NATIONAL ASSOCIATION OF MANUFACTURERS

2 East 48th Street, New York 17, N. Y.

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PREFATORY NOTE

This study, based on manufacturing industry's experience in opening its doors to ever-increasing numbers of older workers, provides an insight into the nature of the problems confronting employers and the marked progress industry has made in utilizing the skills of mature applicants.

By raising some vital questions which affect continuing progress on the subject and setting forth a constructive attitude and philosophy, it is hoped that employers will find this report helpful in making still further use of the many and varied talents, experience and judgment which older workers have to contribute.

Although NAM membership is composed of companies of all types and sizes throughout the country, most of these 20,000 member companies are small. (Over one-quarter of them employ less than 50 people; almost half employ fewer than 100; five out of six NAM member companies have fewer than 500 employees on the payroll). NAM's thinking and recommendations, therefore, give particular weight to considerations affecting the smaller company.

The problem of providing employment opportunities for mature workers is here discussed with full awareness that conditions vary markedly between companies, between industries and between different sections of the country. The knowledge that there is no single solution to the problem is a paramount consideration.

I. AN OPEN LETTER TO EMPLOYERS

The public is deeply concerned with the "plight" of the over-45 job seeker because of a widespread impression that the doors of employment are closed to him.

Despite many employers' insistence that age is not a barrier to employment, the cry is raised that this is not so, that old prejudices are merely going underground and workers are being rejected in more subtle ways.

Whether justified or not, this problem is being laid at the employer's door. The employer who turns down any older applicant, even for good and sufficient reason, is labeled as "short-sighted, prejudiced, behind-the-times, and working against his own best interests."

Politicians are quick to espouse the cause of the older person. Realistically, they see the vote potential of this ever-enlarging group. Special committees appointed by mayors and governors, spokesmen for medical, social agency and union organizations are garnering more and more attention; and laws to bar age discrimination, in seven states now—with insistent pressures for action at the federal level—are the handwriting on the wall.

Unfortunately, legislation regulating company employment practices is widely viewed as a solution: "Let's make employers hire older people" sounds like an easy remedy and few stop to consider the futility and the danger of this over-simplification.

There are some who see the solution in terms of collective bargaining agreements. Already, there have been demands to require employers to hire a certain number of workers over 45 years old for every given number of new employees they take on and to maintain that ratio.

Unions have also sought provisions requiring employers when hiring in any plant, to give preference by seniority to workers laid off from the company's other plants and from other companies in the area and industry. This is just one of many proposals being eyed by the union organizer to woo the potential member.

As midde-aged dues payers begin to increase in unions, we can expect demands designed to "strengthen" job opportunities for older employees who have been laid off and cannot find work.

The mature worker, with his valuable storehouse of experience and skill, is the very backbone of industry, and wise employers—knowing they need these men and women—have adopted clear policies to make sure that the best-qualified person is hired regardless of age. But any possible gaps between company policy and hiring practice need to be scrutinized.

In the labor-short economy that lies ahead—as we strive to meet the needs of an expanding population and our defense establishment—there is every indication that in order to man its machines and its processes, industry will have to hire more and more people in the older brackets. There just won't be enough workers in the 25-45 age group to do the job. It, therefore, makes good sense for employers to review their policies *NOW,* to examine their practices, to find out what kind of performance they may reasonably expect from older applicants and to gear up for their efficient use.

Older workers are far younger than they used to be—they are more productive because of better health, more vigorous philosophy and attitude, better education.

The increase in the life span of the average American and the resulting shift of a larger percent of the population into the upper age brackets pose questions that are of concern to everyone. Employers have a profound interest in the intelligent solution of these problems.

The question of gainful employment bulks large in this complex, and while the public needs to understand more about industry's achievements and difficulties in employing mature people, there is no substitute for performance. The myth of the employer's supposed unyielding preference for younger people as employees can be melted away only by a record of action.

II. THE DIMENSION OF THE PROBLEM

Any attempt to evaluate the size and complexity of the problem begins with a distinction of terms. Who is the "older worker"?

1. Is he the person beyond normal retirement years who wants or needs employment?
2. Is he the middle age or older worker who is slowing down or showing signs of physical disability?
3. Is he the mature worker, too young to retire, who finds difficulty in getting a job because of age?

Although real problems are inherent in #1 and #2, this review deals only with the third category. The crux of the problem lies with the person aged 45 to 65 who is

[1] Employers traditionally have attempted to take care of their own long-service employees for whom they have a high regard. Where employees can no longer meet the full requirements of the job, adjustments are usually made or the employee is transferred to suitable work. This practice is general throughout industry in the case of individuals who have spent years with the company.

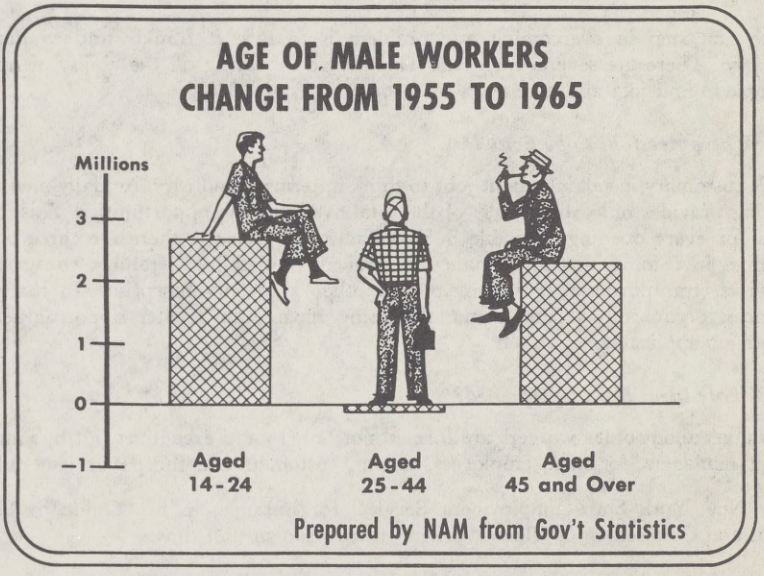
seeking new employment. This *individual* needs the opportunity to support himself and his dependents, and to protect his equity in social security and private pension alike. The *economy* needs his contribution.

The over-45 age group is the fastest growing labor group in our land. Soon every third person in America will be 45 or over. (By 1975 half of the labor force will be over 45).

Assuming progress at the same rate as in recent years, the U.S. Bureau of Labor Statistics estimates our Gross National Product at 560 billion dollars in 1965. To attain this level, the Bureau calculates the need for 10 million more people in the labor force than in 1955. Half of these ten million added workers must come from the over 45 group, although that group will increase only by 31% in the population (because the declining birth rate from 1930 to 1940 will mean fewer males 25-44 years old in 1965).

Putting it another way, the 45-64 year group will grow 17% by 1965; the 14-24 year group will grow by 41%, but the latter is the "school age" group.

The "prime working group" (ages 25-44) on which industry has traditionally relied for its solid core of skilled help, will not increase at all—may even decline slightly, leaving to those over-45 the major burden of producing the added output required by our larger population. Actually, for every *2* more workers in the age group usually considered the most "eligible" for employment, there will be *11* new workers among the plus-45s.



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All of the above points up the fact that the middle-agers are an important reservoir of manpower for the accelerated needs of tomorrow. A deliberate effort to utilize their capabilities more fully becomes not just a social welfare issue, but a hard fact of life for industrial operation. The employer who wisely cultivates those past 45 will have a decided competitive edge over the one who suddenly finds he can get only raw young workers for jobs that take skill and training.

The need for employees changes rapidly as a result of market and technologic factors, but in light of the clear demand for skilled workers, many companies are conducting personnel inventories to determine their future labor requirements and training needs. Obviously the size and shape of management's personnel needs points to better use of men and women over 45 than heretofore and with the greater supply (now 28 million, but in 10 years, 33 million) employers will have a wider variety of applicants to choose from, some of whom may be infinitely better qualified than the less experienced, younger man or woman.

III. BARRIERS — REAL OR FANCIED?

The first step in overcoming any problem is to face it frankly and evaluate it clearly. There are several questions which have a bearing on the ability of mature people to find jobs and here are a few:

A. *Where Are Jobs to be Found?*

It is customary in talking about jobs to think in terms of industry. Actually, manufacturing provides only about 25% of the total available job opportunities. This means that for every opening available in manufacturing industry, there are three opportunities in commerce, trade, finance, insurance, wholesaling, retailing, construction, services, transportation, government and other kinds of enterprise. In many instances, organizations outside manufacturing have even greater opportunities for older job applicants.

B. *Whose Ideas Must be Updated?*

Opinions about older workers are formed not only by top executives but by employment managers, foremen, employees, unions, customers and the public generally.

The New York State Employment Service, for instance, in its "Guide to Placement and Counselling of Older Workers" warns its own staff thus:

"All staff must exercise particular care to guard against reflecting in their actions, traditional prejudices against older workers and making generalizations about the work capacities or lack of work capacities found in older workers. . . . The necessity for overcoming any discriminatory attitudes or erroneous assumptions on which staff members may operate is of the greatest importance."

C. *Does the Employer Owe a Special Responsibility to Mature Job Applicants?*

No industrial establishment—no employer—has an obligation to employ any specific group of workers as such. Indeed such action would, in itself, be discriminatory. For example, any effort to fit the older group into the work force at the expense of younger people would be unrealistic.

Employment practices should be based on conservation and fullest possible utilization of existing manpower—by selecting, placing, promoting and retaining employees on the basis of qualifications for the job. Under this concept, age per se is not a barrier to getting or holding a job.

D. *Does It Cost More to Hire Mature People?*

Fear of increased costs of employee benefits such as pensions, workmen's compensation, accident, sickness, hospitalization and surgery insurance are sometimes mentioned as roadblocks to the older person seeking employment.

In the case of *pensions,* there are two reasons given as "obstacles":

- The cost of providing adequate pensions is higher when the new employees are older. Actually, it takes four times the contributions per year to build the same size pension fund at age 65, when you start with a person 50 years old as with one 25. Obviously the newcomer at 50 could not expect to receive as generous a pension at 65 as his associate who had given 40 years of service, as against his 15.

  This is the situation which has given rise to the charge that companies will not hire older workers because they will not be on the payroll long enough to make it economical to incorporate them in the pension program.

- Rather than have dissatisfied workers who are left out of the pension program, or providing less than adequate pension rights thereby risking unfavorable public reaction, employers are said to prefer hiring young personnel.

What are the facts?

The NAM recently queried 70 leading companies asking "If you have a pension plan, does it affect your employment of those over 45?" We found that:

. . . 58% of the employers declared age was no consideration if the older worker had the qualifications needed to fill the job.

. . . 30% stipulated they could not include anyone in their pension plans who had not been employed at least 5 years (and many preferred 10 years).

. . . the balance declared they did not discriminate against newly-hired older workers but did not invite them to participate in the company's pension plan. Frequently those not eligible for a pension are provided with a separation allowance when they leave.

Actually, employers tend less and less to use the pension "excuse" for not hiring older applicants since:

1. Today older workers are drawing more benefits under Social Security (both because more of them qualify for maximum levels and because benefit levels have been raised)—thus minimizing adverse community attitudes which used to result when companies hired older people and retired them on the smaller pensions which went with their shorter years of service.

2. Private protection has grown enormously and a much higher percentage of employees than formerly have purchased retirement and endowment policies "on their own" as a supplement to Social Security.

3. Vesting privileges under many company plans give employees unqualified rights to funds accumulated under company pension plans. If they change jobs, they maintain this layer of protection.

4. Workers hired in *lower* age brackets cost more over the long haul than those hired at higher ages under the pension plan because:

   . . . longer life expentancy for younger workers means they will draw benefits for longer periods than older ones

   . . . benefits paid in future years are likely to increase substantially, requiring rising contributions by management

5. Where companies change retirement plans to permit employees to continue working beyond age 65, pension costs tend to be reduced.

It is becoming increasingly apparent that instead of incurring community disfavor because he has hired an older man who does not qualify for full or partial pension coverage, the employer who takes this step may be applauded as doing a distinct service—to the worker personally and to the community, as well as to himself.

Any adverse public reaction can be met squarely by a frank and clear statement of the facts to the employee at the time he is hired, and by periodic explanations to the entire work force and to the public. This view is borne out by the findings of a recent study by the Bureau of Labor Statistics:

- A group of pension experts examined the question of community reaction to retiring people with little or no pension. They concluded that many older workers will get enough Social Security upon retirement so that the management need not fear the repercussions of such situations.

- The study also points out that the employer tends to overlook future pension costs

that will be incurred for the younger worker he hires. Longer life expectancy for workers who are now young will result in retirement benefits being paid for longer periods than for the older workers he hires. Since the pension costs in future years may increase substantially, management's contributions will have to rise accordingly.

- The study concludes that selective hiring of older workers will add only a small percentage of one percent to management's total compensation costs and may not add anything at all to the final cost of retirement benefits.

There is a similar story on *insurance and other benefit plans.* A survey by Temple University on the employment of older people in Pennsylvania industries showed that:

> "With respect to *insurance costs,* it can be noted that discrimination is negligible, particularly in view of the liberal attitude of manufacturing plans.
>
> "The study pointed out that for a 50 year old employee $3,000 of group life insurance would cost $2.25 per month more than for a worker 30 years of age. With dividend or rate credit there was further reduction until the net difference was usually less than 1¢ per hour."

In an analysis of 170,000 employees covered by *group insurance,* the Metropolitan Life Insurance Company found that the 45-64 age group formed 32.7% of its policyholders as compared with 31.8% of the same age group in the general work force. On this basis Charles Siegfreid of that organization concluded that group life insurance plans have had no noticeable effect on the hiring of older workers, or on their continuance in employment.

As for *workmen's compensation,* rates are based on number of injuries, not age, and accident rates tend to decrease with age.

A. R. Mathieson, President, U. S. Steel and Carnegie Pension Fund stated:

> "The costs of workmen's compensation insurance, accident and sickness, and hospitalization and surgery insurance are not materially increased by the inclusion of older people in the work force."

In any consideration of possible increased costs, while it may be desirable to have a low insurance and pension rate, it is insignificant when one compares it with the costs involved in turn-over, poor or indifferent performance, absenteeism, lack of job interest and application, and the fact that the company is cutting itself off from the services of able, mature employees.

E. *Is the Older Job-Seeker His Own Worst Enemy?*

In opening up more jobs for mature workers, the older worker himself plays a part. Opportunities in any labor market seldom match exactly the desires and skills of the job applicants. Therefore, obtaining a job frequently requires adjustment on the part of the applicant to changes in kind of work, wages, working conditions and job location. Ofttimes a sense of pride interferes with over-45 job seekers taking work

requiring lower skill or less salary . . . or, he is reluctant to undertake training or be trained. Ultimately, the older person can work out much of the problem for himself.

Too frequently the older job seeker is his own chief stumbling-block. Sometimes suffering from a defeatist attitude, he tends to feel he is not wanted in the labor market. Instead of accentuating his strengths and skills, he accepts the "accent on youth" idea and magnifies the imagined handicap of his age. This attitude can become, in itself, a serious handicap.

Unless he consciously guards against it, he can easily acquire a "chip on the shoulder." No matter how he falls short in measuring up to the requirements of a job, he often feels sure he is rejected because of his age. Therefore, a determination to steer clear of this disastrous pitfall is most important to an older person looking for work.

Furthermore, once on the job, he must guard against the onset of those undesirable and unattractive personal characteristics which often creep up on him unawares—the tendency to be overbearing, stagnant, resistant to correction, inflexible, cynical or uncooperative. Once efficient and valuable long-service employees (perhaps because of the sure knowledge that they *do* know their jobs) sometimes degenerate into such "problem cases" that they find themselves pushed aside and begin to blame management for a situation that is largely of their own making.

F. *Should Specific Jobs Be Set Aside for Older Workers?*

Some employers have gone so far as to design special jobs and working conditions for older workers. This may mean employing the technique of job dilution, for instance —breaking down certain jobs into less arduous subtasks, thus reducing job requirements so that specific functions may be performed by older persons.

Certain collective bargaining contracts designate that special jobs be reserved for the older person.

Some companies have set aside certain types of jobs which they feel are suitable for older persons who are no longer able to continue at their regular work—jobs such as guards, watchmen, elevator operators, maintenance, etc.

In general, however, this is not regarded as a sound approach. The older worker is not "a special case." He wants or generally needs no quarter and will stand on his own in placement on a job commensurate with his abilities and capacities.

G. *How Do Seniority and Promotion-From-Within Policies Affect the Hiring of Older Workers?*

Obviously there are realistic limits on the extent to which mature workers can be hired if a vital promotion-from-within policy is to be maintained. Older applicants can be considered only when there is no qualified available employee who can be promoted to the opening.

Furthermore, promotion-from-within policies place hiring emphasis on beginners, and

starting salaries are not generally adequate to meet the requirements of older applicants who usually have moved along in the financial scale.

In responding to a recent NAM questionnaire, companies put it this way:

> . . . "Very often if he is desirable, his achievements by the time he is 45 have put him in a salary bracket difficult for us to reach because he has not attained an acceptable experience level in the industry and cannot move from another industry to ours without a period of unproductive orientation for which we cannot pay his attained salary."
>
> . . . "Since we do follow a policy of promotion-from-within to the extent that this is possible, the job openings for the experienced person which take full advantage of his experience are limited and this often proves to be a stumbling block in the hiring of such people."
>
> . . . "In the usual case, an individual in a higher age group has had considerable experience and is not interested in a job in lower employment levels. It is our long-standing policy to promote from within the company, and since we have devoted much time and effort toward placement, training, and in every other way to assisting our regular employees to take on better jobs, it seldom happens that there is an opening in the upper jobs which cannot be filled from within the company."

Promotion-from-within, universally regarded as sound policy, does indeed operate to the disadvantage of the older applicant. He normally will not accept a beginning job with starting salary.

H. *What About Training for Promotion?*

While some older workers may be slower to embrace change, this disadvantage is balanced by their greater effort to get more out of the retraining, once the need for change is made clear. While younger workers look on each change as a stepping-stone, something temporary, the older person is more likely to buckle down and master the details.

Psychological studies have revealed that in the working world, a mature person learns differently from, but as well as, a younger one. Through experience he has cultivated the ability to select, to evaluate, to conserve, and to grasp principles.

The practice of promoting the best available man, even if his retirement is imminent, may pay off far better than moving up the one who is "second best."

I. *Is the Older Applicant Ready for a New Job?*

In today's changing industrial scene there is continual emphasis on acquiring new skills. Unemployed older persons are more generally taking advantage of adult vocational and business education opportunities.

> For instance, the Federation Employment and Guidance Service, through its "Operation Second Chance" provides scholarship funds for tuition-free study

> grants at trade or business schools in New York City. It provides $250 grants to accredited schools for applicants who are at least 40 years old.
>
> . . . At Greenwich House, New York City, daytime refresher courses are available for women over 40 in shorthand, typing, bookkeeping and clerical work. An evening course in beginner typing is given.

In many instances it is important and profitable for the middle-aged to learn new skills or to improve old ones. Never before have there been available so many opportunities for the individual to equip himself for gainful employment.

J. *What About Absenteeism?*

The idea that older workers are absent more is pure fiction. The reverse is true, according to Secretary of Labor James P. Mitchell:[2]

> "The older man is likely to be a family man, a home owner with community responsibilities that make his presence on the job important to him. He is more settled than his younger colleague; he has, more often than not, put his roots down and is seeking permanent employment and steady work. All of our studies showed that the older worker is less given to absenteeism than the young worker."

Absence due to illness is actually less among the over-45s than with younger employees. It is true that when they are out, it is sometimes for a longer period, but it is much easier to plan production when a worker has to be away for a week than when one takes off an unexpected day at a time over a period of months.

One employer says:

> . . . "Our greatest problem with employees over age 45 is their absence from work because of illness. This problem is somewhat offset by the fact that these older employees are less likely to change jobs."

K. *How Do They Compare on Safety?*

Mature employees are less likely to take a foolish chance than the younger ones. They don't engage in horseplay and are actually more careful than younger people. Records show that they have fewer accidents.

Furthermore, workmen's compensation rates are based on the company's accident rates and the type of work being performed. Age has no bearing on such rates.

L. *Can the Economy Absorb the Enlarging Older Work Force?*

Opportunities for full utilization of the abilities and skills of older people depend upon an expanding economy—upon additional job opportunities. And what is it that determines the number of job opportunities that become available in the American economy? *Jobs are made by profit opportunities.* In our type of economy people are employed because other people see prospects of making a profit out of produc-

[2] New York Times—June 19, 1960.

tive operations involving the need for their labor. Jobs decline and unemployment results when there are not sufficient profit opportunities in our economy.

It takes capital, machines and equipment on a large scale to make workers productive. *One* job in industry today calls for an investment, on the average, of $19,500. The willingness of the public to save and invest is a crucial factor in providing the means of improving and expanding our facilities and job opportunities. There can be no jobs without assets behind them.

The problem is how to encourage the full play of personal initiative so that ambitious people will be eager to strike out into new fields to provide more goods and services for more people.

Any move which blocks the advancement of technological progress or any of the basic factors of production, through excessive taxes or unsound fiscal policies or unreasonable interference with business, can discourage investors from taking the risks which *make for expanding jobs.*

M. *What Other Factors Present Difficulties?*

The Bureau of Employment Security, U. S. Department of Labor, in discussing "problem areas which are associated with older unemployed workers", mentions these handicaps:

- Lack of job opportunities for specialized skills on unique jobs or outmoded jobs.
- Loss of speed in production operations. (This calls for a shift to new fields of work).
- Non-realistic, or too rigid, demands with respect to wages, working conditions, travel or type of firm on the part of some applicants.
- Disuse or lack of skill.
- Low morale due to unfavorable past experience or the feeling of not being wanted.
- The inexperience of many older workers in job-hunting.
- The difficulty of some older workers in adjusting to physical handicaps, particularly those experienced in later life.
- Inability to estimate one's own limitations.

Other problems include:

> Adding "over-45" newcomers to a work force already employing a large percentage of older people interferes with balanced replacements.
>
> The prejudice of fellow workers. The ages of people already in the department are a factor in building a homogenous work group. In addition an older person often finds it difficult to "take" supervision from a younger individual.

The N. Y. State Department of Labor puts it this way:

> "Of course employer reluctance to hire older workers is not always based entirely upon fancy. Unquestionably, in some instances there are certain obstacles which

> rationally militate against such applicants. Often, too, some adjustments are called for in company personnel programs. The experience of employers who are hiring older applicants demonstrates beyond any doubt, however, that by using a little imagination these so-called obstacles and difficulties prove more illusory than real."

With more and more employers recognizing that it is sound business to employ older job seekers, it is hoped that ways may be found to surmount the barriers—whether real or fancied.

IV. DOES THE GOVERNMENT HAVE A ROLE?

In the 86th Congress bills were introduced in the Senate to make it unlawful to bar a worker from a job on the basis of age. Similar proposals have been before Congress since July 1951 when Jacob Javits, then a member (Rep.) of the House from New York, first came up with the idea of a National Act Against Age Discrimination in Employment which he has repeatedly introduced.

Administration of his proposed statute to make age discrimination unlawful would be placed in the hands of the Wage and Hour Administrator, and would make it unlawful to refuse to hire, to discharge, or otherwise discriminate against any individual because of his age. "Age" is not defined, but when Sen. Javits introduced the bill it was indicated that the aim was to protect those in the 45-65 bracket. Enforcement would involve issuance of "cease and desist" orders along with hiring or reinstatement of the worker with lost pay.

Another approach is to deny government contracts to firms which bar jobs to the over-45s. In June 1960 Senators McNamara, Randolph and Clark introduced a bill to outlaw job discrimination for reasons of age where employers hold federal contracts.

A third method under consideration would be to amend Section 8(a) of the National Labor Relations Act to outlaw age discrimination in employment and in April 1960 Congressman Dingell (Dem., Mich.) introduced just such a proposal.

An enlarging group of legislators with their eye on the political potential of older voters are thinking of climbing on the bandwagon.

No realist believes that a law can solve the problem of the mature worker who finds himself in the job market, but there is a feeling in some quarters that the law exerts a moral suasion.

Legislative pressure is slowly building up. Five years ago, the Department of Labor formed a departmental committee on the Older Worker and launched an extensive project with investigation centering on six areas:

1. The work qualities of older workers.
2. The obstacles, if any, to employment of older workers which pension plans create.
3. Clauses from union-management contracts which take care of jobs for older workers.
4. Employment problems and practices—the what and why of employer policies regarding employment of older people.
5. The possibilities of individual placement services to obtain jobs for qualified oldsters.
6. The employment outlook for mature women.

Already the federal government has eliminated maximum age limits on federal competitive civil service jobs, and the Civil Service Commission has announced studies that will examine problems of employment of older workers in government.

In 1958 Sen. John Kennedy, (Dem., Mass.) directed the staff of the Senate Subcommittee on Labor to undertake a comprehensive study of the needs of older citizens to lay the foundation for a full legislative program on behalf of a 10-point "bill of rights for our senior citizens." This program contained the following points:

1. The federal government should encourage greater employment among older persons so they can make maximum use of their skills.
2. Vocational training facilities must be expanded to help older citizens learn new skills and adjust to new jobs.
3. Housing for the aged needs more attention: a loan program is needed for those who wish to purchase homes and special assistance should be available to those who wish to convert houses to adjust to special requirements of the elderly.
4. Adequate medical and dental care must be made available to those of the upper age brackets.
5. Old Age and Survivors Insurance benefits which are "grossly inadequate for even a minimum standard of living" must be increased.
6. Public assistance payments for the aged should be increased even as the proportion of persons getting such payments is cut by means of some of the above-mentioned programs.
7. Recreational facilities for older persons should be expanded.

[3] Bureau of National Affairs Daily Labor Report—8-18-58.

8. Federal government research facilities dealing with chronic illnesses and diseases of the aging should be expanded.

9. The federal government must also expand training of personnel and enlarge its research projects in the field of geriatrics.

10. An effective program of assistance to widows and dependents of older citizens must be established.

Senator Pat McNamara (Dem., Mich.), Chairman of the Senate Labor Subcommittee on Problems of the Aged and Aging, early in 1959 announced plans for a year-long inquiry—and he carried them out.

He first invited key spokesmen to Washington to act as a panel and lay down guidelines for study. Subsequently, hearings were held in Washington and in seven key cities at which government officials and representatives of interested groups testified. Most of the specific recommendations for legislation made by this Subcommittee are directed at advantages for the elderly. Only one seems to apply to the middle-aged:

> "To assure those between 40 and 64 equal opportunity for employment, it urges states to consider at their next session legislation to outlaw such discrimination.

At the state level, seven states have already put "no-age-discrimination-in-hiring" laws on the books:

Massachusetts	1950
Pennsylvania	1955
Rhode Island	1956
New York	1958
Connecticut	1959
Oregon	1959
Wisconsin	1959

The Desmond Committee (New York State) — in discussing the effectiveness of such legislation—lists the following:

PROS:

1. Removes the sanction of discrimintion.
2. Forces re-examination of unrealistic personnel policies.
3. Enables power and prestige of government to be used to "educate" employers.
4. Reduces overt symbols of discrimination such as age limitations in help wanted ads and job orders.

CONS:

1. Does not materially affect basic conditions of the labor market which primarily determine hiring of the 40-plus.
2. Does not wipe out stereotypes and prejudices about older workers.
3. Does not result in placement.
4. Evasion is simple, widespread and enforcement most difficult.

5. Provides an agency before which older workers may air their grievances.
6. Permits older workers to at least gain access to personnel managers and employment office.
7. Proclaims a state policy.

5. Does not strike at employer concern with increased costs of pensions, insurance, nor with promotion-from-within personnel policies.
6. Falsely raises hopes of older workers.
7. Interferes with "promotion from within" systems.

A statistical analysis of experience under state laws shows "no discernible relationship between the placement of older workers and the presence or non-existence of a non-discrimination law", regarding persons age 45 and over, according to Earl T. Klein, manpower development specialist for the U. S. Department of Labor. In New York, placements increased after the law was passed, but this had been accompanied by considerable advance study and education. The upward trend, in fact, began several years prior to passage of the New York law in 1958, Mr. Klein says, suggesting that an extremely important part of any program should be educational.

Another important procedure is job placement by the Employment Service. He points out:

> "The successful placement of an older worker is perhaps the best way of convincing an employer that such workers are capable, and this leads to consideration and employment of others."

Further questions are raised by this excerpt from a memorandum issued by the National Committee on the Aging:[4]

> "Experience with age discrimination legislation in other states, notably Massachusetts, Rhode Island, and Pennsylvania, raises some doubt about the effectiveness of such legislation in creating job opportunities for older workers.
>
> "Experience in Massachusetts and Rhode Island indicates that there has been relatively little activity under the statutes in those two states. A recent evaluation of experience in Pennsylvania points to the conclusion that the statute has done no harm, and may have done some good by focusing attention on the artificial age barriers to employment which are sometimes needlessly raised by employers. Specific achievements in any of these states, other than elimination of age specifications in advertising, are difficult to pinpoint.
>
> "The difficulty arises from the fact that an employer's refusal to employ can always be based on considerations other than age. To what extent age discrimination legislation may constructively influence employer attitudes is essentially a matter of conjecture.
>
> "We believe that, as a general principle, employers must be convinced of the value of older workers before older workers can expect relative improvement in their employment prospects. Employers are more likely to be convinced by demonstration than by coercion."

[4] June, 1958.

The N. Y. Joint Legislative Committee on the Aging is equally blunt:[5]

> "The anti-discrimination laws reflect growing concern with unrealistic personnel policies, rather than substantive means of eliminating bias or enlarging job opportunities."

Elder statesman Bernard M. Baruch underlined this thought when he told that very Committee:

> "I do not believe that employment opportunities for the aging can be broadened by any kind of anti-discrimination legislation. You cannot legislate understanding. . . ."

But effective or not, these laws are moving in the direction of control. In the last decade a majority of states have established Councils or Committees to study the problems and opportunities brought about by increasing longevity. These groups are delving into the wider-ranging social and economic problems which result. Education, economics, health, rehabilitation, housing, home services, recreation and leisure are matters of concern to them, but invariably in their reports they foster the idea that employment is a key problem with older people.

State drives to "find jobs for workers shut out of the labor market by early age limits on hiring" have been financed by legislative appropriations and even Federal grants. Isador Lubin, former N. Y. State Industrial Commissioner, in launching such a program urged employers "to stop cutting themselves off arbitrarily from a vast reservoir of proven skill and to halt the moral disintegration, the social waste and the economic cost to the community that result when willingness and ability to fill a job are repudiated."

Unquestionably, the Government has a signal role to perform in collecting useful data and statistics, so the nation can have reliable information on the progress being made and where the thorny problems lie.

There already exists a Federal Council on Aging, established by President Eisenhower in April 1956, made up of representatives from the 12 government departments and agencies which deal with older persons' problems. In a "memorandum" dated April 2nd, he explains his action:

> "The marked rise in the number of older persons in our population has a continuing and fundamental impact on our society. . . . The great majority of older persons are capable of continuing their self-sufficiency and usefulness to the community if given the opportunity. Our task is to help in assuring that these opportunities are provided. . . .
>
> "To achieve this, and to assure that our older citizens are able to participate fully and effectively in the life of the community, emphasis should be placed on improvement in such areas as:
>
> 1. Preservation of physical and mental health, and rehabilitation
> 2. Income maintenance

[5] 1958.

3. Employment and retirement
4. Housing, living arrangements and family relationships
5. Education, civic participation, and recreation.

"Within these fields lie new opportunities and responsibilities for greater participation by all our social institutions—secular and religous organizations, and local, State and Federal Government.

"In the Federal Government, activities and programs benefiting older persons are conducted in a number of agencies which administer health, welfare, housing, employment, and other programs affecting the population as a whole. These departments and agencies are charged with the basic responsibilities and have a wealth of experience and expert staff in their respective fields. They must continue to carry on their basic responsibilities. To supplement their efforts, there is a further need for coordinated policy development, planning and programming so that the departments and agencies can work together toward common objectives with a minimum of duplication and waste effort.

"To this end, I request that each of you designate a representative from your own Department or Agency to act with the other representatives so designated as a Federal Council on Aging. It will be the function of the Council to review existing programs in the light of emerging needs, and make recommendations to the appropriate departments and agencies as to emphases, priorities and provisions for unmet needs. Initiation of new programs and activities and changes in existing policies will remain the responsibility of heads of the departments or agencies directly affected."

Two years later (September 1958) the President took further significant action by signing into law the White House Conference on the Aging Act. This act opens with the statement:

"The Congress hereby finds and declares that the public interest requires the enactment of legislation to formulate recommendations for immediate action to improving and developing programs to permit the country to take advantage of the experience and skills of the older persons in our population, to create conditions which will better enable them to meet their needs, and to further research on aging."

In signing it, the President asked that the Conference, which will be held in January 1961, make sure that its recommendations are based on maximum individual responsibility, that the free choice of the individual and the idea of self-help be maintained, and that existing programs and agencies be used.

The Chairman of the Advisory Committee to the White House Conference is former Congressman Robert W. Kean of New Jersey. The Committee has set 2,800 as the number of delegates to the Conference:

1740 from the states
660 from national organizations
400 from the federal government

Intensive preparations are under way at the state level to develop plans and make recommendations to the 1961 conference, for action at the federal, state and local levels.

Though there are 20 subjects on the agenda, none is more critical to manufacturers than that of employment of the older worker.

In a business system where the welfare of each person depends primarily on his own efforts, it is essential that no arbitrary hiring limitations be imposed because of age. Surely the nation will not tolerate the economic loss resulting from any contrary policy, and will move to impose legislative sanctions if widespread need exists.

V. A REALISTIC APPRAISAL OF INDUSTRY'S PERFORMANCE TODAY

Through the policy of hiring the best available applicant, the seasoned value of older workers has proved to outweigh any drawbacks—real or imagined. As a result, there is a growing realization that men often attain their greatest worth as employees in their later years. Workers between 45 and 65 are frequently at their best because of the knowledge and judgment they have gained through experience.

A. Factors Which Encourage Employment of Mature People

There are a number of concurrent developments which have given impetus to their employment.

1. New Processes and Automatic Machinery Aid Older Workers

There is evidence on every hand that age limitations have already been eliminated to a larger extent than is generally realized. With the development of labor-saving machinery, with push-button and automatic operation, physical strength and stamina, as such, have become less important requirements for industrial employment.

It is true that industry has made these changes not to accommodate the mature employee, but to bring greater operating efficiency so that better products might be made available at lower prices. This in turn, however, has aided the older worker by opening up new employment opportunities. Even in those situations where slowed-down reaction time, increased fatigue or decreased ability to cope with job demands have made it advisable to re-engineer the job, the new techniques resulting have been an aid to both older and younger workers and tended

to simplify the work generally. Indeed, Senator Desmond points out that "industry is going to amazing lengths to re-engineer jobs."

In a study covering 49 plants representing 67% of the employment in the area, the Industrial Management Council of Rochester[6] found that:

> "Transfers and re-assignment of older employees to less strenuous jobs were reported by many companies; and others have established a policy of reserving light jobs for those who can no longer meet requirements of their former occupations.
>
> "But most significant in the survey was the widespread use of labor-saving equipment as a part of a regular program to improve manufacturing methods. In common usage are electric hoists, cranes, fork lifts, etc.
>
> "This brought about the reduction of the degree of physical application necessary to perform certain jobs.
>
> "The natural outcome of reduced physical effort has made it possible for older employees to perform satisfactorily a mechanized job which they would have been unable to do under former job conditions."

Advancing technology, of course, also frequently requires transferring employees to different jobs. Plant relocations and mergers sometimes also affect the older employee.

Where jobs are eliminated in the march of progress, responsible management will ease the transition insofar as possible, so as to minimize any possible disruption to employment.

2. The Growth of Job Analysis and Evaluation in Industry

More and more employers are following the practice of analyzing and evaluating all the jobs in their plants in terms of mental and physical requirements. When this is done and applicants are selected on the basis of experience, skills, education and similar objective factors, an older applicant may be able to fill the job as well as, or better than a younger person. When emphasis is placed on ability, age becomes irrelevant.

With careful development of job specifications, employment becomes a matter of proper selection for and assignment to the job on the basis of individual ability to perform the duties. Anyone who can meet the requirements is a logical candidate for the job, regardless of age, sex, color or other factors unrelated to job qualification.

Discrimination of any kind is then automatically eliminated, as are misfits—for to employ or retain workers in jobs for which they are not fitted is economically unsound, socially indefensible, and unfair to the individual who finds himself in a job for which he is not suited.

[6] Report, N. Y. State Joint Legislative Committee on Problems of the Aging—1954—pp. 99-107.

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The use of job specifications also minimizes charges of age discrimination when lack of qualification is the real job barrier.

3. Practical Selection and Placement

By and large, the employer is likely to approach the task of hiring employees in a realistic manner. For any job opening, he will employ the person who he has reason to believe will do the best job. Employment of people and their assignment to jobs is determined by matching the individual's skills and qualifications with the requirements of the available position. In modern competitive business there is no place for prejudices and generalizations when it comes to choosing or promoting employees.

More and more, employers are coming to realize that they cannot afford to ignore the fact that there is no substitute for experience and the wisdom which comes with age.

Recognizing this fact, some companies are reviewing selection criteria to be sure they are giving mature workers the proper consideration. Many jobs which formerly required physical strength have been changed so that mechanical energy does the strenuous work. Yet as a matter of habit in hiring people there is a tendency to look for the same physical requirements even though the manual work is now being done by the machine.

Testing requirements may also need modification. Sometimes it is reasonable to set up lower norms for older persons. It is interesting that, while workers in the 35-45 age group are said to be the best producers, testing indicates[7] 40% of workers over 45 years of age can outproduce the younger men—even until they are 65.

Furthermore, older workers have been their own best advertisement. They are widely accepted at face value because they have proved themselves on the job.

B. Industry Finds Mature People Make Good Employees

The question of how reliable, productive and adaptable the older worker is, how much special help he may need, if any, to keep up a good production rate is becoming increasingly important to management. Employers need to know what to expect from the older worker in the way of efficiency, work attitudes, etc.

1. A comparison of two NAM membership surveys (in 1939 and in 1951) sheds some light on this matter. On both occasions employers were asked to rate their older workers on the basis of work performance, attendance, safety, and work attitude as compared with the rest of the work force. Forty years was established as the dividing line between the younger and older workers in the 1939 survey. In the 1951 study the dividing line was advanced to 45 years in view of prevailing practice—a fact significant in itself. In 1939 the survey covered about 2500 companies; in 1951 it included some 3600 firms.

[7] "It Pays To Test Before Hiring"—Iron Age, 3/5/59.

The comparisons indicated that in *work performance,* while 84.6% of the employers in 1939 rated the older worker as equal or better, by 1951 the figure had advanced to 92.7%.

The *attendance* improvement was even more striking—82.5% of the employers queried rated their older employees as equal, or better than the entire group in 1939, while in 1951, 98.1% said that their older employees were as regular, or more regular [illegible] as attendance was concerned.

When it came to *safety,* 86.2% of the 1939 employers indicated that their older people were equal or better in avoiding accidents. By 1951 this figure had risen to 97.4%.

So far as *attitude towards work* is concerned, the older worker was rated superior or equal to the younger by 94.8% of employers in 1939. The more recent figure indicated that 99.2% of the reporting employers viewed the oldsters as equal to or better than the younger group in this respect.

It is significant that well over 90% of the reporting employers feel that their older employees are equal to or better than their younger associates on these important counts. In fact, employers report they strengthened their operations by hiring older applicants where heavy turnover and absenteeism were problems.

2. Most surveys comparing older workers with the rest of the work force with regard to work performance and reliability deal with the entire group and not with the *more recently hired individual who is along in years.* However, the Federation Employment Service in New York City has been actively engaged in getting jobs for oldsters since 1948. After one year on the job they checked on the older worker applicants placed in January to June 1951 to evaluate their work performance and their attendance records.

   In this study 83% of the older workers placed had equalled or bettered the productivity of their younger associates, according to their employers. As for absence from work, 87% of the older group had records which were equal to or better than those of their younger co-workers. Where absenteeism is a serious problem, the antidote could well be the employment of more mature workers.

3. A 1958 survey by the Bureau of National Affairs, with 140 business executives participating, revealed that in selecting supervisors, age is ranked as the least important factor to be considered.

Of course, shorter hours and a shorter work week have made it possible for many mature people to remain in active, full employment longer than formerly. At the same time with the advancements in preventive medical programs, both within and outside the plant, the modern oldster is likely to be more active, physically healthier and longer-lived than his counterpart of a generation past.

In thousands of plants all over the land employers have found that from a dollars and cents point of view alone, older employees are an asset and not a liability. They

find them more experienced, generally more reliable, more conscientious, and more resistant to distraction from home problems and outside interests than younger workers.

Further, older workers tend to remain at a job longer than younger ones. They are less likely to quit. Opportunities to change employers are less likely to be seized by older employees than by youthful ones with less stable interests.

There are indications that the morale of older workers is better than that of younger persons. Their work habits are steady and they have a serious attitude toward the job. They are less apt to waste time.

Routine work seems to be less boring to them, less fatiguing and less monotonous. Their judgment is usually better and sounder.

They require less supervision once they are oriented on the job. In fact, they often have a stabilizing influence on others in the group and exercise a kind of "informal supervision."

But the few limitations that older workers have, should also be taken into account. Some may not be able to do work requiring certain kinds of physical exertion, and where muscles or stamina are prime requisites younger workers may be preferred.

Reflexes tend to slow down with advancing age. If dexterity and speed are essential qualifications, and more important than accuracy and judgment, the older person may not be the best choice.

While older workers have fewer accidents and less days away from work, recovery may take longer.

The qualities which make the older person more stable sometimes make him resistant to change—although fear for his security could be a more important factor in his reluctance to accept new methods or directions than so-called stubbornness.

C. More Jobs than Ever Before for Mature People

Employment records in thousands of companies reveal that older workers are holding jobs in greater volume than ever before. This is especially true in industrial centers.

For instance, the director of the New York State Labor Department Division of Research and Statistics recently pointed out the tremendous increase in the number of older people in New York City. Between the 1940 and 1950[8] census, while the population of the city increased some 6%, the number of persons over 65 years of age increased 49%—more than eight times faster than the total population. At the same time, the group past 45 years of age increased 26%—more than four times faster than the entire population.

[8] The 1950 census is the latest one for which these statistics are available.

In spite of this tremendous increase of older people, employment in the over 65 age group was up 100%, while in the over-45 group, employment was 51% ahead of 1940. This indicates that employment of people over 45 increased twice as fast as did their number in the population. In fact, of the more than one-half million resident workers added during the decade (1940-1950), about 82% were people past 45 years of age.

That employers recognize the obvious advantage of hiring the more mature person who is qualified is further demonstrated by a recent report[9] of job placements by the New York State Employment Service. In the first half of 1953, workers over 45 years old placed in jobs were 21% of the total so placed. This figure increased to 30% for the same period in 1959. In short the older worker has half again a better chance of getting a job today than he had just a few years ago.

In May 1960, the N. Y. State Labor Department reported that "workers between 45 and 64 have been particularly successful in job hunting. Representing 29% of the job seekers, they accounted for 28% of the non-farm jobs the agency filled between July 1958 and June 1959."[10]

Other industrial centers disclose similar patterns. In Detroit, for instance, from 1940 to 1950, population in the over 65 group increased 62.4%. While men over 65 increased 69.9% in numbers, the employment of this group increased 109%. Women over 65 increased in number 56.1% while those employed increased 133.3%.

In Grand Rapids, men over 65 increased 24% while their employment increased 81.7% in this decade. In Flint, while men over 65 had increased 43% in numbers, their employment increased 108.5%. The Michigan study states:

> "The older workers, who remain in the labor force, have the best employment records in the state, and the older women outdo the men in obtaining employment."

A more recent compilation of U. S. Census and Bureau of Labor Statistics figures indicates that the number of civilians working in the United States increased 35% from 1940 to 1955. During the same period the old people (65 and over) working increased 54%.

With employment on the rise, it is heartening to know that more jobs are going to the higher-age bracket than ever before.

A recent study[11] by the U. S. Department of Labor indicates that the rate of unemployment in the over-45 year old group as well as in the over-65 year group is considerably less than the average for young workers and somewhat less than the average

[9] New York Times—August 3, 1959.

[10] World Telegram—May 24, 1960.

[11] The Unemployed—Spring 1959: May 1959, U. S. Department of Labor, Bureau of Labor Statistics, Bureau of Employment Security, Washington, D. C.

for all age groups. Although the individual in these age groups who is seeking employment and encounters obstacles, finds no comfort in the fact that statistics show age, as such, is not a major factor in locating a job, it is encouraging to note the trend.

Developments, such as these, convincingly point up the fact that the older job applicant is enjoying greater job opportunities because of the ever-growing acceptance of mature workers in the labor market.

D. Typical Example of Sound Employment Procedure

More than half the employees at a Yonkers, N. Y. company are over 45. The company does not give preference to the middle-aged but in hiring the best available person for the job it has found more older people being selected.

Key step is careful screening by the Personnel Department so that no unqualified older applicants are referred to the department head, who must have adequate reasons if he rejects the applicant. Department heads know that the company frowns on specification of a maximum hiring age in requisitioning new help. *If an age limit is specified, it must be justified to the vice-president who is adept at countering arguments.*

The specific job in question is the frame of reference for the pre-employment physical. There is no attempt to require that all new employees meet certain general standards of physical fitness.

VI. STEPPING UP TO THE RESPONSIBILITY — CALL TO ACTION

The higher age of the work force and the increasing number of older people willing and able to work, calls for change in traditional attitudes toward the employment of older people. Although American industry is today employing a higher percentage of older people than ever before, the growing trend toward longevity in our population, coupled with management's constant need for a competent and stable work force, indicates the desirability of an even greater utilization of the talents, capacities and experience of older persons. This is imperative both for the sake of the individual who must achieve satisfaction through our economic system, and for the sake of a productive economy to which mature men and women have a definite contribution to make.

We have already found in our conferences with employers on this subject an intense interest and willingness to do whatever lies within the realm of possibility. Many company personnel programs are already being adjusted to older workers.

While age limitations in employment have already been broken down to a larger extent than is generally realized, the NAM feels that a great deal remains to be done in the way of enhancing employment opportunities for older people. It may be well to review some of the chief factors involved:

A. Employers are urged to analyze all jobs in the plant in terms of mental and physical requirements. When this is done and applicants are appraised in terms of their ability to meet job requirements, it is readily seen that an older applicant may be able to fill the job as well as, or better than, a younger person. Age becomes irrelevant and emphasis is placed on ability.

B. Care should be taken to discourage any practice of restricting older people exclusively to set jobs such as guards, watchmen, elevator operators, cleaners, sweepers, oilers, etc.

C. Some younger supervisors are reluctant to hire employees much older than themselves. This attitude stems from personal uncertainty or insecurity, as well as from the feeling that the newcomer will be resentful and, therefore, disinclined to cooperate.

   Pre-conditioning of both parties—and co-workers as well—will tend to alleviate this condition.

D. Widespread respect for the principle of seniority has served to protect the older employee. Where union seniority clauses make it more difficult to hire the "over-45" job seeker, the cooperation of the union in overcoming this difficulty should be sought.

E. It is generally agreed that the existence of a pension plan does not mitigate against the hiring of "over-45" job seekers. There is, however, a feeling that retiring a worker with a small pension or no pension at all, (as a result of short tenure) is poor public relations.

But with pension plans becoming more widespread, it is increasingly likely that the mature applicant already has some pension coverage through one or more prior jobs.

Where the employer wants to, he will find a way to hire mature people as evidenced by the many plants where a skilled man is hired at 64.

F. There are many areas where employers have a job to do in getting information to their communities and the public generally, stressing industry's problems and progress in employing older workers. For example:

1. It is recognized that a "promotion from within" policy usually limits job opportunities for older applicants by leaving only the lower-paying, less desirable jobs available to them, except where there is no one within the organization qualified to fill a vacancy.

   Few people understand that this very policy, by providing the means whereby mature people are kept satisfyingly at work, has itself been a responsible contribution to the *solution* of the problem.

   Whenever a man is moved up in an organization, it may give rise to a whole series of promotions, affording younger people the chance they seek to advance. Employers would be wise to work toward a wider appreciation of the benefits of promotion-from-within and the unquestioned fact that although this principle favors more jobs for younger people, at the expense of more jobs for the older, its values are obvious.

   "Promotion-from-within" was established primarily to benefit the individual employee. The employer might often find it preferable to fill a new opening from the outside—but because the policy of advancing his own employees is thoroughly accepted and practiced, industry should not be castigated for the fact that the older applicant is disadvantaged thereby. No way has yet been found "to have your cake and eat it, too."

2. There is also need for broader understanding of the fact that adding "over-45" newcomers to a work force already employing a large percentage of older people interferes with balanced replacements.

When the company refuses to accept age limitations in hiring, the only limitation then becomes the applicant's own ability to meet the physical and mental requirements of the job.

With such a background a company can adopt a positive policy where the yardstick for employment in all jobs is qualification alone, training its personnel workers and supervisors to adhere strictly to this policy.

We are now at a point where middle-aged and older people form a considerable part of the work force potential, with the definite prospect of a manpower shortage in the younger age groups.

With the steadily increasing demand for more people to man our industries and services, there is a pressing urgency to re-examine employment practices immediately. To neglect this task is to penalize employer and mature applicant alike, for both parties—and the community as well—would then be deprived of the benefits which accrue to all when older individuals make their economic contribution in gainful employment:

. . . The employer gains qualified men and women who at age 45 or 55 are more likely to stay with him than those hired at a younger age. The talent and experience of the organization and the skills which may give it an edge over competitors—are thereby enhanced.

. . . The older employee benefits from gainful employment and a chance to maintain his Social Security standing. Invariably he responds with good work performance, loyalty and high morale.

. . . The community is advantaged through the reputation of a good place to work and live.

It is hoped that the suggestions here set forth will assist and encourage employers to make better use of the valuable skills which so many older people possess.

Appendix A

CONSIDERATIONS IN HIRING MATURE APPLICANTS

It is just good business to hire the best possible applicant for an available job. And while good employment procedures avoid generalizing or treating people as members of a group, there are certain factors which an employer might want to consider when dealing with mature job applicants.

I. Favorable Characteristics of Older Employees

Stability

Records indicate that as a group, older people less frequently quit jobs. Companies have solved situations where turn-over has been a problem by deliberately employing mature applicants.

Attendance

Surveys indicate that younger workers have the highest absentee rate. People over 50 are absent from work less than any other age group.

Work Performance

Employers in NAM surveys rate their older employees higher than the younger group on Work Performance. Patience and thoroughness with detailed application are characteristics of mature employees.

Experience

Knowledge is increased by experience. The older worker presents an opportunity for management to capitalize on years of experience.

Safety

As workers grow older, they tend to become more careful. Records prove that younger workers are more susceptible to accidents. Older workers have the best safety records.

Improved Judgment

Obviously some people whether young or old are smarter than others, but greater wisdom usually comes with age. An older employee in the group can serve as a check on the more impulsive younger people.

Work Attitude

Attachment to his work, in fact a bit of possessiveness about his job, is characteristic of the older worker. Interest and job satisfaction are apt to be high with the mature employee. He is less likely to be distracted from his work.

II. Unfavorable Characteristics of Older Employees

Less Strength

As people grow older, there is usually a decline in strength of muscles and heart. Where physical strength is a prime requisite, younger workers may be preferred.

LESS SPEED

Reflexes slow down with increasing age. Where dexterity and speed are essential qualifications, it might be wiser to consider the younger applicant.

LONGER ILLNESS

While older workers have fewer accidents and less days away from work, when they are incapacitated, recovery takes longer.

LESS ADAPTABLE

The qualities which make the older worker more stable sometimes make him resistant to change. Fear for his security could be a more important factor in his reluctance to accept new methods or directions than so-called stubbornness.

On balance, it is clear that for most jobs, the favorable factors greatly outweigh the less favorable, with the likelihood that mature applicants will make excellent employees.

Appendix B

HIGHLIGHTS OF NAM EFFORTS TO EXPAND JOB OPPORTUNITIES FOR OLDER WORKERS

For over a quarter of a century the National Association of Manufacturers has been engaged in continuous activities to promote acceptance of the real value of mature individuals in manufacturing plants. The success of this program is indicated by some of the milestones in the Association's campaign for older job applicants, briefly summarized as follows:

... In *1929,* one of the principal sessions of the NAM Congress of American Industry was devoted to a panel discussion of the "Older Employee In Industry." Later that same year at NAM Headquarters a program was launched for the "Older Employee In Industry." In this campaign, NAM secured the active participation of the National Industrial Conference Board, the National Industrial Council, the National Metal Trades Association, the United States Chamber of Commerce, the Society for the Advancement of Management, industrial relations consultants and four life insurance companies.

... In *1939,* NAM conducted a survey of management practices with respect to mature employees, covering 2½ million people in manufacturing. This study, "Workers Over 40", was the first broad-gauge attempt to deal factually with this situation and indicated the increasing use of older employees in industry. These findings were used extensively as the basis of widespread programs to open up still wider job opportunities for mature employees. The United States Department of Commerce along with many other organizations gave this material wide distribution.

... In *1947,* NAM began a series of conferences with manufacturers, to exchange information regarding the performance and contributions of older workers. Informal exchange of experience, as well as discussions at NAM Industrial Rela-

tions Institutes, continue to be a most effective means of opening up additional job opportunities for older employees.

... In *1948*, realizing that only 25% of the job opportunities were found in manufacturing and that there were three times as many employment opportunities in other fields, the NAM in cooperation with the United States Chamber of Commerce, extended its older worker study to include trade and commerce as well as manufacturing. The results of this survey indicated that employers generally were opening their job opportunities to more and more older workers.

... In *1949*, NAM published "Employment of the Physically Handicapped and Older Workers", a study indicating how industry strengthens the economy by supplying additional job opportunities to qualified applicants without regard to age or physical disability as such. This work was used extensively as the basis of industry programs to extend employment to the physically handicapped and older worker.

... The NAM Industrial Relations Division has taken a leading part in promotional and educational activities in behalf of the aging. Beginning in *1949* it has regularly participated in the University of Michigan Institutes on Problems of the Aging. In *1950* it was represented on the planning committee of the President's Conference on Aging, held under the auspices of the then Federal Security Administration. At that time it was agreed that the Conference should not be used as a springboard for legislation.

... In *1951*, NAM conducted a survey of management evaluation of older worker performance, covering nearly 3½ million employees. When these results were compared with those of the 1939 survey, it was immediately evident that great strides had been made in the acceptance of older workers by employers in industry. These figures have been used extensively as the basis of widespread studies by government and private agencies in attempting to further extend the acceptance of mature people as employees.

... In *1957*, NAM made an extensive check of outstanding United States manufacturing companies, uncovering further utilization of older employees.

... In *1959*, the NAM filed a statement with a Congressional Committee indicating that employment of mature workers in industry has been growing steadily over the years, now reaching the highest point in history.

... In *1960*, NAM supplied the U. S. Department of Labor with 250 TV messages featuring Rudolph F. Bannow, President of NAM, for use on TV stations throughout the country. This public interest story featured job opportunities for mature workers and the advantages of hiring these people.

... In *1960*, a group of prominent industrialists* formed the NAM Committee on Employment of the Mature Worker to study and promote additional job opportunities for this group.

While these highlights indicate significant progress, the ultimate objective — that all applicants be employed in accordance with their qualifications — calls for action on the broadest possible front.

The National Association of Manufacturers continues to drive home the fact that older workers have qualifications which are decided assets in our business life by aggressive education and leadership programs. Some of these follow:

* List available on request.

NAM Activities to Open Employment Doors for Older Workers

1. The NAM undertakes surveys to evaluate management policies, philosophy, and actual practices in dealing with older applicants, over-age applicants, and to determine the actual on-the-job performance of these groups of employees.
2. The NAM disseminates on a broad-scale basis, educational materials designed to guide industrial management in dealing with over-age applicants seeking employment.
3. The NAM provides practical and sound information to promote greater understanding on the part of industrial management of the contribution older workers can make and strongly recommends that employers re-evaluate their existing employment practices to make sure that each older applicant is appraised in light of the specific requirements of the job that is being filled.
4. The NAM issues statements promoting job opportunities for the older worker, pointing to the tremendous reservoirs of judgment, performance, and loyalties inherent in this group of employees.
5. The NAM conducts meetings, conferences, and roundtable clinics for member companies designed to stimulate acceptance of older workers on the basis of their qualifications for key jobs, irrespective of the question of age or other arbitrary factors.
6. The NAM participates in work sessions, study groups, and national conferences on employment for older workers held by the national and state governments, welfare organizations, universities, and other groups.
7. The NAM regularly uses radio and television programs to demonstrate to the public generally the substantial contribution to our economic prosperity which mature workers are making. By showing older employees efficiently at work, other employers are encouraged to hire qualified applicants.

Appendix C

SELECTED REFERENCES ON EMPLOYMENT OF MATURE WORKERS

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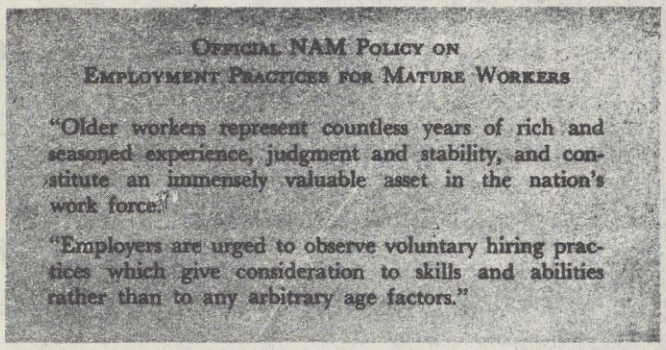
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INDUSTRIAL RELATIONS DIVISION
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2 East 48th Street, New York 17, N. Y.

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IMPORTANT NOTE

NAM is made up of member companies in many different industries of all types and sizes located in every section of the country. Most of these companies are small. (Over one quarter of them employ less than 50 people; almost half employ fewer than 100; five out of six NAM member companies have fewer than 500 employees on the payroll.) NAM's thinking and recommendations, therefore, give particular weight to considerations affecting the smaller company.

The task of providing employment opportunities for mature workers is here discussed with full awareness that conditions vary markedly between types of jobs, between companies, between industries and between different sections of the country. The knowledge that there is no single solution to the problem is a vital consideration.

FOREWORD

Recently the Association published a "Report on Employment of Mature Workers," based on management's experience in providing employment for the increasing number of individuals in the upper age brackets. The ready acceptance and wide use of this publication indicated intense interest in the problems which it outlined and the progress industry has made in utilizing the skills of mature applicants.

Quite naturally it gave rise to the desire of employers for a "How to do it" procedure for their further guidance in employing and placing the mature individual in productive work. This booklet is the result. It is a product of the NAM Committee on Employment of the Mature Worker—a group of specialists who have had considerable experience with these problems in their own companies.

The clear-cut principles which have emerged from years of intensive experience with employment of mature workers are in no way different from the basic concepts which underlie sound personnel administration for employees of any age.

A booklet of this sort may lead the reader to view the average mature worker as a member of a special group. This is not the Committee's intention. While special characteristics of mature employees are here emphasized, it is not the purpose to reflect unfavorably on employees of other ages.

While significant progress has been made, the ultimate objective that all applicants be employed on the basis of their qualifications, calls for action on the broadest possible front. There is ample evidence to support the record of favorable experience where mature workers have been given employment opportunities in line with their abilities.

Mere acceptance of these views is not sufficient. Accomplishment by any employer, large or small, requires that positive action be taken.

Confident as we are that more companies will employ mature workers when they know more about how to do it, this pamphlet is offered as another step in the NAM's vigorous campaign to make better use of the experience, knowledge and skills of men and women of mature years.

I. THE PROBLEM

The mature worker is a person over 45, who is not yet old enough to be eligible for social security benefits. We shall discuss this person as:

1. Employed, and
2. Seeking employment.

Those Who Are Employed

On the job the mature worker is generally well thought of by his employer. And for good reasons. In every generation youth looks to maturity for wisdom and leadership. American industry likewise values these traits. To meet competition in the open market, employers rely heavily on the skills, knowledge, and experience of their mature people.

In appreciation of the mature worker's value, and the need for his services, American industry provides rewards, promotion, increased responsibility, recognition for long service, more job security than has ever before been known in the history of free men.

Those Who Are Seeking Employment

The plight of the mature job-seeker is an entirely different story. Employers sometimes do an "about face" and think in stereotypes. Youth is equated with imagination, drive, and aggressiveness. Maturity on the other hand is often interpreted to mean inflexibility and lack of dynamic energy.

If employers are so satisfied with their own mature workers, why are they often reluctant when a mature worker knocks on their door?

Employers have gone a long way in keeping their mature employees at work—by in-company transfers, for instance. On the "inside", career hiring, promotion from within, and seniority mean a great deal to the security of the mature worker. But at the same time these policies make the situation more difficult for the mature job seeker. A plant closing, a production change that eliminates a job, such factors place a heavy burden on the mature job seeker.

What is the answer?

A Time for Involvement

Let's get involved. Really involved.

Why? Because we have to. The problem of the mature worker is our problem.

We can help him and he, most certainly, can help us.

We need the older worker now as we have never needed him before. The company that recognizes the importance of the mature worker, that has opened its doors and mind, taking an objective view of company needs and, where appropriate, employing him has an important advantage. The company that has not reached this point will soon have to face up to the necessity for, and desirability of, employing the mature worker.

In any event: Now is the time for involvement.

Here is an important fact: By 1970 our labor force will increase by 13.5 million. When the present decade ends, the United States will have a working force of approximately 87 million, 13.5 million more than are employed today. Of the total increase, almost 12 million will be either under 25, or over 45.

A job is open. There are twelve applicants—

6: under 25, just out of school or inexperienced;

1: between 25 and 34, approaching the combination of skill and experience needed to operate at maximum efficiency;

5: over 45, fully experienced and skilled, with no sign of decline.

This is the situation employers will be facing in this current decade, the choice between youth with inexperience and age with experience. But right now, even as this situation comes into sharper focus, these mature workers who are to comprise almost half the increase in the working force are being pushed to the rear instead of to the fore.

The prevailing "too-old" myth is a paradox we can no longer afford.

II. EXPLODING THE MYTHS

MYTH #1 — "I have schedules to keep. I can't take a chance on an older worker; he's liable to be absent too often."

Such fears are groundless. Numerous studies of workers' absence show the opposite to be true: as a group, older workers can be expected to be absent fewer times each year than their younger counterparts.

MYTH #2 — "I'm afraid for the safety of an older worker. He's more accident-prone."

False. All the available research shows the older worker to be generally more safety-conscious, actually less accident-prone. This, incidentally, helps minimize workmen's compensation costs.

MYTH #3 — "Still, you know I have to keep production at a high level. I wonder if an older worker can keep up with the rest."

If there is any difference in the rate of production of an older worker, it does not show until after 55. Even then it is an individual factor; some older workers *outproduce* the younger ones.

MYTH #4 — "I need versatility. Too many older workers are set in their ways."

Some older workers *are* inclined to be inflexible; so are some younger workers. The important consideration is the individual's outlook—his "functional age."

More valid limiting factors caused by aging are physical strength, speed of learning, memory and work speed.

What about these?

Physical strength: With the amount of power-operated equipment in use today, physical strength is less important a consideration than it has been in the past. But older workers are not well-suited to jobs for which the chief considerations are great physical strength or continued exertion.

Speed of learning and memory: The older worker may not be as adept at rote memory, nor may he *seem* to learn a skill as quickly as a younger worker. The older worker learns by grasping one principle at a time, but once having learned the skill, he will perform with a great measure of accuracy.

Work speed: When speed is the chief asset for a job, the older worker is at a disadvantage. He may suffer from the pressure and tension involved.

Briefly, these are the main obstacles facing the older worker, but they are adequately compensated for as will be seen in the following chapter.

III. THE ARGUMENT FOR

The argument for the employment of the mature worker is a strong one indeed. Some of the outstanding traits possessed by a mature worker include:

1. ***The ability to stay with a job***

Surveys conducted by the National Association of Manufacturers and the United States Chamber of Commerce show that an employer can expect less turnover among older workers; that once they have a job, they are more likely to keep it.

2. *Work of quality and accuracy*

If a mature worker's speed is not as great as his younger counterpart's, it can be expected that the quality of his performance will be superior. In our competitive society, with its increasing emphasis on quality, this trait is a prized asset.

3. *Great stability*

Doubtess an older worker has been "at it" longer and this shows up in his performance and adaptability. Further, he is likely to have a stabilizing influence on his fellow workers.

4. *More time at the job*

In a Bureau of Labor Statistics' survey, workers over 45 were shown to be absent an average of only three days per hundred, compared to an average of six days per hundred for workers under twenty.

5. *Better safety record*

An older worker is naturally more careful. He will take fewer risks than others. Company records show that older workers have less than the average number of disabling injuries, although their recovery time is greater. Insurance company accident surveys confirm this fact.

6. *Works better by himself*

Once the older worker masters the job, he can be expected to work well "on his own" and require less supervision, an especially advantageous trait because most supervisors have multiple responsibilities.

7. *Adjusts more effectively to the job*

As the world grows smaller, the strength of roots lessens, giving younger people the urge to move and explore new areas. As a rule, an older worker lends an emotional balance to a working atmosphere. He is a settled member of the community, more willing to accept situations as they are, more interested in the progress of the company for which he works.

8. *Proven efficiency*

The ability of American industry to meet the production challenge of World War II is a significant tribute to the older worker. With the nation drained of the majority of its younger men, supplies and equipment rolled off production lines in ever-increasing quantities. At the end of the war, 750,000 older workers—many already eligible to retire—were holding jobs and serving their employers and country in an efficient, admirable manner.

IV. IMPORTANCE OF A POLICY STATEMENT

The statement of the company's philosophy, thought through and written down, is basic to the success of the mature worker program. This policy statement would include a declaration of:

- The company's willingness to assume its share of the total community responsibility for providing work consistent with efficient and profitable production.
- The company's agreement to hire qualified people when there are suitable openings in which the mature individual can meet the full job requirements.
- The Company's policy to produce high quality goods at lowest prices to the consumer on the basis of efficient production and operations.
- The company's purpose to assemble a work force of qualified people who perform their individual jobs competently and with due regard to the competitive realities of our modern industrial society.

Therefore, the company makes every effort to build a balanced work force, seeking to recruit individuals qualified for their particular jobs, with full consideration for their skills and other qualifications, without regard to arbitrary factors such as age.

V. THE EMPLOYMENT PROCESS

Once a company has fully realized the value of the older worker, and has established hiring policies with no age restrictions, certain areas of personnel administration take on special significance.

In *recruiting* through private and state employment agencies, selection of the right person can be greatly facilitated by supplying the agency with an accurate and detailed job description. It is good policy to provide a description of the duties and responsibilities of the job, the specific skills required, and any special or unusual features of the job. This will aid the agency in matching the qualifications of the applicant to the available job.

A company's *application form* can aid considerably by soliciting information on the applicant's employment history, his special skills, personal obligations, education and interests.

After this, a *check of his references* and former employers will add to the total information in the hands of the prospective employer and will help determine both strong points and weaknesses.

Aptitude tests are helpful in determining qualities not easily brought out in an interview. *Judgments on qualities* such as manual dexterity, reasoning, ability

to get along with fellow employees, special aptitudes and interests, can be made more reliable by using tests to supplement other sources of information.

When the older worker has been found satisfactory, the final important step is the *physical examination.* It should be thorough, including an investigation of the individual's health history, especially in those areas which might affect his work.

In summary, the same highly selective hiring policies should be used in hiring an older worker that would be used for any prospective employee, regardless of age.

A. *The Best Man for The Job*

The goal of every company is to get the best man for the job. This places a heavy responsibility on the interviewer. He must know exactly what the job requires, the training and experience necessary, physical demands and whatever special job factors may have a bearing on selection.

The first step in this process requires that the person doing the interviewing understand the requirements of the job—not only the scope of the work, the training and experience necessary to perform it, but also the physical and environmental characteristics of the job. This is the situation whether the applicant is young or older, handicapped or able-bodied.

Placing the right person on the right job is of course, th. ultimate goal of this procedure. However, to be realistic, it is often necessary to compromise in the interest of putting the best available person on the job. Care must be exercised lest a better qualified mature applicant be passed over in favor of a less able younger person. Since there is no sure way of determining in advance how well an individual will perform in a new job, some placement decisions occasionally prove mistaken, and have to be corrected on the basis of further experience.

B. *Selection and Appraisal*

The best placement is based on matching the abilities and interests of the mature individual with the job he will perform.

It does not end there. Frequent appraisals should be made, carefully and objectively. These will assist the supervisor by giving him a yardstick of performance, as well as helping the mature worker to get a critical and realistic estimate of his own contribution.

C. *Give The Interviewer Some Tools*

It almost goes without saying that no program of this type can work unless the interviewer and supervisor *want* to help; unless these important people appreciate the skills and experience of the mature worker.

The interviewer will appreciate your help. See that he has a job specification and description for each job in the plant, including what work is expected, and a general

indication of the training and experience needed to do it. This information, in writing, is helpful in any company, small or large.

The use of an employment requisition form is recommended, filled out by the supervisor, showing just what the job requires.

These aids are only as good as the effort that goes into preparing them. A vague job description or requistion helps no one—interviewer, job seeker, or company.

Favorable attitudes on the part of the interviewer and supervisor are more important than aids or gimmicks in successfully placing mature workers on jobs. Success cannot be expected from an interviewer with a negative attitude. The foreman also must be interested in this program to use the skills, knowledge and experience of mature workers.

D. *The Actual Interview*

The object is to hire "abilities", not "disabilities". If the abilities of the mature worker do not match the requirements of the job, it does no good to try to bend one to fit the other. Well-intentioned though the effort may be, the result can be nothing but unhappy.

But on the other hand, don't let the mature worker become his own worst enemy. Too many times he feels that he is unwanted in the labor market. Instead of putting his best foot forward and showing the ability which the interviewer is looking for, the mature worker may himself magnify the matter of age.*

Another thing a young interviewer must especially guard against is thinking of someone past 45 as being "over the hill". Remember when you were twelve? Remember what you thought of someone who had reached the ripe old age of twenty-five? Keep it in mind.

In dealing with mature workers, treat the matter of formal education realistically. Don't mistake "years spent in school" for "education". The important thing is what the mature worker can bring to the job.

Here are some glib phrases making the rounds:

. . . "Supervisors hesitate to direct workers older than themselves."

. . . "Employers are reluctant to hire a mature employee at a lower rate of pay than he received on his last job."

. . . "Companies want a work force with a reasonably even distribution of age groups among its employees, so that too many retirements will not occur at one time."

* See "Do's and Don'ts for Mature Job Seekers", an NAM guide for employees.

There are others. The point is that at some places, at some time, they may be true. But they are more likely not to be. When you are dealing with people, catch phrases are no substitute for thinking.

Before you can really be in step with the mature worker program, you might ask yourself: "Why hire a mature worker?" Charity? Sympathy? Because he is mature? No. Because you believe he can deliver on the job. Let him know that you expect it, too.

E. *Pre-Employment Physical Examination*

When the interviewer and supervisor determine that the applicant has the requirements to fill the vacancy, it is important that the applicant have a physical examination. Many clinics and thousands of physicians make arrangements to conduct physical examinations where the employer does not have the facilities in his plant. It is the physician's job to keep in mind that the environment in which the applicant is to work, as well as the job itself, must be such as to maintain the employee's well-being and in no way to endanger himself or his fellow workers.

With advancing age, physical and medical impairments may appear. As people grow old, there is sometimes a decline in strength of muscles and heart. Reflexes slow down with increasing age and mature employees may lack dexterity and speed. And while the employer should avoid generalizations, these are some of the considerations which arise when he considers hiring mature workers.

On the other hand, employer members of NAM have indicated on a number of occasions that they regard the mature employee as equal to or better than his younger counterpart in such important areas as stability, attendance, work performance, experience, safety, improved judgment and work attitude. As one large manufacturing company states:

> "A survey was made involving age groups in one of our largest plants, employing approximately 3,000 wage earners, all male, in the year 1951. It was rechecked in 1956 and the results were precisely the same. The factors included are significant to the point of indicating that the oldest age group does not suffer by comparison with the other three:

	Under 20 Years	20-29 Years	30-39 Years	40 Years and over
Greater Probability of Terminating	2	4	1	3
More Frequent Absence	2	1	3	4
Good Job Performance up to 6 Months	3	2	1	4
Good Job Performance after 6 Months	4	3	2	1

> "We have found in our experience with hourly persons in the older age category in our several manufacturing plants that they can learn how to do new and different work just as readily and as rapidly as younger employees. It is not

> a serious problem to effect transfers when automation reduces the work force except in those unusual cases where failing eyesight or hearing enter the picture. Unusually heavy physical effort which was at one time a deterrent in placing older workers on other work is being eliminated by the introduction of automatic equipment and methods. The older worker, therefore, finds it much less difficult to maintain production standards and meet the physical requirements of jobs to which he might be assigned."

A rigid physical examination, not related to the physical requirements of specific jobs, is out of place in dealing with mature workers where there is no significant physical handicap that would interfere with their job performance.

VI. EMPLOYER, EMPLOYEE, AND THE NEW JOB

Developing the recently-hired older worker into a productive employee is a task for both employer and employee. The speed and ease with which this is accomplished will be in proportion to the amount of cooperative effort expended by both parties.

Securing the cooperation of the job supervisor is the first vital step. Initially, the supervisor may feel that an older worker will be more difficult to handle and require more supervision. This fallacy should be dispelled with facts to show that the average older worker probably requires less supervision. To help overcome a supervisor's opposition it is good policy to consult him in the process of hiring. Let him help decide the important qualifications for the job; have him meet the applicant prior to hiring; and listen to his opinions of the applicant's merits. Make the supervisor an important part of this effort.

Ask one of the present employees to be responsible for showing the new employee around, to introduce him to other employees, and help him to become part of the group.

The company publication or bulletin board can also be used to help establish a generally friendly atmosphere. All these are basic to successful induction and orientation efforts.

In training the older worker, consideration should be given to the fact that mature learning-ability is of a *different type* than the learning-ability of a younger worker. If the job requires merely the adaptation of a skill the older worker already has, there should be no problem. If, however, new skills must be acquired, it is well to consider that the mature worker will learn better by steps; that is, the skill should be broken down so that its acquisition will be a matter of learning and mastering steps. This type of learning actually results in a more complete mastery of the required skill.

VII. THE WRONG MAN FOR THE JOB

Despite the most careful employment procedures, sometimes a person is placed on a job that is wrong for him. If this happens, correct it as soon as possible. Such a situation is hard on the company and it is hard on the mature worker. The longer the situation exists, the more difficult it becomes for all concerned.

What can you do in such a case? You could transfer the mature worker to a less demanding job and forget it—and too often completely demoralize the individual in the process. You can "let it ride" and watch the situation worsen.

Or you can stop and think about it. You can try to find out what created the bad situation. You can analyze it and take steps to see that it does not happen again. Then you can explain it honestly to the employee himself. You can try to place the mature worker in something more suitable.

VIII. MATURE WORKER UNEMPLOYMENT

Mergers, shutdowns, moves to a new location, expansion, cut-backs, elimination of unneeded jobs—these are everyday words in the business vocabulary. Everyday words, but with important consequences for employees—consequences that have nothing to do with the mature worker's ability on the job. Nevertheless, the result may be a number of mature workers unemployed.

In this connection, it must be remembered that:

1. Seniority does not provide protection when an entire plant shuts down or discontinues operations.
2. Competition and technological change frequently require displacement of workers.

Most employers who are faced with situations disruptive of employment, have shown a recognition of responsibility and an acceptance of opportunity to aid both employees and fellow employers. In the event of layoffs, employers frequently attempt to place in other plants, those employees who want to remain in the community. Fellow employers welcome the opportunity to secure qualified, recommended people when they can use them in their operations. In short, the employer who, in the event of layoffs, aids his employees to get relocated, not only assists both his employees and his fellow employers, but improves his own employee and public relations.

One large manufacturer in the midwest, after explaining the many things his company does to aid employees who are displaced, states:

A. "In those instances where we have had to close units, a surprisingly large

proportion of our older people have been helped to find other jobs in the community, often with little or no reduction in income.

B. "Company representatives can be of considerable help in times when there is a shutdown or large layoff in making contacts for older workers and we have tried to maximize our effectiveness in this area.

C. "One important consideration is that the older applicant must himself energetically take stock of his skills and abilities and attempt to 'sell' these to prospective employers. All too often people in the older age groups tend to take a defeatist attitude and make little or no real effort to capitalize on the capabilities they have.

D. "Even when there is a scarcity of jobs, much can be accomplished by the individual who is willing to answer ads, check with his friends, his church and his neighbors, visit employers in the immediate geographical area, register with a reputable employment agency, etc.

E. "A few of the real assets that the older worker has in a situation of this kind are maturity and stability, skill, etc.

Another example of management action in the event of a plant closing was provided by the Vice President of a metal manufacturing company with headquarters in the East. He said:

"The desirability of the mature worker has already been stated. But there are unavoidable times, because of plant shutdowns, when the mature worker finds himself in the open market."

The mid-western plant of this Company provides a specific example and indicates what can be done to offset this situation. In this case, officials of the Company offered direct assistance to the affected workers to enable them to find suitable employment within as short a time as possible.

Behind this plan the Company had two major objectives:

First, to show these employees that their future was a vital concern of the Company.

Secondly, to assume responsibility as part of the local community, and to work together with the community to discharge this responsibility. A step-by-step plan was promptly developed:

"Key representatives from Eastern Headquarters and their other plants were sent to the plant to work with the local personnel executives. Other interested industries were invited to participate, as were the community and State Employment Services.

Sample resumes and blank resume forms were printed. These were distributed to the affected employees, with sample resumes aiding in the preparation of their own forms.

Individual meetings were set up. The mature workers met with members of the personnel department and talked over their situations. The personnel

management team advised and guided them in how best to prepare their resumes; pointed out the most promising possibilities for new employment.

When the employees completed their resumes, these were duplicated. The employees were supplied with sufficient quantities for their own use. In addition, completed resumes were forwarded by the personnel department to the area State Employment Service and to other possible employers within commuting radius.

A list was made of all the available mature workers, showing occupation, education, and interests. This list was sent to all prospective employers, inviting their consideration.

Prospective employers were contacted and invited to visit the plant. There they were given the use of facilities to interview applicants.

Members of the Company personnel team arranged meetings with the Director of Employment Services for the State, as well as District Managers of Employment Services in adjoining towns to acquaint them with the problem facing the affected workers. At these meetings, the Company representative explained some of the workers' problems, such as commuting and relocating. He explained the Company's desire to help solve these problems. Employees' resumes and summary-lists of available workers were distributed.

The Agencies were anxious to help and supplied listings of job opportunities to be posted on Company bulletin boards, along with information as to how to secure additional data. When required, interview dates were arranged.

Contacts were made with local and national Chambers of Commerce, in the hope of trying to encourage other industries to come to the locality, and thus to increase local employment opportunities.

The local press added its support by carrying a front-page story of the Company's efforts in behalf of the idled employees. Publication of this story coincided with the visit of the personnel management team."

This is a fine example of an important and significant contribution to the solution of the problems of the unemployed mature worker.

A great deal of effort was required—by the Company itself, by employees, by other interested companies, by local and State Agencies, by the community, by the newspaper. It was a large team and a dedicated team.

It shows what can be done when people join forces in the community.

The Role of the Local Manufacturers Association

A Local Manufacturers Association affiliated with NAM, typifies the key role which an employer association can perform when a plant has to close down.

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Here are two examples from its own bulletins, indicative of the function which can be performed:

1. "The management of ..... company regrets very much to announce the closing of the Steel Foundry operations at its ..... plant.

It is expected that by December 1, all coremaking, molding and melting operations will have ceased here and by the end of the year all cleaning operations will have ceased and the steel foundry will be closed. This change will mean the loss of some 350 jobs. In the future all steel castings and pattern work will be done at the ..... Steel Foundry. Other foundry, finishing, and assembly operations will continue in .....

The management of ..... company has demonstrated a deep concern over the necessity to make this change and is most anxious to help in every way possible to assist present employees in relocation. They are equally anxious to make skilled and qualified personnel, which includes supervisory and maintenance people, available to other industries which may need such personnel.

These are the reasons why advance notice of this move has been released through this bulletin—

First: The Company wants all of industry to have the true facts in the case.

Second: As a good member of this Association, they wish other members to have first opportunity to acquire needed personnel that will be released, and

Third: Out of consideration for the employees who will be released, they choose to do everything possible to help them relocate.

In the near future an announcement will appear in the classified section of the newspaper, designed to facilitate relocation of personnel. In effect the statement will be as follows:

EXCELLENT FOUNDRY HELP AVAILABLE

As a result of a decision to close the ..... Steel Foundry, many excellent people will be available for employment.

It is our hope that these people will be given an opportunity to remain gainfully employed in the ..... area.

In order to make this possible, we would be happy to provide interviewing space and time, plus a personal resume on all such people, to any prospective employer desirous of hiring excellent foundry help.

If interested, please contact Mr. _____.

2. "The management of the ..... Company regrets very much to announce the closing of the felt operations at the ..... 16th Street plant.

It is expected that by November 1, all felt operations will have ceased. This change will mean the loss of some 60 jobs.

The management of ..... Company has demonstrated a deep concern over the necessity to make this move and is most anxious to help in every way possible to assist present employees in relocation. They are equally anxious to make skilled and qualified personnel, which includes supervisory and maintenance people, available to other industries which may need such personnel.

These are the reasons why advance notice of this move has been released through this bulletin—

First — As a good member of this Association, they wish other members to have first opportunity to acquire needed personnel that will be released, and

Second — Out of consideration for the employees who will be released, they choose to do everything possible to help them relocate.

Anyone interested in additional information, please contact Mr. _____.

In explaining his Association's part in relocating displaced personnel, the Secretary of the Manufacturers Association says:

> "In addition to the examples shown above, we do serve as a clearing house on an informal basis for displaced personnel . . . I might add that most of our effort is on an informal basis since we make no effort to compete with placement agencies, including the State Agency. Thus, visible evidence of our work is lacking."

As an example of a company's handling a reduction in work force, here is an account of what was done by one Company:

"In January of this year we notified some 27 employees that they would be laid off before July 1. Each man was given a personal interview and all of their qualifications were reviewed. Attempts were then made to absorb them in other company departments. All were given an opportunity to seek other work before the actual layoff date. Numerous other companies were contacted and arrangements made for personal interviews. The following is a tabulation of the results: 9 engineers were transferred to other company jobs, 3 left the company for other jobs before the date of their layoff and with company approval, 15 were released with a generous layoff allowance and all found satisfactory jobs within a short time after their release by us.

"Our handling of this situation was not unusual, but rather serves to illustrate the concern that most employers have for their people when they are faced with a layoff. There could not have been a solution unless other employers were willing to accept mature trained workers from another company."

Ten weeks after offering area employers an opportunity to hire employees who were

about to be laid off, another Company followed up with a listing of job classifications of the few who had not as yet been placed and stated:

"The Company is completing transfer of operations to our new refinery on _____. On _____, we sent a letter to many leading companies in the area seeking employment for personnel for whom we do not have work available in the new Refinery.

"The response to this letter was very good and job opportunities were found for many people, for which we are most grateful.

"However, we still have some workers who will be laid off shortly who do not have job prospects at this time. The attached sheet lists the job classifications held by these employees, and any assistance you can give in this matter will be most appreciated.

"If you desire any additional information, please call _____."

IX. WHAT ABOUT COSTS?

The big question: Does it cost more to employ and maintain an older worker?

There is a feeling in some quarters that increased pension and insurance costs are used as a reason for not hiring mature workers. However, situations vary considerably and there is considerable doubt that this feeling is justified.

A. *Unemployment Compensation*

Unemployment compensation costs are of course lower for the employer when laid-off employees quickly get jobs. Most state laws include merit rating provisions which favor the employer whose workers do not drain off his unemployment compensation account with withdrawals because of idleness.

B. *Group Insurance*

Richard Hoffman, an actuary for the Equitable Life Assurance Society, when asked to comment on the effect of age on insurance costs, provided some typical costs for Group Life and Group Hospital and Surgical expense. He indicated that while costs generally move upward with age, the increases are relatively small when compared to salary costs. For example, the annual claim cost (exclusive of administrative cost) of $4,000 of Group Life Insurance plus average Group Hospital and Surgical Expense coverage for an employee and his family at age 25 would be about $170; at age 55, this cost would only be about $207. The addition of a charge for expenses would not alter the ratios of the specified costs at one age compared to another. Mr. Hoffman prepared this table which includes claims cost estimates of Group

Weekly Accident and Sickness coverage. Note that this table shows a total per employee group benefits annual cost (excluding pensions) of $186 at age 25, as against a cost of $251 at age 55.

Estimated Group Insurance Annual Claim Costs* by Age

Age	$4,000 Group Life Insurance[1]	Typical Group Hospital-Surgical Expense Plan[2]	$40 Weekly Accident and Sickness Plan[3]	Total Cost
25	$ 4	$166	$16	$186
35	6	145	19	170
45	17	137	27	181
55	46	161	44	251
65	110	203	90	403

1. Based on Commissioners 1960 Standard Group Basic Mortality Table.
2. "Voluntary Health Insurance and the Senior Citizen" State of New York Insurance Dept., Table 16, Hospital Expense Coverage for husband, wife and children.
3. Based on the experience of male wage employees in a large sized group for a 7-day waiting period, 26 week maximum benefit plan.

* Exclusive of administrative costs.

Age is not considered by most insurance companies in determining health insurance premiums. While the duration of illness (or hospital stay) may be longer with mature people, they usually have fewer dependents and are less likely to require maternity benefits.

As for the cost, if a large number of older workers were added it would raise the cost appreciably. However, there is no more reason normally for an employer to hire a great number of older people than there is that he hire none. Actually, in the average balanced aged group, the addition of a few mature workers would affect costs little, particularly when income tax deduction is possible.

C. *Workmen's Compensation*

Does accident insurance cost more? The answer is "No." Workmen's compensation costs are based strictly on the accident-frequency of the particular company, and the danger of the work performed. Since studies have shown older workers to be above-average in matters of safety, their employment can keep costs down in this area. Accident frequency rates are lower for mature workers, although the severity rate is sometimes higher. These tend to balance each other.

D. *Pensions*

As for pension costs, R. M. Peterson, an actuary and Vice President of the Equitable Life Assurance Society, in his article "Pension Costs and the Employment of Older Workers"* uses a hypothetical case based on the steel industry pension plan, and states:

* *Personnel*, May 1957.

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> "For wage earners . . . the annual normal cost ranges from $120 at entry age of 30 and $189 at 40 to $265 at age 55 and $300 at age 60. In general, costs for persons hired at older ages are no more than twice those for persons hired at younger ages. In cents per hour, the average differential may be only about 7 cents.
>
> "For salaried workers, *the annual normal cost for young entrants is greater than that for old entrants.* This results from the salary increases assumed and the social security offset in the benefit formula. For example, for entry age 30, the annual cost is $441; and for entry at 55, it is $265."

Of course, these results reflect the costs of the steel industry plan. Other plans might produce somewhat different results, but the features of the steel industry plan that produce the pattern of costs shown here by age are usually present in most other pension plans.

This article, together with the booklet entitled "Pension Costs in Relation to the Hiring of Older Workers,"* successfully challenges the common view that the actuarial provisions of pension plans constitute difficult barriers to the hiring of older workers. This U. S. Department of Labor study, prepared with the assistance of a Citizens Committee comprised of pension consultants, bank trust officers, educators and life insurance companies, reaches this conclusion:

> "The costs of private pension provisions ought no longer to be considered a real obstacle to the employment of older workers."

Again, pension plans usually operate on the basis of an annuity calculated on the basis of both earnings and length of service. The sum received by an employee hired at an advanced age is much less than that received by a longer service employee. This has not been found to cause difficult employee relations or public relations problems.

The more one examines pension and insurance costs, the less valid they become as legitimate barriers to the employment of mature workers. When one considers the many personal assets the mature employee brings to the job, pension and insurance costs certainly lose whatever significance they may appear to have.

X. CONCLUSION

A wealth of material already exists to point up the abilities of the older worker and to underline his role as a valuable and productive citizen of the United States.

The value of the older worker can be proven easily. Objective statistics are readily available.

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* Bureau of Employment Security, U. S. Department of Labor, September 1956.

Unemployment among older workers represents a local problem which can best be solved by the community and by employers in the area. The situation varies markedly from area to area. The more the community and employers aid the older job seeker in his search for employment, the less likely it is that additional legislation will be sought as a means of meeting the situation. The federal government is vitally concerned with, and in, this problem, and since 1950 nine states have legislated against job discrimination on the basis of age.

In this decade, when we must face up to the economic challenge posed by the communist nations, we cannot afford to dissipate the valuable natural resource represented by the skill and ability of our mature workers.

Successful operation requires foresight. It requires that men and women be employed on the basis of aptitude and attitude, and not age. The older worker can help and he will help, if we give him the opportunity.

Can we meet the challenge of the '60's?

We can. If we remember that skill is ageless.

Appendix A

CONSIDERATIONS IN HIRING MATURE APPLICANTS

It is just good business to hire the best possible applicant for an available job. And while good employment procedures avoid generalizing or treating people as members of a group, there are certain factors which an employer might want to consider when dealing with mature job applicants.

I. Favorable Characteristics of Older Employees

STABILITY

Records indicate that as a group, older people less frequently quit jobs. Companies have solved situations where turn-over has been a problem by deliberately employing mature applicants.

ATTENDANCE

Surveys indicate that younger workers have the highest absentee rate. People over 50 are absent from work less than any other age group.

WORK PERFORMANCE

Employers in NAM surveys rate their older employees higher than the younger group on Work Performance. Patience and thoroughness with detailed application are characteristics of mature employees.

EXPERIENCE

Knowledge is increased by experience. The older worker presents an opportunity for management to capitalize on years of experience.

SAFETY

As workers grow older, they tend to become more careful. Records prove that younger workers are more susceptible to accidents. Older workers have the best safety records.

IMPROVED JUDGMENT

Obviously some people whether young or old are smarter than others, but greater wisdom usually comes with age. An older employee in the group can serve as a check on the more impulsive younger people.

WORK ATTITUDE

Attachment to his work, in fact a bit of possessiveness about his job, is characteristic of the older worker. Interest and job satisfaction are apt to be high with the mature employee. He is less likely to be distracted from his work.

II. Unfavorable Characteristics of Older Employees

LESS STRENGTH

As people grow older, there is usually a decline in strength of muscles and heart. Where physical strength is a prime requisite, younger workers may be preferred.

LESS SPEED

Reflexes slow down with increasing age. Where dexterity and speed are essential qualifications, it might be wiser to consider the younger applicant.

LONGER ILLNESS

While older workers have fewer accidents and less days away from work, when they are incapacitated, recovery takes longer.

LESS ADAPTABLE

The qualities which make the older worker more stable sometimes make him resistant to change. Fear for his security could be a more important factor in his reluctance to accept new methods or directions than so-called stubbornness.

On balance, it is clear that for most jobs, the favorable factors greatly outweigh the less favorable, with the likelihood that mature applicants will make excellent employees.

Appendix B

HIGHLIGHTS OF NAM EFFORTS TO EXPAND JOB OPPORTUNITIES FOR MATURE WORKERS

For over a quarter of a century the National Association of Manufacturers has been engaged in continuous activities to promote acceptance of the real value of mature individuals in manufacturing plants. The success of this program is indicated by some of the milestones in the Association's campaign for older job applicants, briefly summarized as follows:

... In *1929,* one of the principal sessions of the NAM Congress of American Industry was devoted to a panel discussion of the "Older Employee In Industry." Later that same year at NAM Headquarters a program was launched for the "Older Employee In Industry." In this campaign, NAM secured the active participation of the National Industrial Conference Board, the National Industrial Council, the National Metal Trades Association, the United States Chamber of Commerce, the Society for the Advancement of Management, industrial relations consultants and four life insurance companies.

... In *1939,* NAM conducted a survey of management practices with respect to mature employees, covering 2½ million people in manufacturing. This study, "Workers Over 40", was the first broad-gauge attempt to deal factually with this situation and indicated the increasing use of older employees in industry. These findings were used extensively as the basis of widespread programs to open up still wider job opportunities for mature employees. The United States Department of Commerce along with many other organizations gave this material wide distribution.

... In *1947*, NAM began a series of conferences with manufacturers, to exchange information regarding the performance and contributions of older workers. Informal exchange of experience, as well as discussions at NAM Industrial Relations Institutes, have been a most effective means of opening up additional job opportunities for older employees.

... In *1948*, realizing that only 25% of the job opportunities were found in manufacturing and that there were three times as many employment opportunities in other fields, the NAM in cooperation with the United States Chamber of Commerce, extended its older worker study to include trade and commerce as well as manufacturing. The results of this survey indicated that employers generally were opening their job opportunities to more and more older workers.

... In *1949*, NAM published "Employment of the Physically Handicapped and Older Workers", a study indicating how industry strengthens the economy by supplying additional job opportunities to qualified applicants without regard to age or physical disability as such. This work was used extensively as the basis of industry programs to extend employment to the physically handicapped and older worker.

... The NAM Industrial Relations Division has taken a leading part in promotional and educational activities in behalf of the aging. Beginning in *1949* it has regularly participated in the University of Michigan Institutes on Problems of the Aging. In *1950* it was represented on the planning committee of the President's Conference on Aging, held under the auspices of the then Federal Security Administration. At that time it was agreed that the Conference should not be used as a springboard for legislation.

... In *1951*, NAM conducted a survey of management evaluation of older worker performance, covering nearly 3½ million employees. When these results were compared with those of the 1939 survey, it was immediately evident that great strides had been made in the acceptance of older workers by employers in industry. These figures have been used extensively as the basis of widespread studies by government and private agencies in attempting to further extend the acceptance of mature people as employees.

... In *1957*, NAM made an extensive check of outstanding United States manufacturing companies, uncovering further utilization of older employees.

... In *1959*, the NAM filed a statement with a Congressional Committee indicating that employment of mature workers in industry has been growing steadily over the years, now reaching the highest point in history.

... In *1960*, NAM supplied the U. S. Department of Labor with 250 TV messages featuring Rudolph F. Bannow, then President of NAM, for use on TV stations throughout the country. This public interest story featured job opportunities for mature workers and the advantages of hiring these people.

... In *1960*, a group of prominent industrialists formed the NAM Committee on Employment of the Mature Worker to study and promote additional job opportunities for this group.

... In *1960* NAM published "Report on Employment of Mature Workers." This study was based on manufacturing industry's experience in utilizing the skills of

mature applicants. Its wide distribution and use gave rise to the demand for a "How to do it" pamphlet.

. . . .The Committee on Employment of the Mature Worker established five subcommittees to study various phases of mature worker employment:

The Mature Hourly Employee
The Mature Salaried Employee
The Mature Management Employee
Government Activities for Mature Workers
Private and Public Organizations Interested in Mature Workers

While these highlights indicate significant progress, the ultimate objective — that all applicants be employed in accordance with their qualifications — calls for action on the broadest possible front.

The National Association of Manufacturers continues to drive home the fact that older workers have qualifications which are decided assets in our business life by aggressive education and leadership programs. Some of these follow:

NAM Activities to Open Employment Doors for Older Workers

1. The NAM undertakes surveys to evaluate management policies, philosophy, and actual practices in dealing with older applicants, over-age applicants, and to determine the actual on-the-job performance of these groups of employees.

2. The NAM disseminates on a broad-scale basis, educational materials designed to guide industrial management in dealing with over-age applicants seeking employment.

3. The NAM provides practical and sound information to promote greater understanding on the part of industrial management of the contribution older workers can make and strongly recommends that employers re-evaluate their existing employment practices to make sure that each older applicant is appraised in light of the specific requirements of the job that is being filled.

4. The NAM issues statements promoting job opportunities for the older worker, pointing to the tremendous reservoirs of judgment, performance, and loyalties inherent in this group of employees.

5. The NAM conducts meetings, conferences, and roundtable clinics for member companies designed to stimulate acceptance of older workers on the basis of their qualifications for key jobs, irrespective of the question of age or other arbitrary factors.

6. The NAM participates in work sessions, study groups, and national conferences on employment for older workers held by the national and state governments, welfare organizations, universities, and other groups.

7. The NAM regularly uses radio and television programs to demonstrate to the public generally the substantial contribution to our economic prosperity which mature workers are making. By showing older employees efficiently at work, other employers are encouraged to hire qualified applicants.

Appendix C

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NAM COMMITTEE ON EMPLOYMENT OF MATURE WORKERS

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DWIGHT S. SARGENT
Consolidated Edison Company of N. Y., Inc.
New York, New York

LUTHER R. STROLE
Manager, Industrial Relations
National Lead Company
New York, New York

CHARLES W. UFFORD
Director, Industrial Relations
The Warner & Swasey Co.
Cleveland, Ohio

J. W. WIBEL, *President*
Woodhood Manufacturing Co.
West Hartford, Connecticut

AUSTIN R. ZENDER, *President*
Bridgeport Brass Company
Bridgeport, Connecticut
Proxy, JOSEPH P. MCNAMARA
Vice President, Personnel

PREPARED STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

The National Retail Merchants Association is a voluntary non-profit research organization serving retail, department, women's specialty and other branches of the retail trade. Its membership embraces more than 15,000 individual stores located in every part of the United States and abroad which employ approximately 1,000,000 persons. Combined annual sales volume of its membership is approximately 2 billion dollars.

The National Retail Merchants Association (hereafter referred to as NRMA) wholeheartedly endorses the principle of non-discrimination in employment based solely on age. Subject to occupational qualifications, an individual should have equal employment opportunity regardless of age.

CURRENT LEGISLATION

Your committee has before it, for consideration, S. 830, introduced by Senator Yarborough and others, which sets forth the Administration's proposal as introduced on February 3, 1967. It also has before it S. 788 introduced by Senator Javits, New York, on February 1, 1967. Both of these proposed measures place direct and major emphasis on the vital area of preventing discrimination based solely on age in the hiring of qualified individuals. The principal objective of the framers of this legislation, as well as that of the Executive Branch of the Government, is not to deprive a person seeking employment, who solely because of his age and who through no fault of his own, finds himself without work either because his previous employer has had to close his business or has had to drastically reduce his labor force. The same objective of non-discrimination applies to the older person who suddenly finds it necessary to seek initial gainful employment or to return to the labor market.

A secondary, but still important intended principle is the arbitrary discharge of older workers based solely on age when not supported by other bona-fide factors. NRMA wholeheartedly supports these two basic principles. It endorses appropriate legislation and objective enforcement thereof, to prevent such discrimination with appropriate safeguards to provide obvious and clearly required exemptions. These exemptions should include, as generally recognized in the legislation proposed, special consideration free of discriminatory findings such as:

(a) bona-fide occupational qualification.
(b) established requirements of retirement and insurance programs.
(c) any statutory requirements which may exist at federal or state levels, and
(d) any factors other than "age".

NRMA POSITION

Our basic position is that the legislative intent here is, and should be, confined solely to the discriminatory *hiring* and *discharging* on the basis of age.

We do not believe that the major purpose or need is to attempt to regulate the internal employment operations, procedures and controls of management. We believe it would be most unwise to include such objectives in this legislation. To do so would attempt unrealistically to regulate employment privileges, promotions and other facilities. The administration of these special provisions would not only be highly impractical, but would tend to compromise the inherent right of business to make its own decisions in these areas as necessitated by efficient and profitable Management free of Governmental intrusion.

There are many economic factors, other than "age", which must come into play in the efficient management of today's business. Changes in business objectives and organizational structure, business expansion, new methods and techniques, specialized educational background, training, as well as specialized experience are basic factors unrelated to age upon which management must rely and be guided.

To include promotions, job transfers and other facilities would dilute the administration and enforcement of such legislation away from its basic purpose of eliminating discrimination in the *hiring* and *discharge* of employees. This is truly the root of the age discrimination problem. Whatever Government agency is charged with administering and enforcement of this legislation would be subject to hundreds and hundreds of invalid claims of age discrimination from disgruntled employees or uninformed applicants, thus wasting enforcement

manpower and imposing unduly on the employer energies conducting his business by having to refute such invalid claims.

For these reasons, we strongly urge that the definition of the term "employment" as used in such legislation be limited to the "*hiring and discharge*" of prospective or existing employees, and should not include internal job methods, procedures, performance or requirements.

AGE RANGE

We believe that the age application of this legislation should apply to an individual who is at least 45 years of age, but who has not attained the earliest age which he or she is eligible to receive full oldage benefits under the Social Security Act. If subsequent developments should require an adjustment of this age range—up or down—it should be so determined after adequate public hearings by the Administrative Agency in question.

ADMINISTRATIVE AGENCY

We strongly urge that for the purpose of enforcement, the administration of such legislation be placed under the Fair Labor Standards Act through a new amendment to be known as Section 6(f) thereby placing its enforcement under the Wage and Hour Public Division of the U.S. Department of Labor. This division of the Labor Department already has the responsibility for the enforcement of this Act and also the Equal Pay Act of 1963. Covered employers are familiar with its basic regulations, its investigatory procedures, and its record keeping requirements.

To establish a separate division of the U.S. Department of Labor as the administrative agency to interpret and enforce anti-age discrimination, would merely be duplicating at considerable added expense and great confusion the enforcement organization which already exists in the established Wage and Hour Administration.

Otherwise, employers, as well as their employees, would be confronted with still another Governmental agency applying different regulations, different enforcement procedures, different employer coverage, and different penalties.

INTERNAL EMPLOYMENT PRACTICE

If Congress, in its wisdom, should insist upon including in this legislation internal promotion and other related problems and facilities, then we strongly urge that those individuals defined in Section 13(a) 1 of the Fair Labor Standard Act should be exempt from such promotion and related policies. These individuals are bona-fide executive, administrative and professional employees and are currently exempt from the Fair Labor Standards Act and the Equal Pay Act of 1963 if they meet the tests prescribed by the Wage and Hour Administration.

We sincerely thank the Committee for making available this opportunity to submit our views in writing on this pending legislation. We hope you will give these views your personal and favorable consideration.

TRANSPORT WORKERS UNION OF AMERICA,
RAILROAD DIVISION,
Pitcairn, Pa., March 17, 1967.

Senator RALPH W. YARBOUGH,
Chairman, Senate Labor Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR YARBOROUGH: As per instructions of the members and officers of Local 2009 this letter is written.

It is with pleasure and hope that we find you championing the cause of the discriminated working members of our Society in whatever field of endeavor they may be, and of whatever class, race or color.

Your Bill S–830 will if passed and it must pass, be a giant step forward to eliminate such discrimation.

We have written to the other members of your committe and have asked them to support and work for your bill. We hope they will listen to our plea.

We want you to know that we will support your bill and ask you to work very hard for its passage. We know you will and we know it will pass if every one works hard for it.

If there is anything we can do to help get S–830 passed, please let us know. Such a bill as this needs a good man and a big man to make it a Law and we believe you are that kind of a man.

If you can find time to advise us on the progress of the bill and its chances of passage, we will appreciate it.

Sincerely,

ANDREW BRLETIC,
Financial Secretary-Treasurer.

NASHUA CORP.,
Nashua, N.H., February 21, 1967.

Hon. NORRIS COTTON,
Senate Office Building,
Washington, D.C.

DEAR NORRIS: Thank you for sending me S. 830 relating to age discrimination in employment. We certainly can do without more federal control in labor relations—particularly in the area of employee benefit plans. If, however, this proposal is to be enacted, two changes are clearly required:

First: Section 4(f)(2), while allowing involuntary separation under a retirement policy, does not allow for voluntary separations when an employee reaches what is commonly called early retirement age. Many pension plans provide not only for compulsory commencement of benefits at, for example, age 65, but also give the employee the option of retiring early at, for example, age 60.

Furthermore, many pension and other employee benefit plans limit the age at which a person can enter. For example, a person may be required to be under 60 and over 30 to get in.

Second: Section 13 contains somewhat helpful limitations of application of the Act to persons aged 45–65, but provides that the Secretary may adjust the age limits either upward or downward. It should be revised to make it clear that the Secretary cannot up the minimum or reduce the maximum.

Very truly yours,

CHARLES K. HAMBLETT,
Secretary-Counsel.

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.,
Washington, D.C., March 21, 1967.

Senator RALPH YARBOROUGH,
Senate Labor Committee,
New Senate Office Bulding,
Washington, D.C.

DEAR SENATOR YARBOROUGH: Reference is made to my conversation with Mr. Harris of your staff regarding Senate Bill S. 830. As I explained to him on the telephone this industry has always made an effort to take care of its older employees. However, there are some jobs that older men cannot perform—such as; climbing poles or steel towers, working on high-bay lighting or electrical installations where it is necessary to swing from a bosun's chair or work from temporary scaffolding. Also, we do make an effort to have these men work in areas where we can use their brains rather than their brawn.

It is not unusual for an agreement to contain the following language:

On all jobs employing ____ or more journeymen, every ____ journeyman should be 55 years of age or over if available.

You understand the blank portions of the above provision would have to be filled in by the local area based on the ratio of the number of men over 55 years of age to the number of men available on the workforce. This, of course, would vary from area to area.

Thank you very much for the opportunity to discuss this problem.

Very truly yours,

J. E. SWAN, *Secretary.*

[From Research/Development, February 1967]

EDITOR'S NOTEBOOK

(By George A. Whittington, Editor)

MYTHS TO MISS BY

Scientific management has been with us more than 50 years, to date from the organization of the first professional society dedicated to advancing manage-

ment as a field. In that half century, the arts of "getting things done through others" have been greatly enriched by the work of many outstandingly competent men and women. Today's literature of the field contains useful information on organization, administration, control, economics and, as well, systems concepts and applications, computerology, interpersonal relationships at all levels of the organizational hierarchy, many other key subjects. But I do think that at least one other important subject has been neglected: *mythology.* Myths held in positions of power—misconception, false premises, unsound reasoning on any basis—are more influential and cruel, of course, than those honored in error by people in general. And managerial mythology can be nationally wasteful, costly, and socially destructive.

Official attitudes toward age are a great example! Our national foolishness about the calendar and the rights of the individual was dramatized last month by an advertising agency, which bought advertising space in *The New York Times* and the Saturday Review for the purpose. Perhaps you passed over one of the ads in reading. Perhaps you noticed the headline: *Over 45? Don't call us. We'll call you.* Behind the "brush off" phrases is a situation that should concern even those of use who are comfortably wired-into a good pension plan: one million unemployed job seekers are unable to find employment *primarily* because they are more than 45 years old.

OPPORTUNITY FOR OBSOLENCE

Department of Labor studies provide information that can easily be termed more than informative; even persons under 45, even scientists and engineers in a bullish employment market, might feel amazement, dismay, fright, fury, or all those emotions at the revealing statistics. More than half (almost 3 out of every 5) employers have age limitations in hiring, which are applied without consideration of any other qualifications; 40% of all Americans who work are 45 or over, but only 8.6% of new hires last year were in that age group.

Facts and fictions in this case clearly illustrate that modern managers are behaving illogically—even unintelligently—toward older working persons. Middle-aged employed individuals are said to be particularly valuable because of their experience, maturity, and stability; the same individuals, when applying for employment, are turned away because of their age alone. The one million over-45 unemployed mentioned above *remained that way,* out-of-work, *all year!* Supposedly, it costs more to hire older workers, they are more often absent, they "can't keep up the pace," they are "old dogs who can't learn new tricks." Not so, according to the Department of Labor, as quoted in the advertiesment. Its studies show that there is no higher cost involved in adding an older person to payroll, the number of working days lost decreases with age, older persons compare favorably with their juniors in adaptability and in stamina.

THIS FOOLISHNESS IS EXPENSIVE, TOO

In unemployment compensation and lost production, Secretary of Labor W. Willard Wirtz has estimated, the country "spends" at least $4 billion annually. Worse—far worse—we could follow such policies to the great detriment of our technological future; while we waste experienced minds, the nature of jobs is changing toward increasing emphasis on mental, not physical performance. Perhaps it's time to question a general management attitude as poor judgment, deeply though it is enshrined in red tape. Perhaps staggering national wastes in productive power and human values is too high a price to pay for medical, hospital, and retirement plans based on outdated actuarial tables. One thing is certain, the soundness of today's personnel policies for the over-45 is a *Myth to Miss By.*

DEUTSCH & SHEA, INC.,
New York, N.Y., March 13, 1967.

Hon. RALPH YARBOROUGH,
Senate Committee on Labor and Welfare,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: With respect to your hearings on recommendations of the Executive Branch, we thought you'd be interested in the enclosed advertisements which ran recently in The New York Times and the Saturday Review. Also, a compilation showing the results.

With best wishes.

Sincerely,

ARNOLD R. DEUTSCH.

Enclosures.

As Reprinted from *Saturday Review* January 14, 1967

"Over 45? Don't call us. We'll call you."

This is the theme of an American tragedy about which no books are written. A tragedy for the individual, the community, the nation.

It's being enacted by real men and women, experiencing the agony of reasonless rejection, the victims of a statistic—their date of birth. Its cost is millions of man-years of experience and billions of dollars in productivity lost forever. It is a uniquely American tragedy.

The Great Depression spawned this kind of thinking. Older workers were shunted aside to make room for the young in a stalled economy. Now, in 1967, a derivative of this thinking persists toward the person who is jobless and over 45. We have become the only nation in history to toss away mature ability and experience like a spent match. It is an extravagance we can ill afford.

America's rich. But not this rich.

The cost is not to the individual alone. The community loses a stable, productive worker, his buying power, his taxes—and gains a welfare case. The nation pays even more. A recent Department of Labor report shows that in the midst of a booming economy, with companies scouring campus and countryside for manpower:

... Only 8.6% of all new employees hired were 45 or over, though 40% of all working Americans are now in that age group;

... More than a million job-seekers, men and women 45 and over, were unemployed throughout the year;

... Almost 3 out of 5 employers studied had age limitations (most frequently between 45 and 55) on new hires, which they apply without consideration of an applicant's other qualifications.

The cost? Secretary of Labor W. Willard Wirtz states that "the loss to the economy from older worker unemployment in unemployment compensation and lost production would amount to at least $4 billion per year." No nation is this rich.

Who's old at 45?

There is no prejudice toward the man or woman over 45 who is employed. TIME, in a recent cover story, called them members of "The Command Generation." On top in every sector. Business, government, science, education, the professions. Most of our Nobel laureates in the last 10 years have been over 45. At 15 of our leading colleges and universities, the presidents' average age is 55. Most of the medical specialists called in to treat our nation's recent Presidents have been in the over-45 group.

Business and industry consistently report their older workers are dependable, loyal, exercise good judgment, are highly productive. If middle age is no handicap to doing a job, why should it be a handicap in finding one?

Let's look at the facts.

The person over 45 is bucking a pervasive, many-faceted myth which says that it costs substantially more to hire older workers; that older workers are absent more; that "you can't teach an old dog new tricks"; that older workers can't keep up the pace. What are the facts?

A recent study puts the average cost of adding an older worker to the payroll, including all fringe benefits, at just 5¢ per hour more than the cost for a younger worker. In many cases, there are no added costs.

The Department of Labor states flatly: "The number of working days lost decreases with age."

Another study shows that "the adaptability of older workers ... compares favorably with young employees."

And studies by both the U.S. and Canadian Departments of Labor conclude that the average performance of the older worker equals and sometimes exceeds the younger.

Even in work that demands the hardest physical labor, the statistics are startling. For example, there are nearly as many stevedores, longshoremen and miners over 45 as there are under that age.

Why not put them out on the ice to die?

And yet the outmoded thinking about the older worker persists. It's almost on a par with the ancient Eskimo custom of putting people too old or weak to work on an ice floe to die. This in 1967, when we're working overtime to put a man on the moon. And when Americans are staying active and able so much longer. Just since 1930, life expectancy has risen 8 years for men, 12 years for women.

The character of America's workforce is changing rapidly and radically, too. Only one job in 20 requires more than average physical prowess today. More and more, the emphasis is on brainpower, not muscle: the ability to monitor machines, manage people, make accurate judgments, sell, service, create.

Does your son or son-in-law work as hard as you do?

Being 45 doesn't make a man a good worker or a bad one. There are people fossilized at 25—just as there are people fossilized at 50. There are youngsters to whom work is the boring-but-necessary interval between weekends. And there are the Michelangelos with the drive and creativity to paint the Sistine Chapel in their 60's. Ability is ageless.

What is the answer?

Right now manpower is in painfully short supply and will continue to be a major national problem. Between now and 1975, an estimated 15,300,000 new jobs will be created. This means danger ahead. Finding manpower that will enable the company to grow is the most urgent and critical issue facing business and industry.

One way to help alleviate this problem in your company is to judge applicants on the basis of ability, not age. Hire the best man or woman for the job, whether he's 25 or 45.

It's good for the country, good for your community, good for your company.

DEUTSCH & SHEA, INC.
Advertising
230 WEST 41ST STREET, NEW YORK, N. Y. 10036

MEMBER AMERICAN ASSOCIATION OF ADVERTISING AGENCIES

A REPORT ON RESPONSE TO DEUTSCH & SHEA'S FULL-PAGE AD: "OVER 45? DON'T CALL US. WE'LL CALL YOU."

This is in the nature of an interim report rather than a final analysis of response simply because, although the ad appeared originally almost two months ago, the reaction to it continues.

Every mail brings a few pieces—letters, requests for reprints, clippings of editorial comment—based on the ad. And its appearances in print will apparently continue for some time to come, judging from the requests we receive for permission to reproduce or reprint the ad.

The idea of an ad on the subject of age-discrimination in employment grew in part from the agency's own experiences. The advertising business is worse than most in its refusal to consider mature people for employment and in the past several years we have talked to many people who had been victims of this age-barrier. Conversations with the Labor Department and others in government confirmed the existence of a problem and, as we researched the area further and began to examine national statistics, we were sure that this was a subject that needed airing. The paradox of major demands for manpower of almost all types existing together with a widespread bypassing of a major source of such talent—the over-45 group—seemed to call for action.

"Over 45? Don't Call Us. We'll Call You." was the result.

Many people at the agency had a hand in the research and writing of the ad. Considerable after-hours time and several weekends were consumed in its creation, with changes occurring right down to the deadline. In the process, much detail and numerous statistics were omitted with the objective of creating a fast-reading ad with a high level of impact. Judging from the results, these objectives were accomplished.

RESPONSE: FAST AND FAVORABLE

The ad apparently struck a nerve.

From the moment of its appearance, phones began to ring at the agency. (At one point we had 14 people mobilized to handle calls.) Telegrams arrived; one saying simply, "Thanks." and daily mail deliveries increased considerably.

Response at this point is well over the thousand mark. And, aside from the number of responses, the remarkable thing is that these have been uniformly favorable. Approximately 60% of the reponse has been from private individuals; 20% has come from companies and the remainder from various non-profit and government organizations. The latter two groups have usually asked for reprints of the ad for internal use. The first group has usually thanked us for bringing into the open a situation which many of the respondents had experienced personally. Here are some excerpts from these letters:

"Congratulations on your courage—in your ad 'Over 45? . . .'. You spoke out most splendidly against one of America's ugliest taboos—accumulating birthdays. Since I have been trying to encourage managers to look beyond wrinkles and grey hairs, I enclose . . . a reprint of an article that echoes your theme." Management consultant.

"Your ad has already done some good. I've been called by a few of the personnel agencies who are alleged to be representing me." New York businessman.

"My husband is at the awkward age—too old to be hired by industry and too young to be eligible for Social Security. When he was thirty he was lying in a wet foxhole on Anzio * * * he was discharged in 1945 (with Purple Heart and Silver Star) and had to find work to support his wife and children. He could not take time out to go to school and learn a specialized skill. Now that he is past 45, the industry of that country for which he fought * * * tells him he is too old and too unskilled. You are quite right to call this an American tragedy." Florida school teacher.

" * * * through a group in our church known as Unemployment Anonymous we often counsel with people who face the employment horrors of being over 45. It is nothing less than criminal when a man is forced to feel himself in the scrapheap of undesirables when he is just moving into his most capable and productive age. I sometimes marvel at the callousness and cruelty of American business." New Jersey minister.

"This office recently established an Older Workers Service unit which is making intensive efforts to solve the job finding problems of the Mature

Worker. We plan to make your advertisement part of the campaign." Manager, state employment office, California.

"Having read, re-read, displayed and discussed that admirable production so frequently that our copy resembles an old campaigner, we'd greatly appreciate replacement for it." Indiana housewife.

Letters on the ad have been received from the White House, from Secretary of Labor, W. Willard Wirtz, from Senators and Congressmen, a judge, several editors, the Dean of the business school of a major university and some top echelon business people including many company presidents. Among the companies responding were major industrial firms, a number of publishing companies, a radio station, banks, advertising and public relations agencies and numerous employment agencies. The organizations contacting us included state labor departments, a half-dozen universities, chambers of commerce in several cities; a variety of service groups working with older people, various hospitals, NASA, city officials, the Treasury Department, a major fraternal organization, the Peace Corps, a Canadian manufacturer's group and many others.

EDITORIAL RESPONSE

We do not have a firm count on the number of publications that have already printed or plan to reproduce the ad. But at least sixteen newspapers have run the ad to date, and it has also appeared in a dozen or more specialized journals Other groups have planned to issue the ad in pamphlet form, reproduce it in newsletters or otherwise give it editorial coverage.

Comments on the ad have appeared in at least 30 publications that we know of; since we do not receive a clipping service, this probably represents only a fraction of the total. Among those providing editorial coverage so far are the Dallas News, Printers' Ink, New York World Journal Tribune, Ad Age, San Francisco Chronicle and Los Angeles Herald Examiner. Again, comment has been universally favorable.

REPRINTS REQUESTED

The current total of reprints of the "Over 45?" ad has reached almost 45,000.

Deutsch & Shea has been making up to 50 copies of the ad available without charge to interested individuals and groups. So far, over 15,000 have been distributed on this basis.

The Bureau of Economic Opportunity of the Department of Labor has reprinted some 25,000 copies of the ad for use in its programs and is prepared to reprint more as required. In addition, it has had the ad made up in poster form for display at employment offices throughout the country.

Permission to reprint the ad has been given to a number of other groups including one national fraternal organization. The exact number printed and distributed by these groups is not yet known, but numbers several thousand.

CONCLUSION

We estimate that the "Over 45?" ad has by now appeared in print some two to three million times and has been seen by from six to ten million people.

More important than quantity is the level of the audience, as indicated by the response we have received. The problem of the unemployed over-45 group is widely recognized and many groups are apparently taking vigorous action to combat it. About half the states now have some form of legislation regarding discrimination in employment on the basis of age. President Johnson, in his January 23rd message to Congress, speaking in terms similar to those used in the ad, has asked for national legislation to be developed in this field.

The ad, in both its content and its timing, seemingly struck the right note at the right time. Comments reaching us suggest that it has already had some useful effect. But we would like to note, in conclusion, that its purpose was not, as has occasionally been the interpretation, to urge that industry hire those over 45. Its message is a simple one: hire able people, *whatever* their age, for age is no criterion of ability.

NEW YORK, N.Y., *March 14, 1967.*

Senator RALPH YARBOROUGH,
U.S. Senate Office Building,
Washington, D.C.:

I urge passage of Senate bill 830.

SUZANNE HOWARD,
Stewardess, American Airlines.

NEW YORK, N.Y., *March 15, 1967.*

Senator RALPH YARBOROUGH,
U.S. Senate Office
Washington. D.C.:

I urge passage of Senate bill 830.

NANCEY REDMOND,
Stewardess, American Airlines.

ATLANTA, GA., *March 14, 1967.*

Senator RALPH YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: Urge passage of Senate bill S. 830 to ban age discrimination as an airline stewardess to be affected by an age decision. My interest in the bill is extremely keen.

Yours very truly

Miss CAROLE INGRAM,
Stewardess, Southern Airways, Inc.

NEW YORK, N.Y., *March 14, 1967.*

Senator YARBOROUGH.
Senate Office Building, Washington, D.C.:

We urge passage of bill 830.

KATHY MUELLER,
JUDY MUELLER,
JEAN BOWDEN,
RUTH ROTTEN,
American Airlines Stewardesses.

NEW YORK CITY CENTRAL LABOR COUNCIL,
NEW YORK, N.Y., *March 14, 1967.*

Hon. RALPH W. YARBOROUGH,
Senate Office Building, Washington, D.C.:

New York City Central Labor Council would like to endorse a bill now before you S. 830 which can do a great deal to eliminate bias against a large segment of the American Labor Force. This legislation would prohibit employers from failing or refusing to hire and also prevent them from discharging workers merely because of age. The bill would also provide for enforcement of a ban on such discrimination based merely on age barriers or sex. We particularly have in mind the cases of the young stewardess and flight attendants in the air lines, who at the ripe old age of 31 are called too old to work. We ask for the passage of S. 830.

HARRY VAN ARSDALE, Jr.,
President.
MORRIS IUSHEWITZ,
Secretary.
WILLIAM H. BOWE,
Treasurer.

TULSA, OKLA., *March 15, 1967.*

Senator RALPH W. YARBOROUGH,
Senate Office Building, Washington, D.C.

DEAR SENATOR: I am wiring in regards to Senate bill 830. I am asking you to vote and support this bill as we have members in several States being discriminated against because of age and sex. Thank you for your support.

H. Z. NICHOLS,
President, Local 514, TWU, AFL–CIO.

NEW ORLEANS, LA., *March 9, 1967.*

Hon. RALPH W. YARBOROUGH,
Senate Office Building, Washington, D.C.:

The officers and members of TWU local 206 strongly urge you to support Senate bill S. 830. Our members who are employed by various airlines are unjustly discriminated against because of age, sex and marital status. Your vote and support shall be highly appreciated.

HERMAN C. GRAY,
International Vice President.

YOUNGSTOWN, OHIO, *March 11, 1967.*

Hon. RALPH YARBOROUGH,
Chairman, Senate Labor Committee,
Washington D.C.:

Members of Local 2043 TWU, AFL–CIO, Youngstown, Ohio, requests your support for passage of bill S. 830.

Sincerely,

MIKE J. ONDERKO,
President, Local 2043.

MIAMI, FLA., *March 13, 1967.*

Senator RALPH W. YARBOROUGH,
Senate Office Building,
Washington D.C.:

On behalf of our 30,000 members in the airlines and aero space industry in the State of Florida urgently suggest you support bill S. 830.

WILLIAM GROGAN,
International Vice President,
Transport Workers Union of America, AFL–CIO.

ALBANY, N.Y., *March 13, 1967.*

Hon. RALPH W. YARBOROUGH,
Chairman, Senate Subcommittee on Labor,
Senate Office Building,
Washington, D.C.:

The 2 million members of New York State AFL–CIO strongly supports S. 830 and its companion H.R. 3768 to protect employees from discrimination in their employment on grounds of age or sex and put teeth in enforcement by the Secretary of Labor. We oppose S. 788 because it excludes from its coverage airline flight attendants and does not contain strong enough enforcement machinery. We respectfully request this communication be made part of the record of your hearing on S. 830 of March 14, 1967.

RAYMOND R. CORBETT,
President, New York State AFL–CIO.

BRISTOL, PA., *March 14, 1967.*

Senator RALPH W. YARBOROUGH,
Washington, D.C.:

Local 282 Transport Workers Union of America wholeheartedly support Senate bill S. 830. We urge your committee pass on this matter and get it to the floor as soon as possible.

Sincerely yours,

WILLIAM SURRICK,
President, Local 282, Transport Workers Union of America.

FRATERNAL ORDER OF EAGLES,
PROGRAM AND ACTIVITIES DEPARTMENT,
Milwaukee, Wis., April 11, 1967.

Hon. R. W. YARBOROUGH,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: For ten years the Fraternal Order of Eagles has worked to ban job discrimination based on age. You, Senator Javits, and the late Richard Neuberger were in the early vanguard of those introducing bills to effect such legislation.

The situation sounded encouraging when President Johnson addressed the Congress on Older Americans in February. We are further encouraged to learn that there will be a Senate hearing on what we Eagles refer to as a "Jobs After 40" bill soon.

* * * * * * *

The Eagles have concentrated efforts on the State level, too. If the bill passes on the Federal level, we feel confident that the majority of the twenty-five states that do not now have this humanitarian legislation, will quickly follow suit.

Sincerely,

CHARLES ROWAN,
Chairman, Eagles "Jobs After 40" Committee.

GREENSBURG, PA., *April 11, 1967.*

Senator JOSEPH S. CLARK,
Senate Office Building, Washington, D.C.

DEAR SENATOR CLARK: Although my present address belies it I have been a long time Chestnut Hill (Philadelphia) resident and therefore, knowing your integrity I would like to ask you what actually is realistic about much of our present society?

We have so called poverty programs, foreign aid, war and continually advancing Federal, state and municipal taxes but if one is not part of a pressure system there could not be less concern evidenced by any segment of our society.

Is there no place for the younger, able middle aged? I, for example, am 48 years of age academically trained in engineering and business administration with an extensively productive background of experience in sales and marketing management, presidential assistant, communications and PR and acquisitional evaluation.

Approximately a year ago I joined Westinghouse and was moved to western Pennsylvania. In this period, I contributed an admittedly exceptional job providing maturity of purpose to corporate planning. Conducting comprehensive market studies and long range operational planning resulting in approximately $5,000,000 appropriation from the board for a new divisional growth appendage. Also, at this time, I completed courses in modern marketing and management techniques by Harvard Business School personnel for corporate selected people. I was rated number one in a class of 25. I was abruptly terminated in my employment on Christmas eve of this past year without prior warning or reasonable explanation. I contacted Don Burnham with factual information that could not be ignored—he in turn referred this to the group vice president responsible. I was immediately labeled disloyal for attempting to produce honest, profitable results which was the stated reason for my initial employment.

In the four months since this termination I have literally contacted hundreds of companies, consultants and agencies. Where the few were confidentially honest they frankly stated that age was the impediment. Industry is requesting a maximum of 35 years of age with the experience consideration quite secondary. Should this premise be true then it follows—Congress needs no experienced men and most of the present crop are therefore, ready for pasture.

Senator, I am certainly not looking for something for nothing from the Government—nor anyone else. In fact, I do not believe in taking unemployment insurance or any of the other methods that reduce individual initiative. I am healthy, intellectually young, trained, experienced and capable. I have taken and successfully completed IQ and psychological tests that industry has

borrowed from the OSS and the space programs but, at this age, there is still no room at the inn. I cannot consider even the lowliest of labors—"a too substantial background." What a waste of talent for this nation. Is there really no place for many men such as me? There is no training cost. We are not concerned only with advantages, vacations or time off as are many of the youth group, so much in demand. We have stability, honesty of purpose and experience to give but the so called retirement programs kill off any possibility of consideration. Are we finished? If so, please tell us how we gracefully bow out of these surroundings.

I, for example, am planning on a personal move to the Philadelphia area by the end of this month. Seeking, as a last resort, some possibility in the more active area between Philadelphia and New York. However, with no income, no living family to assist and essentially no savings due to past medical expenses it is close to impossible to be considered even for an apartment.

Is there such a plentiful supply of ability and talent in this country that it can be just tossed aside without thought? Senator, do you have an answer? If so, would you kindly share it with me I just don't know how to straddle the fence alone any longer. What happens should I live for another 20 years?

Sincerely,

J. N. KAMMERER.

Senator YARBOROUGH. The hearing is now adjourned.

(Whereupon, at 12:05, the subcommittee adjourned, subject to call of the Chair.)

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