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RAILROAD RETIREMENT SUPPLEMENTAL
ANNUITIES—1969

GOVERNMENT

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HEARING
BEFORE THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS

FIRST SESSION

ON

H.R. 11607, H.R. 12216, and H.R. 12324

BILLS TO AMEND THE RAILROAD RETIREMENT ACT OF 1937
AND THE RAILROAD RETIREMENT TAX ACT TO PROVIDE FOR
THE CONTINUED PAYMENT OF SUPPLEMENTAL ANNUITIES
IN ACCORDANCE WITH PRESENT LAW

JULY 10, 1969

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ORGANIZATIONS REPRESENTED AT HEARING

Association of American Railroads, Burton N. Behling, vice president, Economics and Finance Department.

Brotherhood of Locomotive Engineers:

McCulloch, E. L., national legislative representative.

Ross, Harold A., general counsel.

Skutt, W. E., assistant grand chief engineer.

National Railway Labor Conference:

Greer, H. E., director of research.

Hiltz, J. P., Jr., chairman.

Railroad Retirement Board:

Cowen, James L., Assistant Chief Actuary.

Habermeyer, Hon. Howard W., Chairman.

Healy, Thomas, member of the Board.

Schreiber, David B., Associate General Counsel.

Railway Labor Executives' Association:

Leighty, G. E., chairman.

Schoene, Lester P., general counsel.

Cambria and Indiana Railroad Co., et al., Richard J. Kent.

RAILROAD RETIREMENT SUPPLEMENTAL ANNUITIES—1969

THURSDAY, JULY 10, 1969

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will please be in order.

The hearings today are on H.R. 11607, which I introduced on May 22, and related bills, providing for an increase in the employer contribution toward payment of supplemental annuities under the Railroad Retirement Act.

In 1966, an agreement was reached between representatives of all the railroads of the United States and representatives of all the standard railway labor organizations, providing for establishment of a program of supplemental annuities to employees retiring on or after July 1, 1966, with this program financed by a tax of 2 cents for each man-hour of employment paid by the carriers.

This rate of tax was arrived at through actuarial estimates which have subsequently proved to have been erroneous. Substantially more people have retired and qualified for supplemental annuities than had been anticipated, and employment in the railroad industry has decreased below the level anticipated.

This has meant that the fund for paying supplemental annuities has had substantially higher expenses than anticipated, and has also received less income than had been anticipated. It is presently estimated that all funds available for current payment of supplemental pensions will be exhausted by October of this year.

This legislation provides for payment by the carriers of amounts sufficient to pay supplemental annuities in the amounts initially agreed upon for the remaining life of the program through October 30, 1971.

At this point the bills and agency reports will be placed in the record.

(The texts of H.R. 11607, H.R. 12216, and H.R. 12324, and a departmental report thereon follows:)

(1)

[H.R. 11607, H.R. 12216, and H.R. 12324, 91st Congress, First Session, introduced by Mr. Staggers on May 22, 1969; Mr. Duncan on June 17, 1969; and Mr. Quillen on June 23, 1969, respectively, are identical as follows:]

A BILL To amend the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act to provide for the continued payment of supplemental annuities in accordance with present law

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15(b) of the Railroad Retirement Act of 1937 is amended by striking out the second paragraph thereof.

SEC. 2. Section 3211(b) of the Railroad Retirement Tax Act is amended to read as follows:

"(b) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the excise tax imposed on every employer, provided for in section 3221(c) of this Act, for each man-hour for which compensation is paid to him for services rendered as an employee representative."

SEC. 3. Section 3221(c) of the Railroad Retirement Tax Act is amended by substituting for the first sentence thereof the following:

"(c) In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, for each man-hour for which compensation is paid, equal to (i) 2 cents for the period beginning November 1, 1966, and ending June 30, 1969, and (ii) for the period beginning July 1, 1969, and ending October 30, 1971, such rate as will make available for appropriation to the Railroad Retirement Supplemental Account provided for in section 15(b) of the Railroad Retirement Act of 1937 sufficient funds to meet the obligation to pay supplemental annuities in such period under section 3(j) of such Act and administrative expenses in connection therewith. For the purpose of this subsection, the Railroad Retirement Board is directed to determine what rate is required for each calendar quarter in the period described in clause (ii) above. The Railroad Retirement Board shall make the determinations provided for not later than fifteen days before each calendar quarter, and the rate determined for the third calendar quarter of 1971 shall apply to the month of October 1971. As soon as practicable after each determination of the rate, as provided in this subsection, the Railroad Retirement Board shall publish a notice in the Federal Register, and shall advise all employers, employee representatives, and the Secretary of the Treasury, of the rate so determined."

UNITED STATES OF AMERICA,
RAILROAD RETIREMENT BOARD,
Chicago, Ill., June 17, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, Rayburn House
Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is the report of the Railroad Retirement Board on H.R. 11607, which you introduced on May 22, 1969.

In 1966, the representatives of railway labor and management reached an agreement upon a supplemental annuity program. They jointly recommended to the Congress that the Railroad Retirement Act and the Railroad Retirement Tax Act be amended to establish the program according to the terms upon which they had agreed. (Hearing Before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, on H.R. 17285 (enacted as Public Law 89-699), September 26, 1966, p. 2.) The Congress enacted Public Law 89-699 (approved October 30, 1966) which accomplished the purpose. The program began in November 1966 and is scheduled to expire at the end of October 1971.

The amount of the supplemental annuity is \$45 a month for the first 25 years of creditable service and \$5 for each additional year up to 30; thus, the maximum is \$70 a month. To qualify for the supplemental annuity an employee must have been awarded a regular annuity under the Act after June of 1966. Also, he must have attained age 65 and have 25 or more years of creditable service. In addition, he must have had a "current connection with the railroad industry" when his regular annuity began.

The program was established by an amendment of the Railroad Retirement Act and the Railroad Retirement Tax Act in order to take advantage of the knowledge and competence of the Railroad Retirement Board in the field of retirement benefits for railroad employees and to avoid the difficulties that would have been involved in establishing a privately operated plan covering so many separate organizations. (Hearing Before the Subcommittee on Railroad Retirement of the Committee on Labor and Public Welfare, United States Senate, on S. 3777 (the companion bill to H.R. 17285 which was enacted as Public Law 89-699), p. 39.)

At the time of the negotiations and the agreement, the estimates were that an excise tax on employers only (except for a similar tax on the few employee representatives) of 2 cents for each man-hour for which compensation is paid would be sufficient to finance the program; and the tax rate was fixed at that amount for the duration of the program.

In recognition of the fact that the tax rate might not be enough to pay full supplemental annuities in the last months of the program, Public Law 89-699 provided that the Board, at the end of forty-eight months following the enactment of that public law, determine whether sufficient funds will be available to pay supplemental annuities for the last twelve months of the program; in the event that the determination is that sufficient funds will not be available, the Board is required to adjust the amounts of the supplemental annuities proportionately for that period so that the funds will be sufficient to pay the annuities as so adjusted. (This particular provision would be deleted by the bill because it would not be needed since the bill would assure that sufficient funds would be available to pay supplemental annuities in full without any adjustment for the final twelve months of the program.)

However, because of the fact that the number of employees in the railroad industry has declined to a number substantially below that assumed for the purposes of the estimates and the fact that more employees have retired and become entitled to the supplemental annuity than was assumed, according to current estimates the tax rate of 2 cents per man-hour will be insufficient to produce enough income to pay supplemental annuities in full after September of 1969.

The bill would amend sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act to provide that the tax on employee representatives and employers, respectively, shall be for the period beginning July 1, 1969, and ending October 30, 1971, such a rate as will make available sufficient funds to pay supplemental annuities throughout the period of the program which, as stated, under existing law ends with October of 1971. (In this connection on page 2, line 12, of the bill "October 30, 1971" should be changed to "October 31, 1971".) The Railroad Retirement Board would be directed to determine what rate is required for each calendar quarter for the period after June of 1969 and to make the determination not later than 15 days before each calendar quarter. Also, the Board would be required to publish a notice in the Federal Register and notify the Secretary of the Treasury and other parties concerned of the rate determined. According to preliminary estimates, the rate required for the period to sustain the supplemental annuity program will range between 2½ cents per hour and 6½ cents per hour.

It is possible that the new tax rate might not go into effect soon enough, because of a delay in the enactment of the bill, to provide funds to cover full supplemental annuity payments in the period immediately following enactment. Accordingly, the Board recommends that the bill be amended by adding the following section at the end thereof:

"Sec. 4. The Railroad Retirement Board is authorized to request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Railroad Retirement Supplemental Account such moneys as the Board estimates would be necessary for the payment of the Supplemental annuities, provided for in section 3(j) of the Railroad Retirement Act of 1937, for the six months next following enactment of this Act, and for administrative expenses necessary in the administration of such section 3(j) (which expenses are hereby authorized) and the Secretary shall make such transfer. The Railroad Retirement Board shall request the Secretary of the Treasury at any time before the expiration of one year following the enactment of this Act, to retransfer from the Railroad Retirement Supplemental Account to the credit of the Railroad Retirement Account the amount transferred to the Railroad Retirement Supplemental Account pursuant to the

next preceding sentence, plus interest at a rate equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the fiscal year ending on June 30, 1969, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer."

As stated above, the representatives of railway labor and management agreed to ask the Congress to establish the supplemental annuity program by an amendment to the Railroad Retirement Act and the Railroad Retirement Tax Act, both Federal Statutes, and their agreement and the law as enacted required administration of the program by the Railroad Retirement Board, a Federal agency; the Internal Revenue Service is required to administer the taxing provisions. The supplemental annuities have, in effect, been promised by Federal statutory provisions through the five-year period ending with October of 1971 to individuals who qualify therefor and, thus, the Federal Government has an obligation in respect to the program. In the view of the Board, a default in the supplemental annuity payments would be manifestly wrong and should not be allowed. A default in this program would not only undermine confidence in the railroad retirement system but would tend to destroy confidence in the social insurance systems in general and even in other commitments of the Federal Government.

Accordingly, the Railroad Retirement Board favors the enactment of this bill with the amendments suggested above.

Since hearing on this bill is scheduled for June 24-26, 1969, we have not had time to obtain clearance from the Bureau of the Budget, and consequently no determination has been made as to the relationship of this report to the program of the President. The Bureau of the Budget is being furnished copies of the report and you will be informed of the views of that Bureau as soon as they are received.

Sincerely yours,

HOWARD W. HABERMEYER, *Chairman.*

STATEMENT OF MR. THOMAS HEALY

I abstain from this Board action because the subject lies wholly within the province of Management-Labor relations and, indeed, is still under consideration by those groups.

THOMAS HEALY, *Member of the Board.*

The CHAIRMAN. Our first witness today will be Mr. Howard W. Habermeyer, Chairman of the Railroad Retirement Board.

Thank you for coming and you may proceed as you wish.

STATEMENT OF HON. HOWARD W. HABERMEYER, CHAIRMAN, RAILROAD RETIREMENT BOARD; ACCOMPANIED BY THOMAS HEALY, MEMBER; DAVID B. SCHREIBER, ASSOCIATE GENERAL COUNSEL; AND JAMES L. COWEN, ASSISTANT CHIEF ACTUARY

Mr. HABERMEYER. Mr. Chairman and members of the committee, my name is Howard W. Habermeyer, and I am chairman of the Railroad Retirement Board. I am here to testify in behalf of the Board in favor of H.R. 11607.

As you know, in 1966 railroad labor and the railroad companies reached an agreement for a supplemental annuity program which, as the name indicates, was to provide annuities to retired railroad employees in addition to their regular annuities under the Railroad Retirement Act. Under the agreement, the program was to continue for 60 months after its inception and would be financed by an excise tax on employers only of 2 cents for each man-hour with respect to which compensation is paid.

The parties recommended to the Congress that the program be established by an amendment of the Railroad Retirement Act which would require administration by the Railroad Retirement Board. Pub-

lic Law 89-699, which was approved on October 30, 1966, established the program in accordance with the terms agreed upon. The benefit and taxing provisions went into effect in November of 1966 and are to expire at the end of October 1971.

In order to qualify for a supplemental annuity, an individual must be entitled to a regular annuity which was awarded after June of 1966 and be at least 65 years of age. Also, he must have 25 or more years of creditable service and have had a "current connection with the railroad industry" when his regular annuity began. The amount is \$45 a month for 25 years of service plus \$5 for each additional year up to 30; thus, the maximum is \$70 a month.

When the agreement was reached in 1966, the estimates were that a tax rate of 2 cents per man-hour would provide sufficient funds to pay the supplemental annuities in full throughout the program and that rate was fixed. However, as a safeguard, the law provides that the Board, having surveyed the program, determine at the end of the fourth year whether the funds available would be sufficient to pay the supplemental annuities in full through the final year.

If the survey reveals that the available funds would not be sufficient, the Board is required to adjust the amount of the annuities proportionately for the final year to an amount where the income would be enough to pay the annuities as so adjusted. Incidentally, the bill would repeal this provision since it would provide for sufficient income to pay the supplemental annuities in full throughout the program.

The estimates now reveal that the 2 cents tax rate will not provide enough income to pay the supplemental annuities in full after September of 1969, which is of course in the third year of the program. The estimate as to the tax rate required turned out to be too low because railroad employment has declined to a number much below that anticipated in the estimates and because more people have retired and qualified for the supplemental annuity than was assumed.

The bill would fix the tax rate for the period after July 1, 1969, and through October 1971 at a rate per man-hour which is needed to provide sufficient funds in order to pay the supplemental annuities in full. The Board would be required to determine the rate needed for each calendar quarter at least 15 days before the start of the quarter. Obviously, a determination cannot be made 15 days before the quarter beginning with July of 1969, and the bill should be amended to meet this situation. The Board believes, however, that a determination of the rate for a 6-month period instead of 3 months would be adequate and now recommends that the bill be amended accordingly. Preliminary estimates are now that the rate required will be from 2.5 to 6.5 cents for each man-hour worked. If the rate is fixed for a 6-month period, as the Board now recommends, instead of for calendar quarters, the range of rates will be the same, but the timing may be somewhat different.

Since the bill may not be enacted soon enough to provide the additional tax income required to pay supplemental annuities in full for some months after September 1969, the Board, in its report on the bill, recommended an amendment to the bill to provide authority in the Board to borrow money from the regular railroad retirement fund, if

needed, for 6 months after enactment. Any loans made would have to be repaid with interest within a year after enactment of the bill.

Because of the Board's experience in the field of retirement, benefits for railroad employees and difficulties that would have been involved in the administration of the program by a private organization, the parties asked for Federal legislation to establish the program. Thus, the good faith of the Federal Government is inextricably a factor in the matter. A default in payments would be considered by many, if not all, of the persons concerned as a breach of governmental obligations and commitments and, in fact, would be such a breach. I am sure that at the time Public Law 89-699 was enacted, the Congress, the parties to the agreement, and the Board did not anticipate a collapse of the program and would have regarded such an eventuality as intolerable. The Board does not think a default in the program should be allowed. Therefore, the Board favors prompt enactment of the bill.

For the reasons I have stated and because of a clerical error, the Board recommends that the bill be amended as follows:

1. On page 2, line 12, change "October 30, 1971" to "October 31, 1971";

2. Strike all that appears on page 2, lines 20 through 25, and insert in lieu thereof the following: "each period of 6 consecutive calendar months in the period described in clause (ii) above. The 4-month period beginning with July of 1971 and ending with October 1971 shall be treated as such a 6-month period. The Railroad Retirement Board shall make the determination for the 6-month period beginning with July of 1969 as soon as practicable after the enactment of the bill and shall make each subsequent determination not later than 15 days before each such 6-month period. As soon as practicable after each determination of the"; and

3. Add the following section at the end of the bill:

"SEC. 4. The Railroad Retirement Board is authorized to request the Secretary of the Treasury to transfer from the railroad retirement account to the credit of the railroad retirement supplemental account such moneys as the board estimates would be necessary for the payment of the supplemental annuities, provided for in section 3(j) of the Railroad Retirement Act of 1937, for the 6 months next following enactment of this act, and for administrative expenses necessary in the administration of such section 3(j) (which expenses are hereby authorized) and the Secretary shall make such transfer. The Railroad Retirement Board shall request the Secretary of the Treasury at any time before the expiration of 1 year following the enactment of this act, to retransfer from the railroad retirement supplemental account to the credit of the railroad retirement account the amount transferred to the railroad retirement supplemental account pursuant to the next preceding sentence, plus interest at a rate equal to the average rate of interest borne by all special obligations held by the railroad retirement account on the last day of the fiscal year ending on June 30, 1969, rounded to the nearest multiple of $\frac{1}{8}$ of 1 per centum, and the Secretary shall make such retransfer."

This concludes my statement, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Habermeyer. I understand Mr. Thomas Healy, member of the Railroad Retirement Board, would like to make a statement.

Mr. HEALY. Mr. Habermeyer has given you the views of the majority of the board. I did not agree to those views, because in my own opinion this is subject to collective bargaining and I would hope it would go back to them for further consideration.

Thank you.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Habermeyer, at the time that they executed the agreement, were you a party to that?

Mr. HABERMEYER. No, sir.

Mr. SPRINGER. I take it from what you said here that your part in this is more or less ancillary as a member of the Railroad Retirement Board to take the money and to distribute it.

Mr. HABERMEYER. Yes, sir.

Mr. SPRINGER. I do not have a copy of the original bill. Would the staff get one for me.

I have a contract here of the Railroad Brotherhood of Locomotive Engineers. I am speaking of the agreement. Are you a lawyer, Mr. Habermeyer?

Mr. HABERMEYER. No, sir.

Mr. SPRINGER. Is your counsel here?

Mr. HABERMEYER. Yes, sir.

This is David B. Schreiber, Associate General Counsel of the Railroad Retirement Board.

Mr. SPRINGER. Perhaps it might be well for me to direct these questions to counsel, since this is a legal matter.

This agreement was executed and I presume executed by all of the 19 brotherhoods separately; is that correct?

Mr. HABERMEYER. I don't know whether all brotherhoods were included, but I think that is true.

Mr. SPRINGER. All of the brotherhoods have a binding agreement with the railroads?

Mr. HABERMEYER. That's right.

Mr. SPRINGER. Is this agreement itself legally binding?

Mr. HABERMEYER. I would think so.

Mr. SPRINGER. I don't see anything in here about the 2 cents. Where does that come?

Mr. HABERMEYER. In the attachments to the agreement.

Mr. SPRINGER. In the agreement itself, I don't see the 2 cents mentioned here. Counsel shows me that on page 16 of the original bill, H.R. 17285, beginning line 5, called supplemental taxes are these words, subsection (b): "in addition to other taxes there is hereby imposed on the income of each employee representative a tax equal to 2 cents for each man-hour for which compensation is paid to him for services rendered as an employee representative."

I take it that this contract by reference includes the statute, is that correct?

Mr. SCHREIBER. That is correct.

Mr. SPRINGER. What is your opinion with reference to the binding effect of the 2 cents?

Mr. SCHREIBER. I think you have to take the agreement in its entirety. The 2 cents was part of the agreement to provide such funds to meet the obligations to pay such supplemental annuities for a period of 5 years. This agreement assumes that 2 cents per man-hour worked would be sufficient for paying supplemental annuities based on 25 years up to a maximum of 30 years of service and payment would be in full for the entire period except the agreement also provided as a precautionary measure that after the 4th year, the Board shall examine the program in the light of the available funds.

Mr. SPRINGER. This means, Mr. Schreiber, that it could be, as I understand it, reopened at the beginning of the last or 5th year?

Mr. SCHREIBER. That's right, sir; and you must also take into account the fact that there was no doubt that until then the 2 cents per man-hour would be sufficient to pay annuities without reductions for 4 years and there might be a reduction in the 5th year if the Board should find that the funds available would be insufficient to pay the annuities in full.

So, if we take the agreement in its entirety, you have to come to the conclusion that there were to be sufficient funds available for 4 years at least to pay full annuities and a possible reduction in the 5th year. I think this is a binding agreement.

Mr. SPRINGER. It is your opinion, then, that this is binding for more than 2 cents, if need be?

Mr. SCHREIBER. It may be binding for more than 2 cents but only if it should develop, as is the case now, that there isn't enough money to pay in the middle of the 3d year. In other words, we are running out of money in September or October of this year.

Mr. SPRINGER. This is your considered opinion?

Mr. SCHREIBER. That's right.

Mr. SPRINGER. Then why not under this without coming to this committee, why do not the brotherhoods go into court and force the agreement?

Mr. HABERMAYER. I think Mr. Schreiber misunderstood the question. I do not think you agree that there is anything binding in excess of the 2 cents.

Mr. SCHREIBER. I believe there is.

Mr. HABERMAYER. Mr. Schreiber is not saying there is anything here on which to go to court and ask for more than 2 cents is the maximum we feel we can get from this legislation.

Mr. SPRINGER. Mr. Schreiber, you are in agreement with Mr. Habermayer on this?

Mr. SCHREIBER. Yes; but with this exception. I think 2 cents is the limit in the light of the estimate made. If because of what happened, the 2 cents rate is no longer sufficient, then something has to be done on the basis of this agreement to make sure that there would be sufficient funds to pay supplemental annuities in full for 4 years, with a possible reduction in annuities in the 5th year.

All I am saying is if you are talking about the agreement, then it is my considered opinion—

Mr. SPRINGER. Suppose you are sitting as a judge over this Federal court and this is before you. What is the maximum that can be taken under the contract if there is a dispute between two parties? How much is the maximum under this that could be received?

Mr. SCHREIBER. Two cents only if it is sufficient to pay annuities in full for 4 years and some reduced annuities in the 5th year.

Mr. SPRINGER. I am a lawyer and I am trying to interpret this and apparently Mr. Habermeyer has a different opinion about this than you do.

Mr. HABERMEYER. I think the impression Mr. Schreiber is leaving, and I think it is erroneous, is that without coming before this committee there is sufficient authority in the law now to have the railroads pay more than 2 cents if more than 2 cents is needed, and I don't think Mr. Schreiber meant to say that.

Mr. SPRINGER. You are in agreement that the 2 cents is the maximum?

Mr. HABERMEYER. That's right. I don't want to limit the agreement to 2 cents.

Mr. SPRINGER. Mr. Schreiber, I don't want to put words in your mouth, but I want this committee to understand what you are saying. I think what you are saying is that 2 cents is the maximum that can be gotten under this contract, but it is your opinion that you are coming back asking for this legislation because you feel that they intended at the time to provide enough money, is that correct?

Mr. SCHREIBER. That is exactly what I am trying to say.

Mr. SPRINGER. Mr. Habermeyer, have you been kept acquainted with the negotiations?

Mr. HABERMEYER. Yes, sir. As a matter of fact, I think we at the Board were probably responsible for getting these negotiations started last fall. We could see last year that the fund was going to be in trouble primarily because a lot more people retired than we anticipated.

Our revenues were reduced because the railroad payrolls did not hold up as high as we thought they would, but what played the big part was the bulge of retirees. We kept the parties informed and they started meeting last fall.

Mr. SPRINGER. How many times have the parties met?

Mr. HABERMEYER. I have not been present at any of the meetings. To my knowledge, they met about three or four times.

Mr. SPRINGER. Do you feel they are at the end of the time when they would negotiate?

Mr. HABERMEYER. I personally would like to see an agreement reached. This would be the nice way of handling this, but time is running out.

Mr. SPRINGER. Did they arrive at this agreement voluntarily last year and agree to this legislation?

Mr. HABERMEYER. Yes, sir; in 1966.

Mr. SPRINGER. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. No questions, thank you.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. I note that there is a provision that provides for the scaling down of the annuities in the event that the collections are inadequate, so there is some opportunity to keep the fund actuarially sound by adjustment of the annuities.

Mr. HABERMEYER. That is in the fifth year, sir, and there is no provision for making any reduction of benefits earlier than that. We anticipate that we will not have sufficient funds to make the payments for the month of October, which would fall due on November 1. That is the last month of the third year.

Mr. NELSEN. I note that the compulsory requirement feature figures into the deliberations. Has your Board any view on that?

Mr. HABERMEYER. I have not talked to the present Board as such on a formal basis on this subject. It was a matter of concern in the 1959 amendments. I testified at that time that I personally was opposed to a compulsory retirement age being included in a Federal statute or Federal Retirement Act. I am not a lawyer, but lawyers I have discussed this with indicate to me that there is probably a question of constitutionality involved. I think that if the parties want to strike a separate agreement, fine, but I don't think it should be part of the legislation.

Mr. NELSEN. This is a supplemental retirement payment, is it not?

Mr. HABERMEYER. That's right, sir.

Mr. NELSEN. The other retirement fund is known as what?

Mr. HABERMEYER. Railroad retirement account and the Railroad Retirement Act.

Mr. NELSEN. In the event of compulsory retirement, would this throw a heavier burden on the main retirement feature of the railroad brotherhoods?

Mr. HABERMEYER. Yes, sir.

Mr. NELSEN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald?

Mr. MACDONALD. I don't have any questions. I would like to welcome back our two perennial witnesses. I feel very familiar when I come in and see you two gentlemen here testifying. I hope we can do as well this year as we did in the past.

Mr. HABERMEYER. Thank you, Mr. Macdonald.

The CHAIRMAN. Mr. Harvey?

Mr. HARVEY. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Watson?

Mr. WATSON. No questions.

The CHAIRMAN. Mr. Adams?

Mr. ADAMS. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Brown?

Mr. BROWN. Mr. Habermeyer, was there a figure in your testimony for what you anticipate the requirement for the tax rate would be?

Mr. HABERMEYER. The tax rate at present is 2 cents. We estimate that to continue this program through the 5-year period, the rate would range between 2.5 and 6.5 cents per hour.

Mr. BROWN. Is that based on the present level of retirement?

Mr. HABERMEYER. That's right, sir.

Mr. BROWN. In other words, if the estimate of those retiring alters, for example, if more retire, then the higher rate will be required?

Mr. HABERMEYER. We are positive that the highest rate required would be 6.5 cents. We are certain we will not have to come back to bail the fund out.

Mr. BROWN. On what level of retirement is that based? Would that be the same number of retirements you are experiencing now, or a different rate?

Mr. HABERMEYER. Perhaps our actuary Mr. Cowen could give you a better answer on that.

Mr. COWEN. The rate is based on a retirement rate which is close to what would come about if there were compulsory retirement. That would be the maximum.

Mr. BROWN. Is that higher than the present retirement rate?

Mr. COWEN. That is slightly higher than the present retirement rate that we are experiencing.

Mr. BROWN. On what is the 2.5 cents rate based?

Mr. COWEN. That is based on the number of beneficiaries which we have currently because the 2.5 cents would be for the first quarter beginning July 1, 1969.

Mr. BROWN. Without any additional retirees?

Mr. COWEN. There is a slight addition for the number we are currently experiencing.

Mr. BROWN. Is your feeling, Mr. Habermeyer, that the retirement issue ought to be negotiated between railroad management and labor?

Mr. HABERMEYER. Compulsory age retirement?

Mr. BROWN. Yes.

Mr. HABERMEYER. Yes, I strongly recommend that that be negotiated.

Mr. BROWN. We have that issue which we might yield to negotiation, Mr. Chairman, and some issues on armed services which might yield to negotiation. It seems to me those two things might be presented to our friends who testified previously on the other legislation, in the hope that some understanding could be reached that would obviate the necessity of this committee undertaking legislatively either one of these issues.

The CHAIRMAN. Mr. Eckhardt?

Mr. ECKHARDT. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Habermeyer, is it true the first estimates were that \$30 million a year would be the necessary annual contribution by industry to cover this fund?

Mr. HABERMEYER. I don't believe as far as the Board was concerned we ever considered \$30 million a year. We were faced with the situation in order to provide supplemental annuities for individuals with 25 or more years of service who retired directly from the industry directly at age 65—

Mr. KUYKENDALL. Don't you figure it out to determine how much to raise?

Mr. HABERMEYER. We figured out how many would retire in 5 years and we determined 2 cents would be the amount.

Mr. KUYKENDALL. You determined the amount before you determined how many would retire. Now what was the amount?

Mr. HABERMEYER. I would say it was probably around \$150 million for the 5-year period.

Mr. KUYKENDALL. \$30 million a year for a 5-year period?

Mr. HABERMEYER. Yes, sir.

Mr. KUYKENDALL. That would be \$80 million too little. Do you now claim your original figures were correct?

Mr. HABERMAYER. The actuaries—

Mr. KUYKENDALL. Why can't we have an agreement here that they are 250 percent wrong and proceed from there? Let's not have any statements that they were right in the first place because they were 250 percent wrong. I am a licensed insurance man and I would go broke quoting figures like that.

You use a 2.5 cents to 6.5 cents per man-hour figure now, you seem awfully sure of yourself, yet I have had representatives of the railroads say it will cost 9 cents. Now what do you think about that?

Mr. HABERMAYER. I have never heard any railroad representatives say it would cost 9.

Mr. KUYKENDALL. And they were willing to pay it.

Mr. HABERMAYER. Are you confusing the issue by including another 5-year period?

Mr. KUYKENDALL. I am talking about the amount of money necessary to pay from \$45 to \$70 a month additional annuity to people who retire from the railroad.

Mr. HABERMAYER. Through this first 5-year period which ends in 1971.

Mr. KUYKENDALL. \$80 million would cost how much per hour?

Mr. HABERMAYER. I don't think any actuary would give you a figure of 9 cents.

Mr. KUYKENDALL. I would not trust the actuaries. I think I would either take the \$80 million figure a year—how much would that be an hour?

Mr. HABERMAYER. I don't have the figures in my head.

Mr. KUYKENDALL. It would take 6 cents to raise \$85 million roughly on the same number of hours, wouldn't it? I believe that is the way arithmetic works. If it took 2 cents to raise 30, it would take 6 cents to raise 80.

Mr. HABERMAYER. This is for from now until the end of October 1971. It is \$80 million for the rest of this period.

Mr. KUYKENDALL. The gentleman back there said 6.5 cents. How much did you raise on 2 cents per hour?

Mr. HABERMAYER. We originally raised a little more than \$30 million and now it is about \$28 million.

Mr. KUYKENDALL. You say you want to raise it to 6.5 cents?

Mr. HABERMAYER. I think in the last 6 months we will need 6 or 6.5 cents.

Mr. KUYKENDALL. Wouldn't that figure be roughly \$80 million a year?

Mr. HABERMAYER. We are not going to charge 6.5 cents immediately. We will probably raise it to 2.5 cents for the first 6 months, 3 cents possibly for the next 3 months and possibly 3.5 cents the next 3 months, and we will probably get to 6 or 6.5 cents by the end of the period.

Mr. KUYKENDALL. What rate are you paying out now?

Mr. HABERMAYER. A little over 2 cents an hour.

Mr. KUYKENDALL. You are paying out that rate. How many dollars are you in the hole at the end of the year?

Mr. HABERMAYER. We are not in the hole yet.

Mr. KUYKENDALL. You said a while ago you would be in the hole the 11th month. What is the figure on that? Mr. Habermeyer, can't you understand we are a little bit dubious about figures being so sure? We don't want you to come up here in 2 years and be this wrong again. What this really all adds up to is this one fact: Voluntary negotiations were going on and offer had been made to cover regardless and I personally think we should recess these proceedings until both sides, management and labor come back before this committee and say, "We are hopelessly deadlocked, dump it in your lap and have another phase of compulsory legislation."

The CHAIRMAN. Mr. Hastings?

Mr. HASTINGS. I have no questions.

The CHAIRMAN. Mr. Watson?

Mr. WATSON. May I ask the gentleman one question.

Were you involved in the negotiations in 1966?

Mr. HABERMEYER. No, sir.

Mr. WATSON. You were not even involved to the extent of giving them some estimates?

Mr. HABERMEYER. Yes, they asked for estimates and we were involved to that extent.

Mr. WATSON. Otherwise you were not involved in the negotiations?

Mr. HABERMEYER. That's right.

Mr. WATSON. I was just wondering if you were and they were successful then, you might involve yourself again and extricate us from this problem.

The CHAIRMAN. Thank you very kindly.

Our next witness will be Mr. Lester P. Schoene, general counsel, Railway Labor Executives' Association.

Mr. Schoene, I don't know if you want to read all of this or summarize it and put it in the record. We will be happy for you to do it that way to save time.

STATEMENT OF LESTER P. SCHOENE, GENERAL COUNSEL, RAILWAY LABOR EXECUTIVES' ASSOCIATION; ACCOMPANIED BY G. E. LEIGHTY, CHAIRMAN

Mr. SCHOENE. I have filed a prepared statement, but I do not intend to read it. I shall speak extemporaneously.

Appearing with me and seated at the witness table with me is Mr. G. E. Leighty, chairman of the Railway Labor Executives' Association, for whom I appear.

My name is Lester P. Schoene. I am a lawyer, a member of the firm of Bernstein, Alper, Schoene & Friedman, with offices at 818 18th Street NW., Washington, D.C.

I appear this morning as counsel for Railway Labor Executives' Association with respect to the bill H.R. 11607. I have been advising the association on railroad retirement and unemployment insurance matters, among others, for approximately 25 years, until several months ago as a member of the firm of Schoene & Kramer.

The Railway Labor Executives' Association is an association of the chief executives of the 20 standard railway labor organizations, representing in the aggregate substantially all the railroad employees in the

country with the exception of those represented by the Brotherhood of Locomotive Engineers, representatives of whom are scheduled to testify here also. I will not read the names of the organizations whose chief executives are affiliated with the association, but they do appear in a list in my prepared statement and I would like to have them copied into the record.

The Chairman of the Railroad Retirement Board has already explained the terms of the present provisions of law relating to the railroad supplemental annuities and I shall not take the time to review them again.

I think the most important thing to call to the attention of the committee is the fact that this is legislation of an emergency nature. Come September of this year, the Railroad Retirement Board will not have funds in its supplemental account, the only account from which supplemental annuities may be paid, and this account will not have the money to pay the annuities.

This means there will be some 60,000 people scattered throughout this country, inhabitants, I am sure, of every congressional district in the country who had every reason to expect that the annuities would be paid and who will be disappointed in not receiving them. This, it seems to us, is an emergency and calls for emergency congressional action.

If you will look at page 4 of my statement, you will see the figures, very simply, what brought this situation about. It was estimated at the beginning of the period, at the time we made our agreement in 1966 that by April of this year the retired population eligible for supplemental annuities would be 44,000. In fact, counting those whose annuities are completely offset by other supplemental pensions—some 5,500 of them—the number, in fact, ran to 57,000 or 30 percent in excess of those that were estimated, according to the 1966 estimates.

Correspondingly, the income to the fund was reduced at least in part because of this higher number of retirements and a failure to replace them on the rolls of the industry. It was estimated in 1966 that in April of this year the funds would accumulate to \$87 million. There were \$83.5 million, or \$3.5 million less than had been anticipated.

We feel that what has happened is of such cataclysmic consequences that action by Congress is called for. This is so radically different from what we had reason to anticipate that if this were a simple mistake of fact, remedial action would be called for.

I am not here to assess blame or responsibility or to engage in any vituperation, but I am not at all reluctant to explore the reasons for the situation in which we find ourselves.

First of all, I think we should understand the nature of these actuarial matters. These were not difficult estimates to make. After all, the Railroad Retirement Board has been accumulating some very complex statistics and some very detailed statistics about the railroad population for some 35 years and we know the composition of the railroad work force. We know their ages, we know how many years of service they have, and this is not a matter of someone simply having done his arithmetic wrong when you make an error of these dimensions.

In other words, what has happened is that the conditions in the industry have very radically changed from those which we had every reason to anticipate on the basis of some 35 years of experience and actual knowledge of the composition of the labor force.

Now, 30 percent more people retired eligible for annuities than had been anticipated in this first 2½ years. What brought that about, I don't know that I can describe reasons for the entire phenomenon, but we do know that within this period very extensively the railroads had been offering separational allowances, buying people's seniority and inducing them to retire.

We know, for example, in the craft of the Locomotive Firemen and Enginemen, we know that as the result of an arbitration award certain groups of employees were subject to job abolitions, but with the payment of separation allowances. We know a large number of those people took retirement annuities.

We are not in a position to measure the exact effect of these phenomena, but we know as a fact from our observations in the industry that certain things were going on which could reasonably be expected to bring about the results that have been brought about and, in my humble judgment, those are the matters which are responsible for the situation in which we find ourselves.

As I say, actually it is not important what brought it about. The important thing is to find a remedy for it.

Now, Mr. Chairman, we don't know whether there is going to be opposition to this bill or not. I suspect there may be. The nature of the arguments in opposition, I don't know. So I would like to ask the Chair that I be permitted to file a statement in rebuttal if that should prove desirable. However, there are two points to which I think I should address myself at this time because the questions that have been asked so far indicate that the committee is somewhat troubled by them.

Reference has been made to the agreement that was made with the railroads back in 1966 at the time this program was inaugurated. That agreement provided, among other things, aside from setting up this program, "No party thereto will recommend or support any further legislation dealing with supplemental annuities to become effective prior to the expiration of the supplemental annuities provided for in title I of the attached bill, unless pursuant to further mutual agreement of the parties."

Questions may be raised as to whether, in supporting this bill, we are observing the agreement that we made? In my judgment, we are, because the program that was set up in 1966 was a program that contemplated a particular level of benefits for a period of 5 years.

The essence of the agreement was that that program should be carried out at that level of benefits and then we would get into discussions during the 5th year as to what the future of the program would be. We are not here asking you to change either the level of the benefits or the duration of the benefits. We are simply asking that the program then contemplated be carried out.

Changes of circumstances that were not anticipated have resulted in conditions that make it impossible to carry out what had been agreed upon, and we are only asking you to remedy that situation.

Secondly, I think I should address myself to the provision in section 15(b) of the Railroad Retirement Act that provided that, with respect to this program, in the event at the beginning of the fifth year the Railroad Retirement Board should find that there were insufficient

funds to carry out the program entirely for the fifth year, it might re-adjust the level of the benefits.

I think that paragraph requires a bit of explanation. It does not contemplate that there would be an insufficiency of funds.

At this point, I might say to you, Mr. Chairman and members of the committee, that I personally attended, I believe, every conference that was held with respect to the 1966 agreement, and I know from personal knowledge what I am talking about; that includes drafting conferences as well as negotiating conferences.

The provision to which I referred came into the bill by reason of a suggestion made by carrier representatives in the drafting conferences that some provision be made for distributing back to the railroads any surplus that might remain at the end of the 5-year period. Representatives of the organizations were unwilling to include in the proposed legislation a specific provision for distributing back to the railroads any surplus that might remain because it was, of course, the contemplation of the organizations, that once you started such supplemental pensions, that would not end at the end of 5 years. We did not want any implication of finality at the end of 5 years.

This, however, led to the suggestion, well, suppose the money is not quite enough? We said we agreed it could be readjusted if it appears in the 5 years it is not enough. The reason we were willing to agree to it was that nobody anticipated that that provision would ever have to be relied upon.

Now we find there isn't even enough money over a year before the inception of this provision, so I don't think any implication is warranted that what has developed is the kind of thing that was encompassed within the range of possibilities.

If you look at the committee reports that were made in both the House and Senate in 1966, you will find that both Houses of Congress, that is, both committees, shared our conviction that the financing would be adequate for the 5-year period.

(Mr. Schoene's prepared statement follows:)

STATEMENT OF LESTER P. SCHOENE, GENERAL COUNSEL, RAILWAY LABOR
EXECUTIVE'S ASSOCIATION

My name is Lester P. Schoene. I am a lawyer, a member of the firm of Bernstein, Alper, Schoene & Friedman with offices at 818-18th Street, N.W., Washington, D.C.

I appear this morning as counsel for Railway Labor Executives' Association with respect to the bill H.R. 11607. I have been advising the Association on railroad retirement and unemployment insurance matters, among others, for approximately 25 years, until several months ago as a member of the firm of Schoene and Kramer.

The Railway Labor Executives' Association is an association of the chief executives of the 20 standard railway labor organizations, which collectively represent almost all of the country's railroad employees and many of its airline employees. These organizations are:

- American Railway Supervisors' Association;
- American Train Dispatchers' Association;
- Brotherhood of Maintenance of Way Employees;
- Brotherhood of Railroad Signalmen;
- Brotherhood Railway Carmen of the United States and Canada;
- Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (into which on February 21, 1969 was merged Transportation-Communication Employees Union, formerly The Order of Railroad Telegraphers);

Transportation-Communication Division—Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Sleeping Car Porters; Hotel and Restaurant Employees & Bartenders' Int'l. Union. International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers and Blacksmiths; International Brotherhood of Electrical Workers; International Brotherhood of Firemen and Oilers; International Organization Masters, Mates and Pilots of America; National Marine Engineers' Beneficial Association; Railroad Yardmasters of America; Railway Employees' Department, AFL-CIO; Seafarers' Int'l. Union of North America; Sheet Metal Workers' International Association; and United Transportation Union (a merger effective January 1, 1969 of the former Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brake-men, and Switchmen's Union of North America).

H.R. 11607 is in the nature of emergency legislation, the prompt enactment of which is essential to prevent collapse of the arrangements existing under present law for the payment of annuities to long-service career railroad employees, supplemental to the joint contributory benefits provided under the regular Railroad Retirement Act. The Association supports this bill and urges its prompt enactment.

In 1966, the railway labor organizations and the railroad managements represented by the Association of American Railroads and the National Railway Labor Conference arrived at agreement concerning the establishment of a supplemental annuity system to be financed exclusively by the managements. The plan was initially to be established on a five-year basis with the expectation that during the final year of that period the parties would confer and endeavor to arrive at any agreement with respect to its future; if agreement were not reached with respect to the future of the program by the expiration of six months of the final year, either party might make such unilateral recommendations as it might see fit.

The program, as agreed upon, was brought to the Congress and its enactment into law recommended by the representatives of the railroad employees and the railroad managements. It was enacted by Congress and approved by the President October 30, 1966.

The benefits were very modest as compared with employer-financed supplemental pensions they being granted to employees in other major industries and even more modest compared with such pensions now being granted. Eligibility for any supplemental annuity required a minimum of 25 years of service, attainment of age 65 and a current connection with the railroad industry at the time the regular railroad retirement annuity would begin to accrue. Benefits for service beyond 25 years were graduated upward to the rate of \$5.00 in benefits per additional year of service to a maximum of \$70.00 for 30 years of service.

To finance these benefits, the legislation established a railroad retirement supplemental account, for the support of which each of the employers subject to the Railroad Retirement Act was required to pay a tax of two cents per man-hour of compensation paid. It was the expectation of railroad managements, railway labor and the Railroad Retirement Board that the thus provided for would in the early years of the five-year period, when the eligible retired population was relatively low, build up a surplus which would be available in addition to current taxes to pay the cost of the program during the later months of the period when the retired population would be greatest and costs consequently highest. It was anticipated by everyone participating in the establishment of the program that the funds would be ample to meet the cost but would substantially exhaust themselves by the end of the five-year period. This expectation is reflected in the reports which the House and Senate Committees made to the respective branches of Congress at that time.

Unfortunately, experience has differed radically from the expectations of all the participants in the establishment of the system. According to the 1966 estimates, the beneficiary population as of the end of April this year should have been 44,000; the actual figure ran (including 5,500 offset by other supplemental pensions that also offset corresponding taxes) 57,000 or 13,000 more than had been anticipated in the 1966 estimates.

This acceleration in retirement rates was likewise reflected in the number of actively employed railroaders whose man-hours of employment were counted upon to generate the taxes for the support of the system. According to the 1966 estimates, the cumulative gross tax accruals by the end of April should have been \$87 million; the actual figure was \$83.5 million or \$3.5 million less than had been anticipated.

The result of this combination of higher rates of retirement with correspondingly higher rates of diminution of the volume of employment has precipitated a crisis. We have been informed, and we understand that this Committee has been informed by the Railroad Retirement Board, that unless Congress takes remedial action, the funds in the supplemental account will be insufficient after September of this year to pay the annuities. Presumably, some way could be found thereafter to dribble out the taxes currently collected in the form of some sort of annuity payments, but it is clear that only prompt action by Congress can rescue the program from collapse.

The question may well be asked, who is responsible for this state of affairs. To me the answer to that question is not nearly as important as the answer to the question, what is Congress going to do about it. By the end of September of this year there will be roughly 60,000 people, inhabiting every Congressional district in the nation, whose vested benefit rights will be adversely affected. This does not take into account the thousands of others who would be coming onto the annuity rolls in the next two years, if the expectations of all participants in the establishment of the 1966 program had been fulfilled.

Although, as I have said, the question of responsibility for this state of affairs is of lesser importance than the question of what Congress is going to do about it, I have no reluctance to explore the former question.

In 1966, there had been approximately 30 years of experience with retirements under the Railroad Retirement Act. The rate at which employees could be expected to retire was ascertainable from experience. We knew from statistics that had been compiled over the past 30 years what the ages and composition of the railroad work force were. Nevertheless, it turns out that the railroad managements, the representatives of their employees, the Railroad Retirement Board and the Congress underestimated the number of people who would retire and be eligible for supplemental annuities in the next 2½ years by approximately 30%. I do not believe that all these people, many of whom are experts in the field, simply did not do their arithmetic right.

If they all made mistakes of this dimension in their arithmetic, then we would have a mutual mistake of fact of such serious proportions as to demand rectification even though blame would not be assessable against anyone.

I believe, however, that there has been a radical change of conditions since 1966 and I further believe that we know what that change is and who caused it. We know as a fact that since 1966 many railroads have been engaged in a deliberate effort to reduce the number of employees to whom they are under obligations to furnish employment. They have offered separation allowances and other inducements to employees to surrender their seniority rights and these offers have been addressed to a substantial extent to the older employees. If employees who are at retirement age can be induced, by payment of a separation allowance, to retire from railroad employment, accept their regular railroad retirement annuities, accept their supplemental annuities, and, perhaps even find employment in other industries, the effect on the railroad retirement supplemental annuity account would be exactly what we have witnessed.

I am not prepared to say exactly to what extent such practices have operated to bring about the situation that confronts us today. We know from observation that the practice has been extensive and, in my opinion and the opinion of the chief executives who are members of the Association I represent here, it has been principally responsible for the emergency that now faces us.

Even so, I am not saying that this Committee should take retributory or punitive action against the railroads. The bill before you provides only that the railroads (and other employers, including unions, subject to the Railroad Retirement Act) shall put up enough money to pay the cost of the commitments that were made in 1966 for the period for which those commitments were made. I do not see how the Congress could do anything else.

I am informed that the Railroad Retirement Board, in its report to this Committee, has urged an amendment to the bill to permit borrowing from the regular Railroad Retirement Account in case the new money raised by the bill does not come in fast enough to permit the Board to discharge its obligations. These bor-

rowings would, of course, be repaid as soon as the influx of funds would permit. A similar provision was included at the inception of the program in 1966 and we support the recommendation of the Railroad Retirement Board in this respect.

Mr. SCHOENE. I think, Mr. Chairman, I can now conclude my remarks if I may have permission to file a rebuttal statement if that should prove to be necessary.

The CHAIRMAN. Without objection, it is so ordered.

(Mr. Schoene's rebuttal statement follows:)

STATEMENT IN REBUTTAL BY LESTER P. SCHOENE

At the time I presented my direct testimony before this Committee with respect to H.R. 11607, I was not informed as to whether there would be opposition to the bill and, consequently, I could not anticipate and refute the arguments that might be made in opposition, except to a limited extent.

Accordingly, the Committee granted me the privilege of submitting a later statement if that should be deemed advisable. I think a brief statement commenting upon the testimony of J. P. Hiltz, Jr. is appropriate.

The central thrust of Mr. Hiltz' position is that the controversies associated with the bill should be resolved through collective bargaining. It should be carefully noted, however, that Mr. Hiltz does not take the position that a collective bargaining contract governing supplemental pensions should take the place of legislation on the subject. Mr. Hiltz expresses the hope that when the controversies associated with the legislation have been resolved by representatives of the National Railway Labor Conference and representatives of the Railway Labor Executives' Association and the Brotherhood of Locomotive Engineers, we can then recommend to the Congress the enactment of a jointly recommended bill, as we did in 1966.

It was, of course, in the hope of arriving at such a happy solution that Mr. Leighty initiated conferences with Mr. Hiltz on this subject last October 28. A copy of Mr. Leighty's letter is attached to this statement.

Since Mr. Leighty initiated these conferences every effort has been made to reach an agreement that would permit us to recommend to Congress legislation that would at least carry out the 1966 commitments and hopefully establish a longer term program. However, we are now in the middle of July and the money to pay supplemental pensions is going to run out at the end of September. Only the utmost expedition on the part of Congress can now avoid interruption of payments.

Mr. Hiltz, as foundation for his recommendation of collective bargaining, has sketched some of the history of past activities within the industry. A full understanding calls for more detail.

Individual crafts on individual railroads began some ten or more years ago serving notices under Section 6 of the Railway Labor Act proposing agreements providing for company pension payments supplemental to the Railroad Retirement Act. Very generally, the response of the carriers, in sharp contrast to the position now espoused by Mr. Hiltz, was that this entire subject had been preempted by the enactment of the Railroad Retirement Act and was not a bargainable subject under the Railway Labor Act.

In 1962, the United States Court of Appeals for the Seventh Circuit made its decision in *Elgin, Joliet & Eastern R.R. Co. v. Brotherhood of Railroad Trainmen, et al.*, 302 F. 2d 540, cert. den., 371 U.S. 823. This decision squarely held that the subject of supplemental pensions or annuities was bargainable under the Railway Labor Act, thus refuting the position theretofore consistently taken by the railroads.

The number of Section 6 notices and the number of crafts serving them and the number of railroads on which they were served multiplied. Nevertheless, it was not until 1965 that the carriers nationally became disturbed sufficiently to enter into national negotiations. The reason they entered into national negotiations is fairly obvious: With the establishment of the legal right to negotiate on this subject, there came the danger that the unions might secure outstandingly good and precedent-making agreements on some railroads on the subject. It should be clearly understood that the railroads embarked on this program, not through magnanimity, but through a desire to avoid being whipsawed into making better agreements from the standpoint of the employees than they could perhaps make if they entered into national negotiations.

But this did not mean that the path toward negotiation of a national agreement was now smooth. Mr. Hiltz' statement contains internal evidence of how rough it was. On page 7 of his statement he quotes, out of context, three paragraphs of a story in "Labor" newspaper of June 11, 1966 in order to measure the dimensions of the carrier commitments that had been made. The whole article sheds an interesting light on the tribulations through which the negotiations went even as late as June 1966. A copy of the whole article is attached hereto and shows that it was necessary even at that late date to appeal to the railroad presidents who supervise the activities of the Chairman of the National Railway Labor Conference in order to keep the negotiations going.

Eventually, on August 24, 1966, an agreement was reached with the National Railway Labor Conference, which is attached to Mr. Hiltz' statement as Attachment A. There are several interesting things about this agreement.

We call your attention to the first sentence of paragraph 3 of the agreement which reads as follows:

"3. Neither the making of this agreement nor the discussions provided for in paragraph 2 hereof shall be considered in any way to prejudice the position of either the carrier parties or the organization parties hereto as to whether or not the subject matter of this agreement or the subject matter of such discussion is a proper or mandatory subject for collective bargaining under the Railway Labor Act or under such law or laws as may hereafter be applicable to collective bargaining in the railroad industry."

In simple terms, even at that date and even under an agreement now in effect, which Mr. Hiltz invokes as having been violated by the organizations in sponsoring the present bill, the railroads carefully guarded against any possible admission that the making of the 1966 agreement established that this was a proper subject for collective bargaining. We submit in all reason that the railroads' position is that whatever forum we are in, we are in the wrong one.

I cannot refrain from calling your attention to another interesting thing about this agreement. The National Railway Labor Conference includes in its intricate composition the three Regional Carriers Conference Committees, each headed by a full-time chairman. Normally, an agreement by the National Railway Labor Conference would be signed by these chairmen. You will note that this agreement is signed only by J. E. Wolfe. Mr. Wolfe explained to us on October 24, 1966 that even at that late date the chairmen of the Regional Conference Committees had refused to subscribe to the agreement and Mr. Wolfe was assuming the responsibility himself for executing the agreement. Mr. Wolfe has retired. Mr. Hiltz has replaced him. Two of the three Regional Carriers Conference Committees Chairmen who held those positions in 1966 hold them and have actively participated in the negotiations that have taken place since last October.

I said in my direct testimony that it is not my purpose to engage in personal recriminations, nor to question the sincerity or good faith of anyone participating in the negotiations. That is still my position and nothing said in the preceding paragraph should be understood as indicating otherwise. I merely mention the circumstances that I have recited as being among the problems that bring us to the middle of July in dealing with the crisis that must be solved by September if we are going to avoid suffering on the part of 60,000 retired railroad workers and their families.

In my direct testimony I said that our present predicament calls for emergency action to provide relief even if what has occurred is simply an egregious mutual mistake of fact. I did undertake, however, to suggest that unusual activities in the industry on the part of the carriers have been of a kind that would be likely to induce accelerated retirements. Mr. Hiltz has undertaken to submit statistical evidence indicating that these carriers' activities could account for only about 2.9% out of the 30% of excess retirements. This purportedly statistical demonstration is as phony as a three dollar bill.

We have become accustomed through many years to unilaterally concocted "surveys" by the carriers that show whatever the carriers want to show. This is a typical example.

We are told that the survey includes 128 carriers having 65% of the employment represented by the National Railway Labor Conference. We are not told whether, for example, Penn Central is one of these carriers, Penn Central represents approximately 15% of the employment represented by the National Railway Labor Conference. If Penn Central is one of the included carriers, this means that 127 other carriers have been included representing collectively only 50% of

the employees employed by carriers which the National Railway Labor Conference represents.

On the other hand, if Penn Central is not one of the included carriers, the omission is inexcusable. The merger of the Pennsylvania Railroad and the New York Central and others to form Penn Central has been one of the biggest events occurring in this industry during this generation. It has caused most profound disturbances and instability in the lives of its employees. If it has been omitted from Mr. Hiltz' survey, that omission alone would serve to condemn the results as unreliable.

We know from the fact that it takes 128 carriers to account for 65% of the employment represented by the National Railway Labor Conference that many large carriers must have been omitted. We are not told which they are. If the largest carriers in the country were included, 65% of the employment could be covered by surveying not more than a dozen or 15 companies.

Apparently, the carriers surveyed were asked to correlate only the payment of lump-sum separation allowances with retirements. Although it is true that in my testimony I mentioned the offering of such allowances as the most obvious example of inducement to early retirement, these inducements are by no means exhaustive. There have been many instances in which jobs have been abolished or moved and older employees have been induced to retire rather than to move their homes even though they were not paid separation allowances. In other instances, employees thought they were going to get separation allowances but did not get them. Years of uncertainty have beclouded the rights of many employees in many instances—the brutal history of the Southern-Central of Georgia merger is a notorious example.

We know from experience in the administration of many of our protective agreements that even after several years the carriers are unable to identify the employees who are entitled to protective rights under protective agreements we have made. Why this is so, I cannot explain. It seems as though the more modern record-keeping equipment of the carrier becomes, the more difficult it becomes to extract information from it. In any event, there is not the slightest reason to believe that Mr. Hiltz could conduct a survey such as that which he presents as having reflected the facts with any resemblance of accuracy.

When Mr. Hiltz was asked whether he was authorized to speak on behalf of all the railroads, he replied, in substance, that he was speaking for all the railroads represented by the National Railway Labor Conference. Obviously this is a question-begging answer. The fact is that Mr. Hiltz does not have power of attorney on this subject from any railroad and cannot make a collective bargaining agreement for supplemental pensions on behalf of any one of them. He has been delegated authority to speak politically for the major railroads—i.e., to make an agreement to sponsor legislation.

Numerically, the major railroads for which Mr. Hiltz speaks are a minor fraction of the employers covered by the Railroad Retirement Act. As of the end of 1967 there were 753 railroads in this country. In addition to the railroads, there are hundreds of affiliated companies and railway labor organizations that are subject to the regular Railroad Retirement Act and also subject to the present laws governing supplemental annuities. Mr. Hiltz cannot and would not deny that railroad management and railway labor are agreed on the proposition that all such employers and their employees should continue to be covered as they are now covered under supplemental annuity legislation.

When we analyze the present situation, the problem with which all of us is confronted appears as really a very simple one. Everyone seems to agree that, no matter how desirable it might be to establish at this time a program extending beyond the expiration of the present five-year period, the commitments at least for that period must be met; they cannot be met beyond September of this year unless there is additional legislation; in the discussions between management and labor attempting to resolve differences the carriers have conditioned their acceptance of any relief on something that the unions simply can't meet, namely, some form of compulsory retirement. Acquiescence in any form of compulsory retirement is beyond the constitutional capacity of some of the organizations and unacceptable as a matter of principle to others.

I raise no question about the legitimacy of the carriers' right to bargain collectively on the subject of compulsory retirement. As Attachment D to Mr. Hiltz' statement shows, many such agreements have been made by individual organizations on individual railroads and I have no doubt that more will be made. However, when Mr. Hiltz conditions fulfillment of the 1966 commitments upon na-

tional acceptance of any form of compulsory retirement by all organizations, he is imposing a condition that it is impossible to meet. It is tantamount to a repudiation of the 1966 commitment.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Washington, D.C., October 28, 1968.

Mr. JOHN P. HILTZ, JR.,
Chairman, National Railway Labor Conference,
Washington, D.C.

DEAR SIR: I am informed that representatives of the railroads as well as the members of the Railway Labor Executives' Association have received copies of a report dated September 20, 1968, by the Office of Actuary and Research, U.S. Railroad Retirement Board, and entitled "The Railroad Supplemental Annuity Program: Its Provisions and Financial Condition".

This report indicates that in a number of respects the experience under the Supplemental Annuity program has differed importantly from that which we mutually expected (which expectations were shared by the Railroad Retirement Board) at the time we were negotiating our agreement of August 24, 1966 on this subject. Last week the RLEA discussed this matter and directed that our Committee request a prompt resumption of conferences between representatives of Management and Labor on this subject.

Accordingly, I request that duly authorized representatives of Railroad Management meet with the Railroad Retirement Committee of RLEA as soon as a mutually convenient date can be arranged to have a thorough discussion of the future development of all aspects of the railroad supplemental annuity program. I contemplate that this discussion would comprehend the financing of the program now authorized by law as well as benefit levels and their financing after the program now authorized has expired.

This request is addressed to you since our agreement of August 24, 1966 was negotiated with your predecessor Mr. J. E. Wolfe and notwithstanding our knowledge that legislative matters are usually handled by the Association of American Railroads. The request is that we have an opportunity to confer with parties duly authorized to represent the railroad industry. We are also fully aware of the provisions of the August 24, 1966 agreement and are not asking you to waive any of those provisions by agreeing to a conference.

Will you please advise?

Very truly yours,

G. E. LEIGHTY,
Chairman, Railway Labor Executives' Association.

[From newspaper, "Labor," of Saturday, June 11, 1966]

BLAST RAILS FOR "DOUBLE CROSS"—UNIONS CASTIGATE CARRIER FLIPFLOP ON PENSION PLAN

Railroad managements were accused this week by the Railway Labor Executives' Association of running out on commitments and torpedoing an effort to achieve labor-management cooperation.

That blunt charge was levelled in a letter sent to carrier presidents who compose the nine-man administrative committee of the National Railway Labor Conference, the negotiating arm of the railroads. The letter was signed by G. E. Leighty, RLEA chairman, for 22 affiliated unions representing nearly all employees on the railroads.

Leighty recalled that in January 1965 the RLEA adopted a resolution "advocating the acquisition and operation" of U.S. railroads by the federal government.

REASONS FOR COURSE

"The decision to advocate that course," he wrote, "was predicated on a variety of reasons, including the apparent indifference of railroad managements toward providing the transportation service the public is entitled to expect and safety of operations."

Another "conspicuous consideration," the letter said, "was the intolerable state to which labor-management relations in the industry had deteriorated."

A month later, the subject was considered again by the RLEA, but meantime a number of rail management leaders made public statements advocating top level consultation between management and labor "to give cooperative attention to all problems of mutual concern in the industry."

"That development led us to believe that a period of enlightenment might have dawned in management circles," the letter continued. "We accordingly made public announcement of our determination to pursue the cooperative course to which we thought we had been invited."

A CONCRETE TEST

Leighty said the unions had on hand "a concrete subject that afforded an opportunity to give this course a practical trial."

This was the subject of supplemental pensions which had been under study for some time at the "insistent demand" of the employees. Such pensions would be in addition to benefits under the Railroad Retirement Act and would be similar to supplemental pensions provided in major industries through collective bargaining agreements.

At the February 1965 RLEA meeting the unions perfected proposed legislation to carry out that objective, but they delayed its introduction in Congress. Instead, this was submitted to the Association of American Railroads "as a basis for consideration and discussion in the hope that a cooperative program could be evolved." The AAR indicated it would set up a committee to deal with the matter.

PARLEYS RESUMED

Meantime, the rail unions were tied up during the summer of 1965 with Medicare and other legislation relating to Railroad Retirement. Then in September the unions were informed that J. E. Wolfe, chairman of the Railway Labor Conference, had been authorized to head up negotiations on the issue with RLEA, both on behalf of the AAR and the Conference.

The unions said they understood this arrangement was made because, in addition to the proposed legislation, there were pending in mediation a number of proposals served on various railroads for supplemental pensions.

"We thought the objective of management was to negotiate a disposition of the whole subject in one package," Leighty's letter continued.

During the latter part of 1965 a series of sessions was held with Wolfe and his associates. It was agreed that if an accord could be reached, "the most effective and desirable means of making it effective would be jointly sponsored legislation."

"It was our hope that such legislation would be ready for introduction, upon our joint recommendation, when the current session of Congress would convene in January," Leighty said.

These hopes "did not materialize," he explained, and additional conferences followed, at Wolfe's request. In the meantime, Wolfe was to ascertain the extent of his authority to commit the railroads to "the expenditure of a specific amount of money for supplemental pensions," and to relay this information to the RLEA's railroad retirement committee headed by President C. L. Dennis of the Railway Clerks.

Finally in March, Wolfe told the unions "he had specific authority to make a definite commitment for the railroads to spend \$30 million per year for supplemental pensions over a five-year period," Leighty's letter pointed out.

NEGOTIATE ON PROPOSAL

This was not adequate, but the unions agreed to negotiate further within the framework of that amount of money. They submitted a number of concrete proposals for implementing the plan. After further discussions, the unions on May 24 submitted to Wolfe, at his request, what was supposed to be a "final proposal, to which he had agreed to give a 'yes' or 'no' answer."

Wolfe asked for more time, and he promised to give his reply on June 3. A day earlier, however, he suddenly notified the RLEA committee that "his authority to handle the matter had been revoked or so impaired that he was unable to proceed with plans to conclude the subject."

QUESTION OF 'PERFIDY'

Leighty, in his letter to the railroad presidents, said "we must assume that Mr. Wolfe "truthfully related the facts" and that there was no "perfidy" on his part.

"Unless you advise us that this assumption is incorrect we must place the responsibility squarely on the shoulders of the top-level managements of the railroads," the letter continued.

"This is a far cry from the industrial statesmanship we were led to hope for a year and a quarter ago. Indeed, it is not even the minimal good-faith bargaining that is legally required under the Railway Labor Act.

"Labor-management relations in this industry simply cannot be conducted in the manner required by the public interest and the best interests of the industry, unless we can deal with representatives of management who have binding and irrevocable authority to carry through the commitments they make in the course of negotiations."

'DISGRACEFUL' ACTION

Leighty said this is not the first instance of "disgraceful" actions by management negotiators, and he then concluded:

"We will no longer tolerate unreasonable delays in the recognition of the legitimate claims of railroad employees to progress in their pay and working conditions, and security in their jobs and in retirement.

"If the consequence is strife in labor relations in this industry and in other forums, including perhaps interruptions of service, the responsibility must be borne by the managements of the industry."

The CHAIRMAN. Mr. Macdonald?

Mr. MACDONALD. I have just one question and I am not going to go into it in any depth.

I just could not understand when you were talking about the railroads inducing people to retire. Usually a carrier or anybody does something for their own reasons, something to benefit them. Perhaps I am not skilled enough in the field, but no thoughts came to my mind as to how the railroad was benefiting by inducing people to retire.

Could you explain that a bit?

Mr. SCHOENE. I think it is fair to say—I wish you would address the question to the carrier representatives also—but I can give you my judgment about it.

I think it is fair to say that the railroad industry has been one in which technology has been changing very rapidly. We have had throughout at least the last 25 years that I have been associated with the industry, the highest increase in employee productivity of any industry in the country. This has not only the aspect of increasing productivity, of producing more transportation, but also doing it with fewer employees.

Of course, the older employees have seniority rights. When carriers feel that jobs have become redundant, as they call it, or that older people are not as adaptable to new methods of doing things, they want the older people to retire. It has been mentioned here and it is no secret, of course, that one of the issues that brings us here without an agreement with the railroads is that the railroads want some form of compulsory retirement now, and some of our people are unwilling to agree to that.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Actuarially, has the fund ever been less than it should be, taking into consideration the extra number of people who have retired over that expected?

Mr. SCHOENE. Yes.

Mr. SPRINGER. What is it now?

Mr. SCHOENE. The figures that I have, which I got from the Railroad Retirement Board, as of the end of April of this year, the figures that appear on page 4 of my statement, show that according to the estimates that were made at the beginning of this program, there should have been \$87 million in the fund. There actually was \$83.5 million. That is the money we should have had to be solvent on the basis of the retirement rates anticipated at the beginning. But in addition to being short \$3.5 million on money, we were long by 30 percent on the number of retirees. Thirteen thousand more people retired and became eligible for annuities than we anticipated.

Mr. SPRINGER. That is in the neighborhood of an increase of roughly 25 percent?

Mr. SCHOENE. The increased retirements is about 30 percent more.

Mr. SPRINGER. About 30 percent more?

Mr. SCHOENE. Yes.

Mr. SPRINGER. Can you tell me how the fund expects to meet this increase?

Mr. SCHOENE. It can't.

Mr. SPRINGER. I beg your pardon?

Mr. SCHOENE. It can't.

Mr. SPRINGER. Has Mr. Habermeyer agreed on that?

Mr. SCHOENE. I think so. I heard his testimony and I understand that he is in agreement.

Mr. SPRINGER. What do they intend to do to balance the fund?

Mr. SCHOENE. They are going to run out of money in September of this year. They will currently have money coming in, of course, through taxes.

Mr. SPRINGER. Maybe I did not make myself clear or maybe you misunderstood me. How do they expect to balance this extra 13,000 over the expectancy in the regular fund?

Mr. SCHOENE. Then they can only pay the annuities that are authorized by law, which will exhaust the fund by September of this year.

Mr. SPRINGER. Mr. Schoene, would you be willing to allow Mr. Habermeyer, who is sitting behind you, to testify on this?

Mr. SCHOENE. Yes, I would be happy to have him speak to this.

Mr. HABERMEYER. You are talking about the regular railroad retirement account. Over the years we have had actuarial deficiencies which have later been taken care of by increasing our revenues.

These additional 13,000 retirements that we did not anticipate do affect the regular railroad retirement account. We are operating now at a deficiency of 1.16. That is a deficiency in our regular account, at an annual rate of about \$58 million a year.

Mr. SPRINGER. Deficiency of \$58 million a year in the regular fund due to this extra 13,000?

Mr. HABERMEYER. This is part of it.

The regular account is not going to run out of money for many years to come—probably we will not be in serious trouble until along about 1990, but sometime in the future we will have to bring more revenue into the regular railroad retirement account. This is not an immediate problem.

Mr. SPRINGER. Thank you, Mr. Habermeyer. I think the committee wanted to know that.

Mr. SCHOENE. I am glad Mr. Habermeyer supplied this information. I did not realize you were talking about the regular railroad retirement account and I apologize.

Mr. SPRINGER. Could you tell me what is in discussion over the 7-year agreement suggested by one side or the other in your negotiations?

Mr. SCHOENE. There have been discussions. As indicated by the previous testimony, there have been discussions between the National Railway Labor Conference and the Railway Labor Executives' Association and the Brotherhood of Locomotive Engineers concerning possible terms of continuing beyond the present 5-year period.

In the course of those discussions various proposals have been made back and forth. I don't know that I should attempt to express a judgment as to what has prevented an agreement, although I will take that risk and give you the benefit of the best judgment I have.

I do not mean to indicate that all other items are ironed out, but in my judgment probably—probably—all of the other elements could be ironed out except that so far at least, the railroads have insisted that there be some form of compulsory retirement at some given age and some of our people are just unalterably opposed to that.

My own judgment is that that is not germane to the continuation of supplemental annuities.

Mr. SPRINGER. Did this start at age 70 and come down?

Mr. SCHOENE. That was discussed.

Mr. SPRINGER. It is my understanding that the whole part of the effort, though, is to continue this same agreement with modifications for another 7 years on supplemental pensions. Is that a fair statement?

Mr. SCHOENE. That has been discussed, yes.

Mr. SPRINGER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pickle?

Mr. PICKLE. Mr. Chairman, I have not had a chance to read all of the testimony and I wish to reserve my time.

The CHAIRMAN. Mr. Brown?

Mr. BROWN. I would like to inquire if anybody has calculated what would happen if the compulsory retirement provisions were to go into effect. Specifically, what would happen in the way of the future need for the supplemental benefits and what would happen with reference to the basic fund?

Mr. SCHOENE. The Railroad Retirement Board has made estimates from time to time as to what they expect the effect would be on the cost of basic retirement system. Those estimates have differed from time to time and rather than attempting to quote the current figure, perhaps Mr. Cowen could supply that information as to what the Railroad Retirement Board's present estimate is.

Mr. BROWN. I would be happy to have him do that.

I would assume by deferring to him, you are in agreement with the estimates that have been made.

Mr. SCHOENE. I do not have any basis for disagreeing, Mr. Brown. I am not an actuary. Mr. Leighty, my chief here, although not a professional actuary, can outguess the actuaries, and I would be happy to have him express himself on that.

Mr. BROWN. Let's get the first guess and then the second guess.

Mr. COWEN. Our current estimates are that the cost of the regular railroad account would increase 0.5 percent of payroll or \$20 million a year, that is, if compulsory retirement at age 65 were instituted immediately.

Mr. BROWN. Put that in the percentages that Mr. Habermeyer used.

Mr. COWEN. Under the current program 1.16 percent of payroll per year. This would increase that deficiency to 1.56 percent of payroll, or \$78 million a year.

Mr. BROWN. You gave me the answer on the supplemental.

Mr. Leighty?

Mr. LEIGHTY. I am of the opinion that that estimate is too low. I might say this: Probably my basis for making the computations I do are not actuarial, but I might say my organization had a legal reserve life insurance company for a number of years and as its president I had to participate in all of the discussions with our actuaries and with other individuals and compare our operations and policies with other life insurance companies, and through my contacts with the actuaries, I acquired quite a little information with respect to how they operate.

Very frankly, I have consistently challenged actuarial figures, and I might say I can't recall any time when my figures were off to any marked degree except in this particular instance that we are talking about now, supplemental pensions.

Mr. BROWN. Could you give me some reason why you have come to that conclusion? It seems to me that if compulsory retirement were were established, it would be a relatively predictable figure as to how many people would be obliged to retire. What we have been faced with, if I may use the euphemism, is voluntary retirement and that is where the figures go up.

With the voluntary retirements you had more people volutarily retiring than you anticipated.

Mr. LEIGHTY. Yes, I would be glad to give you my views. At the present time the retirement age is approximately 67 years and the life expectancy for a man aged 65 is 13 years, so that man can expect to draw his annuity at age 67 for a little more than 11 years.

If you require him to retire at age 65, he is going to draw his retirement for about 2 additional years. That is almost 20 percent longer a period of time than he would if he retired at age 67. In addition to that, the railroad retirement account would lose the taxes he is paying. He pays taxes from age 65 to age 67 and those taxes at the present time amount to, for those who pay the maximum amount, about \$700 a year.

You might say, "Well, the man coming in will pay taxes." That is true, but he is acquiring an equity for the taxes he is paying, so my thinking in connection with it is that the \$20 million a year figure is much too low.

Mr. BROWN. Could I have rebuttal from the actuary?

Did you take those things that Mr. Leighty has mentioned into account?

Mr. COWEN. All of those things are taken into account in the calculation.

Mr. BROWN. Anybody may answer this question: What if you changed the provisions of the investment requirements of the railroad retirement system so that you could invest in more productive

bonds or stocks, running perhaps a little more risk, but also making possible a little more return? Is there any prospect that this deficit could be made up on that basis?

Mr. COWEN. Raising interest income on the investments would, of course, lower the cost of the program. It would depend on how much additional interest income could be achieved.

Mr. BROWN. And presumably increase the risk of the stability of the whole program.

Mr. SCHOENE. I should say, Mr. Brown, we have a bill before this committee, on which I believe the carriers and the organizations are in agreement, which deals with that subject.

Mr. BROWN. Great.

The CHAIRMAN. Before I yield to Mr. Eckhardt, I would like to say I think we are dealing with a matter that has probably never been suggested, and that is retiring at age 65. The only suggestion I have heard is retirement at age 70 and gradually coming down to 65, and I would assume this would reduce the estimated actuarial costs.

Mr. LEIGHTY. The estimates made by the railroads indicate it would be less than \$5 million a year. I do know one thing you must take into account in considering the railroad retirement situation, and that is the fact that the figures the actuaries give us are based on perpetuity, but nobody can tell us what perpetuity is.

At the present time we are told we have a deficit of 1.16 percent. However, the amount in the reserve fund is increasing every year, so that is the estimate of the deficit in perpetuity. It is not a current estimate.

The CHAIRMAN. I understand that, and I want to make it clear I have heard no proposal that this take effect at age 65. I think all of the proposals have started at 70 and gradually come down to 65.

Mr. LEIGHTY. That is correct.

The CHAIRMAN. Mr. Eckhardt?

Mr. ECKHARDT. I would like to clear up in my own mind some statements that have been made here. I understand the amount of money that would run out of the account this year would be from the railroad supplemental account?

Mr. SCHOENE. That is correct.

Mr. ECKHARDT. But the reference that was later made was with reference to the regular railroad retirement account.

Mr. SCHOENE. That's right.

Mr. Habermeyer testified with respect to the regular railroad retirement account.

Mr. ECKHARDT. What relation does the regular railroad retirement account have to this supplemental pay? Does the obligation fall back on the regular railroad retirement account if the supplemental account has been depleted?

Mr. SCHOENE. No, it does not. They are entirely separate accounts and except for the provision which was made at the initiation of this fund, and which the Railroad Retirement Board suggests be made again now, a suggestion in which we concur, that is, that there could be some borrowing subject to repayment from the regular retirement account in order to get this fund started, aside from that, there is no relationship between the two accounts.

Mr. ECKHARDT. Can that borrowing be done without legislation?

Mr. SCHOENE. No, sir.

Mr. ECKHARDT. Suppose we did nothing and suppose the supplemental account did run out in September, what would be the obligations and duties between the parties under such circumstances?

For instance, Joe Smith retires and there is no money to pay his supplemental figure. Does he have a cause of action against railroad to make up the amount or is he simply out?

Mr. SCHOENE. I think he is simply out. I noted with some amusement actually the questions that Mr. Springer asked with respect to bringing court action to enforce the payment of some larger amount. In my judgment, a court action could not be brought by anybody. Conceivably a claim could be progressed in the Court of Claims, but I don't think so.

Mr. ECKHARDT. Do I understand there are some differences between the obligations that may exist in the 4 years and the fifth year?

Mr. SCHOENE. Legally there is. Through the fourth year, there is no authority to pay any amount other than the full amount to which the individual is entitled under the law. In the fifth year, if the amount in the account should be found inadequate to pay the full amount, the Railroad Retirement Board does have authority to readjust the amounts of payment, but that authority does not extend to prior to the fifth year.

Mr. ECKHARDT. Would this distinction in any way imply that there was an absolute duty on the part of somebody to pay the full amount through the fourth year?

Mr. SCHOENE. It would certainly imply that everybody contemplated that it would be paid.

Mr. ECKHARDT. But if the money were not there, it is your opinion that there would simply be no person to go against in order to require the payment of the funds?

Mr. SCHOENE. That is my judgment.

Mr. MACDONALD (presiding). Mr. Kuykendall.

Mr. KUYKENDALL. It is good to have you here, Mr. Schoene. All of the discussion we have had about honest men making honest errors on the actuary, I think, should lead us up to a point here. Nobody is accusing anybody of anything so it has been refreshing to that extent.

In one way the negotiations before this committee have been rather pleasant to the extent that labor and management have not accused anybody of anything so it has been refreshing to that extent.

Representatives of both sides here have called on me, and I have had no evidence from the part of management that they didn't expect to pay the full \$45 to \$70. I have seen no fear evidenced on the part of labor, that it would not be ultimately paid.

Whether or not the man out in the field that is working and lives in my district and Mr. Skubitz's district and the chairman's district is going to get the \$45 to \$70. I don't think there is any doubt in anyone's mind. We seem to be arguing about two things—whether this can be settled by voluntary arbitration and what the mechanics will be in the future.

Now, would you not agree, Mr. Schoene, that we have reached the point where anything that we arrive at past just 2 years, and I hope and pray we don't have to do something today that we have to do again 2 years from now—but don't you agree we are going to have to

have some type of self-adjusting situation rather than guessing again?

Mr. SCHOENE. Yes, the bill provides for that.

Mr. KUYKENDALL. I am talking about the past 2 years. I know the bill provides for that. The bill provides that the railroads cover it, period.

Now, it is not true that along with some suggested compromises, which right now you just do not like, is it not true that one of the offers made by the railroads is to cover it for 7 years regardless of the cost in exchange for some other things, but is that not true?

Mr. SCHOENE. I think that is a fair statement.

Mr. KUYKENDALL. This is a pretty big chunk to bite off. If the errors in the future are off as much as they have been in the past, I know the figure will go to 9 cents an hour. I don't see many people in the room shaking their heads.

Now, is it not reasonable to expect if management or the railroads are going to buy an obligation that is almost open end—let's face it, it is practically open end—that they should have some idea how to fix up their actuarial obligations, namely, some age of compulsory retirement? Isn't that a reasonable exchange, that if they are going to pay an open end obligation that they at least have an idea when their people are going to retire?

I am not talking about any certain age now.

Mr. SCHOENE. I realize that, Mr. Kuykendall, but where I am having difficulty, you are relating retirement to cost regardless of age; and compulsory retirement, while it may enable you more accurately to guess what the cost will be, it will increase the cost rather than decrease it.

Mr. KUYKENDALL. I believe, in explaining the act to the chairman, you explained why the railroads were inducing retirement and it was a frank and forthright explanation, and I can't imagine anybody disagreeing with it.

Mr. SCHOENE. While we are on that subject, there is one item I overlooked in my explanation, and that is throughout the industry now through merger agreements and through other collective bargaining agreements, we have provisions for stabilization of employment and contractual rights to continue in employment over and beyond the ordinary seniority rights, and this is an additional inducement to the carriers to try to escape those obligations by buying off the man's rights and inducing him to retire early.

Mr. KUYKENDALL. Did you not say, and it sounds reasonable, that the carrier, when he is in a position of reducing force and he has very old men, some of them several months past 70 who are in very senior and very important positions, that they would not increase their total outlay as a company?

Let's broaden our scope and look at their total outlay and not just what they are going to contribute to this fund. After all, they have a total bank account.

Would they not be reducing their obligation to retire the 73-year-old man and put a 46-year-old man in his position if the 46-year-old man was already on his payroll?

Mr. SCHOENE. Yes.

Mr. KUYKENDALL. Isn't that pretty much what you said?

Mr. SCHOENE. Yes; this is the inducement for what the carriers are doing.

Mr. KUYKENDALL. I feel better and I trust the other man more when I can see his selfish motives. I trust them a lot more than I do the other kind.

Let me get back to the last question, Mr. Chairman. Is it not reasonable to expect that some age be fixed for retirement if they are going to buy an open end obligation for an annuity?

Mr. SCHOENE. Mr. Kuykendall, I would rather not answer that question because, you understand, I am counsel to a group of chief executives and they disagree among themselves.

Mr. KUYKENDALL. I understand. You brought out probably the most important point that has been made here today.

Thank you, sir.

Mr. MACDONALD. Mr. Preyer?

Mr. PREYER. No questions.

Mr. MACDONALD. Mr. Skubitz?

Mr. SKUBITZ. No questions.

Mr. MACDONALD. Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman.

What would be the effect if this committee did nothing and no action were taken on this particular bill?

Mr. SCHOENE. I can't predict that exactly. The Railroad Retirement Board tells us that they will be out of money in September. They will be having current income at the rate of 2 cents per man-hour, but that will be insufficient to pay annuities.

My guess would be—and this is purely guess as to what they would do under those circumstances—I think about the only thing they could legally do would be to wait until they had accumulated enough money to pay the annuities that were due in October and then pay them and then wait for some more money to accumulate and then eventually pay those that were due in November, and so on.

Mr. THOMPSON. I believe Mr. Eckhardt was following this line of questioning. Would he have any legal right to the supplemental when the fund is not there? He could not bring any action against the company, from what I understood you to say, so he has no recourse?

Mr. SCHOENE. In my judgment he has no recourse. If I may put it this way, he has a legal right without a remedy.

Mr. THOMPSON. Let me get to one point Mr. Kuykendall was mentioning and I bring this up because I am not quite in agreement with the point he was making about the definite retirement age.

Is it not true that if a person works for a longer period of time, he is contributing to that fund all the time he is working and when he retires, his life expectancy is less and, therefore, the amount he draws would be less, so the total effect would be he would contribute a greater sum and actually draw a smaller sum when he retires at a later date?

Mr. SCHOENE. Yes, I think that is a correct statement so far as concerns the regular railroad retirement system to which he contributes.

Mr. THOMPSON. Would it be correct with the supplemental?

Mr. SCHOENE. He does not contribute to the supplemental. This is financed entirely by a tax on the carriers.

Mr. THOMPSON. I have no further questions.

Mr. MACDONALD. Mr. Hastings?

Mr. HASTINGS. I have no questions.

Mr. MACDONALD. Mr. Watson.

Mr. WATSON. Mr. Schoene, I believe you said you were involved in all of the negotiating sessions back in 1966 when you worked out this original supplemental annuity agreement.

Mr. SCHOENE. I think I attended practically all of them, Mr. Watson.

Mr. WATSON. Including drafting the actual agreement itself?

Mr. SCHOENE. Yes, sir.

Mr. WATSON. Have you been involved in the negotiations thus far trying to rectify the problem with which we are immediately confronted? Have you been involved in these negotiations?

Mr. SCHOENE. Yes, I think I have attended all of the meetings that have been held on that.

Mr. WATSON. I am distressed about two things. Of course, you are not involved with the hours of service. We just concluded that yesterday and we have other problems coming.

What is your feeling now? Is collective bargaining pretty well going out of the picture? Are we going to have to rely upon the inexpertise of men on this committee and men of Congress to settle these problems?

We have more and more problems coming up here and it concerns me because I believe in collective bargaining.

Mr. SCHOENE. I do, too, Mr. Watson. I believe in collective bargaining very thoroughly and I don't think that we should allow the fact that occasionally there are breakdowns to obscure the fact, which is even more important, that American industry runs from day to day on collective bargaining.

This is true in the railroad industry just the same as it is true in other major industries. Unfortunately we sometimes have collapses of collective bargaining. I have been here before this committee on a number of occasions when that has happened and opposing compulsory arbitration, which I am sure many members of the committee will recall I have done before this committee on several occasions.

However, I do not think we are warranted in taking a pessimistic view of collective bargaining. Most of the time it works.

Mr. WATSON. In order that we might get all the cards on the table, all of them, will you briefly tell us what was the circumstance of the bargaining on this particular matter at the last session you had and when that session was and, if you can, relate to us what triggered the breakdown in bargaining?

Mr. SCHOENE. I think I have already done that in response to a question by Mr. Springer to the best of my ability. I will repeat it.

I do not think that all other matters were ironed out completely and, therefore, I have to make a judgment about what matters were capable of resolution and what were not. In my judgment, all other matters probably, and I say "probably" not "certainly," but probably all other matters could have been ironed out if it had not been for the fact that the railroad representatives insisted on a form of compulsory retirement and the majority of my associates, my clients, were opposed to that.

Mr. WATSON. A majority of your clients were opposed to that?

Mr. SCHOENE. That is correct, and I also added to Mr. Springer's question and I should add here now in my own judgment that subject is not germane as to whether or not we are going to pay these supplemental annuities come next September. I don't think we have heard the last of this.

Mr. WATSON. That is the easy way out. I think we should face up to all of these issues at one time. I think you will agree we have had more frequent occasion so far as this committee and Congress is concerned in recent years to arbitrate these matters that have not been negotiated through collective bargaining.

This concerns me. I would like to get all of these issues settled if we can and not repeatedly have to have this committee spending more time and hearing time in trying to arbitrate these differences. It distresses me that apparently the parties are not going to get together.

Let me ask you this: We have the Federal employees and others who are calling for optional 30-year retirement. It looks to me that every industry is going to some fixed-date retirement. Is that not an accurate statement; but yet here with this particular matter we don't want to have any definite retirement?

Mr. SCHOENE. Optional retirement at 30 years is quite different from a compulsory retirement age.

Mr. WATSON. Everybody is anxious apparently to get the earliest possible retirement, and do not most industries have a retirement age, a fixed retirement age?

Mr. SCHOENE. I would doubt that, but I am not an expert on that subject.

Mr. WATSON. Do you mean to tell me we have been negotiating here and we are not even aware of what other major industries are doing in this particular field?

I am just trying to get some facts, that we are negotiating this matter and we don't even know what the experience is in other industries.

Mr. SCHOENE. You made a particular statement, Mr. Watson, that most industries have a compulsory retirement age. I say I doubt that. That does not mean that we are unaware of what practices are in other industries. They vary a great deal.

Mr. WATSON. I am sure they do and I was trying to get a little light from you, obviously, an able and expert man in this field. Apparently I have gotten little light from you in this regard and I would just be in hopes that the parties can prove that collective bargaining will work and will not again come up here and we will be on the horns of the dilemma.

We are condemned for compulsory arbitration on these matters, but yet it is strange that this is exactly what you are asking us to do right now.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. PICKLE?

Mr. PICKLE. As I understand it, there is good intent on the part of management that the funds ought to be found and provided to pay these annuities. I think that is healthy, because on that intent we ought to be able to work out something. I would hope that the parties would be able to work it out, because it is to be desired.

As I understand your testimony, you are saying that Congress is the only one who can resolve this and we should pass this legislation

to increase the manhour tax up to an amount that would pay these annuities or I suppose borrow some funds. Are the parties bargaining at all on this matter now?

Mr. SCHOENE. No; not at the present time.

Mr. PICKLE. When is the last time you met on this?

Mr. SCHOENE. Mr. Leighty provides the date for me. It was May 27th.

Mr. PICKLE. When?

Mr. SCHOENE. May 27th.

Mr. PICKLE. If it was May 27, it was after this bill was introduced, according to the date of H.R. 11607.

Mr. MACDONALD. Apparently that is not the correct date, Mr. Schoene.

Mr. SCHOENE. I will have to check that date and see if I have a notation of it.

Mr. PICKLE. Does the chairman know the correct date?

Mr. SCHOENE. The chairman gave me the wrong date, to begin with, I do have a notation in here. Our last meeting was on June 26th.

Mr. PICKLE. Were you meeting during this particular time, the date of the billing, in May?

Mr. SCHOENE. Yes, we were meeting after the bill was introduced.

Mr. PICKLE. Are we to assume, then, that during your negotiations you felt nothing could come out of it and you just asked that this bill be introduced?

Mr. SCHOENE. I think it is fair to say that at the time we requested the Chairman to introduce this bill, we felt we had reached an impasse. Subsequently there were reasons for supposing perhaps that impasse was not unsolvable, so further negotiations were held.

Mr. PICKLE. We must assume, of course, that you bargained in good faith.

Mr. SCHOENE. I think both sides were bargaining in good faith.

Mr. PICKLE. But while you were bargaining, the measure was introduced?

Mr. SCHOENE. Yes, it was. Time is important, most important. At the time we asked the Chairman to introduce this bill, we were at an impasse. Subsequently there were indications we might not be. However, we find ourselves again at an impasse.

Mr. PICKLE. No management has testified. I understand they were offering to meet this deadline and to provide the funds and I think that is healthy, but they were asking in turn for a moratorium or a period of time that this would remain in effect past the 2-year period.

Now, do you oppose that position?

Mr. SCHOENE. I have already testified, Mr. Pickle, in my judgment that would not have been a stumbling block.

Mr. PICKLE. It would not have been?

Mr. SCHOENE. It would not have been.

Mr. PICKLE. That is, you might be able to bargain for a period past this 2 years?

Mr. SCHOENE. That is correct. I think that would not have been a stumbling block.

Mr. PICKLE. Then as counsel for your organization, you are asying that perhaps the parties could bargain for a period longer than this 2-year extension, but up to 3, 4, 5 years?

Mr. SCHOENE. I think they could bargain for an agreement in perpetuity.

Mr. PICKLE. Of course, they could, but why aren't they doing it then?

Mr. SCHOENE. I previously testified, Mr. Pickle, in my judgment the occasion for an impasse was inability to agree on a compulsory retirement system.

Mr. PICKLE. At age 70?

Mr. SCHOENE. Age 70 was discussed, yes, sir.

Mr. PICKLE. It is your judgment the main difference between the parties was the compulsory retirement?

Mr. SCHOENE. I think that is a fair statement, and I have also testified that a majority of the members of the association are opposed to compulsory retirement at any age. There are others who have a different view and representatives of some very large groups of people.

Mr. PICKLE. On other point that disturbed me was what was the intent of the Congress when we passed this bill in 1966? I have been reading your testimony of the gentleman who preceded you, as well as reading the legislative history of the measure.

I just do not believe it was covered clearly that there was any understanding at any period of time except the 4-year period than Congress automatically would just renew it for the balance of the time or would increase the rate to provide for it.

Apparently the only record that I find in it is at the close of the 4th year they would reexamine it but only with respect to the possibilities of reducing the amount of the annuities and that the Board would recommend that reduction. Am I correct on that?

Mr. SCHOENE. Yes, you are incorrect on that, Mr. Pickle.

First of all, the legislative history very plainly shows in the committee reports of both Houses that it was contemplated that the financing provided in 1966 would be adequate to carry the system for the full 5-year period and nobody entertained any thought that it would not be adequate.

Furthermore, however, there was provision for the parties getting together. This is in the agreement that the parties made in 1966. They agreed that they would discuss during the 5th year the future of the system, not only for the 5-year period and if they were unable to reach an agreement as to the future of the system by the expiration of 4 years and 6 months, either party would be free to come to Congress and make his own recommendations.

This was all agreed upon in 1966.

Mr. PICKLE. I would also read one sentence from the report which says: "In the event it is determined that such balance plus anticipated income is insufficient, the amount of supplemental annuities for the succeeding 12 months would be adjusted by the Board proportionately."

I think everybody had hoped that the 5 years would have been carried out. The main thing is that these annuities must be financed. I would still hope that the parties could come together rather than depend on Congress.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Thompson?

Mr. THOMPSON. I would like to ask a couple of other questions and make a couple of observations.

Frankly, I am disturbed in your answers to Mr. Watson's questions that you do not have an idea of what the usual practice is of industries concerning a compulsory retirement age. According to this statement, you have been in your present capacity for about 25 years representing a group who are very concerned about this issue.

I think it is important that all witnesses before this committee be as frank and forthright as they can be. I was very much disturbed yesterday when a representative of management did not give an unequivocal answer on whether or not the railroads would attempt to assert that there is a legal prohibition against bargaining on hours of work.

A member came to see me yesterday afternoon, a member of management, and I told him unless something is stated in the record, stating that the railroads were prohibited by law on bargaining hours of wage, I intend to support the cutting down of the 16 hours.

Let me say I understand this supplemental is paid entirely by management. I can understand how they would like to have some known age or some specific date for retirement, but apparently the union officials do not want this.

Now surely you have an idea, you have researched this thing if you have been doing your job and you know what other industries are doing and it disturbs me when you say you don't know what the usual practice is as far as mandatory retirement ages in other industries.

Mr. SCHOENE. I am afraid you are not quoting me exactly.

The statement Mr. Watson asked me to subscribe to is that in most other industries there is a compulsory retirement age.

Now, I am not in a position to say that that is untrue, but I don't believe it is true on the basis of my knowledge of what the practices are. The fact is it varies very widely company by company in other industries.

Mr. THOMPSON. I do not have the expertise that you have. I do not spend my full time in this field. I am aware of mandatory retirement ages for most of our large companies, and I could name them and I believe I could almost give you the ages.

I think perhaps there is a pattern that has been established, but it disturbs me that I don't want this committee to have to be arbitrating between management and labor on all railroad matters. I would like to be certain there is a showing of good faith between all the members, management and labor, and yesterday, as I mentioned, I was disturbed in that it appeared that management was trying to reserve a possible legal technicality as a bar toward collective bargaining in one area and now I cannot help but feel that maybe in this area there is a tendency, and I will not say possibly a strong one, but there is a tendency on your part to want to preserve the statement that this is not an accepted concept of a mandatory retirement age.

Mr. SCHOENE. When you say it is accepted, it is a question of accepted by whom. I have been in this field a long time. I was here in 1934 when the unions supported a compulsory retirement age and the carriers contested the constitutionality of the law making retirement compulsory and had it declared unconstitutional.

The shoe was on the other foot in 1934. When the 1937 act came, it was understood this was to be a voluntary system and the costs were arranged on that basis. There have been no readjustment of costs to contemplate compulsory retirement. This is a feature that has to be dealt with as part of this whole picture.

I have seen the time when it was actually suggested by Members of the U.S. Senate sitting in committee that a special reward be allowed, special credit be given, for staying in the industry after age 65. This was during the manpower shortage.

These things fluctuate.

Mr. THOMPSON. I understand they fluctuate when there are joint contributions and so on and I can see where it would possibly be to management's advantage for them to stay in and when there is a contribution only by management, I can see where it might be to management's advantage to have them retire.

Do you feel the unions would bargain in good faith on this particular subject?

Mr. SCHOENE. I haven't any doubt that they would bargain in good faith on it, but what was being asked of us was that we make a uniform national agreement applicable to all crafts and all individuals, and this has not been possible.

Mr. THOMPSON. Thank you very much.

The CHAIRMAN. Mr. Eckhardt?

Mr. ECKHARDT. Thank you, Mr. Chairman.

Mr. Schoene, I can well understand your reluctance to say precisely what the situation is with respect to compulsory retirement age, because I have had occasion to study this question in the Bell Telephone Co. for a good number of years and it is an extremely complicated question.

There is an age at which an employee must or may demand retirement himself. There is another age at which the company may demand retirement. There is doubt as to certain other ages with respect to female employees, as to whether both may demand it. As a matter of fact, the matter is in the fifth circuit at the present time.

If any lawyer can answer that question with respect to precisely what the retirement age is, even in a big company, he can do more than I can at this time.

Mr. SCHOENE. I appreciate your saying that.

Mr. ECKHARDT. I would like to get down to the question of settling this retirement age.

As I understand, if an employee of a railroad comes to retirement age after September and nothing is done, we will have a right without a remedy; is that correct?

Mr. SCHOENE. That is correct.

Mr. ECKHARDT. Whether or not he is to have a remedy for a right which is already subjected to a contract and already subject to a statute, as I understand it, depends on whether or not we take some action here?

Mr. SCHOENE. That is correct.

Mr. ECKHARDT. The other possibility would be that the parties agree but, as I understand, an extrinsic requirement has been placed by the railroads with respect to retirement age.

Now, I cannot see why anyone would demand that a retirement age agreement be entered into before a man's right be completed by the extension of the remedy. It seems to me that is the position we are in.

Mr. SCHOENE. I agree with you completely, Mr. Eckhardt.

The CHAIRMAN. Mr. Brown?

Mr. BROWN. Mr. Schoene, it seems we have agreed that there might be some negotiation and collective bargaining on this question of the retirement age and also on the question of the hours of service. Perhaps even a trade-off of some kind can be arranged between management and labor in this area, and I would like to commend that to you.

I would like to ask you in light of the fact that it has taken this committee several days to get to that kind of discussion if maybe one of the things we ought not be concerned with is rewriting the Railway Labor Act to get us out of the arbitration business.

By "us" I mean the committee. This would free us to get to some realistic issues in the bargaining.

Mr. SCHOENE. I am afraid if you try to rewrite the Railway Labor Act, you would be right in the middle of arbitration. I say this based on a lot of experience, too.

The CHAIRMAN. If there are no other questions, thank you very much, Mr. Schoene, for coming and giving us the benefit of your views.

Our next witness is Mr. E. L. McCulloch, national legislative representative of the Brotherhood of Locomotive Engineers. I understand Mr. McCulloch has two gentlemen accompanying him. I will ask you, Mr. McCulloch, to identify the gentlemen who are accompanying you, and their capacities.

STATEMENTS OF E. L. McCULLOCH, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, AND HAROLD A. ROSS, GENERAL COUNSEL, PRESENTING THE STATEMENT OF C. J. COUGHLIN, GRAND CHIEF ENGINEER; ACCOMPANIED BY W. E. SKUTT, ASSISTANT GRAND CHIEF ENGINEER

Mr. McCULLOCH. Thank you, Mr. Chairman.

I am E. L. McCulloch, national legislative representative of the Brotherhood of Locomotive Engineers. I have with me assistant grand chief engineer, W. E. Skutt, who has participated in the negotiations that led up to this legislation; and our general counsel from Cleveland, Harold A. Ross, of the law firm of Ross, Kraushaar & Bennett. If you so desire, Mr. Ross will summarize the statement for us.

The CHAIRMAN. That will be fine. The full statement of Mr. C. J. Coughlin, grand chief engineer of the Brotherhood of Locomotive Engineers will be placed in the record at this point, and you may proceed to present the summary, Mr. Ross.

(Mr. Coughlin's prepared statement follows:)

STATEMENT OF C. J. COUGHLIN, GRAND CHIEF, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

My name is C. J. Coughlin. I am Grand Chief Engineer of the Brotherhood of Locomotive Engineers. As the chief executive officer of the BLE, I am testifying before this committee in regard to H.R. 11607 on behalf of the 35,000 members of

the Brotherhood who are currently employed as locomotive engineers and locomotive firemen on the railroads of the United States and on behalf of members of the Brotherhood who are presently retired and receiving the supplemental annuity which is the subject of this legislation.

The BLE is the bargaining representative for the craft of locomotive engineers on most of the nation's railroads and represents 97% of the individuals employed as locomotive engineers. In addition, the BLE also holds contracts for locomotive firemen on a substantial number of small railroads. I personally have 41 years of service with the Spokane, Portland and Seattle Railroad including 27 years seniority as a locomotive engineer.

The BLE and its membership, both active and retired, wholeheartedly support H.R. 11607 and join the other labor organizations in urging the passage of this needed legislation.

H.R. 11607 requires the nation's railroads to pay the supplemental annuities to retired railroad employees provided for in the Railroad Retirement Act 45 U.S.C. § 228c (j) (1). A brief history of the legislation is necessary for complete understanding of the situation. In 1966, the carriers and the various labor organizations entered into a collective bargaining agreement whereby both parties would endorse and support legislation to provide supplemental annuities to railroad employees, 65 years or older, who retire after a minimum of 25 years of service with the railroad. These supplemental annuities were to remain in effect for five years and then be subject to further negotiation and legislation. The railroads agreed to finance the plan by payment of a 2 cent tax for each man-hour for which compensation is paid. Legislation encompassing these principles was adopted in 1966.

In this, the third year of the five year supplemental annuity term, the Railroad Retirement Board informed both the carriers and the labor organizations that the 2 cent tax paid by the carriers would only support the supplemental annuity program until September or October, 1969. Then, benefits would, at best, be reduced. Extensive negotiation between the carriers and labor organizations was commenced. The negotiations failed. Therefore, H.R. 11607 was introduced. This legislation requires the carriers to pay sufficient tax to fulfill the obligations specified in the agreement of 1966. H.R. 11607 neither increases the amounts of the supplemental annuities nor changes the termination date of said annuities. It merely provides that the carriers shall fulfill the original obligations as agreed to in 1966.

A review of the committee reports and testimony pertaining to the legislation passed in 1966 makes it evident that everyone involved with this legislation including the Railroad Retirement Board, the Bureau of the Budget, and the carriers believed that the supplemental annuities were adequately financed by the two cent tax. The next question is obvious. What are the reasons for the depletion of the supplemental annuity fund? Certainly, the supplemental annuity program itself encouraged retirement, but this was anticipated by the Railroad Retirement Board and used in its formula when computing the 2 cent tax rate. Secondly, railroad employment generally has steadily decreased thereby reducing the number of man-hours worked and the tax paid by the railroads to the fund. Finally, a reduction in the man-hours and the tax payable thereon by the carriers, has resulted to a great extent from the numerous mergers in the railroad industry. Mergers are justified by savings, and savings are made by a reduction of payroll. A reduction in the man-hours and the tax is only the first adverse effect merges have caused the supplemental annuity fund. In mergers, employees over 65 are urged by the railroad to accept lump-sum severance payments and retire. Benefit payments to these retired employees increases the burden on the supplemental annuity fund. By urging employees of the merged railroad to retire, the carrier can then use a younger employee in that position vacated by the retired employee thereby saving the railroad guarantee payments which would otherwise be payable to the younger employee pursuant to employee protective agreements made in accordance with Section 5(2)(f) of the Interstate Commerce Act. Railroads have benefited from the various mergers and, as a result thereof, have placed the supplemental annuity fund on the brink of financial disaster. H.R. 11607 requires the railroads to pay for the situation which they themselves have created.

Insight into the situation created by the merger of various railroads can be garnered from a review of the facts pertaining to the number of employees receiving supplemental annuities. On December 31, 1967, 26,585 former railroad employees were receiving supplemental annuities. By April, 1969, this

number was increased to 49,113. Mergers and the railroad's general policy to reduce employment account for this increase in the number of individuals receiving supplementary annuity and account for the financial condition of the supplemental annuity fund.

There are approximately 3800 retired BLE members receiving the supplemental annuity at the present time. The average paid to each of these individuals is approximately \$68.00 per month. For the 50,000 retired railroad employees presently receiving the supplemental annuity, the average payment to the retired employee is \$65.93. It is the position of the Brotherhood of Locomotive Engineers that H.R. 11607 must become law because to deprive the 50,000 individuals, most of whom are on a fixed income, of \$60.00 to \$70.00 a month in this, a tremendous period of inflation, is unconscionable. The travesty of the situation is increased because the individuals who are presently receiving the supplemental annuities made retirement plans fully expecting to receive the supplemental annuities for a period of five years.

The BLE urges this committee and the Congress to take the necessary action to enact immediately this legislation.

Mr. PICKLE. May I interrupt. Are you presenting the statement of Mr. C. J. Coughlin?

Mr. ROSS. Mr. Coughlin was scheduled to testify before this committee in June but because of the schedule he could not be reached, although his statement was distributed at that time but he was unable to return today. This is his general statement and as general counsel he asked me to present his statement.

The BLE both active and retired membership wholeheartedly support H.R. 11607 and join the other labor organizations in supporting passage of this needed legislation. We are in full accord with what Mr. Shoené said with regard to the Railway Labor Executives' Association and the other member group.

As far as the Brotherhood of Locomotive Engineers is concerned, we discovered that there are approximately 3,800 retired members of the BLE who are receiving the supplemental annuity at the present time. The average pay to each of these individuals is approximately \$68 per month.

In addition to that, figures reveal that on December 31, 1967, there were 26,585 former railroad employees who were receiving these supplemental annuities. By April of 1969 this number had increased to 49,113. Therefore, by this time, for the 50,000 approximately retired railroad employees presently receiving the supplemental annuity, the average payment was \$65.93.

It is the position of the Brotherhood of Locomotive Engineers that H.R. 11607 must become law because to deprive these 50,000 individuals, most of whom are on a fixed income of \$60 to \$70 a month, in a tremendous period of inflation is unconscionable. The travesty of the situation is increased because the individuals who were previously receiving the supplemental annuities made retirement plans fully expecting to receive the supplemental annuities for a period of 5 years.

As has already been testified, the supplemental annuity fund is on the brink of financial disaster. H.R. 11607 requires the railroads to pay for the situation which they have created through the various devices which have been testified to which have increased the rolls of persons who are on retirement. The BLE urges this committee and the Congress to take the necessary action to immediately enact this legislation.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. I thank the gentleman for summarizing the statement in such quick order. Maybe if we all did that as members, maybe we would save some time here.

I believe your point is you would not want a period beyond the 2 years because this is a period of highly inflationary times and if you make a settlement that would be for any great length of time, as you said, it would be unconscionable.

Mr. ROSS. I don't think I testified to that today. If you are referring to so-called negotiations which have taken place, one of which point was introduced therein of a 7-year moratorium, I would say yes, we believe that that would be unconscionable, that you cannot at this time make a guestimate as to what the situation would be in 1973 or 1975.

Mr. PICKLE. You used the word "unconscionable." Do you mean if they had to suffer a reduction?

Mr. ROSS. That is right.

Mr. PICKLE. I don't believe I have any other questions, Mr. Chairman. I think the problem has to be met, and we will just have to deal with it.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Mr. McCulloch, we appreciate your being here and the testimony of your counsel. Obviously, these supplemental annuities have got to continue. I am sure that it goes without saying that when they originally began no one contemplated that they would be cut off, and certainly no one contemplated they would be cut off at the end of 5 years.

Mr. ROSS. No one contemplated; that is correct.

Mr. WATSON. And they were to be renegotiated at the end of that period.

A thought occurs to me: Why have the supplemental? Once you start these programs, they must continue, in fairness to the individual, and you could not cut off this \$65.93 average for people living on very limited income now. I do not understand how they live on what little they get. I imagine you, as an experienced lawyer, and some of us would have some difficulty living within the incomes that we have in this time of high inflation. Would you be adverse to putting this entire thing under the regular retirement program, the regular railroad retirement program, and not have a separate supplemental annuity?

Mr. ROSS. No, I do not think that the supplemental annuity should be inserted in the regular retirement account; not at this time. I think you are going to have to make a lot of revisions and study before you would even contemplate doing that. Personally, I do not think that the issue is really germane to the problem that we are being faced with at the present time. This is emergency legislation here.

Mr. WATSON. I would agree we are trying to look at the whole picture. I am afraid we are just dealing with these matters on an emergency basis, and I think you would agree that your best thinking does not go into emergency situations. It is better if you plan it for the long haul and if you can sit down without the air of urgency in planning all of these matters. Would you not agree as a basic proposition that that is the best way to do things?

Mr. ROSS. To put it into the regular retirement account?

Mr. WATSON. No; not to put it on an emergency basis but plan for the long haul.

Mr. ROSS. Yes, planning for the long haul and doing it in a very systematic manner.

Mr. WATSON. I am sure you have thought about this thing over the past 3 years or so. What would be the objection to including all of this in the regular retirement program?

Mr. ROSS. What would be the objection to it?

Mr. WATSON. Yes.

Mr. ROSS. I have never heard anybody suggest that it should all be put into the regular railroad retirement account.

Mr. WATSON. I know that. I am just tossing that out. I am just wondering why the supplemental. Why not put it into a regular program and then the employees can intelligently plan for their retirement.

Mr. ROSS. One of the reasons is—and you have to go back to 1966 to see what was negotiated for at that time to see how this came about—in 1966 at least when our union made its proposal, it was on the basis of the benefits to be paid people out on retirement. It was in the nature of the scheme which has been developed in the steel industry and the automobile industry, and it was to be an employer-contributed fund. It was to be over and above the governmentally paid retirement plan. It was like the suggestion we have thrown out that it would be a great deal like plans in other industries where you receive your social security benefits and, on top of that, you would have these negotiated plans.

It did not develop that way, so there has been no thought on the part of our organization of putting the supplemental annuities into the regular retirement funds, but you have all kinds of problems when you get into that.

Mr. WATSON. I think I can see the principal objection in the regular retirement program. There is employee contribution as well as employer. Under this supplemental, there is not the employee contribution. It is strictly the employer contribution.

Mr. ROSS. That could be one of the objections.

As you probably know, the rate that these employees are taxed in the railroad industry is much more severe than it is under social security, and I do not think you can increase the rate. I believe it is at 9.5 percent at the present time.

Mr. WATSON. I would be in hopes we could look to the long haul and not even the discussion we have now for another 5-year extension of this program. Once you set up a person on a retirement whether it is a separate fund from the regular retirement fund, a supplemental or an additional retirement fund, and so forth, so far as buying groceries and living, it is still money and it is still retirement.

I think we should all get it together. I was a little distressed by one statement that was made not by you but by the author of this particular document here. At the top of page 4, he said that H.R. 11607 requires the railroads to pay for the situation which they themselves had created.

I do not like anyone coming in and saying the blame is on both sides. You really do not believe that. I understood it was just an honest error in trying to figure out what the costs would be of this program and

more employees retired than expected and that is the thing that created the money problem.

Are you taking the position that now all of the fault is on one side and, consequently, the Congress should arbitrarily come in and say this should be continued?

Mr. Ross. You are trying to connect two unrelated facts together in justifying the other position. On the other hand, the fact is after 1966, as Mr. Schoene already testified, the carriers took active action in which to reduce their payrolls, in which to reduce their obligations under other agreements and, therefore, created a situation, disturbed the facts which people had relied on in 1966. That was the actuaries who were making their estimates. So, those facts were no longer true. They could not be true because they could not anticipate what action the carriers would take in that regard.

Mr. WATSON. Do you mean to tell me you could not have anticipated mergers and advances in technology and there would be a reduction in employees and that this factor only began in 1966? Is that what you are trying to tell us?

Mr. Ross. It has been speeded up.

Mr. WATSON. It occurred prior to that time. I am trying to get to the facts, but you are giving me some ideas.

Mr. Ross. It was after 1966 when the whole procedure started to hasten. It was after 1966 when the bulk of the great big mergers took place on the railroads and when the Interstate Commerce Commission gave approval for these mergers. It was after that that the carriers engaged in their program to try to get out of the agreements they had reached on one hand with the unions by offering to buy these people off with seniority, and so forth. That is when this tendency or trend became very prevalent. Nobody knew in 1965 and 1966 when they were preparing the statistics engaging in the factors to see what the retirement ratio had been up to that time. They just did not have the trends that took place later.

Mr. WATSON. Mergers are not restricted to the carriers' industry. You have that throughout the whole spectrum of all business.

Mr. Ross. It is quite true it has occurred in other industries.

Mr. WATSON. People are unwilling to sit down and negotiate these things out through collective bargaining, and you are running to Congress on all of these matters, and collective bargaining is weakened each time you come and ask for compulsory arbitration. That is not against the workers—not so at all.

Earlier we had the carriers coming in and asking for compulsory arbitration. Now you are coming in. I do not know where it is going to stop.

Mr. Ross. May I comment on two things?

I guess I disagree with two words you used throughout. The first is collective bargaining. There is no collective bargaining on this present situation because collective bargaining refers to give and take on both sides.

Actually, if you look at the bill as it was drafted and the underlying agreement that was reached, there was not to be collective bargaining until 6 months after the expiration of the 5-year period.

Secondly, we are not asking you for compulsory arbitration. We are asking you for an emergency measure. This is a tax bill and it is

required to fund these supplemental annuities to cause them to continue throughout the 5-year period.

Mr. WATSON. We are only involved after you reached an earlier agreement and you asked us to put it into the law.

Is it unfair now for us to ask you again to reach an agreement, and we will give it the advocacy of law?

Mr. ROSS. I think the proposition that Congress related themselves to previously is the one we are speaking to today and that is to make sure that these annuities are put on a pay-as-you-go basis.

Mr. WATSON. The law that was enacted in 1966 was exactly what was requested of the Congress.

Mr. ROSS. We had bargained with the carriers for benefits, not the funding. It was their device that they set up and it was on their estimates and also the railroad retirement bill that the financing appeared to be all right. We had assurances that everything was all right. The collective bargaining was not for the funding of the program.

Mr. WATSON. What is Mr. Coughlin's present age?

Mr. ROSS. He is presently 61 years old.

Mr. WATSON. He has been with the railroad for some 40 years?

Mr. ROSS. That is correct.

Mr. WATSON. I wanted to see if we could get his ideas as to what would be a proper retirement age.

Mr. ROSS. Mr. Coughlin is not here at the present time, but in that respect his hands are perhaps tied. I would say. The policy of the organization is set by the delegates in convention and that has already been set. It is in the constitution of the brotherhood.

Mr. WATSON. In other words, optional retirement?

Mr. ROSS. That is right.

Mr. WATSON. Thank you, sir.

The CHAIRMAN. Mr. Preyer?

Mr. PREYER. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman?

Mr. BROTZMAN. No questions.

The CHAIRMAN. Mr. Eckhardt?

Mr. ECKHARDT. With respect to this question of the railroads decreasing their employee force, had they decreased it by normal retirements there would have been no effects on the plan at all; would there?

Mr. ROSS. According to our understanding, no, there would not have been.

Mr. ECKHARDT. This has occurred in many industries along with automation. The industry simply does not press an employment program so that the total force is decreased and persons retire or move out of that employment, et cetera.

Now, had that occurred in this particular instance, there could have been a reduction in force and, at the same time, no unusual effect on the retirement plan. Is that not correct?

Mr. ROSS. I believe that is correct.

Mr. ECKHARDT. You have other industries which have automated, for instance, such as the telephone industry which has maintained a rather stable force of employees because, at the same time, it is expanding services, but in this particular instance, you have had automation running at a greater pace than the operation.

Mr. ROSS. You have had increased mechanization and labor-saving devices introduced into the evidence.

Mr. ECKHARDT. And not sufficient expansion.

Mr. ROSS. That is correct, plus the fact of these mergers and these other devices.

Mr. ECKHARDT. I assume this is probably what your chairman is stating when he says they themselves have created this. That does not necessarily indicate that there was any evil motive with respect to destroying the plan; does it?

Mr. ROSS. No; I think they were looking after several other avenues. They were looking at the stabilization agreements they had entered into with other unions and also they were looking at the manning question as it faced engine service craft, and so on. They were trying to get out of the protective benefits and the other things that have been created at the other end of the spectrum.

Mr. ECKHARDT. But there was an accelerated program of retirement which in effect destroyed the accuracy of the actuarial prediction of the rate of retirement. Is that not correct?

Mr. ROSS. That is correct.

Mr. ECKHARDT. What is stated here is that this was caused by the railroad companies, not necessarily because they were attempting to destroy the plan but because these factors occurred after the plan had been entered into. Is that correct?

Mr. PICKLE (presiding). Mr. Brown?

Mr. BROWN. I have no questions, Mr. Chairman.

Mr. PICKLE. Mr. Preyer?

Mr. PREYER. No questions.

Mr. PICKLE. Mr. Skubitz?

Mr. SKUBITZ. Mr. Counsel, what is the total membership of your organization?

Mr. ROSS. Approximately 39,000 active members.

Mr. SKUBITZ. What percent of the total membership exceeds 65 years of age?

Mr. ROSS. I cannot answer that.

Mr. SKUBITZ. Can you provide that for the record?

Mr. ROSS. Yes.

Mr. SKUBITZ. Would you do that please?

(The following letter was received for the record:)

ROSS, KRAUSHAAR & BENNETT,
Cleveland, Ohio, July 18, 1969.

Mr. W. E. WILLIAMSON,
Clerk, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. WILLIAMSON: During my appearance at the hearings before the House Committee on H.R. 11607 held on July 10, 1969, Congressman Skubitz requested certain information for the purpose of his edification on certain pending safety legislation which I stated that I would supply for the record if available.

Congressman Skubitz wanted to know the percentage of locomotive engineers belonging to the Brotherhood of Locomotive Engineers who were 65 years of age or older. I have determined that there is no current breakdown as to the age groupings of the Brotherhood's members, the last such undertaking being an incomplete sampling in 1959 which was never compiled. In addition, there are no figures available from that sampling to determine any definite trends or to break them down into job classifications as to engineers, firemen or hostlers.

I have been informed that to derive this information for 1969 would require a manual check of the date of birth written on each of the 39,000 membership applications and, in turn, a comparison of each name to the monthly dues statement in order to ascertain the job classification in which he is working. In view of the cost and the time necessary to do this, we are not prepared to make that study at this time.

Further, I think that it should be pointed out that any determination which we could make would not necessarily be conclusive in that a significant, though minor, percentage of locomotive engineers do not belong to any organization or belong to a minority union, since on some railroads there are no union shop agreements in effect and as to others, where there are union shop agreements, Section 2, Eleventh (c) of the Railway Labor Act has been held to permit alternate membership in a minority union in full satisfaction of the union shop requirements. See *Birkholz v. Dirks*, 391 F. 2d 289 (7th Cir. 1968), *cert. granted*, 37 U.S.L. Week 3133 (Oct. 14, 1968), *vacated as moot*, 37 U.S.L. Week 3450 (May 27, 1969); *O'Connell v. Erie-Lackawanna R. Co.*, 391 F. 2d 156 (2d Cir. 1968), *cert. granted*, 37 U.S.L. Week 3133 (Oct. 14, 1968), *vacated as moot*, 37 U.S.L. Week 3450 (May 27, 1969).

I am sorry that we could not have been of greater service on the subject at this time.

Very truly yours,

HAROLD A. ROSS,
General Counsel, Brotherhood of Locomotive Engineers.

Mr. SKUBITZ. Do locomotive engineers undergo physical examinations annually or semiannually?

Mr. ROSS. Yes, they do.

Mr. SKUBITZ. How often?

Mr. ROSS. You would have to go to every property and find out how they are set up.

Mr. SKUBITZ. What is the rule?

Mr. ROSS. As you get older, you have to stand for these physical examinations more often. Usually when you reach 60, it is approximately every 6 months.

Mr. SKUBITZ. Does the company have the right to require the examination or does the company require it?

Mr. ROSS. The company requires it. We have agreements on the physical examinations.

Mr. SKUBITZ. I asked these questions not because of their relationship to this bill but because of the safety bill we have under consideration.

Thank you, sir.

Mr. PICKLE. Mr. Hastings?

Mr. HASTINGS. No questions, Mr. Chairman.

Mr. PICKLE. Mr. Ross, we thank you very much.

Mr. ROSS. May I make one statement with respect to Mr. Skubitz' request. He wants the percentage of membership over 65 years of age. I think that information can be supplied but I do not know if it is on any forms which are readily available. I believe it is but I am not sure. I will make an attempt to get that information.

Mr. PICKLE. I am sure that would be satisfactory with Mr. Skubitz.

Again, thank you very much. We appreciate your testimony. It has been good testimony and we are glad you could come before us.

I want to say to the committee that the chairman had to go to the floor because we have a bill that came out of this committee, the medical libraries bill. He has asked me to announce that the committee will plan to go back into session at 2:30 this afternoon, subject, of

course, to permission being granted and subject to the House being in session.

All of you who want to attend will come back at 2:30. I assume the first witness will be Mr. J. P. Hiltz, chairman of the National Railway Labor Conference.

We will hope to resume the hearings at 2:30 and you will be our first witness, Mr. Hiltz.

The committee stands in recess then until 2:30.

[Whereupon, at 12:30 p.m. the committee was recessed to reconvene at 2:30 p.m. of the same date.]

AFTER RECESS

(The committee reconvened at 2:50 p.m., Hon. Harley O. Staggers, chairman, presiding.)

The CHAIRMAN. The committee will come to order.

Our next witness this afternoon will be Mr. J. P. Hiltz, Jr., chairman of the National Railway Labor Conference.

STATEMENT OF J. P. HILTZ, JR., CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE; ACCOMPANIED BY H. E. GREER, DIRECTOR OF RESEARCH; AND BURTON N. BEHLING, VICE PRESIDENT, ECONOMICS AND FINANCE DEPARTMENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. HILTZ. I have with me Mr. H. E. Greer, director of research of the National Railway Labor Conference, and Burton N. Behling, vice president, Economics & Finance Department, Association of American Railroads.

The CHAIRMAN. I was wondering, since your statement is pretty long, if you could put it in the record and sum up.

Mr. HILTZ. Mr. Chairman, I don't intend to give the entire statement, but being the only witness in opposition to this bill, I would like to get some of the points across.

The CHAIRMAN. I might say the whole statement will be included in the record.

Mr. HILTZ. Thank you, sir.

My name is J. P. Hiltz, Jr. I am chairman of the National Railway Labor Conference, which is made up of practically all class I railroads in the United States. The conference, along with the Eastern, Southeastern, and Western Carriers' Conference Committees, is responsible for representing the railroad industry at the national level in matters involving labor relations. I appear today to express the views of the American railroads with respect to H.R. 11607.

This bill, as the committee is aware, is designed to deal with a problem that has arisen with respect to the railroad supplemental annuities program. That program was instituted in 1966 pursuant to legislation enacted by the Congress with the support of both the railroads and the unions. It was to be a 5-year program funded by a specific, agreed upon amount of money to be paid by the railroads—2 cents per man-hour, which for the class I railroads was estimated to be about \$150 million over the 5-year period. Based upon actuarial estimates of

the Railroad Retirement Board, which were concurred in by both the unions and railroads' actuaries, it was believed that this amount of money would, for a period of 5 years, support supplemental annuities on a scale of from \$45 to \$70 a month. The problem, put in its starkest terms, is that those actuarial estimates have proven to be erroneous; the fund will be virtually exhausted this autumn; continuation of the annuities at the present levels would cost about \$80 million more than the parties bargained for and the Congress in 1966 provided; and in contrast to the situation in 1966 the parties have not united in a request for legislation because the process of negotiation has broken down.

Before describing the railroads' position in detail, I should like to outline that position in general terms. First, the railroads recognize that the problem that has arisen is serious. Second, the railroads believe that collective bargaining should be a central component of the machinery employed to achieve a resolution of the problem. Third, the railroads believe that, with the assistance of this committee, collective bargaining can play that role. Fourth, the railroads oppose H.R. 11607 because, rather than encouraging collective bargaining, it would bypass it, and because, contrary to the carrier-union agreement of 1966, it would impose upon the carriers without a quid pro quo the \$80 million additional costs of the supplemental annuities. Fifth, there is a practical alternative for this committee that would protect the legitimate interests of the unions, the railroads, and the employees while at the same time encouraging collective bargaining.

This is the railroads' position. In detailing how and why we have arrived at it, let me begin with a description of the nature and origins of the problem. In our view, how we got where we are should have a good deal to do with the action this committee may determine to take.

I say that for two reasons: First, the history of the 1966 legislation shows that the railroads and the unions can work out complex problems of this character through collective bargaining. And, second, to the extent that equities arising out of the 1966 agreement and legislation are relevant, they do not favor enactment of H.R. 11607. I call attention of the committee at this time to attachment A to my statement which contains the 1966 agreement.

While, as I shall point out, the unions have breached their agreement with the railroads by urging the passage of this bill, I do not suggest that this should be a controlling consideration for the Congress of the United States in the discharge of its obligations to protect the public interest. But I do not suggest that the threatened deficiency in the annuities fund cannot be laid at the door of the railroads any more than it can be laid at the door of the unions.

As I shall show, the railroads entered into their agreement with the unions in good faith, they supported the 1966 legislation in good faith, they have honored their commitments under their agreement and the legislation in good faith, and have not in any fashion, wittingly or unwittingly, reneged on any of their obligations. This is not to say, as I shall indicate later, that the railroads are unwilling to continue the program of supplemental annuities. It is to say, however, that no actions by the railroads warrant visiting upon them the full burden of

that continuation, unrelieved by any measures to assist them in shouldering that burden.

In support of these contentions, I refer the committee first of all to the relevant aspects of the history of the 1966 agreement and legislation. I do not think that, as to the aspects of that history I have in mind, there can be any substantial dispute. In the first place, that legislation was the outcome of extended, and ultimately successful, collective bargaining. I could elaborate upon this point by describing the complexity of the issues and the extended nature of the negotiations, but I will not take the time of the committee for that. I simply want to underscore the importance of the fact that, in 1966, the parties managed to resolve their differences and jointly presented to the Congress a proposed bill. And surely the problems solved then, involving as they did the first supplemental annuities program in the history of railroad legislation, were much more complex than those presented to the committee now.

The second relevant feature of the prior negotiations and legislation is that they embodied a final settlement of a railway labor dispute under which the railroads' contribution to the supplemental annuity fund was a finite amount. That is, the railroads did not commit themselves, either implicitly or explicitly, to funding a specified level of annuities on a pay-as-you-go basis. Rather, the railroads agreed simply to contribute, for a period of 5 years, 2 cents per man-hour, which for the class I line-haul railroads was estimated to be \$30 million per year. There could have been no mistake about this, for the central issue in the bargaining was the amount of money that the railroads would make available to fund the program. It was only after the railroads agreed to a contribution of \$30 million per year for each of the 5 years that the parties, with the help of their own and Railroad Retirement Board actuaries, framed the levels of the supplemental benefits to be paid.

In this connection, the June 11, 1966, issue of the newspaper *Labor*, published by the unions which are members of the Railway Labor Executives' Association, carried a newsstory detailing the course of the negotiations leading to the supplemental annuities agreement. The following appears in that news item:

In the meantime, Wolfe—

Incidentally, he was negotiator for the railroads in this matter and was my predecessor.

* * * was to ascertain the extent of his authority to commit the railroads to "the expenditure of a specific amount of money for supplemental pensions", and to relay this information to the RLEA's railroad retirement committee headed by President C. L. Dennis of the Railway Clerks.

Finally in March, Wolfe told the unions "he had specific authority to make a definite commitment for the railroads to spend \$30 million per year for supplemental pensions over a five-year period," Leighty's letter pointed out.

Leighty being president of the RLEA.

This was not adequate, but the unions agreed to negotiate further within the framework of that amount of money. They submitted a number of concrete proposals for implementing the plan. After further discussions, the unions on May 24 submitted a number of concrete proposals for implementing the plan. After further discussions, the unions on May 24 submitted to Wolfe, at his request, what was supposed to be a "final proposal, to which he had agreed to give a 'yes' or 'no' answer."

It was this limited commitment on the part of the railroads that was ultimately reflected in the legislation enacted by the Congress upon the recommendation of this committee and its counterpart in the Senate. The agreed-upon legislation became Public Law 89-699. While the supplemental annuities program became a part of the Railroad Retirement Act, the program in its origin and concept is in effect a privately agreed-upon annuities program which is being publicly administered by the Railroad Retirement Board. Thus, the Assistant Director for Legislative Reference of the Bureau of the Budget wrote to this committee when it was considering the original bill:

Although it is proposed as an amendment to the basic Railroad Retirement Act, the supplemental pension plan is in reality a private pension plan arrived at through collective bargaining and similar in general form to many such plans within American industry except that the Federal Government will (a) administer the plan through a Federal agency; (b) collect its revenue through the Federal taxing power; (c) require compulsory participation of the entire industry; . . . (Letter dated September 26, 1966.)

There is no need to labor the point for there can be no dispute about it. The agreed-upon contribution was translated into a tax of 2 cents per man-hour worked by railroad employees, and the statute provided that, should the moneys realized through this tax not be sufficient to pay the annuities at the specified level, the Railroad Retirement Board was to adjust the annuities to such amounts as could be paid.

Chairman Howard W. Habermeyer of the Retirement Board emphasized this provision in his testimony to this committee (hearings, p. 17, before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, on H.R. 17285, 89th Cong., second sess. (1966)):

The Board is also satisfied that the provisions for supplemental annuities are adequately financed. However, as a precaution the bill provides that if, as the result of the survey to be made by the Railroad Retirement Board after 48 months have elapsed from the beginning of the supplemental annuity program, it should appear that the balance in the railroad retirement supplemental account together with the anticipated income to such account would be insufficient to pay the supplemental annuities in full for the remaining 12 months of the program, the Board is authorized to adjust the supplemental annuity amounts proportionately.

Finally, the unions evidenced their unqualified acceptance of this commitment by the railroads in satisfaction of their demands by agreeing with the railroads to a moratorium against any changes during the 5-year period of the program. The language of the agreement could hardly be more clear. Under section 1 of the agreement, attachment A, neither the unions nor the railroads would "recommend or support any further legislation dealing with supplemental annuities to become effective prior to the expiration of the supplemental annuities provided for"—that is, before October 31, 1971.

Moreover, the parties also agreed that neither would have the right to insist upon bargaining under the Railway Labor Act on notices pertaining to pensions or annuities which contemplated an effective date prior to October 31, 1971. Section 4, attachment A.

I note parenthetically that it can hardly be denied that the unions, in supporting the proposed legislation, are breaching their agreements. As I have indicated before, I do not urge that this committee, in its discharge of its responsibilities to the public, be governed by private

agreements. However, to the extent that the preservation of rights and obligations fairly bargained for are an ingredient of the public interest, I think it only fair to suggest that the unions' actions in this matter do not warrant encouragement.

This, then, is the salient history of the prior legislation up to the time of its enactment: Legislation by this Congress, agreed to and supported by both railroads and unions on the basis of the extended collective bargaining, involving a specified commitment of railroad funds to finance supplemental annuities at a level that was targeted but not certain of achievement over the full 5 years. Probably if that level had been nearly reached, but not quite reached, the matter could be disposed of simply by the parties, but in point of fact it turns out that the target has been missed by quite a margin.

As to that, I wish merely to make the point that the railroads are no more to blame for this difficulty than the unions or the Railroad Retirement Board. Chairman Habermeyer of the Retirement Board has pointed out in his statement to your committee that the insufficiency is attributable to the fact that the number of employees eligible for supplemental annuities who retired following enactment of the 1966 legislation has far exceeded the projections relied upon by the Retirement Board, the railroads, the unions and, indeed, the Congress. In addition, he has noted that the number of railroad employees had declined slightly below the levels used by the actuaries in making the projections upon which the 1966 agreement and legislation were based. These developments have respectively both increased the demands upon the fund and produced a small decline in the carriers' contributions.

The pertinent facts are these. Supplemental annuities are paid to those who retire after July 1, 1966. The Retirement Board's original actuarial estimate was that 44,000 employees eligible for supplemental annuities would retire between July 1, 1966, and April 30, 1969. In fact, 57,000 such employees retired during that period. The Board underestimated the number of retiring employees by 29.5 percent. This plainly is the primary cause for the insufficiency.

To be sure, reductions in total employment by the railroads have brought about a diminution in actual excise tax accruals as compared to the 1966 estimates, but only a small one. The latest figures from the Retirement Board show that the gross tax accruals for the period July 1966 through April 1969 were \$83.5 million, down only 4 percent from the Board's original estimate of \$87 million. The data discussed in this and the paragraph above are detailed in attachment B.

During our discussions with the unions on this matter, it was suggested by union spokesmen that the insufficiency in the supplemental annuities account was the result of railroad-induced retirements. The point advanced was that since July 1, 1966, many railroad employees had been induced to accelerate their retirement when railroads offered their older employees lump-sum payments if they would retire. At that time we knew that there had been instances of accelerated retirements but had no knowledge of their extent. To determine the facts, the conference recently conducted a survey of age requirements in the railroad industry during the period July 1, 1966, through March 31, 1969. The results are shown in attachment C.

These data cover 128 railroads, including 47 class I linehaul railroads and 81 other linehaul and switching and terminal companies, representing about 65 percent of the employment of the railroads which are members of the National Railway Labor Conference.

Those data show that during the 33-month period subsequent to July 1, 1966, 31,618 employees retired with 25 or more years of service. Of these, there were 914, or 2.9 percent of the 31,618 retirements, in which lump sum or other payments were received as an inducement to retire. Applying this percentage to the total of 57,000 retirements since July 1, 1966, that is, those on the supplemental annuity rolls, it may be assumed that no more than 1,650 employees can be said to have accelerated their retirements because of inducements offered by the railroads. I believe this demonstrates that the so-called induced retirements are not the cause of the insufficiency.

At this point I would like to bring out that both Mr. Schoene and Mr. Ross in their testimony brought up the matter of the greater number of retirements brought about by Public Law 88-108 which resulted in the Arbitration Board 282's findings and which resulted in the elimination or partial elimination of firemen and stated that these induced retirements reached a peak because of that provision of Arbitration Board 282.

I might point out that most of the activity with regard to Arbitration Board 282 and induced retirements was accomplished prior to the time that the supplemental annuities legislation became law. The award of Arbitration Board 282 became effective January 25, 1964, for trainmen and March 31, 1964 for the firemen. It was during that 2-year period from 1964 to 1966 that most of these induced retirements in connection with crew consists were effected.

Thus the railroad industry and the Congress now face a problem which is the result of a mutual mistake of the carriers, the labor unions, and the Railroad Retirement Board. The insufficiency is not the result of any action which either the railroads or the unions could have prevented. It stems in the main from the free exercise by an expectedly large number of employees of their right to retire. The actuarial assumptions of all the parties concerned proved substantially incorrect. In such circumstances, at the least it can be said that this is not a problem that can or should be solved by the Congress assessing blame upon one party and lodging against that party the entire \$80 million of additional costs that would be incurred if annuities were maintained at the present levels.

Indeed—and this is my next, and most important, point—this is not a problem for which the Congress should have to undertake primary responsibility at all. Rather, the Congress should properly look to the parties to resolve their differences through collective bargaining as they did in 1966. I recognize, of course, that the Congress, having assumed at the behest of the parties some responsibility in the field by enactment of the 1966 legislation, has a legitimate concern that the difficulties be disposed of. At the same time, from the enactment of the Railway Labor Act through the passage of the 1966 legislation, there has been a strong tradition in the railway labor area for the Congress to look to the parties to present for consideration legislative measures as to which they are in accord.

This tradition, I hope and believe, has been useful to the Congress and beneficial to the parties. Moreover, it deserves special preservation with respect to subjects such as supplemental annuities, which are after all a form of employee compensation and accordingly are indistinguishable from matters that are the subject of collective bargaining.

I daresay that few would dispute this principle that I advance—that is, the principle that if at all possible the parties should settle this matter through collective bargaining rather than through legislation. I should think the only legitimate concern would be whether collective bargaining gives any promise of success. I believe that it does, and that this is shown by the history of that bargaining to date. Let me describe what has happened.

It was in the fall of 1968 that the railroads and the unions first learned from the Retirement Board of the projected deficiency in the fund. From that time on we have diligently sought a solution through collective bargaining. We have conducted a number of studies on our own and have considered a wide range of alternatives, and doubtless so too have the unions. To date, the parties have met on numerous occasions and have made what the carriers considered to be significant progress. While bargaining stopped temporarily when H.R. 11607 was introduced on May 22, 1969, through substantial efforts on both sides, negotiations were resumed thereafter.

Mr. Schoene testified that we had reached an impasse at the time this legislation was introduced. This is not correct. We had scheduled a meeting on May 27, 5 days after the legislation was introduced, and it was only during this meeting that the carriers learned that this legislation had even been introduced. So we had not reached an impasse at the time the legislation was introduced.

Our last session was held on June 24, 1969. While negotiations have again ceased with the approach of these hearings, we were in my view close to a solution in the final weeks of our negotiations.

I hope it will be helpful to the committee for me to review in specific terms the progress that has been made. My purpose in doing so is to demonstrate to the committee the good faith with which the carriers approached these negotiations, the desire which the carriers have of finding a solution, and the wisdom of sending the parties back immediately for a renewed effort to reach an agreement. At the last bargaining session the carriers indicated their readiness to agree to a settlement along the following lines:

(1) The carriers would contribute the \$80 million necessary to fund the present level of supplemental annuities through October 1971. This is the period of the original program.

(2) The supplemental annuities program with annuities at present levels would be extended without time limit but, for the first time, with the carriers undertaking full responsibility to fund their cost on a pay-as-you-go basis.

(3) As in their 1966 agreement, the parties would agree to a moratorium upon seeking or supporting changes in the supplemental annuities program either through collective bargaining or through legislation. The moratorium would extend the 1966 moratorium for another 5 years, through October 1976. It is estimated that during this 7-year period carrier contributions would approximate \$775 million.

(4) The carriers would institute a mandatory retirement program for all employees age 70 or above with provision for scaling down the retirement age to 65 over a 5-year period.

I might say the railroads were optimistic that settlement would be made along the foregoing lines. In fact, the parties were close to full agreement on all items of the carriers' proposals. However, unions representing only 20 to 25 percent of all railroad employees were unwilling to agree to the mandatory retirement program as proposed. This being the fourth point in the foregoing recital.

The railroads feel strongly that this was a generous proposal. As this committee knows, the railroads are not money machines, and an outlay of over three-quarters of a billion dollars through 1976 will fall upon them heavily. Yet in return for undertaking that burden the railroads asked only two things from the unions—a moratorium that would at least assure the carriers of a reasonable period of cost stability, and a compulsory retirement program that would enable the carriers to improve the safety and efficiency of operations and to offset in some modest fashion this heavy new expense.

Perhaps a word is in order about the advantages to the railroads of compulsory retirement. While those advantages cannot be computed on a calculator, they would be quite real nonetheless. They would arise from the increased safety and efficiency of railroad operations that would, we are confident, be the result of a compulsory retirement program. Today, many jobs, both operating and nonoperating, demand high levels of skill and attention which frequently cannot be met by the older employees.

In addition, mandatory retirement would retire elderly employees who continue to be employed at high-income levels whether or not they perform useful work because they are "protected" by the terms of various agreements with the brotherhoods. These agreements impose a substantial economic burden on the carriers.

We believe mandatory retirement offers a reasonable answer to the needs and problems of the railway industry. Moreover, compulsory retirement is no innovation in this industry. Both operating and nonoperating unions have a long history of inclusion of provisions for compulsory retirement in their collective bargaining agreements with the carriers and the carriers' current proposal follows the pattern set in these agreements.

The major railroad unions have all agreed at one time or another to the principle of compulsory retirement. Although the Brotherhood of Locomotive Engineers has generally insisted on age 70 for mandatory retirement, according to a study made in 1967 even that union had made six agreements with mandatory retirement at 65. The complete results of the 1967 survey of class I railroads having mandatory retirement agreements are shown in attachment D.

There are yet, I believe, substantial reasons to anticipate a settlement, but only if this committee presses the parties to try. Surely the fact that the carriers' proposals were acceptable to unions representing a large majority of the employees is promising. However, if the unions have reason to believe that the alternative to a collectively bargained solution is the passage of H.R. 11607, there will be no incentive for them to resume meaningful negotiations.

Accordingly, we oppose the enactment of that bill and urge the committee to take a different course, one calculated to promote rather than discourage collective bargaining. Concretely, I suggest that the committee postpone action, that it direct the parties to utilize the next 2-week period for intensive bargaining and that it invite the National Mediation Board to assist the parties by lending its good offices. The committee should hold the parties' feet to the fire, by asking the National Mediation Board to report whether the parties might be able to reach agreement, if not, whether an agreement might be anticipated shortly, and what are the issues upon which the parties are in agreement and those upon which they are in disagreement.

It is premature now to attempt to describe what action Congress might take upon receiving the National Mediation Board's report. I would hope that we will have reached an agreement and have a draft bill for the committee's consideration.

In conclusion, I would urge this committee to reaffirm its faith in the collective bargaining process as the best means of resolving the hard issues which necessarily arise between labor and management in an ever-changing, progressive economy. I cannot believe that the Congress wants to shoulder the responsibility of resolving such questions or that the Nation would be better off were the Congress to substitute its judgment for that of the concerned parties. The collective bargaining process has worked in the past to inaugurate a strong supplemental annuities program. Congress should help make it succeed again.

Mr. Chairman, the rest of my statement has to do with an inequity which has developed subsequent to the enactment of the supplemental annuities legislation. We subscribe to the inequity and the unions do not disagree with our suggested correction. I will not take the committee's time to read this. Inasmuch as it is entered into the record, it will suffice, I believe.

Thank you, Mr. Chairman.

(The remainder of Mr. Hiltz' formal statement and attachments thereto follow:)

BALANCE OF STATEMENT OF J. P. HILTZ, JR., CHAIRMAN, NATIONAL RAILWAY LABOR
CONFERENCE

Before I finish, I should like to comment briefly on an inequitable situation which came to light after the supplemental annuities legislation was passed. This developed on those railroads with private pension plans instituted through collective bargaining. While this problem arises essentially among the railroads owned by the steel companies, there are a few other railroads in this same category.

The inequitable situation arises because these railroads are presently subject to the excise tax of 2 cents per man-hour paid while the tax credits which they receive under the existing law are limited to the amounts by which supplemental annuities are reduced by the private pension offsets. This offset is provided for in the second paragraph of Section 3221(c) of the Railroad Retirement Tax Act.

The railroads owned by the steel companies say that their tax payments very substantially exceed tax credits in the case of employees covered by negotiated supplemental pension plans and this is so primarily because they have and will continue to have relatively few retiring employees eligible for supplemental annuities under these plans, as compared with the number of employees covered for whom they are compelled to pay this excise tax. Moreover, these railroads anticipate that this imbalance will become much worse if the excise tax rate is increased.

The railroad industry subscribes to this contention and we understand that the unions do likewise and it is our hope that through collective bargaining we can arrive at agreement to support an amendment to the law which will alleviate this situation. Under such an amendment railroads with supplemental pension plans established pursuant to a collective bargaining agreement would not be subject to the payment of the excise tax as to those employees who are covered by such privately negotiated supplemental pension plans. Those railroads would, of course, continue to pay the excise tax as to all other employees.

Supplemental annuities would continue to be paid to the extent that they are now paid or in the future would be payable to all employees of any such railroad. Instead of paying the regular tax for employees covered by the negotiated supplemental annuities plan, the railroad would be subject to a tax, on a monthly basis, equal to the amounts of supplemental annuities actually paid to the covered employees, plus a service charge to cover the administrative expenses of the Board. This tax would apply to the supplemental annuities being paid to the already retired employees as well as to those who would receive supplemental annuities in the future.

We believe that such an amendment would remove this inequity that has arisen. The amendment would involve no loss to the Railroad Retirement Supplemental Account and I do not believe it would present the Railroad Retirement Board with any undue administrative problems. The amendment we envision would modify Section 3221(c) of the Railroad Retirement Tax Act by the addition of a new subsection as follows:

"(d) Notwithstanding the provisions of subsection (c) of this section, the tax imposed by such subsection (c) shall not apply to an employer with respect to employees who are covered by a supplemental pension plan which is established pursuant to an agreement reached through collective bargaining between the employer and the employees. There is hereby imposed on every such employer an excise tax equal to the amount of the supplemental annuity paid to each such employee under section 3(j) of the Railroad Retirement Act of 1937, plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under such section 3(j) of such Act. Such tax shall be due and payable on the first day of the calendar month next following the calendar month in which such supplemental annuity is paid."

(Attachments A through D follow:)

ATTACHMENT A

AGREEMENT

This agreement made this 24th day of August, 1966, by and between the Carriers represented by the National Railway Labor Conference as parties of the first part, and the Railway Labor Organizations as parties of the second part, WITNESSETH:

1. The parties hereto mutually agree to cooperate with each other and jointly to recommend to the Congress and the President of the United States the enactment at the earliest feasible date of the Bill attached hereto. No party hereto will recommend or support any further legislation dealing with supplemental annuities to become effective prior to the expiration of the supplemental annuities provided for in Title I of the attached Bill, unless pursuant to further mutual agreement of the parties.

2. Representatives of the parties to this agreement, or their successors, not earlier than one year prior to the expiration of the supplemental annuities provided for in Title I of the attached Bill, will at the request of either party, meet for the purpose of discussing the subject of supplemental annuities. If these discussions do not lead to agreement on what action, if any, should be taken in regard to the subject within a period of six months prior to the expiration of the supplemental annuities provided for in Title I of the attached Bill, or upon termination of any extension of the period for discussion as may be mutually agreed upon, both the carrier parties and the organization parties to this agreement shall be free to recommend or support legislation dealing with supplemental annuities, subject to the other provisions of this agreement.

3. Neither the making of this agreement nor the discussions provided for in paragraph 2 hereof shall be considered in any way to prejudice the position of

either the carrier parties or the organization parties hereto as to whether or not the subject matter of this agreement or the subject matter of such discussion is a proper or mandatory subject for collective bargaining under the Railway Labor Act or under such law or laws as may hereafter be applicable to collective bargaining in the railroad industry. It is further understood that the making of this agreement is not a waiver of the position of the carriers that the 1937 agreement with respect to equal joint employer and employee taxes to finance benefits provided by the Railroad Retirement Act, as amended, is still binding on the parties, nor is it a waiver of the position of the organization parties hereto to the contrary.

4. In consideration of the mutual commitments made in the foregoing paragraphs, the parties further agree that all notices of intended changes in agreements heretofore served by any Carrier or Organization party hereto on any other party hereto pursuant to the Railway Labor Act pertaining to pensions or annuities of employees and not heretofore disposed of shall not be further progressed and shall be promptly withdrawn. The parties hereto further agree that no Carrier or Organization party hereto shall serve any such notice on any other party hereto pertaining to pensions or annuities prior to six months immediately preceding the sixtieth month following the enactment of the attached Bill, provided further that such Section 6 notices do not contemplate an effective date prior to the expiration of the supplemental annuities provided for in Title I of the attached Bill.

Signed at Washington, D.C., this 24th day of August, 1966.

For the Carriers:

Chairman, National Railway Labor Conference.

For the Organizations:

[The agreement was signed by the officials of the following organizations:]

American Railway Supervisors' Association; American Train Dispatchers' Association; Brotherhood of Locomotive Firemen and Enginemen; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Brotherhood of Railroad Trainmen; Brotherhood of Railway Carmen of America;

Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Sleeping Car Porters; Hotel & Restaurant Employees & Bartenders' International Union; International Association of Machinists & Aerospace Workers; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers; International Brotherhood of Electrical Workers;

International Brotherhood of Firemen and Oilers; International Organization Masters, Mates & Pilots of America; National Marine Engineers' Beneficial Association; Order of Railway Conductors and Brakemen; Railroad Yardmasters of America; Seafarers' International Union of North America;

Sheet Metal Workers' International Association; Switchmen's Union of North America; Transportation-Communication Employees Union; and Railway Employees Department, AFL-CIO.

* * *

[H.R. —, 89th Cong., second sess.]

A BILL To amend the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, Title I—Amendments to the Railroad Retirement Act of 1937 to provide Supplemental annuities.

SEC. 1. Section 3 of the Railroad Retirement Act of 1937 is amended by adding at the end thereof the following new subsection:

“SUPPLEMENTAL ANNUITIES

“(j) (1) An individual who is entitled to the payment of an annuity under section 2 of this Act (other than subsection (e) or (h) thereof) and had a current connection with the railroad industry at the time such annuity began to accrue, shall be entitled to have a supplemental annuity accrue to him for each month beginning with the month in which he has (i) attained the age of sixty-five and (ii) completed twenty-five or more years of service. The amount of the supplemental annuity shall be \$45 plus an additional amount of \$5 for each year of service that the individual has in excess of 25 years, but in no case shall the supplemental annuity exceed \$70. For the purposes of this subsection, there shall

not be included in the computation of the years of service any month on the basis of the individual's service as an employee of a railway-labor-organization employer during which he was not engaged predominantly in work involving representation of employees within the definition of 'employee' in this Act. The supplemental annuity provided by this subsection shall, with respect to any month, be subject to the same provisions of subsection (d) of section 2 of this Act as the individual's annuity under such section 2. Except as provided in subsection (a) (2) of this section, the supplemental annuity provided by this subsection shall not be taken into consideration in determining or computing any other annuity or benefit under this Act.

"(2) The supplemental annuity provided by this subsection for an individual shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan if such pension is not reduced by reason of the supplemental annuity to which such individual is entitled under the provisions of this subsection.

"(3) The supplemental annuity provided by this subsection shall terminate with such annuity accruing for the sixtieth month following enactment of this Act."

SEC. 2. (a) Section 15 of the Railroad Retirement Act of 1937 is amended by inserting after subsection (a) the following:

"RAILROAD RETIREMENT SUPPLEMENTAL ACCOUNT

"(b) There is hereby created an account in the Treasury of the United States to be known as the Railroad Retirement Supplemental Account. There is hereby appropriated to the Railroad Retirement Supplemental Account, for the fiscal year ending June 30, 1967, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, to provide for the payment of supplemental annuities in accordance with the provisions of section 3(j) of this Act, and for expenses necessary for the Board in the administration of such section 3(j) as may be specifically authorized annually in Appropriation Acts, for crediting to such Supplemental Account, an amount equal to amounts covered into the Treasury (minus refunds) during the fiscal year ending June 30, 1967, and during each fiscal year thereafter, under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act.

"At the end of forty-eight months following the enactment of the Act establishing the Railroad Retirement Supplemental Account the Railroad Retirement Board, having surveyed the progress of such Account, shall make a determination of whether the balance in such Account together with the anticipated income to the Account for the next succeeding twelve months will be sufficient to provide for the payment of the supplemental annuities provided for in Section 3(j) (1) of this Act. In the event that such determination is that such balance and such anticipated income will not be sufficient to provide for the payment of all such supplemental annuities in the amounts specified, the Railroad Retirement Board is hereby authorized and directed to readjust the amounts of all such supplemental annuities, proportionately, so that such balance and anticipated income will be sufficient to provide for payment of all the supplemental annuities as so readjusted for the next succeeding twelve months."

(b) Section 15 of such Act is further amended by redesignating subsections (b), (c) and (d) as subsections (c), (d) and (e), respectively; by striking out the word "Account" where it first appears in subsection (c) as redesignated and inserting in lieu thereof "Railroad Retirement Account and the Railroad Retirement Supplemental Account (hereinafter jointly referred to as 'Accounts' or 'Railroad Retirement Accounts')"; by striking out "Accounts" each time it appears elsewhere in such redesignated subsections and inserting in lieu thereof "Accounts".

SEC. 3. (a) The amendment made by section 1 of this title shall be effective with respect to individuals whose annuities under section 2 of the Railroad Retirement Act of 1937 are first awarded on or after July 1, 1966, provided that no supplemental annuity shall accrue for months before the calendar month following the month in which this Act is enacted.

(b) The Railroad Retirement Board is authorized to request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Railroad Retirement Supplemental Account such moneys as the Board estimates would be necessary for the payment of the Supplemental annuities,

provided for in section 3(j) of the Railroad Retirement Act of 1937, for the six months next following enactment of this Act, and for administrative expenses necessary in the administration of such section 3(j) (which expenses are hereby authorized) until such time as an appropriation for such expenses is made pursuant to section 15(b) of such Act, and the Secretary shall make such transfer. The Railroad Retirement Board shall request the Secretary of the Treasury at any time before the expiration of one year following the enactment of this Act, to retransfer from the Railroad Retirement Supplemental Account to the credit of the Railroad Retirement Account the amount transferred to the Railroad Retirement Supplemental Account pursuant to the next preceding sentence, plus interest at a rate equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the fiscal year ending on June 30, 1966, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer.

TITLE II—AMENDMENTS TO THE RAILROAD RETIREMENT ACT OF 1937 TO PROVIDE AN INCREASE IN CERTAIN ANNUITIES UNDER THE ACT

SEC. 201. (a) (1) Section 2(e) of the Railroad Retirement Act of 1937 is amended by striking out the period at the end thereof and inserting in lieu thereof the following: “: *And provided further*, That the spouse's annuity provided for herein and in subsection (h) of this section shall be computed without regard to the reduction in the individual's annuity under the first two provisos in sections 3(a) (1) of this Act and without regard to the effect of section 3(a) (2) on the annuity of the individual from whom such spouse's annuity derives.”

(2) Section 2 of such Act is further amended by adding a new subsection at the end thereof as follows:

“(i) The spouse's annuity provided under subsections (e) and (h) of this section shall (before any reduction on account of age) be reduced in accordance with the first two provisos in section 3(a) (1) of this Act except that the spouse's annuity shall not be less than it would be had this Act not been amended in 1966.”

(b) Section 3 (a) of such Act is amended by striking out all that appears therein and inserting in lieu thereof the following:

“SEC. 3. (a) (1) The annuity shall be computed by multiplying an individual's ‘years of service’ by the following percentages of his ‘monthly compensation’: 3.58 per centum of the first \$50; 2.69 per centum of the next \$100; 1.79 per centum of the next \$300; and 1.67 per centum of the next \$100: *Provided, however*, That in cases where an individual is entitled to a benefit under Title II of the Social Security Act, the amount so computed shall be reduced by 6.55 per centum of the amount of such social security benefit (disregarding any increases in such benefit based on work recomputations after such reduction is first applied and any increases derived from changes in the primary insurance amount through legislation enacted after the Social Security Amendments of 1965): *Provided further*, That in determining social security benefit amounts for the purpose of this subsection, if such individual's average monthly wage is in excess of \$400, only an average monthly wage of \$400 shall be used: *And Provided further*, That the amount of an annuity as computed under this subsection shall not be less than it would be had this Act not been amended by 1966.

“(2) Notwithstanding the provisions of paragraph (1) of this subsection, the annuity of an individual for a month with respect to which a supplemental annuity under subsection (j) of this section accrues to him shall be computed or recomputed under the provisions of this subsection as in effect before its amendment in 1966.”

(c) Section 3(e) of such Act is amended by striking out all that precedes the first proviso and inserting in lieu thereof the following: “In the case of an individual having a current connection with the railroad industry, the minimum annuity payable shall, before any reduction pursuant to section 2(a)3, be whichever of the following is the least: (1) \$5.35 multiplied by the number of his years of service; or (2) \$89.35; or (3) 118 per centum of his monthly compensation except that the minimum annuity so determined shall be reduced in accordance with the first two provisions in subsection (a) (1) of this section, but shall not be less than it would be had this Act not been amended in 1966.”

(d) Section 5(h) of such Act is amended by striking out all that appears therein and substituting in lieu thereof the following:

"Maximum And Minimum Annuity Totals.—Whenever according to the provisions of this section as to annuities payable for a month with respect to the death of an employee, the total of annuities is more than \$38.84 and exceeds either (a) \$207.15, or (b) an amount equal to two and two-thirds times such employee's basic amount, whichever of such amounts is the lesser, such total of annuities shall, after any deductions under subsection (i), be reduced to such lesser amount or to \$38.84, whichever is greater. Whenever such total of annuities is less than \$18.14, such total shall, prior to any deductions under subsection (i), be increased to \$18.14: *Provided, however*, That the share of any individual in an amount so determined shall be reduced in accordance with the first two provisos in section 3(a)(1) of this Act except that the share of such individual shall not be less than it would be had this Act not been amended in 1966."

(e) Section 5(1) (10) of such Act is amended—

(1) by striking out all that appears in subdivision (i) and inserting in lieu thereof the following: "for an employee who will have been partially insured, or completely insured solely by virtue of paragraph (7) (i) or (7) (ii), or both: the sum of (A) 52.4 per centum of his average monthly remuneration, up to and including \$75; plus (B) 12.8 per centum of such average monthly remuneration exceeding \$75 and up to and including \$450; plus (C) 12 per centum of such average monthly remuneration exceeding \$450 and up to and including \$550, plus (D) 1 per centum of the sum of (A) plus (B) plus (C) multiplied by the number of years after 1936 in each of which the compensation, wages, or both, paid to him will have been equal to \$200 or more; if the basic amount thus computed is less than \$18.14, it shall be increased to \$18.14;" and

(2) by striking out in subdivision (ii) thereof "49" wherever it appears and inserting in lieu thereof "52.4", by striking out in such subdivision "12" and inserting in lieu thereof "12.8", by striking out in such subdivision "\$40.33" and inserting "\$43.15", by striking out in such subdivision "\$30.25" and inserting in lieu thereof "\$32.37", and by striking out in such subdivision "\$16.13" and inserting in lieu thereof "\$17.26".

(f) Section 5 of such Act is amended by adding at the end thereof the following new subsection:

"(m) An annuity payable under this section to an individual, without regard to subsection(h) of this section or the proviso in the first paragraph of section 3(e) of this Act, shall be reduced in accordance with the first two provisos in section 3(a)(1) of this Act except that the amount of the annuity shall not be less than it would be had this Act not been amended in 1966."

(g) All pensions under section 6 of the Railroad Retirement Act of 1937, all joint and survivor annuities and survivor annuities deriving from joint and survivor annuities under that Act awarded before the month following the month of enactment of this Act, all widows' and widowers' insurance annuities which began to accrue before the second month following the month of enactment of this Act, and which, in accordance with the proviso in section 5(a) or section 5(b) of the Railroad Retirement Act of 1937, are payable in the amount of a spouse's annuity to which the widow or widower was entitled (except those of such insurance annuities which are based on a spouse's annuity which was payable in the maximum amount as determined in accordance with the provisions of the Social Security Act as amended by the Social Security Amendments of 1965), and all annuities under the Railroad Retirement Act of 1935 are increased by 7 per centum: *Provided, however*, That in cases where an individual is entitled to a benefit under Title II of the Social Security Act, the additional amount payable because of this subsection shall be reduced by 6.55 per centum of the amount of such social security benefit (disregarding any increases in such benefit based on work recomputations after such reduction is first applied and any increases derived from changes in the primary insurance amount through legislation enacted after the Social Security Amendments of 1965): *Provided further*, That in determining social security benefit amounts for the purpose of this subsection, if such individuals average monthly wage is in excess of \$400, only the average monthly wage of \$400 shall be used.

SEC. 202. (a) The amendments made by section 201 of this title shall be effective with respect to annuities accruing for months after the month in which this Act is enacted, and with respect to pensions due in calendar months after the month next following the month in which this Act is enacted. The amendments made by subsection (e) of section 201 of this title shall be effective as to lump-sum benefits under section 5(f)(1) of the Railroad Retirement Act of 1937 with respect to deaths occurring on or after the date of enactment of this Act.

(b) All recertifications required by reason of the amendments made by this title shall be made by the Railroad Retirement Board without application therefor.

TITLE III—AMENDMENTS TO THE RAILROAD RETIREMENT TAX ACT

CHANGES IN TAX RATES

SEC. 301. (a) Section 3201 of the Internal Revenue Code of 1954 (relating to rate of tax on employees under the Railroad Retirement Tax Act) is amended by striking out "6¾ percent" from subdivision "(3)" and inserting in lieu thereof "7 percent"; by striking out "7 percent" from subdivision "(4)" and inserting in lieu thereof "7¼ percent"; and by striking out "7¼" from subdivision "(5)" and inserting in lieu thereof "7½ percent."

(b) Section 3211 of such Code (relating to rate of tax on employee representatives under the Railroad Retirement Tax Act) is amended by striking out "13½ percent" from subdivision "(3)" and inserting in lieu thereof "14 percent"; by striking out "14 percent" from subdivision "(4)" and inserting in lieu thereof "14½ percent"; and by striking out "14½ percent" from subdivision "(5)" and inserting in lieu thereof "15 percent".

(c) Section 3221(a) of such Code (relating to rate of tax on employers under the Railroad Retirement Tax Act) is amended by striking out "6¾ percent" from subdivision "(3)" and inserting in lieu thereof "7 percent"; by striking out "7 percent" from subdivision "(4)" and inserting in lieu thereof "7¼ percent"; and by striking out "7¼ percent" from subdivision "(5)" and inserting in lieu thereof "7½ percent".

SUPPLEMENTAL TAXES

(d) Section 3211 of such Code is further amended by inserting "(a)" after "Sec. 3211" and by adding at the end thereof the following new subsection:

"(b) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to two cents for each man-hour for which compensation is paid to him for services rendered as an employee representative."

(e) Section 3221 of such Code is further amended by adding at the end thereof the following new subsection:

"(c) In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to two cents for each man-hour, for which compensation is paid. With respect to daily, weekly, or monthly rates of compensation such tax shall apply to the number of hours comprehended in the rate together with the number of overtime hours for which compensation in addition to the daily, weekly, or monthly rate is paid. With respect to compensation paid on a mileage or piecework basis such tax shall apply to the number of hours constituting the hourly equivalent of the compensation paid. The tax imposed by this subsection shall not apply to hours included in any month of service as an employee rendered to a railway-labor-organization employer during which months the individual to whom such compensation is paid was not engaged predominantly in work involving representation of employees within the definition of 'employee' in this Act.

"Each employer of employees whose supplemental annuities are reduced pursuant to section 3(j)(2) of the Railroad Retirement Act of 1937 shall be allowed as a credit against the tax imposed by this subsection an amount equivalent in each month to the aggregate amount of reductions in supplemental annuities accruing in such month to employees of such employer. If the credit so allowed to such an employer for any month exceeds the tax liability of such employer accruing under this subsection in such month, the excess may be carried forward for credit against such taxes accruing in subsequent months but the total credit allowed by this paragraph to an employer shall not exceed the total of the taxes on such employer imposed by this subsection. At the end of each calendar quarter the Railroad Retirement Board shall certify to the Secretary of the Treasury with respect to each such employer the amount of credit accruing to such employer under this paragraph during such quarter and shall notify such employer as to the amount so certified."

(f) The amendments made by subsections (d) and (e) of this section shall be effective with respect to man-hours, for sixty months beginning with the first month following enactment of this Act, for which compensation is paid.

ATTACHMENT B

SUPPLEMENTAL ANNUITIES

Relationship of Actual Experience to the 1966 Estimates, as of April 1969:

Number of beneficiaries:

Actual	57,000
1966 estimate	44,000
Increase	13,000
Percent increase	29.5

Cumulative gross tax accruals:

Actual	\$85.3
1966 estimate	\$87.0
Decrease	\$3.5
Percent decrease	4.0

NOTE.—Of the 57,000 beneficiaries on the supplemental rolls, not more than 1,650, or 2.9 percent, were accelerated retirements involving lump sum or other payments, other than the supplemental annuities, which were afforded to the retiree by employers as an inducement, based on the returns to a NRLC survey.

Source: Railroad Retirement Board estimate of June 17, 1969.

ATTACHMENT C.—SURVEY OF 128 ROADS¹ RELATING TO AGE RETIREMENTS DURING THE PERIOD JULY 1, 1966
THROUGH MAR. 31, 1969

1. NUMBER RETIRING WITH 25 OR MORE YEARS OF SERVICE, BY AGE AT RETIREMENT

Age	Number	Percent of total
60	328	1.0
61	311	1.0
62	842	2.7
63	877	2.8
64	1,677	5.3
Total, 60 to 64	4,035	12.8
65	13,249	41.9
66	3,991	12.6
67	2,799	8.9
68	2,133	6.7
69 and over	5,411	17.1
Total, 65 and over	27,583	87.2
Grand total	31,618	100.0
Total age retirements:		
Less than 25 years service	8,765	21.7
25 or more years service	31,618	78.3
Total	40,404	100.0

2. NUMBER RETIRING WITH 25 OR MORE YEARS OF SERVICE, BY QUARTERS AND FISCAL YEARS

Quarter	Number	Index (average=100)	Fiscal year ending—	Number	Index (average=100)
July–September 1966	2,618	91.1	June 1967	11,426	97.0
October–December 1966	3,229	112.3	September 1967	12,916	109.7
January–March 1966	2,915	101.4	December 1967	12,632	107.2
April–June 1967	2,664	92.7	March 1968	11,975	101.7
July–September 1967	4,108	142.9	June 1968	11,959	101.5
October–December 1967	2,945	102.4	September 1968	11,328	96.2
January–March 1968	2,258	78.5	December 1968	11,118	94.4
April–June 1968	2,648	92.1	March 1969	10,881	92.4
July–September 1968	3,477	120.9			
October–December 1968	2,735	95.1			
January–March 1969	2,021	70.3			
Total	31,618				
Average per fiscal year	11,779	100.0			
Average per quarter	2,875	100.0			

¹ Including 47 class I line-haul railroads and 81 other line haul and switching and terminal companies. These 128 companies represent about 65 percent of the employment of NRLC member roads.

Note: Number of accelerated retirements during the 33-month period involving lump sum or other payments as an inducement: 914 retirements, or 2.9 percent of the 31,618 employees retiring with 25 or more years of service.

Source: NRLC survey.

ATTACHMENT D

SUMMARY OF NOVEMBER 1967 SURVEY RELATING TO COLLECTIVE BARGAINING AGREEMENTS PROVIDING FOR COMPULSORY RETIREMENT AT SPECIFIED AGES

Labor organization	Number of agreements providing for mandatory retirement at—			
	Age 70	Ages 66 to 69	Age 65	Total
Brotherhood of Locomotive Engineers	66	1	6	73
Brotherhood of Locomotive Firemen & Enginemen ¹	45	4	44	93
Order of Railway Conductors and Brakemen ¹	35	3	9	47
Brotherhood of Railroad Trainmen ¹	55	7	73	135
Switchmen's Union of North America ¹	1		6	7
Brotherhood of Railway, Airline & Steamship Clerks	3		2	5
Transportation-Communication Employees Union ²	2	6	17	25
Brotherhood of Maintenance of Way Employees	2	1	3	6
Brotherhood of Railroad Signalmen	1	1	7	9
Brotherhood Railway Carmen of the United States & Canada	1		5	6
Sheet Metal Workers' International Association	1		4	5
International Brotherhood of boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers	1		4	5
International Association of Machinists & Aerospace Workers			3	3
International Brotherhood of Firemen & Oilers	1		3	4
International Brotherhood of Electrical Workers	1		2	3
United Transport Service Employees	1	1		2
Brotherhood of Sleeping Car Porters	5	1		11
Hotel & Restaurant Employees International Union	2		1	3
Railway Patrolmen's International Union ²	2		14	16
American Railway Supervisors Association			2	2
American Train Dispatchers Association	6			6
Railroad Yardmasters Association	5		5	10
Association of Station Masters			1	1
Dining Car Employees Union	2			2
Transport Workers Union	2		9	10
Masters, Mates and Pilots	2		3	5
Inland Boatmen's Union-Seafarers International Union			3	3
Railroad Maine Employees—TWU			7	7
International Union of Operating Engineers	1			1
Great Lakes Licensed Officers Organization			1	1
Total	242	25	239	506

¹ Merged into United Transportation Union.

² Merged into Brotherhood of Railway, Airline & Steamship Clerks.

The CHAIRMAN. Thank you very much, Mr. Hiltz.

Mr. Friedel?

Mr. FRIEDEL. Mr. Hiltz, on page 5 you mention supplemental annuities of from \$45 to \$70 a month. Can you elaborate on that for the record?

Mr. HILTZ. Yes, sir; the supplemental annuities apply only to employees 65 years or older with 25 or more years of service. Those with 25 years of service would get a \$45 per month supplemental annuity. Then it would step up \$5 for every year of service, \$5 until \$70 is reached, at 30 years of service.

Mr. FRIEDEL. That is supplemental?

Mr. HILTZ. Supplemental to the regular railroad retirement annuity.

Mr. FRIEDEL. Also on page 2 you stated that negotiations have broken down. Were they close to getting somewhere when they broke down?

Mr. HILTZ. As I pointed out later in my statement, Mr. Friedel, I thought we were extremely close. The only point where we broke down on is that the unions who represent about 20 percent of the railroad employees would not agree to a compulsory retirement provision.

Mr. FRIEDEL. What was the stumbling block there? You said you were near agreement.

Mr. HILTZ. The compulsory retirement provision was the stumbling block.

Mr. FRIEDEL. At what age was retirement to be compulsory?

Mr. HILTZ. At age 70, and stepping down. In our proposal every year they step down 1 year until 65 was reached over a span of 5 years.

Mr. FRIEDEL. In other words, the difference was that you would agree on 70 years—

Mr. HILTZ. The unions that represented 20 percent of the employees would not agree to any compulsory retirement at all.

Mr. FRIEDEL. They would not agree to any?

Mr. HILTZ. That is right.

Mr. FRIEDEL. The majority felt that some form of compulsory retirement was acceptable?

Mr. HILTZ. That is correct.

Mr. FRIEDEL. Do you think you could get any closer on that part of the bargain?

Mr. HILTZ. We are certainly open to any suggestions. We are willing to bargain in any area.

Mr. FRIEDEL. I just happened to walk out for a moment. I think you said you had a meeting June 23?

Mr. HILTZ. June 24 was our last one. My written testimony is in error. June 24 was the last.

Mr. FRIEDEL. Has there been a meeting since then?

Mr. HILTZ. There has not been.

Mr. FRIEDEL. Is any meeting contemplated?

Mr. HILTZ. No, sir. We are ready, willing, and able, but the brotherhoods broke up the meeting on June 24 and no further meetings were arranged.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Skubitz.

Mr. SKUBITZ. Will the gentleman yield?

Mr. FRIEDEL. I yield.

Mr. SKUBITZ. What percentage of the employees refused to accept the compulsory age requirement?

Mr. HILTZ. The unions representing between 20 and 25 percent of the employees.

Mr. SKUBITZ. What specific unions are we talking about?

Mr. HILTZ. I don't think that this will enhance collective bargaining negotiations if they are enumerated, but if you insist I will be glad to name them.

The CHAIRMAN. Mr. Kuykendall.

Mr. KUYKENDALL. Your situation reminds me of a story where in another case one of the parties said, "We are awfully close. There is nothing between us except a quarter inch of steel."

I happen to be one of the people who is very much interested in your having your meetings in some place without the members of this committee present. I think all of you are here. I think it would be better if all the people up here on the committee would leave and let you people settle it in this room or, better still, somewhere else.

The idea of collective bargaining in my short tenure in Congress, about 3 years, has been quite enlightening. I know in the summer of 1967 the two parties were here on the doorstep, as they have been probably 10 times since, and at that time that was a real critical one, you remember, when we had the 2-day strike. I believe it was management that was wanting us to settle their affairs and labor wanted free bargaining, and now the positions are exactly reversed.

I have fussed at both sides about 10 times in recent months and am fussing at both of you during these proceedings because I can't imagine that we could not arrive at any sort of solution to this problem behind closed doors that wouldn't treat both of you as justly as we know how, and I am sure if we treat both of you as justly as we know how neither one of you will be happy. You shouldn't at least, if we do justice.

So the only way that you can be happy is to work it out behind your closed doors, not ours. I just promise you this, that I, as one member of this committee, will try to see that both of you get justice and therefore neither one of you will be happy with what we turn out of this committee. I hope you are not. I hope you are both very unhappy, unhappy enough, maybe not to come back again for a while with what we turn out of this committee.

Now I will say this: I want to say this publicly, as soon as we go into executive session I am going to move, Mr. Chairman, that we suspend these hearings until you fellows both are willing to come in here and say you have exhausted, totally exhausted, collective bargaining. Then and only then will we pass a bill. We are not going to let these people on annuities go without annuities. We know that. But there may be some conditions that neither one of you will be very happy about.

I am not going to comment on any of your figures or any of your statements except to say please, please for the sake of collective

bargaining, stop coming to our doorstep every time you have a problem that we can't handle.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Hiltz, do you feel that these annuities must be, or should be, paid for the full 5-year period?

Mr. HILTZ. I think that in equity they should be paid, yes, sir.

Mr. PICKLE. The employees have a right to expect and to receive the amount of money that we agreed they should receive 3 years ago?

Mr. HILTZ. Yes, sir. I don't think there is any question about that. The question, of course, is who will pay for providing it.

Mr. PICKLE. You said in your statement that if at all possible the parties should settle this matter through collective bargaining. Do you think that there is still a chance to settle it by collective bargaining?

Mr. HILTZ. Absolutely.

Mr. PICKLE. If you have broken off all meetings and negotiations, then why would you be prompted to say there would be a chance of getting the parties together?

Mr. HILTZ. We have not broken off the meetings. We have been available to meet with the unions ever since June 24. I think as long as H.R. 11607 is hanging over our heads there is no incentive for the unions to meet.

Mr. PICKLE. You suggest that we ought to suspend these hearings and ask the parties to get together and possibly call in the Mediation Board to assist you?

Suppose the committee did that, or perhaps an emergency board could be appointed and a set of facts would be submitted to this committee or to the parties first, would you be agreeable to what was recommended by the Mediation Board and/or a special emergency board?

Mr. HILTZ. Mr. Pickle, before I answer your question may I say that this was not my recommendation. In other words, the Mediation Board's function in this would be that of assistance to the parties, as we put it, to lend their good offices to try to get the parties to negotiate. We find that through the help of the Mediation Board many times we can get off dead center when we can't in direct across-the-table negotiations.

The Mediation Board's function has never been to arbitrate a dispute and also, unless you provide some law to make this a compulsory arbitration matter, there is no provision in the National Railway Labor Act for it.

Mr. PICKLE. If we could establish machinery somehow to appoint a special board, or emergency board after the Mediation Board has helped get you together would you be agreeable to whatever recommendation was made?

Mr. HILTZ. Yes.

Mr. PICKLE. I will go back to the agreement that you reached. I was impressed by your testimony. It seemed to me like the parties had a good faith agreement and the actuary made a mistake. It was an unintentional mistake, but it happened. Now you agreed on \$150 million for a 5-year period.

Mr. HILTZ. That is correct.

Mr. PICKLE. You figured it out at 2 cents per man-hour. Now suppose this agreement had been that you had to pay more originally, that is 3 cents or 4 cents, would you have carried out this particular agreement?

Mr. HILTZ. Absolutely. We carried it out, we are still carrying out our obligation under the original agreement to submit to the tax of 2 cents per hour.

Mr. PICKLE. I assume that then the establishment of the 2 cents level was just an actuary figure and that whatever was necessary to meet it would actually be met.

Mr. HILTZ. The 2 cents per hour was arrived at after the carriers, as I pointed out in my testimony, had indicated they could spend \$30 million a year on this program, or \$150 million over the original 5 years. The 2 cents an hour according to the actuaries, coincided with the pensions which were provided by the law, \$45 to \$70 a month.

Mr. PICKLE. I wondered myself if the 2 cents per hour was important to the fact that you agreed to pay this supplement.

Mr. HILTZ. We regard this as our only commitment, our only obligation under the original agreement and under the original legislation was to pay 2 cents an hour and we are willing to continue that.

Mr. PICKLE. You feel that your obligation was for the amount of money at that level?

Mr. HILTZ. That is correct.

Mr. PICKLE. Now you comment that you want to settle it by collective bargaining by pursuing negotiations and you are asking for a quid pro quo and you are asking for a 7-year extension of the moratorium. What we are trying to settle is the 2 remaining years. Why do you ask for quid pro quo, or something over and beyond?

Mr. HILTZ. We are committing ourselves, and for the first 5 years we are committing ourselves to an additional \$80 million expenditure which we don't feel we are obligated to furnish. We don't feel that this was included in the original agreement. Now we are willing to pick that \$80 million up in return for some sort of cost stability in the industry, and also——

Mr. PICKLE. That is the point I am trying to get to now. If the difficulty in further negotiation lies in the moratorium and on compulsory retirement, could you make a proposal to settle it on the next 2-year base?

Mr. HILTZ. We had not operated on that base; no, sir. We have not considered that within our negotiations.

Mr. PICKLE. Do you have any thoughts about it now?

Mr. HILTZ. No, sir; I have not at the present time. I would have to give it some thought in order to do that.

However, I might say that the moratorium has to my knowledge never been a problem in these negotiations. At one point I asked the union chief negotiator with regard to proposed legislation which we had submitted to them in negotiations and which contained the moratorium, contained the four points I have outlined in my testimony, whether they had objection to anything other than the compulsory requirement, and the answer was no.

Mr. PICKLE. I would hope that if you do have any other thoughts or proposals on the 2 years remaining, or for the period of the addi-

tional 5 years, that we may have the benefit of your thinking here. We may help to serve the purpose of the Mediation Board, this committee, in finding some middle ground.

As I understand from the testimony this morning they thought that a 7-year moratorium would be an excessive period of extension, particularly in view of the present inflationary period. I can see that point. The question is, is there a middle ground or compromise area that we might reach? I want to mention one other point. The funds were exhausted because they were underestimated but the excessive demands made by the employees on the fund did not result from lump sum payments of all employees, only 1,650 then actually received the lump sum payment. So we have to assume, then, that the employees just voluntarily wanted to retire and wanted to get the annuity and asked for it. Is that correct?

Mr. HILTZ. That is correct, Mr. Pickle. I think the actuaries underestimated the impact of this supplemental annuity when it became available to the employees. This is shown somewhat by the figures in my attachment C, which shows that after this was enacted in August, effective in July 1966, the retirements did increase. I think that the actuaries underestimated the impact of the attractiveness of this additional supplemental annuity.

I would like to say one other thing, Mr. Pickle, if I may, with regard to this moratorium. I think Mr. Schoene indicated this morning, just as I have indicated here, that this was not a problem during our negotiations. The problem was the compulsory retirement feature.

Mr. PICKLE. Mr. Chairman, might I have one more point, because I want to pose a question that perhaps Mr. Hiltz and Mr. Eckhardt, our colleague, might want to pursue.

This morning Mr. Eckhardt made a very logical argument as I understood it, not only logical but also in law, that this fall these men will not be able to either draw the funds or they will draw less funds, and the contract entered into will have been breached. That is, they would have a right but no remedy as of this fall.

I think we must think in terms of the rights of the employees. I have been thinking about that because it made an impression on me. I would like for you to express yourself further. If there was a right vested in the employees I would assume that it would be a right that would go to both management and labor, it would not be one sided. I would like you to express yourself as a lawyer on that point either now or during Mr. Eckhardt's time.

Mr. HILTZ. Mr. Pickle, I am not a lawyer and I therefore will not address myself to that right. However, if there is a right we are not raising that question. All we are raising is who is going to assume the obligation for that right? We don't think that it should fall on management alone. It was a joint mistake and why should it fall on management alone? However, as a solution to the problems, we have offered to assume the obligation but we would like some means of getting back the additional cost which assuming the obligation will entail.

I think this is only fair and is a process of collective bargaining, the give and take of collective bargaining.

Mr. PICKLE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Skubitz.

Mr. SKUBITZ. I want to commend you for your statement. I think is is excellent.

Mr. HILTZ. Thank you, sir.

Mr. SKUBITZ. I would like to ask you to turn to page 18.

Mr. HILTZ. Yes, sir.

Mr. SKUBITZ. As I understand it, the reason for the deficit today is because 13,000 more workers took retirement.

Mr. HILTZ. That is the primary reason.

Mr. SKUBITZ. That is the primary reason. The brotherhoods spokesmen have indicated this was primarily due to the fact that the railroads through improvements have forced employees to retire. You in turn have presented some figures to contradict this statement.

If the point you listed on page 18 were agreed upon would it be possible, we will say, in 1973, for this fund to not have sufficient money in it to take care of the annuities?

Mr. HILTZ. No, sir; this is on a pay-as-you-go basis. Under our proposal we will assume full responsibility.

Mr. SKUBITZ. In other words, you are going to guarantee that the fellows will get from \$45 to \$70.

Mr. HILTZ. Whatever the present law provides we will guarantee in perpetuity.

Mr. SKUBITZ. This is the point I am getting at. In turn what you are asking is mandatory retirement?

Mr. HILTZ. Mandatory retirement and the moratorium.

Mr. SKUBITZ. Thank you.

Mr. FRIEDEL (presiding). Mr. Eckhardt.

Mr. ECKHARDT. Mr. Hiltz, you may not be a lawyer but I think between your statement and Mr. Schoene's you have presented us with two excellent briefs that state the facts of this case. I certainly do want to compliment you for it.

Mr. HILTZ. Thank you very much, sir.

Mr. ECKHARDT. I see your point. I see the point you make that you are not in any way bound by a previous agreement to carry the full impact of the \$80 million that you find is the shortage for the rest of this period. I think you are perfectly right on that with respect to collective bargaining. But I do want to raise one question. I note in your own statement you say that this was a matter of mutual mistake. I certainly do agree with that. I also find in the agreement a provision about not negotiating on this same subject during the period of the act. Yet it would seem to me that this was all based upon a clear assumption that is indicated in the act that both parties felt that the amount in the fund would clearly cover the first 4 years of the program.

Do you not find that to be inherent in that act? Doesn't it appear to you that the parties clearly felt that the amount set aside would cover the annuities for the first 4 years, but there might be some question on the fifth?

Mr. HILTZ. That is implied, Mr. Eckhardt; yes, sir.

Mr. ECKHARDT. I think so, and I think we make a mistake if we try to say that either the unions breached agreement by coming in here with this legislation, or that the company acted in some way wrongfully with respect to quick retirement. I think that your arguments there

are quite telling. Perhaps one of the reasons why there was more quick retirement than the actuaries expected is because there is a large employment market. There may be those who retired and took other jobs.

At any rate, I think that looking behind the motives of either party is not very fruitful here. Would you not agree to that?

Mr. HILTZ. The motives of either party? Are you talking about the motives of the retirees?

Mr. ECKHARDT. I am talking about either the railroads or the railroad unions. I cannot see any evidence here of any bad faith on either side.

Mr. HILTZ. Generally, I can't, either, except that there is a breach of the agreement. As I have said in my statement, I am not asking this committee to make this an overriding point but I certainly want to point out that I think there was a breach of this agreement and I don't think such a breach should be encouraged.

Mr. ECKHARDT. I will say that I was not convinced by any attempt to show, if there was an attempt, and I am not sure there was, that the railroads acted wrongfully in urging quick retirement. I am inclined to agree with you that the railroads were simply acting to their economic advantage very reasonably and perhaps predictably.

But on the other hand, it would also seem to me that there is no breach of an agreement when in effect the entire agreement is breached with respect to the third party beneficiaries.

The third party beneficiaries are not going to get their \$45 unless the money comes up from some source. Now when this agreement was entered into all parties felt that they would get their full annuities, at least through the first 4 years. When this failed it seems to me nobody should be bound to try to cure the fault by legislation or otherwise. That is what I am getting at.

Mr. HILTZ. Mr. Eckhardt, as I tried to point out in my testimony, while I feel that there was a breach of the agreement I am not asking you to really take this into great account. I think the thing to do is to decide here how this tragedy should be corrected.

Mr. ECKHARDT. We certainly agree; we may disagree slightly semantically as to whether there was a breach of agreement. At any rate, getting down to the situation that now has to be solved and certainly would be best solved by agreement if it could be done, I would like to ask you this question.

Do you have the authority from all the railroads involved to enter into an agreement in which the railroads would pick up the \$80 million tab if some quid pro quo of the nature of compulsory retirement was offered by the unions? Do you have that authority to speak for all the railroads involved?

Mr. HILTZ. I have the authority to speak for the railroads represented by the National Railway Labor Conference.

Mr. ECKHARDT. That would substantially settle this matter; would it not?

Mr. HILTZ. That is correct.

Mr. ECKHARDT. Now suppose it were the situation that some of the unions were not able, because of their constitutions or because of the process of getting authority, to come to an agreement with respect to the question of compulsory retirement; would there be a degree of

flexibility? Could there be another quid pro quo with respect to certain of those unions or would you have to deal with everyone exactly in the same manner?

Mr. HILTZ. Mr. Eckhardt, I am not trying to dodge the question, but this would be a national agreement and I just can't envision having a certain quid pro quo for a certain number of unions and another quid pro quo for another number of unions.

Mr. ECKHARDT. As you were pointing out about 80 percent of the unions are in a position to agree if they have not already tentatively agreed, at least unions representing 80 percent of the persons involved, as I understand.

Mr. HILTZ. That is correct.

Mr. ECKHARDT. Now it may be that you have a hard nut to crack with the rest of the 20. Particularly, as I know union affairs, if there is some kind of constitutional inhibition and sometimes there are certain very strongly felt prejudices among certain unions, you would have a pretty hard nut to crack if there were no areas of flexibility with which you might possibly make another agreement with respect to another quid pro quo concerning these unions.

Don't you feel that if there is to be effective negotiations you are going to have to take into account these practicalities?

Mr. HILTZ. We are certainly willing to take into account any practicalities and approach the problem and try to work out a solution. We are not stuck hard and fast with either this proposal we have here or any other proposal.

Mr. ECKHARDT. You understand, of course, in all the questions I asked you I am not asking you to say, "We will agree to this." The only thing I am asking is, Would it be within the ambit of your bargaining authority to do it? I would assume you would have authority to deal with a degree of flexibility with the various unions, would you not?

Mr. HILTZ. That is correct.

Mr. ECKHARDT. Thank you, sir.

Mr. PICKLE. Would the gentleman yield?

Mr. ECKHARDT. Yes, I yield.

Mr. PICKLE. The point raised by Mr. Eckhardt with reference to the constitutional provision which the various unions enjoy—as I understand it all of these unions do have a constitutional basis and they can not bargain on compulsory retirement, that their negotiators simply can not agree and bargain as a means of negotiation.

First, am I right or wrong about that? Do you know?

Mr. HILTZ. I would say you are incorrect, Mr. Pickle, from the statements made across the bargaining table when I asked directly whether the unions had authority to do such and such. In that session there was only one union that indicated that it did not have authority and that authority was only restricted at that time to a certain level. In other words, that particular union, and again I would prefer not to mention the union's name because I think it would restrict any collective bargaining if we get into it again, but that particular union indicated that it was restricted in making any compulsory retirement agreement below the age of 70 years.

Mr. PICKLE. If unions representing 80 percent of the employees had agreed in a tentative sense that they would bargain, as you mentioned,

then it would indicate to me that they do have the legal authority and there would not be a constitutional prohibition in their charter that would prevent them from getting together and negotiating that point.

If on the other hand, they have that prohibition and they cannot negotiate, then of course there is nothing really for you to negotiate on or to ask the Mediation Board to negotiate on.

Have you asked the Mediation Board to help on this matter?

Mr. HILTZ. No. As a matter of fact, this is not a matter that has been handled under the Railway Labor Act at all.

Mr. PICKLE. It would not normally fall under the Mediation Board authority in serving a section 6 notice, but I assume since you mentioned in your testimony that you would be willing to ask the Mediation Board—

Mr. HILTZ. That is correct, I would be willing to ask the Mediation Board for help on a public service basis.

I may point, Mr. Pickle, to attachment D to my statement which indicates the extent of the compulsory retirement agreements that have been entered into by these various unions. It is quite evident that they are not restricted by their constitutions from entering into compulsory retirement agreements.

Mr. ECKHARDT. I would like to make one statement in conclusion. I think it is the consensus of this committee, although I certainly can not speak for all of them, that negotiation would be a vastly superior way to settle this thing. I for one do not feel that we can avoid our responsibility of settling this by statutory enactment if settlement is not done rather promptly in bargaining. It would seem to me that there is no commitment, either morally or legally, on the part of either party not to seek to solve the thing legislatively if it cannot be solved by negotiation.

I say that not only with respect to the language of the contract but it would seem to me that a contract that is purported to preclude settlement by legislative action would be certainly against public policy in this case.

Mr. HILTZ. All I will say, Mr. Eckhardt, is that Congress was aware of that agreement at the time the last legislation was passed.

Mr. ECKHARDT. But not bound by it.

Mr. HILTZ. No, sir. But the parties were.

Mr. FRIEDEL. Mr. Preyer.

Mr. PREYER. Mr. Chairman, I have no questions. I do want to repeat what some of the others have said here, that I think Mr. Hiltz' and Mr. Schoene's testimony taken together brings the issues as clearly in focus as I have ever before seen for the committee. I think we do understand the issues now. It has been made clear that this is a situation that arose without anyone being really at fault. I think we understand why it is a difficult one to answer.

I commend both of your gentlemen on the nature of your statements, and I think they are clear, they don't need further cross-examination.

Mr. FRIEDEL. Mr. Hiltz, I would like to ask one more question.

As I understand the bill, if something is not done by mutual agreement between management and labor then there will not be sufficient funds to pay the men who have already retired. Am I correct?

Mr. HILTZ. That is correct, sir; not sufficient funds to pay them the full pensions.

Mr. FRIEDEL. There will not be sufficient funds to pay them their full pension?

Mr. HILTZ. That is right.

Mr. FRIEDEL. Unless agreement is made or legislation is passed they will not get their full payment. If you have agreement or legislation is passed, they will get their supplemental annuity?

Mr. HILTZ. If the agreement or legislation provides for that; yes.

Mr. FRIEDEL. You also said you are willing to meet with them in trying to work this out through collective bargaining.

Mr. HILTZ. Any time, 24 hours a day, 7 days a week, Mr. Friedel.

Mr. FRIEDEL. As I understand it, the funds will be exhausted in September. Do you think you can get together before then?

Mr. HILTZ. I think they will last through October.

Mr. FRIEDEL. Is there any possibility that you can get together by the middle of August?

Mr. HILTZ. Mr. Friedel, I don't think there is any possibility as long as H.R. 11607 is hanging over our heads. I think that the unions will use that as a means of ducking further negotiations.

Mr. FRIEDEL. Do I understand you to say you were near agreement?

Mr. HILTZ. Yes, sir. It was my opinion we were near agreement.

Mr. FRIEDEL. Thank you; that is all the questions I have, Mr. Chairman.

Mr. PICKLE. Mr. Chairman.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. I see Mr. Schoene in the audience. We raised a question just a minute ago whether the unions involved did have the authority to negotiate this matter of compulsory retirement. Mr. Hiltz indicated he thought they did have, and they were near agreement on that point.

I do want to raise an issue if there is a difference of opinion and if this is not contrary to what the people who testified this morning feel about it. I would like to ask Mr. Schoene to make a statement now whether that is right or not, if he is in a position to say so.

Mr. FRIEDEL. If there is no objection, we will hear from Mr. Schoene.

Mr. SCHOENE. I don't know that I can speak for all the unions involved. I think Mr. Hiltz has correctly testified that of the union representatives who attended the last meeting of the Railway Labor Executives Association, there was only one who expressed to Mr. Hiltz a constitutional disability. I know that there was at least one other that has a constitutional disability, and a very rigid one. There were several union representatives not in attendance at that meeting and I would not want to undertake to speak for them.

I think by and large Mr. Hiltz has correctly represented the situation. But it is not quite correct to say that there was only one that is under a constitutional disability.

Mr. PICKLE. Thank you, Mr. Schoene.

Mr. Chairman, I would like our counsel to submit to the committee his finding on this question because if it is one that can be negotiated, we ought to look into it further.

Mr. FRIEDEL. The counsel will be so instructed.

Mr. SKUBITZ. Mr. Chairman.

Mr. FRIEDEL. Mr. Skubitz.

Mr. SKUBITZ. Aren't the railroads and the brotherhoods about in the same position now as the coal miners and the coal operators were when they first agreed to a retirement program? The operators were to contribute 25 or 30 cents per ton to a pension fund. The miners were to get around \$125 a month and the widows were supposed to receive a percentage of this amount. Hospitalization and medical assistance was to be provided. The program was fine but the company contribution was not sufficient to meet the demands on the fund.

The first thing they did was to cut off the widows' pensions, then they cut off the hospitalization for the family except the coal miner himself. In this instance the operators agreed to pay a certain amount of money and they paid it. With regards to the problem at hand, the railroads agreed to pay a certain amount, and you are still willing to pay that amount. Is that correct?

Mr. HILTZ. That is absolutely correct.

Mr. SKUBITZ. This is a matter that should be worked out between the railroads and the railroad brotherhoods rather than the Congress or courts taking care of it.

Mr. HILTZ. We have asked for a quid pro quo to help us defray the additional expenses. We are willing to assume an additional obligation but we have asked for an offset in the most painless way we know of. We think it is an equitable way which will not place a great burden on anybody.

Mr. FRIEDEL. If there are no further questions, thank you very much, Mr. Hiltz.

Mr. HILTZ. Thank you, Mr. Chairman.

Mr. FRIEDEL. We have one more witness, Mr. Richard Kent, president, Philadelphia, Bethlehem & New England Railroad Co.

STATEMENT OF RICHARD J. KENT, REPRESENTING 11 SHORT LINE RAILROADS, PRESENTED BY ROBERT HANCOX, COUNSEL; ACCOMPANIED BY R. D. LAKE AND G. T. CREEDON, RAILROAD OFFICIALS

Mr. HANCOX. Mr. Chairman and members of the committee, my name is Robert Hancox. I am appearing for Richard Kent. Mr. Kent is over at the National Mediation Board in mediation. He has asked me to present his statement. I am attorney and secretary of six short line railroads. I am also the spokesman for two others. On my right is Mr. R. D. Lake, who is vice president and director of nine railroads. On my left is Mr. G. T. Creedon, who is the supervisor of industrial relations for three railroads.

The 20 railroads that we represent as a group all have privately negotiated pension plans. We would like to say that we support Mr. Hiltz' position as he has just given it and would like to elaborate on the allusion he made to the last pages of his statement that were not read into the record, dealing with the inequity that has risen with respect to those railroads that do have supplemental pension plans that had been negotiated with their represented employees.

I would like, with your permission, to read into the record Mr. Kent's prepared statement.

As you note, sir, in the interest of brevity we have made some deletions on the first, second, third pages. So that with those deletions I shall present Mr. Kent's statement.

Mr. PICKLE. Proceed as you wish, Mr. Hancox.

Mr. HANCOX (reading). "My name is Richard J. Kent. I am president of six affiliated short line railroads; namely, Cambria & Indiana Railroad Co., Conemaugh & Black Lick Railroad Co., Patapsco & Back Rivers Railroad Co., Philadelphia, Bethlehem, & New England Railroad Co., South Buffalo Railway Co. and Steelton & Highspire Railroad Co. The Cambria & Indiana is a short line coal carrier located in western Pennsylvania. The other five are terminal and switching railroads serving industrial plants in their respective areas. I also appear here on behalf of a number of other short line railroads.¹ I shall refer to the railroads on whose behalf I appear as 'the short line railroads.'

"I appear in opposition to H.R. 11607 because it fails to correct a gross inequity in the existing law in that the short line railroads, which have their own private supplemental pension plans, are being taxed under an agreement between those other railroads and the labor organizations which are sponsoring H.R. 11607. The remedy that we ask is that we be excluded from the law entirely or at least that we be exempt from this tax.

"The parties to the national agreement agreed that there should not be a pyramiding of the supplemental annuities under Public Law 89-699 and the supplemental pensions under private plans, as evidenced by the testimony of Lester P. Schoene, counsel for the Railway Labor Executives Association, before the Subcommittee on Commerce and Finance on September 27, 1966:

"This is a clarification of language in the section that avoids the pyramiding of these supplemental annuities upon supplemental pensions that some railroads are already providing for. We have agreed that this should not be pyramided on pensions that the railroads are already providing for but they should be adjusted to it.

"Thus the national railroad plan embodied in Public Law 89-699 properly requires that any supplemental annuity thereby provided 'be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan * * *.' That means, if the company pension is greater in amount—which is always true under the pension plan of my companies—the pensioner gets no increase in his total retirement income by reason of the law's supplemental annuity. If the company pension is lesser in amount, the difference is paid as a supplemental annuity.

"The 1966 legislation properly avoided a pyramiding of benefits, but unfortunately it did not adequately prevent a pyramiding of costs to those railroads having their own supplemental pension plans. To the cost of the benefits that their employees derived from their negotiated pension plans, these railroads were required to add the cost of paying the supplemental annuity tax, with only a partial offset for the additional cost. To the extent that the supplemental pension plans provide for the deduction in whole or in part of the law's supplemental annuity, the railroads having such plans obtain from the pension de-

¹ Aliquippa & Southern Railroad Co., Aliquippa, Pa.; the Cuyahoga Valley Railway Co., Cleveland, Ohio; the Monongahela Connecting Railroad Co., Pittsburgh, Pa.; Pittsburgh & Ohio Valley Railway Co., Neville Island, Pittsburgh, Pa.; and the River Terminal Railway, Cleveland, Ohio.

ductions a commensurate offset against the taxes they pay. Furthermore Public Law 89-699 provided for a complicated system of tax credits, but such credits are not computed on the same basis as the tax liability, and worse, they can only be carried forward, and not backward to make up for past losses. The net effect is that the short-line railroads have been required to assume substantial pension costs beyond those they bargained to assume with the labor organizations representing their employees.

"The cost of my own six small companies, whose total employment is only 3,700, shows the extent of the added costs unfairly imposed upon them. On these six roads it is estimated that if the tax remains at 2 cents during the 5-year period from November 1, 1966, through October 31, 1971, the net cost—that is, taxes paid less tax credits and pension deductions—would be approximately \$165,000. If the tax were now raised to 3½ cents for the period July 1, 1969, through October 31, 1971, the net cost for the 5-year period would jump to approximately \$470,000. For any increase in the tax above 2 cents, the unreimbursed additional cost on the six railroads is \$80,000 per year for each cent of tax. To continue the supplemental annuities at the same benefit rates for a second 5-year period, one estimate has been that it would require a tax of 7½ cents. At 7½ cents the net cost on the six railroads for the second 5-year period would be approximately \$1,300,000. And these are conservative figures based on the assumption that all employees would retire at or before age 65 and live throughout both 5-year periods. This net cost to my companies may even be greater under the unlimited taxing authority sought in H.R. 11607.

"This injustice clearly calls for remedial legislation exempting from the national railroad supplemental annuity plan and its taxing provisions those carriers and their employees who are covered by their own collective bargained pension plans. We have discussed this problem with the National Railway Labor Conference, and the conference has suggested an acceptable approach which, in view of the equities, we hope is also acceptable to the national railway labor organizations.

"That is the proposal that appears from page 23 on in Mr. Hiltz' statement.

"Under this proposal, railroads with negotiated private pension plans would, after enactment of an amendment, not be subject to payment of the excise tax as to their employees who are covered by the negotiated plans. Such railroads, however, would continue to pay the regular tax as to all employees not covered by the negotiated plans. Supplemental annuities would continue to be paid to the extent that they are now paid or in future would be payable to all employees of any such railroad. The railroad would then, on a monthly or quarterly basis, reimburse the railroad retirement supplemental account for the amounts of supplemental annuities actually paid to the employees covered by negotiated plans, plus a service charge to cover administrative expenses of the Board. These reimbursements would apply to the supplemental annuities being paid to the already retired employees as well as to those who would receive supplemental annuities in the future following their retirement.

"For the reasons outlined above, the railroads which I represent are opposed to the passage of H.R. 11607, unless it is accompanied by the remedial legislation proposed by the National Railway Labor Conference.

Mr. PICKLE. Thank you, Mr. Hancox.
If this legislation was accompanied by remedial legislation that you propose, would your organization then favor H.R. 11607?

Mr. HANCOX. Our organizations do not follow the national railroad pattern. Also, if this remedial legislation went in they would not get supplemental annuities. Under our pension plan now they either get no supplemental annuity at all or they get a partial supplemental annuity.

To the extent that they get a partial supplemental annuity, their pensions are reduced. So the present law, Public Law 89-699, has not meant any additional retirement income to our employees who get supplemental pensions from the company under our negotiated plans. So they would have no position, really, on H.R. 11607. It would be of no monetary interest to them.

Mr. PICKLE. Do you know whether the railway labor organization and management would be agreeable to the amendment that you propose?

Mr. HANCOX. Mr. Hiltz has put into his statement and has discussed with us, in fact it was their formal suggestion—we wanted to get out entirely and there were some problems in doing that—his organization has come up with this proposal whereby we would gain some financial relief for our represented employees who have negotiated supplemental pension plans.

I understand that it is acceptable to management, and I believe that it has been discussed in passing with the railway labor organizations—we had talked earlier on that—and I am very hopeful and I believe that they would be agreeable to it, too, because our employees are members of the same national brotherhoods that make up the national railway labor organization. It is just that they haven't been able to get the benefit of the supplemental annuities because of these privately negotiated supplemental pension plans.

Mr. PICKLE. Mr. Skubitz, do you have any questions?

Mr. SKUBITZ. I have no questions.

Mr. PICKLE. We thank you, Mr. Hancox, for giving us this testimony. I do see that you have a different problem, that is a private pension plan.

The committee I know would want to address itself to this matter if and when we pursue this in executive session.

I thank you for presenting this testimony and giving us the benefit of your views.

I believe there are no further witnesses.

The CHAIRMAN. Mr. Hancox, I am sorry I was not here to hear your testimony. I will read it in the record, I assure you.

I want to thank all of you who have come to give us the benefit of your views.

I want to thank all of you and especially those who had to stay over. These days have been long, and I know they are tiresome, but it seems that if we are going to get our job done we have to do it. So I want to thank all of you for bearing with us.

This closes the hearings on H.R. 11607 and related bills. We will go into executive session later.

(The following statement was received for the record:)

(The following statement was received for the record:)

STATEMENT OF R. D. LAKE, VICE PRESIDENT OR DIRECTOR, BESSEMER AND LAKE ERIE RAILROAD COMPANY; DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY; ELGIN, JOLIET AND EASTERN RAILWAY COMPANY; THE LAKE TERMINAL RAILROAD COMPANY; MCKEESPORT CONNECTING RAILROAD COMPANY; THE NEWBURGH AND SOUTH SHORE RAILWAY COMPANY; NORTHAMPTON AND BATH RAILROAD COMPANY UNION RAILROAD COMPANY; AND YOUNGSTOWN & NORTHERN RAILROAD COMPANY

My name is R. D. Lake. I am Vice President or Director of the nine railroads listed at the conclusion of my statement. My statement is made in behalf of these nine railroads, who have in excess of 10,000 employees, in opposition to H.R. 11607 in its present form and in support of the proposal by the National Railway Labor Conference.

I oppose H.R. 11607 because among other things it fails to remedy the defect in the existing law whereby railroads with private supplemental pension plans negotiated with labor unions are still required to pay the excise tax.

Public Law 89-699, effective October 30, 1966, imposed a new tax upon railroad employers of 2¢ (per employee hour paid for) for the purpose of providing supplemental pension benefits to employees. The railroads which I represent object to the payment of this tax since they are already providing and paying for the same or greater benefits under their own negotiated supplemental pension plans. I submit to this Committee that such treatment is patently unfair.

When Public Law 89-699 was enacted in 1966, our employees were already covered by private supplemental pension programs that provided benefits in excess of those available from Public Law 89-699. The Railroads and the Railroad Labor Organizations agreed that there should not be a pyramiding of public and private benefits as evidenced by testimony before the Subcommittee on Commerce and Finance.

The 1966 legislation rightfully avoided a pyramiding of benefits but did not prevent a pyramiding of costs under all circumstances. While Public Law 89-699 provided for a system of tax credits, these credits are not computed on the same basis as the tax liability. In the less than three years that the supplemental annuity legislation has been in effect, the railroads listed in the appendix experienced a substantial pyramiding of costs with the tax rate at the 2¢ level. In addition to assuming the cost of the benefits which their employees derived from negotiated private pension plans, they were required to add to these costs by the payment of the supplemental annuity tax with only a partial offset through operation of the credit provisions of the law. Through March, 1969, this unrecovered cost has amounted to almost \$700,000. With the projected increase in the rate of the tax, the cost burden will increase many times over.

To correct this fundamental defect in the present law, we have worked with the National Railway Labor Conference and concur in their proposal, which not only corrects this inequity but also resolves other matters which are of importance to the railroad industry in general. Under this proposal, railroads with private supplemental pension plans which are the result of collective bargaining are not to be subject to the payment of the excise tax as to those employees who are covered by such negotiated plans. Such railroads would continue to pay such tax as to all employees not covered by such negotiated plans. Supplemental annuities would continue to be paid by the Railroad Retirement Board to the extent that they are now paid or in future would be payable to all eligible employees of any of such railroads under Public Law 89-699, 1966. Such railroads would be subject to another excise tax, payable monthly, to cover the amounts of supplemental annuities actually paid to the retired employees of such companies covered by such negotiated plan, plus a percentage of such amount to cover administrative costs. This tax would be a reimbursement to the Railroad Retirement Board of the supplemental annuities being paid to the already retired employees who had retired under such negotiated plans, as well as to those who would receive supplemental annuities in the future following their retirement under such plans.

For the reasons set forth above, the nine railroads for whom this statement is made are opposed to the passage of H.R. 11607 and support instead the alternate bill proposed by the National Railway Labor Conference.

Bessemer and Lake Erie Railroad Co.; Duluth, Missabe and Iron Range Railway Co.; Elgin, Joliet and Eastern Railway Co.; The Lake Terminal Railroad Co.; McKeesport Connecting Railroad Co.; The Newburgh and South Shore Railway Co.; Northampton and Bath Railroad Co.; Union Railroad Co.; and Youngstown & Northern Railroad Co.

(Whereupon, at 4:20 p.m. the committee adjourned.)



