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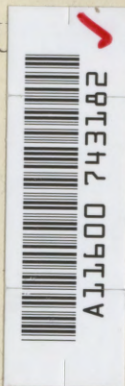
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SUBCOMMITTEE ON RETIREMENT, INSURANCE,
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OF THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS

FIRST SESSION

ON

H.R. 9858 and Similar Bills

A BILL TO AMEND TITLE 5, UNITED STATES CODE, TO CORRECT
CERTAIN INEQUITIES IN THE CREDITING OF NATIONAL
GUARD TECHNICIAN SERVICE IN CONNECTION WITH CIVIL
SERVICE RETIREMENT, AND FOR OTHER PURPOSES

SEPTEMBER 17, 1971

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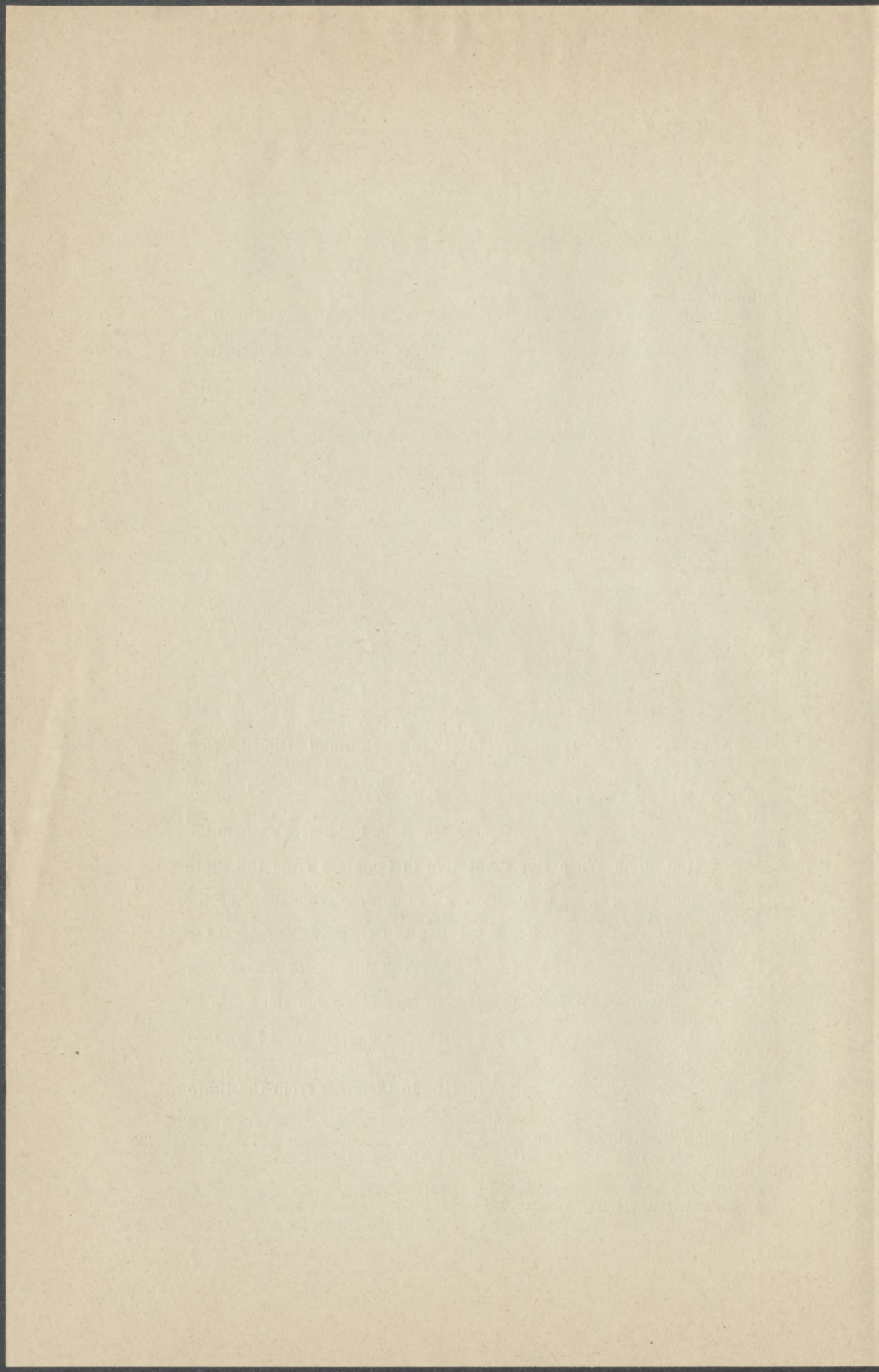
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NATIONAL GUARD RETIREMENT

FRIDAY, SEPTEMBER 17, 1971

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

The subcommittee met at 10:20 a.m., in room 210, Cannon House Office Building, Washington, D.C., Hon. Bill Chappell, Jr. (acting chairman) presiding.

Mr. CHAPPELL. The subcommittee will please come to order.

It looks like we have a very large subcommittee here this morning. It looks like we have got a few who want to testify.

Let me apologize for being late and for holding some of you up this morning. We will try to catch up on that, to move along and give everybody an opportunity to be heard.

As you know, today the Committee on Retirement, Insurance, and Health Benefits is being convened to hear testimony on legislation to increase retirement benefits for National Guard technicians. When the National Guard Technicians Act was passed in 1968, technicians who were in the program on or after January 1, 1969, were given full Federal employee status with one exception. That exception was that for annuity computation and optional deposit purposes, credit was granted at a 55-percent rate for pre-1969 service.

The legislation which is before us today deals with two primary changes in the technician retirement program. First, it would raise the 55-percent figure to a full 100 percent. Second, the bill would repeal the restriction that benefits be granted only to those technicians serving in the National Guard program on and after January 1, 1969.

Without objection, a copy of one of a number of identical bills on the subject, H. R. 9858, and the administrative report thereon, will be inserted in the record at this point.

(The bill and the administrative report follow:)

[H.R. 9858, 92d Cong. first sess.]

A BILL To amend title 5, United States Code, to correct certain inequities in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8332(b) of title 5, United States Code, relating to creditable service for civil service retirement purposes, is amended by striking out the last sentence thereof which reads as follows: "Service referred to in paragraph (6) is allowable only in the case of persons performing service under section 709 of title 32, United States Code, on or after the effective date of the National Guard Technicians Act of 1968."

(b) Section 8334(c) of title 5, United States Code, relating to deposits for periods of creditable service for civil service retirement purposes is amended by striking out the last sentence thereof which reads as follows: "Notwithstanding the foregoing provisions of this subsection, the deposit with respect to a period of service referred to in section 8332(b) (6) which was performed prior to the effective date of the National Guard Technicians Act of 1968 shall be an amount equal to 55 per centum of a deposit computed in accordance with such provisions."

(c) Section 8339 of title 5, United States Code, relating to computation of civil service retirement annuities, is amended by striking out subsection (1) thereof which reads as follows:

"(1) In determining service for the purpose of computing an annuity under each paragraph of this section, 45 per centum of each year, or fraction thereof, of service referred to in section 8332(b) (6) which was performed prior to the effective date of the National Guard Technicians Act of 1968 shall be disregarded."

(d) Section 3(c) of the National Guard Technicians Act of 1968 (82 Stat. 757; Public Law 90-486), relating to crediting of National Guard technician service for Federal employees' leave, death, and disability compensation, group life and health insurance, severance pay, tenure, and status, is amended by striking out the last sentence thereof which reads as follows: "This subsection shall apply only in the case of persons who perform service under section 709 of title 32, United States Code, on or after the effective date of this Act."

SEC. 2. The foregoing provisions of this Act shall become effective as of January 1, 1969.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C. September 14, 1971.

HON. JEROME R. WALDIE,

Chairman, Subcommittee on Retirement, Insurance, and Health Benefits, Committee on Post Office and Civil Service, House of Representatives.

DEAR MR. WALDIE: At your request, I am pleased to submit a statement in behalf of the Civil Service Commission relative to your Subcommittee's scheduled hearings on H.R. 9858 and other identical bills "To amend title 5, United States Code, to correct certain inequities in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes."

Effective January 1, 1969, the National Guard Technician Act of 1968, Public Law 90-486, statutorily grants Federal employee status to National Guard technicians, bringing them under the civil service retirement law, and according full credit to those employed under the technician program on and after that date for their pre-1969 technician service in determining length of service for leave, Federal employees death and disability compensation, group life and health insurance, severance pay, tenure, status, and for civil service retirement, except for annuity computation and optional deposit purposes. For annuity computation purposes, credit is allowed for 55% of the pre-1969 technician service. Also, technicians have the option of paying 55% of the deposit required for this past technician service for which no retirement deductions were taken from their salaries. If the deposit is not made, the annuity otherwise payable in each case is reduced by 10% of the amount determined to be due.

H. R. 9858 would, retroactively from January 1, 1969, make the following changes in the crediting of pre-1969 National Guard technician service:

1. Repeal the last sentence in section 8332(b) of title 5, United States Code, which restricts civil service retirement credit for pre-1969 National Guard technician service to only those persons who are actually employed as technicians on and after January 1, 1969. Deletion of this sentence would have the effect of granting retirement credit to all former technicians serving in any civil service covered position on and after January 1, 1969.

2. Repeal the last sentence of section 8334(c) of title 5, United States Code, which limits the optional deposit to 55% of the amount determined to be due. Deletion of this sentence would allow eligible technicians to pay the full amount of the optional deposit due for their pre-1969 technician service.

3. Repeal section 8339(1) of title 5, United States Code, which provides that 45% of each year of such technician service is to be disregarded for annuity computation purposes. Elimination of this subsection would have the effect of allowing 100% retirement credit for pre-1969 technician service for annuity computation purposes.

4. Repeal the last sentence of section 3(c) of the National Guard Technician Act of 1968 (82 Stat. 757) which allows only those persons serving in the technician program on and after January 1, 1969 to receive full credit for their pre-1969 technician service in determining length of service for leave, Federal employees death and disability compensation, group life and health insurance, severance pay, tenure and status purposes. Deletion of this sentence would allow all former technicians in Government service on and after January 1, 1969 to receive service credit for their pre-1969 technician service for the purposes stated.

Insofar as cost is concerned, if the 55% credit provision for pre-1969 technician service is repealed, the unfunded liability of the civil service retirement fund would be increased by \$128 million. Under the provisions of section 8348(f) of title 5, United States Code, this amount could be amortized by 30 equal annual installments of approximately \$7.9 million. We are unable to determine the number of former technicians who were separated from the technician program prior to January 1, 1969, but who are and will be employed in civil service covered positions on and after this date and will under H.R. 9858 receive retirement credit for their past technician service. We cannot therefore estimate the cost of providing retirement credit to these people for their past technician service.

In any event, the Commission does not concur in the enactment of H.R. 9858. The National Guard Technician Act of 1968 represents a compromise among a wide range of choices which was available to the Legislative and Executive branches of the Government in considering (among other things) the persons who would benefit from the Act, and the degree and extent to which pre-1969 non-Federal technician service would be creditable for civil service retirement purposes.

The Commission is not aware of any new developments since adoption of the compromise solution which make it less acceptable today than it was at the time of enactment. No reasons have been advanced for liberalizing the benefit provisions and incurring the additional costs involved which were not fully considered before approval of the present law.

For the above reasons, the Commission recommends that adverse action be taken on H.R. 9858 and on any other identical bill.

The Office of management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission :

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

Mr. CHAPPELL. The first statement before the subcommittee is from the Honorable William S. Moorhead. His statement will appear in the record at this point, as though presented in full.

STATEMENT OF HON. WILLIAM S. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MOORHEAD. Mr. Chairman, I want to thank you for giving me the opportunity to appear in behalf of my bill H.R. 5249, which I believe will go far in rectifying a situation which adversely affects National Guard technicians.

For a number of years there was a great deal of discussion as to the status of National Guard technicians—were they Federal or State employees for purpose of coverage under the Federal Civil Service retirement program? The question was resolved in 1968 with the enactment of Public Law 90-486, the National Guard Technician Act of 1968. Under this legislation, the National Guard technicians were covered under the Federal civilian retirement program just as any Federal civilian employee. The coverage, however, was effective only for people

who were employed on the effective date of the legislation and those who became employed afterward. Moreover, the coverage was generally prospective only, even though the law provides that a covered technician can get credit for 55 percent of his employment prior to the effective date of the 1968 act. The reason why coverage is generally prospective is that the retroactive 55-percent coverage is available only if the technician himself pays civil service contributions to cover the prior service. For most technicians, men who earn \$8,000 or so a year, the cost of the retroactive coverage may be as much as \$6,000, which is considerably more than most technicians can afford.

Mr. CHAIRMAN. I would call attention to the fact that when the 1968 legislation was being considered—it originated in the 90th Congress as S. 3865—the Senate Committee on Armed Services said in its report that there were a number of ways that coverage could be provided for National Guard technicians. Either no credit could be given for prior service—this was one extreme—or, the other extreme, full credit could be given. The committee's report goes on to say that, "... after long and careful examination . . . the 55-percent credit represents a fair, equitable and generous treatment of this matter."

I find it difficult to believe that legislation purporting to provide a specific benefit is fair, or is equitable, or is generous when it conditions the benefit on a requirement that is impossible for most of the affected employees to meet. It seems to me that a law of this type is a little like the mother who gave her daughter permission to go for a swim as long as she did not get wet.

The idea behind the 1968 legislation is fine. We did, however, get a little off the track in the details of the legislation and now I propose that we should perfect the idea that is embodied in the 1968 act. Therefore, I have introduced H.R. 5249 which would provide retroactive civil service retirement credits for all National Guard technicians, regardless of when their employment terminated and without regard to the payment of contributions for the retroactive coverage by the technicians.

This, I think, is what we should have done in 1968 and I urge your subcommittee to take prompt action to perfect the 1968 legislation which provides civil service retirement coverage for National Guard technicians.

Mr. CHAPPELL. We have some Members of Congress who wish to testify. First we have Congressman Stratton from New York.

STATEMENT OF HON. SAMUEL S. STRATTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

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

I want to express my appreciation to you and to the other members of the committee for your courtesy in scheduling these hearings. We have made an effort for some time to initiate the hearings, and I appreciate the action of Chairman Waldie and Chairman Dulski in arranging for these hearings today.

I have a prepared statement. I will try to be very brief in reading it because, as you say, Mr. Chairman, we do have a number of other people who want to testify in support of this legislation. And, as you can see, there is very substantial interest in it.

Mr. Chairman, I appear this morning in an effort to achieve merely simple justice for thousands of loyal Federal Government employees, who, because of a very specialized situation, are not receiving that justice today.

I refer to the National Guard technicians, the day-to-day professionals and experts without whose skills and dedication one of the key elements of our overall national defense structure, the National Guard, could not operate. These are the men and women who keep our powder dry; who make sure that our guns and tanks are ready for instant use when the balloon goes up; and who make sure throughout the week that our reserve airplanes are ready to fly on weekends for our weekend warriors.

As America's regular, standing forces decline in size and strength, as Congress has dictated they shall decline, the importance of our Guard forces to our Nation's safety and security increases geometrically. And its readiness and its capability will be nothing without the help of the day-to-day experts who alone are capable of making a weekend military machine a genuinely credible deterrent.

Now, what is the problem to which my bill, H.R. 9858, and a considerable number of identical bills addresses itself? The problem, Mr. Chairman, is that the Federal Government is treating these National Guard technicians as second-class citizens. And it is high time we put a stop to that practice and afford those who play such a vital and essential—and volunteer, let me add—role in our national security the same rights and privileges we extend to all other Federal employees.

Briefly, the situation is this: For many, many years these National Guard technicians lived in a kind of limbo. They worked as civilian employees under the immediate direction of the State authorities, the Governor and the adjutant general. Yet, as key elements in the national defense posture, they were paid by the Federal Government. Yet they did not have real status as a Federal employee, and were not part of the Federal retirement system. In some cases they did belong to some of the various State retirement systems, and the Federal Government even paid their contribution to these systems up to certain fixed limits. In short, these technicians were, in spite of their great contribution as full-time civilian technical assistants to the National Guard program, neither fish, nor fowl, nor good red herring.

Congress, and the members of the Armed Services Committee have long been aware of the anomaly and the inequity of this situation, and tried for many years, unsuccessfully, to do something about it.

Finally, in 1968, Congress passed the National Guard Technicians Act—Public Law 90-486—which was designed to eliminate this anomaly and bring these 42,000 professional Federal employees into the Federal retirement system.

But the 1968 act unfortunately didn't do the full job. It ended one inequity but it created another. In order to get the legislation approved, as very frequently happens here on Capitol Hill, a compromise was reached in admitting these technicians to the Federal retirement system: The Federal Government would allow only 55 percent of their past Federal service to be credited to them for annuity retirement purposes.

So here we are, back again, even after the 1968 act, to second-class status. Federal employees, and in the Federal retirement system, but

getting only half of their prior service credited to them while all other Federal employees are getting full credit.

This bill before your committee today will end that inequity and that injustice, as, of course, it should be ended. We have no place today for second-class citizens of any shape or form in the Federal retirement system. Admittedly, a compromise was required in 1968 to get legislative agreement on any bill at all. But that doesn't make it right.

America got started many years ago on a basis of limited citizenship, limited suffrage, and limited democracy. We had to do it that way to get started. But it didn't make it right. And over the years, thank God, we have been gradually ending those inequities and bringing more and more Americans up to full, first-class citizenship.

We ought to be doing the same thing in this case, Mr. Chairman. I believe we have a moral obligation to end this inequity—this discrimination toward a very essential and very patriotic group of Federal employees. This is what our various bills would do, and I urge the committee's full and enthusiastic approval of them.

Mr. CHAPPELL. Thank you, Congressman Stratton. It appears that you have considerable support here for the statements which you have made.

Although I am the only one here at the moment, we have a number of questions which other members have left for us to ask, and I will try to cover those as best I can.

First of all, you were a member of the Armed Services Committee back when this was passed, were you not?

Mr. STRATTON. That is correct.

Mr. CHAPPELL. And you were a senior member of that committee?

Mr. STRATTON. That is right.

Mr. CHAPPELL. What new factors or new matters or circumstances have come into being since the time your committee unanimously approved the present act, up to this time?

Mr. STRATTON. As a matter of fact, Mr. Chairman, our committee tried to get full retirement for these people in the legislation that originally came out of our committee. We ran into trouble, as often happens, in the other body. And as I indicated, the compromise that was needed to get the legislation enacted was an agreement on some kind of a compromise figure, and the 55 percent was the compromise that was agreed to.

As a matter of fact, our committee tried in 1967 to get these people blanketed into the Federal retirement program but the Senate knocked that provision out. We were not able to get it approved. But the Senate did agree to consider it in 1968.

So we came back in 1968 and we got the compromise figure in order to get agreement between the two bodies.

It is not that circumstances since then have changed, Mr. Chairman, but, as I tried to indicate, even though we had to get a compromise to get any kind of a bill in 1968, it still did not make that compromise right. And in the years that have passed since then these technicians have, quite justifiably, begun to be aware of the fact that they are being discriminated against, in that other Federal employees have 100 percent of their service counted toward retirement, while they have only 55. And they feel—and I think quite rightly so—that if they are

going to be first-class citizens, they ought to have the same arrangements as other Federal employees.

Mr. CHAPPELL. Mr. Stratton, as a matter of fact, though, is it not true that, except for annuity computation and optional deposit purposes, these people have full Federal employee status—which is to say that they were brought fully under the Civil Service Retirement Act except in those two respects? Is that not true?

Mr. STRATTON. Well, there, of course, is the key factor, because it means that if you are going to retire, you are going to end up with about half of the kind of retirement benefits somebody else would get who had served exactly the same length of time.

Admittedly, we are all getting a little older. These technicians are getting a little older too. They are 3 years closer to retirement now than they were in 1968, and maybe they are beginning to realize more clearly just how substantial this difference is going to be.

Mr. CHAPPELL. But the fact remains that, except for those two features—that is, annuity computation and optional deposit purposes—they have full status?

I just want to get the record straight on that. Is that not true?

Mr. STRATTON. My understanding, Mr. Chairman, is that the most important thing about a retirement program is what you draw when you retire.

Mr. CHAPPELL. I understand that.

Mr. STRATTON. You use the word "annuity," but the meaning is still that you are going to get only 55 percent of what somebody else will be getting under that program, once you have retired, who has worked exactly the same number of years as a Federal employee.

Mr. CHAPPELL. My point is, so that we can understand and get right to the problem and try to work out this inequity, those are the two things really that we are trying to work out, because everything else has already been worked out?

Mr. STRATTON. That is correct. That is my understanding.

Mr. CHAPPELL. Talking about the matter of annuity computation and optional deposit purposes as differences or variances from the other Federal employees, which is to—

Mr. STRATTON. You are much more knowledgeable than I am, Mr. Chairman, on these technical matters with respect to the details of the retirement system because, of course, that is the field in which this committee has special jurisdiction.

But my understanding is that what we are talking about is the amount of money that these people are going to get when they retire.

Mr. CHAPPELL. Let me read this into the record at this point, because I do want to see if we are all talking about the same thing. We are trying to come down just to those two points.

As I understand it now, effective January 1, 1969, the National Guard Technician Act of 1968, Public Law 90-486, statutorily first granted Federal employee status to National Guard technicians, which meant that they were brought under the civil service retirement law and, accordingly, they were granted full credit—or that is to say, full credit was granted to those employed under the technician program on and after that date for their pre-1969 technician service in determining

length of service for leave, Federal employees death and disability compensation, group life and health insurance, severance pay, tenure, status, and for civil service retirement—and here is the point: and for civil service retirement, except for annuity computation and optional deposit purposes.

I want to be sure we are all talking about the same things. And I would ask those who will testify later to comment on those to be sure we do understand that everything else has already been covered and we are talking only about this one thing—that is, for civil service retirement. Except for that, they have full status in every respect with other Federal employees? And we are dealing here with the question of, “Shall we grant the 100 percent?” And, with reference to that, so that we would settle this matter of annuity computation and optional deposit purposes.

Let me go on to say, as I understand it, for annuity computation purposes, credit is allowed for 22 percent of the pre-1969 technician service. Also, technicians have the option of paying 55 percent of the deposit required for this past technician service for which no retirement deductions were taken from their salaries.

If the deposit is not made, the annuity otherwise payable in each case is reduced by 10 percent of the amount determined to be due.

I just want to ask all of you, as we consider these things—if there are areas of disagreement on that, let us hear those, and if not, let us address ourselves strictly to the two other points.

Mr. STRATTON. Mr. Chairman, I do not think there is any disagreement about the wording of this letter—which is, of course, a report from the Civil Service Commission and it is an unfavorable report on this bill—except that when they say “and civil service retirement except for annuity computation and optional deposit purposes,” it makes it sound as if this was some very specialized and limited type of retirement problem.

Actually the thing they are referring to is the amount of money you get when you retire, and that is the guts of the whole civil service retirement program.

Maybe if a technician dies before he retires his benefits to his widow are going to be the same as those of other employees. But the important question is, once you retire, how much you are going to get to live on? And when we are talking about an “annuity compensation,” we are talking about the money you get under the retirement programs.

Now, as this letter points out, these technicians do have to make a deposit of what should have been paid in for this 55 percent of their service, and if they do not make that deposit, then what they receive is reduced by another 10 percent.

Mr. CHAPPELL. This, though, Mr. Stratton, is optional, not mandatory; right?

Mr. STRATTON. That is right. But, again, people might say, “Well, isn’t this fair, because they should have contributed during all of these years and they didn’t contribute?”

But let me point out that, after all, these technicians have been in a kind of limbo status. They are civilians and yet they have been performing military functions. And, of course, the whole military retirement system is a noncontributory retirement system, so that there is

really nothing too unusual in having them blanketed into this system since they are already performing military functions, even without a full contribution on their part.

Mr. CHAPPELL. But, Mr. Stratton, on that point, they have that retirement system. They are entitled to that retirement system at age 60. Am I correct on that?

In other words, they are really wearing two hats; they are really in two capacities?

Mr. STRATTON. Some of them may also be military personnel; that is true. And they would have whatever retirement might accrue to them as Reserve or National Guard personnel. I do not know the exact percentage. I do not know how many are in both of these positions.

But, of course, anyone who has a Reserve status and is getting or is looking forward to a Reserve retirement knows it is a pretty small retirement.

Mr. CHAPPELL. Do you know what percentage of these people are actually members of the Reserve?

Mr. STRATTON. No; I do not have that figure, Mr. Chairman.

Mr. CHAPPELL. It is something like 95 percent or better; is it not? It is something like 5 percent or less that is not required to be members of the Reserve because of their particular station?

Mr. STRATTON. I think some of the members of the organization probably would have to answer that. It may be fairly high, but I do not think it is completely 100 percent.

Mr. CHAPPELL. Let me ask this question of you—and I would like to ask particularly our colleagues to comment on it when they have an opportunity to comment on it.

As I understand it, the Federal Government back before the Federal employee status granted—I understand that the Federal Government actually contributed to the States, I think in some 17 or 18 instances with other States?

Mr. STRATTON. That is right. I mentioned that in my statement.

Mr. CHAPPELL. Now I assume that when those States pulled away, when they went into this program, that there was still some Federal money left to those States, and apparently unused. If my judgment is correct, there would be a good number of millions of dollars involved, maybe \$17 million or \$18 million.

Would it be your feeling that there ought to be some type of effort made to recover those moneys back from those States, either by credit or otherwise?

Mr. STRATTON. I would think that that might be a very desirable move, Mr. Chairman. But I am afraid I could not give you any reading on how successful you would be with respect to New York State, for example, with all the financial problems that Governor Rockefeller has got now. I do not know whether he would be able to dig up the funds to return to the Federal Government.

Mr. CHAPPELL. Of course, if the State is receiving Federal moneys from time to time, a simple little credit against what the Federal Government might be contributing would be one way, which means it could be obtained, and particularly if you spread it out over a period of several years.

I just wondered what you think.

Mr. STRATTON. I do not know what the situation is. That is a very good point. It is conceivable that these people may have built up some interest in the State retirement system.

This matter first came to my attention when I first came to Congress in 1959. I remember that Congressman Becker from Long Island, who was a member of the committee at that time, was one of the leading proponents of trying to get these people blanketed under the Federal retirement system, and part of the problem was that the Federal Government would contribute to the State retirement system only the same percentage of the salary of the technician that would be contributed did he belong to the Federal system—which I think was 5 or 6 percent at that time. I have forgotten what the exact figure was. Whereas in the New York State retirement system, I think the required percentage was as high as 14 percent. And the National Guard technicians in New York found that they, although the Federal Government was willing to make some contribution to the State retirement system, it wasn't willing to make the percentage that was required, so then people were left in a special kind of limbo again. And an effort was made to try to get the Government to agree to contribute whatever figure the particular State program would require.

But this was turned down. Then the effort was made to try to blanket the technicians into the Federal system.

I do not know, however, whether any moneys were actually contributed. It might be that since New York State requirements were so high that nothing was contributed at all. I am not really clear on that point.

Mr. CHAPPELL. I think the record will reflect that there are some 17 States, and even those States varied. And in the other States, as I understand it, they had no pension programs at all.

I would just like to see a show of hands, if I might, of those of you in here who were participating in a program, that is, a State program before. Would you raise your hands? [Show of hands.]

Mr. CHAPPELL. Let the record show approximately a third of those here had been under State programs for some sort of retirement.

Now, all of you who were under no program at all, raise your hands. [Show of hands.]

This looks like the record would be accurate to reflect some two-thirds who were under no program at all.

Mr. Stratton, let me ask this question: Do you know whether the bill would in any way touch the circumstance where these people who were under a program—do you have any information as to whether or not they were offered the opportunity to have any moneys contributed refunded to them prior to their moving into this program?

Mr. STRATTON. I am afraid that I can't answer that question, Mr. Chairman.

Mr. CHAPPELL. I assume somebody else later can answer this.

Mr. STRATTON. I was not on the subcommittee that developed the legislation, and I do not honestly know the answer to that point.

Mr. CHAPPELL. At this point I would like to see a show of hands as to how many of these people are actually members of the National Guard. [Show of hands.]

Let the record show that is nearly 100 percent.

Let us test it the other way. How many of you are not members of the National Guard? [Show of hands.]

I see four hands, I believe, altogether. And there are both sexes involved. There is no discrimination on that point.

Mr. Stratton, have you attempted to make any computation yourself or have the computation made for you on the cost of this?

Mr. STRATTON. No; I have not made any computation. The civil service report, as you know, indicates that it would increase the unfunded liability of the civil service retirement fund by \$128 million, and this amount could be amortized by 30 equal annual installments of approximately \$7.9 million.

I am sure that they would not be underestimating the liability.

But when you consider, Mr. Chairman, that in order to get a volunteer armed force we have just added \$2.7 billion to the pay bill for a single year—and I read in the paper this morning that in an effort to prevent that bill from being placed on the table in the other body, the President is willing to go along with the effort to upgrade the conference report which cut that \$2.7 billion down to \$2.4 billion, back up to \$2.7 billion. This will satisfy Senator Allott and several others and maybe get enough votes to keep the bill from being tabled.

But it does seem to me that when we want to keep people in the armed services—and these technicians are all volunteers—\$128 million is a pretty small figure compared to \$2.7 billion in a single year.

Mr. CHAPPELL. Mr. Stratton, thank you very much. As usual, you have done an excellent and outstanding job, and the committee appreciates the information which you have brought to us.

Mr. STRATTON. Thank you very much, Mr. Chairman. I hope I have been able to persuade the committee.

Mr. CHAPPELL. Congressman Melcher from Montana.

STATEMENT OF HON. JOHN MELCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. MELCHER. Thank you, Mr. Chairman. I am pleased that the subcommittee is considering the inequities of the present computation method for crediting National Guard technician service for purposes of civil service retirement and am thankful for the opportunity to assert the remedies offered by my bill, H.R. 8289, and other identical bills.

Since the passage of the National Guard Technician Act of 1968, which laid down the very arbitrary 55 percent scheme for annuity computation for pre-1969 technician service, the need to effect a just correction has been obvious. The act's important advance of granting Federal employee status to National Guard technicians was impaired by the failure to grant them 100-percent retirement credit for pre-1969 technician service for annuity purposes. As Federal employees, they should be treated equally with others under civil service procedures.

The net result of my bill, and the other identical bills, would be to grant retirement credit to all former technicians serving in any Civil Service covered position on and after July 1, 1969, to enable eligible technicians to pay the full amount of the optional deposit due

for their pre-1969 technician service when computing annuities, and to allow all former technicians in Federal service on and after January 1, 1969, to receive service credit for their pre-1969 service.

These provisions will bring the status of technicians into a more proper alinement. The National Guard Technicians Act appropriately granted these one-time State employees Federal status with full credit for their pre-1969 technician service in ascertaining the length of service for leave, Federal employee death and disability compensation, group life and health insurance, severance pay, tenure and status. H.R. 8289, and the other identical bills, will add annuity computations to that 100-percent list.

The National Guard is an essential link in our defense network. Its varied units and components, each with a clearly and carefully defined mission in cooperation with our active forces, are a vital part of our strategic system. The National Guard technicians shoulder the tremendous responsibility of "minding the store" in the intervals between military training assemblies. They are involved in the management of facilities and programs worth millions of dollars and of large forces of military reservists. Although their written job descriptions never show it, general experience demonstrates that technicians, because of their nature as caretakers, are called upon to display expertise in much broader areas of responsibility than their paychecks reflect. Yet, historically, they have labored under greater hardships. Because of their military status also, they face an earlier retirement than other civilian employees, plus rigorous periodic military physical examinations which, if failed, could result in an altered retirement status.

The National Guard Bureau says nearly 95 percent of the technicians do not have transfer rights to other agencies or career jobs because of their "expected" status under law. In the pre-1969 years as State employees, they suffered many on-the-job drawbacks, including the lack of pay for overtime work and travel expenses. There is no doubt in my mind that these men fully deserve this corrective legislation.

Mr. Chairman, there are those who will say this legislation is too costly, but I think not. The Civil Service Commission reports the legislation would create a new retirement system liability of about \$128 million for the pre-1969 adjustment for present technicians, which could be amortized over a 30-year period. This is within our resources as a nation, to establish a policy of equity and fairness for all Federal service employees.

I urge the subcommittee to act favorably on this legislation.

Mr. Chairman and members, thank you for your consideration.

Mr. CHAPPELL. Mr. Melcher, thank you very much for a very fine statement.

I wonder if we might deviate a moment to give Congressman Hagan an opportunity to make his statement, because he does have a conflict of schedule.

Then we will come back to some questions, if you have no objections?

Mr. MELCHER. That is fine, Mr. Chairman. I would be happy to do so.

Mr. CHAPPELL. Thank you.

Mr. Hagan?

STATEMENT OF HON. G. ELLIOTT HAGAN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF GEORGIA

Mr. HAGAN. Thank you very much, Mr. Chairman. I appreciate, very much, your giving me the opportunity to be heard. I have been interested in this subject for quite some time. I introduced a similar bill to old H.R. 2, as a lot of you gentlemen will recall, leading up to the final 1968 legislation. I also worked on the Committee on Armed Services with Sam Stratton and others who are vitally interested in this legislation.

I am glad to have this opportunity to join these other gentlemen in expressing my feelings about the proposed legislation you are considering this morning.

I have also sponsored a similar bill, H.R. 5502, and this is on behalf of our National Guard technicians.

I have two gentlemen with me today who were over here a while ago when some of the flashbulbs were going, Mr. Jesse Reese, and Mr. Charles Riggs, who I know personally have been doing a tremendous job, along with their colleagues that I have met with on numerous occasions. And I say without any question or doubt that these men are entitled and long overdue to what we are trying to give them here today, Mr. Chairman.

When the National Guard Technicians Act of 1968 was enacted into law, it recognized that the federally paid, full-time workers of the Guard were, in fact, Federal employees. Although this law was a step in the right direction in providing for retirement credit for these dedicated civil servants, the 55-percent retirement formula is not adequate nor equitable for men who have served in past wars, present conflicts, and now stand ready for the call to duty wherever needed. This kind of service should be fully credited. Some of these men have served for years knowing that they had no retirement and no future security for themselves and their families, but were hopeful that ultimate recognition by their Government would be forthcoming. They worked hard for years to gain this recognition and Congress has seen fit to grant it.

Favorable action on the legislation before us today would allow for the amendment of the National Guard Technicians Act to include the additional 45 percent needed for 100 percent credit toward retirement. This would make a great difference to the men of the Guard and their families. For example, based on an average \$8,000 yearly salary, a Federal worker getting full credit for 20 years will receive \$242 a month on retirement against the technician's \$72 monthly. This inequity must not continue.

In view of the announced policy of the Secretary of Defense, Melvin Laird, that the National Guard and Reserve will take on increasing responsibilities and will be used initially to augment active forces should the need arise, we must keep a viable and strong National Guard.

I feel I know a little something about this, serving on the Subcommittee of Armed Services which deals with the National Guard. If we are to rely on the Guard, then the kind of incentive before the committee today will be important in keeping present personnel and in attracting good personnel in the future.

There is no doubt that recruiting will be easier when the men know that after serving their country loyally, their country will be willing to compensate them in their retirement years.

I would like to hear further discussion, but I have to rush. I appreciate this opportunity for letting me put my brief statement in the record.

I do hope—and I know that you will give this your consideration—that the committee will see fit to pass this bill.

Thank you very much.

Mr. CHAPPELL. Mr. Hagan, let me thank you for your very fine statement. The information which you have given us, and your thoughts, I am sure will be very helpful to the full committee. I am sorry we had to detain you so long.

Mr. HAGAN. That is all right. I appreciate your giving me the opportunity.

Mr. CHAPPELL. Mr. Melcher, let me cover one point I did not have an opportunity to cover for the committee with Congressman Stratton.

This bill, as I understand it, provides that there will be coverage for any person who was previously in this program—that is, prior to January 1, 1969—and who is not now in the program but working elsewhere in the Federal service.

Would you comment on what you think about that part of the bill?

Mr. MELCHER. I think that is equitable. After all, if he'd been recognized on Federal status prior to that time and were continued in a different job capacity with a different agency, that status would have followed with him, and all the advantages for retirement would have been with him. So I think this only serves to treat him equitably with other Federal employees.

Mr. CHAPPELL. Is it not a fact that in restricting the right to receive credit for pre-1969 service to only those technicians in the program thereafter, the Congress recognized the fact that service was not Federal service and indicated the intent that credit be allowed only as an incentive for participation in the technician program?

Mr. MELCHER. I was not here at that time. I was not in the Congress at that time. But I judge that was the logic in the thinking at that time.

But, in my opinion, it was not completely fair and it was not completely equitable for the National Guard technicians.

Mr. CHAPPELL. Well, as a matter of fact, because of the very nature of the Constitution, the National Guard was State-oriented; was it not?

Mr. MELCHER. Yes.

Mr. CHAPPELL. In other words, these people were part of the State Guard in every instance? That is, where they were a member of the Guard or an employee of the Guard. And because of that, and because of the provision in the Constitution, it was strictly a State situation; was it not?

Mr. MELCHER. Yes, that is true. But I understand that the technicians in the District of Columbia, however, were extended the opportunity or were extended all the other rights of Federal employees and were treated as such. So even at that time we had some split because of the nature of the District of Columbia.

Mr. CHAPPELL. Because it was not, in essence, a State?

Mr. MELCHER. That is correct, Mr. Chairman.

Mr. CHAPPELL. Which put it in a different category?

Mr. MELCHER. That is correct.

Mr. CHAPPELL. So that I understand it correctly, when the program started, you started with a situation where you had some 17 States who had some type of retirement, and the rest of them had none, which meant that these people at that time, except those 17, had no such benefits at all.

Now, was that not the way it started? They had none?

Mr. MELCHER. I am sure that is correct, Mr. Chairman.

Mr. CHAPPELL. Now it was as an incentive to keep our good people in the program and to help in recruiting that this program was first conceived and brought to the Federal employees status, and because it did, the Federal Government attempted to go far enough back and give credit for the time which had been in State service; is that not right?

Mr. MELCHER. That is my understanding.

Mr. CHAPPELL. So in the beginning there was not any obligation on the part—if you are talking about obligation and talking about equities, I just want to pursue this a minute—at that time the Federal Government had no responsibility to the State Guard, but in order to help this recruitment they got into the program and at that point went far enough to say that, “We will even give 55-percent credit for all of the time which you have spent in the State Guard.” Is that not the way this thing arose?

Mr. MELCHER. I am sure that is correct, Mr. Chairman.

Mr. CHAPPELL. I see some disagreement. If I am wrong on it—I am trying to understand it and get it in the record so members who are not here can get the right perspective on the thing.

Mr. MELCHER. I would like to point out, Mr. Chairman, regardless of what the reasoning was, what the encouragement and incentive was, that there is a precedent already established among Federal employees in that the ASCS employees were accepted into the Federal Retirement System in 1961 by an act of Congress.

Prior to that time, primarily functioning within their own counties and as part of the State board, they were not given Federal status as to retirement.

Mr. CHAPPELL. Of course, in those instances, those were instances where there was no coverage at all, no participation on the part of the Federal Government, though; was it not?

Mr. MELCHER. Well, yes; there was participation for the ASCS employees. But it was done through the States.

Mr. CHAPPELL. Were there Federal moneys contributed to the State for retirement purposes?

Mr. MELCHER. No: at that time there were no Federal moneys. But this recognized this obligation prior to 1961, and gave those particular employees the option to pick up their retirement, just as the bills today are proposing for the National Guard technicians.

Mr. CHAPPELL. Mr. Melcher, thank you very much. You have been most helpful.

Mr. MELCHER. Thank you, Mr. Chairman.

Mr. CHAPPELL. Mr. Paterno, with the Association of Civilian Technicians, will be our next witness.

Will you please identify the gentlemen you have accompanying you?

STATEMENT OF VINCENT J. PATERNO, PRESIDENT, ASSOCIATION OF CIVILIAN TECHNICIANS; ACCOMPANIED BY ANTON R. ROHRMEIER, PRESIDENT, SCHENECTADY CHAPTER, ACT; FREDERICK TEDESCO, PRESIDENT, NEW YORK CHAPTER, ACT; JOHN T. HUNTER; AND JOHN HERNON

MR. PATERNO. I have Mr. Hunter and Mr. Hernon with me, and Mr. Rohrmeier and Mr. Tedesco are in the audience.

MR. CHAPPELL. You say you have a number of other people with you?

MR. PATERNO. I would say 100 or so people.

MR. CHAPPELL. All right, you may proceed.

MR. PATERNO. I would like to first say that it is with very sincere gratitude of an individual who will be personally rewarded, as well as the pleasure of being able to serve the membership, that I thank the chairman and members for this opportunity to relate the needs of most of the National Guard civilian employees for an equitable retirement.

Our organization, composed only of Guard employees, has been deeply involved for better than a decade in gaining just and equitable treatment for this category of civil servant. That we exist today, as an independent union with thousands of members in 18 States, is testimony to the dedication of my fellow members and officers, and to the intensity of our "crusade."

When we speak, it is not only for technicians, but as National Guard technicians. When Guard employees are hurt, we feel the pain. When they are treated unfairly, we are wronged. When they anger, it is our fight. When they gain equity, justice, and appropriate reward, we gain and exult. It is in this spirit of involvement, expertise, and emotion that our position is presented.

The legislation that has been proposed as H.R. 2530, and 15 other bills in the House, S. 855 in the Senate, with eight sponsors, is a fair and appropriate way to adjust one of the inequities resulting from Public Law 90-486. That being the singular and discriminatory 55-percent formula for retirement credit for service before 1969.

This legislation would recognize past service credit in full under the normal and existing formula for all others. The National Guard employee would suffer no stigma of difference from other Federal employees. His past, unfairly lived with as an orphan in the gap between the Federal-State relationship, would no longer haunt him for the rest of his days. Cut-rate annuities for full-time service would disappear. The acceptance into the Federal employee program, at least in the retirement portion, would not deprecate his previous service. He could look forward to the uncommonly early retirement forced upon National Guard employees because of their military status, without the fears of large-scale economic deprivation. His widow could be somewhat better off in the event of death. If disabled, his income would not be abnormally low. The security and equitable rewards of long-term Government service would deservedly be gained.

Historically, we can note that legislation that would have given National Guard employees full credit for past service passed the House in 1966 and 1967. It was in the Senate that action was delayed. We can

remark that the recommendations of the President's Cabinet Committee on Federal Staff Retirement Systems, which were referred to the House Post Office and Civil Service Committee, and had gained the approval of the Civil Service Commission, and the Bureau of the Budget, on March 7, 1966, included the following:

Since National Guard technicians perform essentially Federal functions, necessary procedural changes should be effected by statute to provide formally for their Federal appointment and supervision. Their resulting formal designation by statute as Federal employees would entitle them to Civil Service Retirement Act credit and related Federal benefits. As Federal employees thus designated, they should concurrently be granted a statutory entitlement to Civil Service Retirement credit for all past National Guard technician service.

I do not find it inconsistent that the present Civil Service Commission and Office of Management and Budget think differently. I would be surprised were they to back any benefit or gain for employees. But at least they have not held out, and then withdrawn, the carrot of "comparability" before our retirees. They have determined with the efficiency, heart, and soul of an adding machine that 55 percent computed retirement benefits for National Guard employees give a "comparability" they can live with, even if our retirees must sacrifice. As I watch the economic "game plan" unfold, I hear from a widow, living in a condominium retirement village home, that she invested almost all of her savings into a few years ago, so that she could live on her \$200-a-month income as a retired GS-4, as she reports to me that the real property taxes have gone up more than double. If her monthly payment is increased in the same proportion, she will surely have to sell her retirement home just to exist. This widow is not a National Guard retiree at 55 percent computation; but a full civil service annuitant.

I sometimes wonder why National Guard employees stay with such a program as we have. Not only is their time before 1969 partially credited, but they are, for the most part, outside the competitive service, can be fired at will, do not get paid for overtime, are restricted in promotional possibilities by sex and military rank, are required to belong to the military to hold their jobs, and in most instances are forced to wear military uniforms to hide their civilian status from the world. If there is a worse public employee system in this Nation, I have not heard of it. I think it is a faith that these things would get better that has kept them, to this point. I now feel that if this program does not improve drastically that, with the next upturn in the economy, there will be a huge exodus. The productive ones will leave, with only the high-graded clubmen and their circle of bootlickers remaining.

The repair job on the imperfections of Public Law 90-486 can start in this subcommittee with affirmative consideration of the proposed legislation. It is where we must begin because hundreds of our long-term employees face retirement soon and many have retired already on amounts not sufficient to maintain dignity and reasonable life standards.

We have a man, now age 59, who retired on disability after almost 25 years of service with the final grade of GS-7 step 8, receiving \$2,208 per year in retirement pay. Another who retired at the mandatory age of 60 receives \$2,172 per year. A fine technician, WG-12, who

retired on disability at age 50 and died 10 months later, has a widow receiving \$2,145 a year.

It was argued in the Senate Armed Services Committee hearings in 1967 that these employees were covered by social security benefits. Little recognition was given to the fact that the mandatory age of retirement is 60 and that benefits under that act cannot begin before age 62, and then only at a reduced amount. It was stated that our type of employee was also covered by Reserve military retirement. However, some are not, and those with the lower grades and income can hardly expect large payments. Further, as I testified in 1967, any Federal employee who served 20 or more years in the Guard or Reserves would get the same thing. The military retirement is for separate time and separate duties.

A big issue at the time was the argument that some 4,500 employees had a vested interest in State Retirement Systems that would give them a "windfall." As a result, we gave this 10 percent of the working force only a 55-percent "windfall" but succeeded in divesting the other 90 percent of a full 45 percent of their prospective retirement for past service.

At this point I would like to include a question-and-answer dialog from pages 275-6 of the official transcript of the Senate Armed Services Committee Hearings on H.R. 2. The date was October 3, 1967. I was the witness and the Honorable Senator Miller was questioning.

Senator MILLER. May I say that if a person has been taking something out of his pay check in order to get into a State retirement system, I have some sympathy with that person if he wishes to go under the State retirement system. After all, he has been paying for it, along with the State.

But what I am concerned about especially is this penalty of only 10 percent. If you have 20 years of service, you may have a very substantial payback to make in order to get the full Civil Service Retirement. You might well—my guess is you could sit down with a sharp pencil and figure out that it would be a lot better for you not to make any payback and only take a 10 percent cut and use the money that you otherwise would have had to take to pay it all back to invest in something else.

I would just like to say that most of them are damn lucky if they can keep up their mortgage payments and send their kids to school. We had a very low-paid grade of people, basically, and the average pay is something like \$8,000 or \$9,000. We are not talking about people who can pay thousands and thousands of dollars back into the system that easily. And now, back to this.

Now I am wondering if this penalty should not be scaled according to the amount that is paid back? If a person has to pay a certain amount to bring himself up-to-date, fine. If he only pays back half of that amount, then his benefits will be scaled accordingly, instead of just an arbitrary 10 percent figure. Would not this be a little more equitable way to figure this out? I am looking at equity within the group itself.

Mr. PATERNO. I am quite happy that you brought up this question, because I think there may be some misunderstanding here.

The 10 percent we are discussing is 10 percent that was set up as a standard in the Civil Service Retirement Act, as I understand it. But the 10 percent is not a reduction of the pension by 10 percent; it is a reduction of the annuity you get by 10 percent of the amount of money you owe.

In my case, I can project that I would owe them \$10,000. Therefore, my pension would be reduced by, say, \$98 a month, or something in that area, which

would almost equate what I would get out of Social Security. The thing does balance out.

Some people are going to end up owing, because of accrued interest and because of the term of service, up to \$12,000 or \$15,000. Their pensions will be reduced by \$120 or \$100 a month. We are not discussing reducing a \$400 pension by \$40; we are discussing reducing a \$400 pension by one-quarter. This is a different set of figures than has been understood.

Senator MILLER. I am glad you brought that point out. I don't know what the mathematics are. But it would seem to me that in fairness to the Civil Service Retirement Fund which, as you know, is in pretty rough shape right now, this ought to be calculated out on how much one can pay back in order to get full benefits, and if he pays back on a lesser amount, how much those benefits would be reduced. So it is on an actuarial basis, taking the interest and all of that into account so that there is an equitable result.

Now, would you have any objection to that approach? I do not know whether the 10 percent will do this or not. If it does, fine. But, I have a feeling it may not. And if it does not, would you have an objection to using that approach?

Mr. PATERNO. Yes, sir, I have certain other objections relative to equity.

The equity of the circumstances that for all of these years, we, for instance, have not received a Government contribution to buy health insurance. We receive no Government contribution to our life insurance, as they presently do. There have been basically no fringe benefits other than annual leave and sick leave.

So if you are going to discuss this as a financial equity, then all of these things should be brought into effect, too. I have never been, in the State of New York, under the opinion that I was anything less than a Federal employee. The State of New York has never recognized me per se, by statute or any other way as a State employee. The State Courts have upheld this. The only reason for my existence is the fact that the Department of Defense makes certain regulations that the National Guard should be run by; the Congress of the United States has appropriated certain money to create me.

I do not know that we started, before some six or seven years ago, to influence any legislation in this area, because we have never had any association of our type of employees. We have been in this Association now for seven years. We have come down to Washington two times in groups. Our experience is necessarily limited, because we are all full-time technicians. We are not in any sense professional union people, or anything like this. (Note. Four years and the Executive Order have changed this.)

I do feel that the equity here, the measure of equity is to this man who has been putting in the dual service all these years; this man who has worked overtime without compensation; this man who has given more service, I believe, to his community, his State, and his Government than any other Civil Service man in this country. He is not actually asking more than any other group who has come into the Civil Service Retirement Program.

I do not argue with the premise that there could be some windfalls in particular instances, but we have assumed that this could only result to some 10 percent. I do not want to deprive them of anything they have possibly contributed or can get. I do say, though, that I can speak for the other 36,000 adequately and say there is nothing in this bill that would give us anything inequitable, sir.

Senator MILLER. I think your point on fringe benefits is well taken.

The position taken in the above-recorded dialog is valid today. I would answer now, much as I answered then. Although I received the pen used by President Johnson to sign "the National Guard Technician Act of 1968" into law, and was grateful, I could not regard this act as anything more than a short distance down the road to justice and equity. Pride in a limited accomplishment, if allowed to end there, would have given lie to previously announced principles and goals. There are no 55 percent people—only poorly constructed legislation that attempted to create them.

Behind all of the purportedly meritorious positions that denied National Guard employees the full light of day in days past, as civil

employees of their national Government, there existed adjutants general of various States, jealous in their prerogatives within a nonlegislated system of federally paid employees and fighting bitterly against efforts to gain civil service status for these employees. Suffering no need to answer appeals or grievance systems, defying merit standards, making mockery of civil rights, practicing nepotism, cronyism, and personal favoritism, there was no desire to see an identity as public servants emerge. Retirement they were not against as long as the arbitrary rule could remain. Effort after effort was made to stem the prevailing tide. The Congress was assured that if the Federal Government would pay the State share, the technicians would all be put in State retirement systems. And so they passed the law in 1961. It did not happen. Laws were then proposed that would have placed technicians under the cover of the Civil Service Retirement System without their becoming Federal employees. This did not happen. When we finally did become Federal servants, the entry law, Public Law 90-486, gave us so few of the normal rights that it is no wonder that even credit for past service was cut in half. One of these State generals said to me in 1964, before a large group, "You will never be Federal employees as long as I am around." We have since gotten the label and most of the benefits, but I think he was right.

That some employees have completed the minimum quarter coverage under social security should not be importantly regarded. This coverage available only from 1954-68 will rapidly diminish in value providing only minimum benefits in most instances. It can also be considered coverage contributed to by both employee and employer that will tend to balance out the unpaid deposit deduction from the annuity. Too, current coverage within 5 years is required for other benefits. Only 2 more years exist for that coverage due to Federal employment.

Coverage for employees who were not on board as technicians on the initial date of the act, should be extended. Many have become Federal employees in other agencies and activities and deserve no penalty for honest service, honestly given. Exclusions of this sort are discriminatory.

Reasonable retirement income, adequate survivor benefits, and above-poverty-level disability benefits are not possible for a generation of National Guard technicians without the passage of this legislation. It will cost the Government money, without doubt. But it is only proper back wages for a group of the finest employees this Nation has ever had. The service and standby readiness of these men and women during World War II, Korea, the Berlin crisis, and Vietnam, has already served the Nation well. Give them their due.

I wish to thank the chairman and members of the subcommittee for their interest and stand ready to answer any questions to the best of my ability.

Mr. CHAPPELL. Mr. Paterno, thank you very much for your usual excellent statement.

Let me ask this question in the beginning.

I notice you are not completely agreeing with something I said earlier about the present status. Let me be sure we understand each other on that now. Let me take these one-by-one so the record will be real clear on them.

Are we in agreement that effective January 1, 1969, pursuant to the National Guard Technician Act of 1968, that this law statutorily granted Federal employees status to National Guard technicians, bringing them under the Civil Service Retirement Law? Period?

Mr. PATERNO. Right, sir.

Mr. CHAPPELL. All right.

Second, that, accordingly, you were giving full credit to those employed under the technician program on and after that date for their pre-1969 technician service, fully, for determining the length of service for leave purposes? We agree on that?

Mr. PATERNO. That is right, sir.

Mr. CHAPPELL. And for Federal employees death and disability compensation, just like all the other Federal employees?

Mr. PATERNO. I imagine so. I have not gone into that in depth. I would not know if there is a formula that would affect it.

Mr. CHAPPELL. All right, then, the next item, with reference to group life and health insurance?

Mr. PATERNO. Yes, sir.

Mr. CHAPPELL. Is it just like all the other Federal employees?

Now with reference to severance pay, do we not agree that it is just exactly like all the other Federal employees?

Mr. PATERNO. Well, yes; in a financial sense it is the same. The application of the severance principle is different.

Mr. CHAPPELL. In what sense?

Mr. PATERNO. In the sense that we are not under the normal Civil Service Adverse Action Appeals System. We do not have the normal protection against arbitrary layoff that the normal competitive civil servant does have.

Mr. CHAPPELL. But insofar as determining what the severance pay is, it is the same, is it not?

Mr. PATERNO. Yes; it is.

Mr. CHAPPELL. Do we not agree that you are in the same status as all of the Federal employees with reference to tenure?

Mr. PATERNO. I do not believe so, sir. Tenure would be relative to your being in the competitive status for an effected purpose.

Tenure for pay purposes, yes. Tenure for retention purposes or other purposes that we could be talking about, no.

Mr. CHAPPELL. Can you give an example on that?

Mr. PATERNO. I can give the example that the final appeal on, for instance, the elimination of a person by reduction of force or for any other reason lies in the hands of the State adjutant general, who is the State officer. There is no appeal beyond that.

In the grievance procedure, the reduction of force procedure, he is not required to follow merit standards set by the Civil Service Commission but, rather, can assert his own.

There is a military rank requirement put in on top of the thing which really confuses the whole issue.

I do not believe you can honestly state that the tenure provision is there and relates completely to us.

Mr. CHAPPELL. Should not this bill touch on that point, then, if we are trying to do away with all of the inequities?

Mr. PATERNO. I would feel we should try to do away with all the inequities. But I would feel that an omnibus bill that would include everything in it would suffer much more difficulty of passage.

Mr. CHAPPELL. Then are we talking about an omnibus bill? We have agreed, I think on all the items—one you were not sure about, death and disability compensation. We agreed on those, the rest of them, down to tenure. And then insofar as pay purposes, we agree that that is identical to the rest of them?

Mr. PATERNO. For pay purposes, yes.

Mr. CHAPPELL. But what you are suggesting is that there is an inequity as to the hiring and firing procedures? I think that is what you are really talking about.

Mr. PATERNO. Right.

Mr. CHAPPELL. Now that we are down to that point, there is only one other that is above and beyond what is already in the bill, and that is status. Do we agree that you have the same position with reference to status as other Federal employees?

Mr. PATERNO. No. We are in the excepted service.

Mr. CHAPPELL. Now what would it take to bring status into line?

Mr. PATERNO. This would take separate separate legislation for other purposes. It would not require any financial circumstance or any report of the Bureau of the Budget.

It raises questions relative to certain decisions by the Senate Armed Services Committee, primarily, that would not really be germane to this particular issue.

This particular issue is rightly vested in this committee, because it is simple and singularly a retirement issue.

Mr. CHAPPELL. Why was it not lodged in the committee to begin with, rather than the Armed Services Committee? It looks like we are trying to help them clean up some of their mess.

Mr. PATERNO. The same adjutant general who told me we would never be Federal employees as long as he was around advised me they had pressured this thing in the Armed Services Committee because they thought they would get that kind of consideration there rather than the Civil Service Committee.

Mr. CHAPPELL. Are there any grievance procedures at the State level?

Mr. PATERNO. There could be some negotiated, but there is no appeal beyond the State adjutant general.

Mr. CHAPPELL. Well, then, tenure would be a proper item for this committee, but status would not? That is what you are saying?

Mr. PATERNO. Well, for instance, we have proposed legislation against the wearing of the uniform during the pursuit of civilian duties, since it lends so many confusions and many improprieties to a civilian structure. This particular legislation, for instance, was given by the Parliamentarian to the Armed Services Committee.

We have a jurisdictional problem here.

Mr. CHAPPELL. I understand that. I was just trying to get your thought.

When you are talking about an omnibus bill, it seems to me that we are down to the point of where you have full—in your words—full

Federal status except in the area of tenure. And you have that with reference to the determination of the amount of pay, but not with reference to the hiring and firing—which might be a consideration for this committee. And status, which, of course, is for, in your opinion, a military affairs committee, the Armed Services Committee?

Mr. PATERNO. Not in my opinion.

Mr. CHAPPELL. I think I concur with you on that. I am not trying to get into that. I am just talking about these areas.

Then we come down to the final item, as I view it, and then you have—except in those areas we have already talked about and in this specific one for civil service retirement—do you not agree that you have full Federal status except for annuity computation and optional deposit purposes? That is what we are talking about.

Mr. PATERNO. The annuity purposes, for past service?

Mr. CHAPPELL. Yes, sir. And actually also for your optional deposit?

Mr. PATERNO. No, we do not have a full optional deposit. We can only opt to pay back 10 percent of the 55-percent formula.

Mr. CHAPPELL. That is what I am saying. I am trying to nail the issues and see whether or not there ought to be other considerations in the bill if you are going to do the thing right. And, as I see it, you have only got two other areas: tenure—and only part of tenure, really—and the possibility of death and disability compensation, if there be any. Right?

Mr. PATERNO. Right, sir.

I believe the 55-percent formula does affect the death and disability compensation.

Mr. CHAPPELL. Let me ask this specific question.

You mentioned on page 7 at the bottom of the page, in the last sentence, "Too, current coverage within 5 years is required for other benefits. Only 2 more years exist for that coverage due to Federal employment."

What did you mean by that?

Mr. PATERNO. The widow's survivor benefits. There are certain types of benefits such as disability coverage, widow's, family survivor benefits, under the Social Security Act that require coverage within the past 5 years for current coverage.

Now, since the Federal employee per se is not covered by social security, in a sense we were prior to 1969, we are almost 3 years into that 5-year period of elimination for current coverage purposes.

Mr. CHAPPELL. Are we agreeing that the law requires 5 years of coverage only if one failed to participate from his first opportunity? That is, 1969? Is that what we are saying?

Mr. PATERNO. We are talking about Social Security Act here.

Mr. CHAPPELL. Right. Okay.

Mr. PATERNO. What we are talking about is that in order for those people to get coverage for an eventual pension, they require 40 quarters of coverage.

Mr. CHAPPELL. I see what you are talking about now. I thought you were still talking about this.

You are talking strictly about social security?

Mr. PATERNO. In order for them to remain currently insured under the social security, they would have to be within the 5 years. This

would not eliminate the fact they would get a pension; but it would eliminate those benefits that accrue to it by current coverage.

Mr. CHAPPELL. I see.

Let me do a few comparisons so that I will get a clear picture and build it for the other members who are not here.

Prior to January 1, 1969, how would you describe your status? I am talking now about insofar as the uniform. Who were you working for?

Mr. PATERNO. Well, I will say this: I published a pamphlet. It was entitled "A Search for Identity." We probably ran 10,000 copies. It was distributed well over this whole Hill.

Our principal fight at first was to get legislation to give us identity as some type of employee. At some point there were 17 or 18 States that had them under State retirement systems, but in some States, like the State of Washington, they had ruled they were not State employees.

In the State of New York, Congressman Stratton gave it to you very well when he stated that the amount of money required to enter the State retirement system was far too great for the Federal contribution to allow us in. So we were never in any State retirement system in the State of New York. We were not State employees.

Mr. CHAPPELL. Let us back away from retirement considerations just for the moment.

Were you wearing uniforms? What percentage of you people were actually wearing uniforms as part of the State militia?

Mr. PATERNO. We were then and now.

Mr. CHAPPELL. What percentage? 95 percent?

Mr. PATERNO. I would say more like 60-40, 50-50.

Mr. CHAPPELL. You say 60 percent were wearing uniforms. Was this a requirement? In other words, you were a member of the State militia on full-time active duty?

Mr. PATERNO. No, we are civilian employees.

I have always personally detested this word "technician." This word "technician" grew out of Southeast Asia when our security agencies used to send Army and civilian personnel over there in civilian clothes and, for the want of some term, to call them, to hide them for covert purposes, they called them "technicians," and suddenly—back in the middle fifties we had been called "civilian employees" up until that time. The Bureau came out, the National Guard Bureau, with this idea we should all be called "technicians," and the only purpose for calling us "technicians" was to avoid using the word "civilian employee." That is the fact of the matter. Too much of this whole affair is subjective and it does not lend itself very easily to a data-type collection circumstance. It is not all a dollar-and-cents thing.

I have no doubt that we could have been full Federal servants at any time from 1950 on had there been a reasonable desire by the Adjutant General Association, or the National Guard Association, the Guard Bureau, and others, to do this, because the Federal Government itself had no objection.

Mr. CHAPPELL. What percentage of you people were officers and enlisted men in the State militia?

Mr. PATERNO. About 90 to 95 percent.

Mr. CHAPPELL. Was this on a full-time or a weekend-drill type of thing?

Mr. PATERNO. It is a weekend drill thing.

Mr. CHAPPELL. Kind of like the Naval Reserve?

Mr. PATERNO. Much the same. For instance, I was employed before I went full-time with our union a year or so ago, as an auditor-examiner for the U.S. property and fiscal officer for the State of New York National Guard. However, my military position for weekend drills was that of a supply warrant officer for a tank battalion and had no correlation whatsoever. I had two different sets of supervisors. I didn't work for the same unit in the military sense that I worked for in a civilian sense.

Mr. CHAPPELL. I asked this earlier, but I really do not quite understand it in the same context I am about to ask it now.

What percentage were required to be officers and enlisted men?

Mr. PATERNO. About 95 percent, sir.

Mr. CHAPPELL. So that all of you, whether you were part of the uniformed services, that is, part of the State militia, or you were in some capacity or otherwise, you regarded yourselves—aside from the assignment to the State militia, you said you regarded yourselves as Federal employees?

Mr. PATERNO. We regarded ourselves as Federal Civil Service employees, even though we had not been accepted yet. Yes, we definitely did.

Mr. CHAPPELL. Why was this?

Mr. PATERNO. The rules under which we were actually administered came out of the National Guard Bureau. They were not Guard Bureau regulations; they were Federal regulations. They were not State regulations. We were paid directly by a Federal check drawn on the U.S. Treasury, for all of these years, every paycheck came from the Treasury.

Mr. CHAPPELL. All the way back to 1950?

Mr. PATERNO. All the way back.

And the requirement to belong to the military is not as ancient as some people believe. There were changes in the middle 1950's. I can remember changes in attitude then. I can remember when I came in in 1950, they did not want me to join the National Guard for they were afraid if the Guard were mobilized, there would be nobody left to do the work.

Then later on a change came in and they wanted everybody to join. I was not required to at that time. I voluntarily did join the Guard because I happened to like the National Guard. The principle I am stating here is not relative to being against it, because I liked it. I like 5 days of civilian status in one place, and I like my military status in another, and I think the separation of the two is the best thing that can happen.

Mr. CHAPPELL. What about your pay as a member of the Guard? Was that State or did that come from Federal?

Mr. PATERNO. That is a Federal check, too.

Mr. CHAPPELL. Both of them were Federal checks all the way back?

Mr. PATERNO. About 95 percent of all of the money that supports the National Guard is Federal money.

Mr. CHAPPELL. Let me ask this: Since you folks are teaching me so much, was this the same in all the States?

Mr. PATERNO. Just about. I do not know of any differences.

Mr. CHAPPELL. Would you people hold up your hands? Did any of you people receive compensation—that is to say besides your paycheck—either for Reserve—that is Uniformed Service—or others, from a State?

The record should reflect that one gentleman rose.

Will you state your name, please.

Mr. OLSZEWSKI. Sergeant Olszewski. Mr. Olszewski from Baltimore.

Mr. CHAPPELL. He is talking in both capacities.

Mr. OLSZEWSKI. The only payment I ever received for services of the State was in 1968 during the riots in Baltimore. I believe I received \$10 a day. And the rest was subsidized by the Federal Government.

Mr. CHAPPELL. What I am interested in is where did the paycheck come from, the Federal Government?

Mr. OLSZEWSKI. The way I understood it, the State paid for it; and the Federal paid it for the 1 week I was on duty during the riot.

Mr. CHAPPELL. That is a minor exception. I see that.

But the rest of you, all you gentlemen, for all the years you have been associated—I should say as long as you have been working for the National Guard—all of you received your paychecks from the Federal Government? That is to say, the National Guard, from the Federal Government? Is that correct? [Show of hands.]

Mr. CHAPPELL. Let the record show that everyone agreed they received their pay from the Federal Government at least as far back as 1950.

Let the record show that they say at least back as far as 1946.

Mr. SIMPSON. And this is not a State militia. This is a National Guard.

Mr. CHAPPELL. I understand that, but there are some technicalities in the Constitution which has probably confounded this issue.

Mr. Paterno, can you set forth any new developments which occurred since the adoption of this compromise resolution in 1968 which made it less acceptable today than it was at the time of its enactment?

Mr. PATERNO. Yes; as I pointed out, the dollar values received by the people retired, the fact that many of the figures that were given at the time in the Senate committee, as far as the cost factor—for instance, it was stated in the Senate report—which I do not have in front of me but I remember this very well—that it was going to cost \$750 million for the 55 percent; \$750 million on the assumption that the average age is 60 or not earlier, and no future pay increases.

Yet we find today the Civil Service Commission telling us it will only cost \$128 million to give us all the back time, the 45 percent.

Now, somebody is wrong.

Mr. CHAPPELL. Is that not based on the proposition that if that is true the Federal Government would put it in right now?

Mr. PATERNO. Right, but even if we take the figure and amortize it at 7.9, the figures we were getting in the Senate Armed Service Committee were some of the most fantastic figures. Like \$1.76 billion. Even Senator Cannon at one point had to interpolate and say to one of the Senators that made the argument, "You are trying to foist upon the system all of the ills of the civil service retirement system. If we amortize this whole thing in the future, you have to take all the people in the annuity system and say we are all equally guilty."

Mr. CHAPPELL. One of the pertinent things is the decrease in the value of the dollar insofar as the retirement is concerned?

Mr. PATERNO. Definitely.

Mr. CHAPPELL. On page 4 of your statement you recite several cases of benefits payable to technician retirees and survivors. Let us take those up for just a moment. That is page 4.

How much would each have received had retirement or death occurred prior to January 1, 1969?

Mr. PATERNO. In most cases it would have been slightly less than double.

Mr. CHAPPELL. No, wait; maybe I am not stating that right. How much would—in each of those instances, how much would they have received from the Federal Government if death had occurred prior to January 1, 1969?

Mr. PATERNO. Nothing, sir.

Mr. CHAPPELL. The answer is zero, right?

Mr. PATERNO. Nothing.

Mr. CHAPPELL. Now, secondly, how long were each subject to the Federal retirement system after January 1, 1969?

Mr. PATERNO. These particular people were all subject to it for about 1 year or slightly more.

Mr. CHAPPELL. All right; and how much did each of these contribute to the civil service retirement fund?

Mr. PATERNO. For 1 year's purpose; for 1 year's backpay.

Mr. CHAPPELL. 1 year's backpay?

Mr. PATERNO. I mean 1 year's pay as they were on the payroll.

Mr. CHAPPELL. You made a comment a few minutes ago I am not sure I understood when you were talking about the 10 percent. You are talking about the 10-percent loss if you did not go back and catch up, go back and make the deposit. Now explain that one again to me.

Let us start off with an example. Say a person has earned in retirement—say he has a benefit retirement of \$2,000 in the fund, just as an example. And say that he has \$2,000 prior to January 1, 1969, that he would have paid in had this program been in effect all the way through, but he did not pay it.

Now take that example and tell me how that fund works.

Mr. PATERNO. If that \$2,000 figure included the accrued interest, because accrued interest goes up on this thing and each 15 years, approximately 50 percent—in other words, in 30 years the entire amount would double.

Mr. CHAPPELL. Which amount?

Mr. PATERNO. The interest would build up the amount that you owed to the system approximately double in 30 years. It would build it up 50 percent more in 15 years.

Mr. CHAPPELL. It doubles in 24 years, I think, is the actual figure.

Mr. PATERNO. Assuming now the \$2,000 had been with the accrued interest and everything else, then he would lose 10 percent of the \$2,000 from the annuity, which would be \$200, which would be taken off his annuity for the year.

The people we are talking about and the primary people that are affected by this normally would owe under the 100-percent formula

something in the neighborhood between \$6,000 to \$10,000, depending on length of service.

Mr. CHAPPELL. At what point are you making the example now?

Mr. PATERNO. I projected it in mine. Of course, mine was with 20-some-odd years of service at that time and it was about \$10,000 I owed back with accrued interest.

The figures that I came up with here are interesting to me because I had to reply to a question. I did not have them prepared and I did them in my mind rapidly. But later on, when the Civil Service Committee did provide figures on the various costs of how much people owed back, it did turn out there were people that owed back \$12,000 and \$15,000.

Mr. CHAPPELL. Would that be the general rule?

Mr. PATERNO. No; the general rule would have gone into \$7,000, \$8,000, \$9,000, depending upon the length of service.

However, this builds up, because for each year he does not pay it back, more interest accrues on it. Every year that he does not pay it back penalizes him for not paying it back.

Mr. CHAPPELL. I understand this.

Let us take a simple example—and you understand, all of you, we are trying to build a record here that other can read. Since they were not here to hear the testimony, we are trying to get this into the record so others can understand it.

Let us take the simple example of the \$2,000 I mentioned before. Let us say as of this moment one would be entitled to \$2,000. Now he had not paid back, because of the prior situation he had not paid in the \$2,000 back there.

Mr. PATERNO. Then he would get \$1,800, sir.

Mr. CHAPPELL. Right. So what you do is take the 10 percent you are talking about, the 10 percent, and apply that to the unpaid balance; and if the unpaid balance was \$2,000, you would take 10 percent of the unpaid balance and subtract it from his annuity, which would give him \$1,800?

Mr. PATERNO. I do not like the example, sir, because it looks like, in the particular example you are giving, because both figures match, the 10 percent would apply either way.

Mr. CHAPPELL. Let us take an instance where you have got \$10,000, which is your case?

Mr. PATERNO. Right.

Mr. CHAPPELL. Let us apply the 55 percent factor to it, and that would give us a \$5,500 annuity?

Mr. PATERNO. No, no, sir.

Mr. CHAPPELL. The annuity computation, with no payment—

Mr. PATERNO. No, sir.

Mr. CHAPPELL. Is that not right?

Mr. PATERNO. No. I do not know exactly what my retirement is, because it depends on my high 3 average years.

Mr. CHAPPELL. We are talking about what you owe now.

Mr. PATERNO. But assuming that my retirement would have been, say, \$3,500—which I think would be a fair estimate under the 55-percent formula—I think I would owe them something like \$5,500.

Mr. CHAPPELL. Let us take that one. You owed them \$10,000. You apply the 55-percent formula and that gives you a figure of \$5,500, which would be what you owed?

Mr. PATERNO. Yes. And then take \$550 off the \$3,500, reducing me to \$2,950.

Mr. CHAPPELL. Right. So you take 10 percent of the \$5,500 and, assuming you had \$5,500 coming, this would reduce your annuity to \$2,950?

Mr. PATERNO. That is right, sir.

Mr. CHAPPELL. Which, if you are saying it the other way, rather than saying you take away 10 percent, you are really saying you are giving 90 percent; are you not?

Mr. PATERNO. It does not work that easily, sir.

Mr. CHAPPELL. Is that not essentially what it is?

Mr. HUNTER. It is 10 percent, plus unpaid—

Mr. CHAPPELL. Wait just a moment. We are going to come to you. Let we follow through here.

Mr. PATERNO. That is one of the more difficult to try to explain. The 10 percent is, first, accumulated over the years, all the deposits you haven't made. They add all the interest for each year.

Mr. CHAPPELL. I understand. Let us come right down to just the figure now.

You take whatever your annuity would be in computing this person and say that you had earned \$3,500 now, entitled to an annuity of \$3,500, now, if you did not go back and pay back a thing in the world but you owed \$10,000, as your instance is, you take 10 percent of that and reduce your annuity by that amount, which would reduce it then to \$2,950?

Mr. PATERNO. Of the \$550; out of the \$5,500, and \$10,000 would reduce it by \$1,000.

Mr. CHAPPELL. I am talking about when you apply the 55 percent factor, and that is what we are doing, right?

Mr. PATERNO. But this is the formula under which they brought in other groups which have come in. The ASCS was mentioned. It was a formula that was in the Civil Service Retirement Act as a provision for people coming in and getting credit for the time before the Technician Act was considered. The Technician Act did not create the 10-percent formula. It was in there.

Mr. CHAPPELL. Of course, if you took it on the same basis—let us go the 100-percent route.

If you took the 100-percent factor—let us take the \$3,500 again, which would be the 55 percent credit.

Mr. PATERNO. I have some figures here. If the man had 25 technician years prior to 1969, he would get \$2,035.20 a year if he earned \$8,000 on the 55 percent computation. On the 100 percent computation he would get \$3,700 a year. He, in effect, has lost \$1,664 on the computation.

I can provide the committee with a set of tables that we have within a few days that would illustrate some of these differences. They were not completed in time for me to make them part of my testimony.

Mr. CHAPPELL. We both admit it gets a little bit complicated?

Mr. PATERNO. It is a very complicated formula, sir.

Mr. CHAPPELL. But under the same formula, if you took \$3,700 now, which would be the 100 percent, on the 100-percent basis, and you say you owed back there \$10,000—now 10 percent of \$10,000 would be \$1,000?

Mr. PATERNO. Right. It would reduce it to \$2,700.

Mr. CHAPPELL. It would reduce it to \$2,700, which is less than the other one; is it not?

Mr. PATERNO. Well, there are so many ways you can work this out. You see, they get full credit for the years they were on active duty. They get full credit for the time they have in 1969.

The formula is different with each application. The initial Senate figures, which I used in our first handouts on this, I found to be low. They were lower than the actual fact, but mainly because you did not take into account the fact there were some full creditable years.

Mr. CHAPPELL. Do you know what the present average age of the technician work force is?

Mr. PATERNO. I would estimate it at 38 or 39. It was that in 1967. In and out, I have not changed. It would probably go up from 38 to 39, something in that area.

Mr. CHAPPELL. What would you say the average length of service for the technician work force is?

Mr. PATERNO. About 12 years, I would imagine, sir.

Mr. CHAPPELL. What do you estimate that it was on January 1, 1969?

Mr. PATERNO. About the same, sir. I do not think it has changed that much. The ins and outs have not changed that much.

Mr. CHAPPELL. How many people do you think we are talking about now that would be brought in under this program?

Mr. PATERNO. Well, the one figure—I cannot come up with the number of people that have left the system and have become Federal employees as covered in the legislation. But I would estimate 15,000 to 20,000 people would be affected by this, perhaps a few more—depending on how many opted out of the State retirement system. I have not been able to come up with the figures of people who stayed in State retirement systems. I have asked the Guard Bureau for this and it was not able to come up with it. They could not find the figures.

I know the Senate committee has asked for these figures, too, and they did not come up with them yet.

I am disappointed there were no Government witnesses here today because I think some of the figures on these statistics that are needed can be better supplied by either the Civil Service Commission—

Mr. CHAPPELL. We will have them. There will be other hearings on this. They are going to be given an opportunity to be heard, with the facts and figures, I assure you.

Let me ask: How would you describe this situation? Would you say that you are under the control of the Federal Government or the State insofar as your activity?

Mr. PATERNO. The law specifically states that we are employees now of the Department of the Army or the Air Force, working for the Army or Air National Guard. However, they have made this one different. They have named in the law the fact that the adjutant

general of the State, who is not a Federal officer, is the hiring and firing official. The appeal rights end with him.

Mr. CHAPPELL. So on appeals, you would go through the State?

Mr. PATERNO. Right, sir. Well, through the regulations that are given out as supplements to the National Guard regulations, we are into the court in one State questioning some of the vagaries of this law as applied to the firing of an individual under the arbitrary powers given to an adjutant general. In other words, we had an adverse action hearing on the firing of the man. The adverse action board ruled in favor of the man and said he should not have been fired. The adjutant general said, "I do not care what the board said; he is fired anyway."

So, anyway, we are in the courts trying to prove capricious action—

Mr. CHAPPELL. In the State court or the Federal court?

Mr. PATERNO. We are in the Federal district court.

Mr. CHAPPELL. Did you test it in the State courts at all?

Mr. PATERNO. We have been in the State courts only before 1969, and the State courts ruled in the State of New York that they were not State employees, and it did not apply. When the same case went to the Federal courts, they said it is up to the Congress to make a law to make these people something, that they had no jurisdiction.

Mr. CHAPPELL. Mr. Paterno and gentlemen, I thank you very much for your very fine enlightening testimony.

Do any of you other gentlemen at the table want to add anything?

Mr. HUNTER. I do not think we will go back into the 10 percent.

Mr. CHAPPELL. I think you have confused me enough.

Mr. HUNTER. I would like to make one comment, to add to what we were talking about the State control of the adjutant general.

I think one of the reasons that transference does not apply—there are others, but one of the main reasons that veteran's preference does not apply to the National Guard technician is because if it did apply, he would be able to take his right of appeal to the Civil Service Commission. At this time, he cannot. He can only go to the State adjutant general. And by any capricious action of the State adjutant general, our man could be fired. He could be given a hearing, and if the adjutant general has made his mind up this man is going to be fired, he is gone. And you can appeal to that adjutant general from now until doomsday. This is the man who is hiring and firing these individuals.

Mr. PATERNO. I think, sir, there are other witnesses, and I hate to take the time up. I would ask if the other people will indulge you and just put their statements in the record?

Mr. ROHRMEIER. That is all right.

Mr. CHAPPELL. The statements of Mr. Rohrmeier and Mr. Tedesco will appear in the record at this point.

(The statements follow:)

STATEMENT OF ANTON R. ROHRMEIER, PRESIDENT, SCHENECTADY CHAPTER, ATC

I am pleased to have this opportunity to relate to this committee the affect that the 55% limitation has upon the men and women at my own installation. I realize that Mr. Paterno has comprehensively revealed the ramifications of this limitation as it affects the total program, but I would like to address my remarks specifically as it concerns the people at Schenectady, New York.

We will have thirty-five people retiring in the next ten years if they stay on until age 60, two of whom will retire within two years. This fact emphasizes the urgency in correcting the 55% inequity without further delay. If some were to choose voluntary retirement at age 55, this number could increase to approximately fifty. My projections, however, are based on retirement at age 60. The average retirement annuity for this group with the present limitations would amount to \$3600.00. The removal of the 55% limitation and the restoration of 100% would result in an average annuity of \$4800.00. I have excluded from the averages some of the higher grade GS supervisory positions (GS-12, 13, 14) so as to present a more realistic retirement picture as it relates to the bulk of workers at this base. Both of the retirement annuities cited above contain the 10% reduction automatically applied if a worker declines to buy back his share of past air technician time. The average buy back on the 55% limitation for this group amounts to approximately \$5000.00 and on the 100% it increases to approximately \$10,000.00. The GS 12-13-14 were deleted because they are so few in number and distort graphically the true averages. My people realize that all who have come in to the air technician system in the last few years are not adversely affected by the 55% limitation. But the fact remains that the hard core of technicians of World War II vintage who were the prime movers of the air side of this program and who have sustained the operation at Schenectady since 1948 receive second rate consideration with the 55% clause.

Our installation is located in Congressman Stratton's Congressional District and I want to express my deep appreciation and the appreciation of all the men and women at the Schenectady Air National Guard Base for his willingness to thoughtfully listen to our plea and to serve in the vanguard of legislators concerned with correcting this inequity. I also extend my personal gratitude and that of the workers at Schenectady to all the other able and concerned legislators who have risen to support our cause.

STATEMENT OF FREDERICK TEDESCO, NEW YORK STATE CHAIRMAN, ASSOCIATION OF CIVILIAN TECHNICIANS, INC.

On behalf of the 2,200 National Guard Technicians in New York State and all the other National Guard Technicians throughout the country, represented by the Association of Civilian Technicians, I would first like to extend my thanks to all of the Congressmen responsible for the scheduling of this hearing this morning.

I will leave the technical aspects of our bill to our very able President Mr. Vincent J. Paterno, to Mr. John Hernon, Vice President—General Schedule and other representatives of A.C.T., Inc.

However, just to give you a brief example of our pension benefits as they stand now—we have a number of Technicians who are drawing \$30.00-\$35.00 a week after serving at least twenty three (23) years in the program.

Too, existing on an inadequate pension is an added penalty for the many females in our program, who, because of their sex, are denied positions higher than GS-05 or in a few States, GS-06. Advancement is denied these very capable ladies because National Guard membership is a prerequisite for grades higher than a six (6). They are therefore limited in their pension coverage to 55% for their time in the program prior to 1969 and are again penalized by drawing a pension based on a grade classification which restricts their pension annuity to a very low sum.

Public Law 90-486 was passed after many years of dedication to our National Guard program but also after many years of struggle in attempting to secure our rightful identity as federal civil service employees. In order to get a Bill we therefore unwittingly found ourselves with the National Guard Technician Act of 1968 which restored only a part of our heritage.

Our Technicians don't want and aren't asking for a gift; nor do they want welfare in their later years. They only want what all other government employees were given when they were brought into the Civil Service system—full pension coverage for their past time.

We were told many times that full pension coverage was not given to us because of our eligibility for Social Security. As we all know, Social Security diminishes as time goes on. Except for a few isolated cases, by the time the majority of us retire, our Social Security check can be used to keep us in cigarettes.

As for our National Guard pension, any federal employee who is a "part time Guardsmen" (a Letter Carrier with the Post Office—a Customs Inspector), draws this pension also. Why not the full timer?

Another consideration is the fact that this National Guard pension is for the added hours put in as Guardsmen. It is in consideration for the four (4) hour Drill on Tuesday night, for the week-end once or twice a month at the training Camp, for the two weeks Annual Training; for the time during the Postal Strike and for Attica Prison.

In closing I would like to thank Congressman Hanley and Congressman Halpern and all the other Congressmen who have helped us bring this Bill to the point it is today. I would particularly like to extend my sincere appreciation to Congressman Samuel Stratton. By his interest and intense vigor he has been the driving force behind our legislation. I ask all of you for your continued support.

Thank you.

Mr. CHAPPELL. Now, let us call Mr. Alan Whitney.

Mr. Whitney, you represent the National Association of Government Employees, and you have some gentlemen with you. Would you tell us who they are?

STATEMENT OF ALAN WHITNEY, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES; ACCOMPANIED BY CHARLES HICKEY, DIRECTOR OF NATIONAL GUARD AFFAIRS, NAGE; DAVID RAINEY, PRESIDENT, NAGE LOCAL R5-91 (AIR NATIONAL GUARD, FLORIDA); ROBERT SHEPPARD, VICE PRESIDENT, NAGE LOCAL R8-22 (ARMY NATIONAL GUARD, MICHIGAN); ARTHUR GUARRIELLO, JR., PRESIDENT, NAGE LOCAL R2-78 (ARMY NATIONAL GUARD, NEW JERSEY); JAMES DURAN, PRESIDENT, NAGE LOCAL R14-83 (ARMY NATIONAL GUARD, TEXAS); AND JERRY WOHL, VICE PRESIDENT, NAGE LOCAL R14-83 (ARMY NATIONAL GUARD, TEXAS)

Mr. WHITNEY. Certainly. I am accompanied today by Charles Hickey, who is the director of National Guard affairs for NAGE; David Rainey, president of the NAGE local of the Air National Guard, Florida; Robert Sheppard, vice president, NAGE, local, Army National Guard, Michigan; Arthur Guarriello, president of the NAGE local, Army National Guard, New Jersey; James Duran, president of the NAGE local, Army National Guard, Texas; and Jerry Woehl, who is vice president of our local which represents the technicians of the Army National Guard in Texas.

And I might also point out, Mr. Chairman, that the red buttons you see around the room also indicate members of our organization who are technicians from various parts of the country.

With the Chair's permission, I believe I do have time and, with your indulgence, rather than summarizing my statement, may I read it quickly?

Mr. CHAPPELL. Yes, sir; you may proceed as you like.

Mr. WHITNEY. Mr. Chairman, the National Association of Government Employees, as the certified bargaining agent for 9,500 civilian technicians of the National Guard, appreciates this opportunity to speak in support of legislation to grant technicians full credit toward retirement for employment prior to 1969.

Several bills have been introduced to accomplish this purpose; among them are H.R. 3163, which was introduced by Representative Robert Tiernan, and H.R. 10579, which was introduced at the request of the NAGE by the majority whip of the House of Representatives, Representative Thomas O'Neill of Massachusetts. Mr. O'Neill also introduced a similar measure in the last session of Congress.

The principal justification for enactment of these measures into law is the simple fact that technicians, under the terms of the National Guard Technicians Act of 1968, are unfairly penalized and deprived of treatment equal to that accorded other Federal employees. Because credit for years of service performed prior to 1969 is limited to 55 percent, technicians are faced with the prospect of entering retirement, the so-called golden years of life, on limited annuities.

This, of course, will force them to live at a lesser level of income and security than their colleagues who retire from other Federal agencies.

The NAGE recognizes that the primary basis for imposing this limitation in the basic legislation was of an economic nature: the cost of providing full credit for retirement purposes as measured against the amount of funds contributed by the Federal Government both to the social security fund and to various State retirement funds as the employer's contribution. Such contributions, over the years 1955 to 1969, totaled slightly less than \$78 million, the bulk of that amount being represented by contributions to the social security fund.

Had the technicians been subject to the Federal civil service retirement system during those years, the Federal Government would have contributed to the civil service retirement fund nearly \$143 million. We believe the difference between these figures can be considered a rough approximation of the disparity of retirement benefit levels which technicians receive compared to what they would receive if these bills are enacted into law.

An important element which must not be overlooked in considering these measures is that, while technicians technically—at least, according to the National Guard Bureau—were State employees prior to January 1, 1969, they were fulfilling a mission of the Federal Government. It is this very ambiguity, incidentally, which has resulted in technicians having their benefits and terms of employment set at a level vastly inferior to the working conditions of other Federal workers.

Technicians, it is true, are subject to the operational control of the adjutants general of the various States—this is an important point—however, this control is exercised by these State officials only through a delegation of authority from the Secretaries of Army and Air Force.

It is because of this essentially Federal nature of their service over this period of years that the NAGE believes technicians are entitled to 100-percent credit toward retirement. In short, the question is: Is this service creditable or is it not creditable?

And the very fact that the National Guard Technician Act of 1968 was approved and enacted establishes without question that the service is creditable.

I might point out that employees of the Agricultural Stabilization and Conservation Service (ASCS) were accepted into the Federal retirement system in 1961 under the terms of Public Law 87-350. They were granted 100-percent credit for retirement purposes for past employment within their respective States.

It also should be noted that those technicians employed by the Army and Air National Guards of the District of Columbia enjoy full retirement credit, since they were covered by the Federal retirement system prior to 1969.

It has been suggested that since about 20,000 technicians have acquired a vested interest in future social security payments this supports the imposition of the 55-percent restriction. This suggestion overlooks the fact that an equal number of technicians have not acquired such a vested interest. It also overlooks the fact that social security payments in these cases will typically be at the system's minimum level—which I understand is about \$100 per month—which falls far short of the amount of benefits which would be payable if that same service had been subject to the Federal retirement system. And, finally, it overlooks the fact that social security payments become available to an individual only upon reaching age 65—or, at a reduced level, age 62. Technicians must, as a matter of law, retire at the age of 60.

We cannot emphasize too strongly that social security, in nature and philosophy, is designed to fulfill a social-equity principle quite different from the individual-equity principle of the civil service retirement system. Social security should rightfully be regarded as a means of assuring an adequate minimum level of protection to all American workers, particularly those who do not attain a high level of earnings in their careers, whether those careers are of a long or brief duration.

In other words, social security provides a floor below which protections may not drop; it should not be used to supplant regular pension and retirement plans, in whole or in part.

National Guard technicians, we might point out, were denied even social security protection until fiscal year 1955, and this remained the only retirement benefit for nearly 24,000 technicians up to 1969.

Regarding State retirement systems—and you notice there is a difference in figures; our information is that 21 States accepted technicians into their systems, and most such acceptances occurred in the 1960's. One State, Pennsylvania, enacted this only a very short time before the passage of the act.

The report of the Armed Services Committee on the Technician Act noted that only about 4,450 technicians had acquired a vested interest in a future annuity under one of these systems. Some of these, of course, have foregone their entitlement to a State annuity in favor of Federal retirement. And, in at least one State—New Jersey—legislation was passed depriving technicians of their vested right to a State annuity.

A third rationale advanced to justify the 55-percent limitation is that all technicians become eligible for Reserve retired pay at age 60

if they complete the required 20 years of satisfactory Reserve service. The inference is that their entitlement to Reserve retired pay offsets the benefits they lose due to the 55-percent restriction.

It is the position of the NAGE that the Federal Government has no more right to limit civil service retirement benefits based on Reserve retirement pay than it would to force General Electric, General Motors, or any other employer to deduct or limit pensions paid by those employers based on any Reserve pension that an employee might qualify for.

We noted at the outset the basic economic nature of the objections to providing technicians full retirement credit. Necessarily, such objections must be resolved within this economic context.

The NAGE, therefore, submits that roughly \$78 million is available to assist in financing this legislation by framing it to enable the Federal Government to, one, retrieve the \$19,606,000 it has paid in past years into State retirement funds for technicians' service, and, two, provide for a transfer-of-credits from the social security fund to the civil service retirement fund in the amount of \$58,348,000 which was contributed by the Government as the employer's share for past technician service which was subject to social security coverage, plus the technicians' own contributions, which would double that latter figure.

We can readily anticipate the screams of anguish that would emanate from the 21 States involved if legislation were enacted to recoup these moneys. However, these cries should not be permitted to override the pleasure of the technicians for adequate protection in their retirement years. The simple fact is that the States have had the use of moneys that do not belong to them; and they have used these funds for everything from highway construction to paying annuities to their own employees.

The concept of a transfer-of-credits between social security and civil service retirement is not new. It has been proposed in other contexts in the past and, to our knowledge, has been researched and found to be feasible.

One final proposal, which can be considered a secondary alternative to the foregoing—and I might point out we are rather reluctant to bring this up, but we do feel it is necessary to offer up to the members of the committee an alternative proposal in the event they do not feel they can go with the legislation as presently proposed, and the secondary alternative would be to enact legislation which would increase the technicians' credit for pre-1969 service by 9 percent over each of the next 5 years. This would result in the achievement of full coverage on a phased basis by providing the required additional 45-percent credit on an incremental basis.

This is not, of course, what the technicians hope to achieve; but we are convinced that they would accept it as an adequate compromise if this subcommittee of the committee were to determine that full credit cannot be accorded immediately.

Mr. Chairman, the National Guard Technicians Act of 1968, hailed as a breakthrough when it became law, has become to the technicians a hastily settled paternity suit that has been a relief only to the parents—the Federal and State Governments, leaving the illegitimate off-

spring—the technicians—inadequately provided for. Enactment of the measures you are now considering would do much to make them legitimate members of the Federal Civil Service family.

Thank you, sir.

Mr. CHAPPELL. Mr. Whitney, thank you very much for your statement.

Let me refer to page 3 where you say:

Technicians, it is true, are subject to the operational control of the Adjutants General of the various States. However, this control is exercised by these State officials only through a delegation of authority from the Secretaries of Army and Air Force.

Does that relate to anything other than a State of emergency?

Mr. WHITNEY. The only time there would be an exception to that condition would be if the National Guardsmen would be mobilized by the State. However, if they were mobilized in that fashion, they would then convert from technician status to military status, and then they would be controlled by the Adjutant General, subject to the control of the Governor of their respective States, and they would not, in that situation, be subject to Federal control.

Mr. CHAPPELL. Well, now, there was some question earlier to the effect whether or not the State militia is involved in this picture at all. Is it?

Mr. WHITNEY. Well, sir, the distinction, which I admit we have the most difficult time communicating to people, is this very ambiguous distinction—sometimes I think it is an intentionally ambiguous—to cloud the difference between technician status and military status.

Now we do not often use the term “State militia.” However, I am sure that it is synonymous with the National Guard, when the national Guardsmen are in military status subject only to the control of the Adjutant General of the State.

During the regular work week, when these individuals, when these technicians are performing their day-to-day functions, there is no connection with any State militia. They are then acting in a full-time capacity as Federal civilian employees. It is only during weekend drill status or when the Guard is mobilized, that they emerge from their civilian status as Federal employees and slide over the line into their role as National Guardsmen. And that, sir, is the distinction.

Mr. CHAPPELL. You mentioned also on page 3 about the other Federal group that was brought in under a similar program, the Agricultural Stabilization and Conservation Service. How many people were involved in that? Do you know?

Mr. WHITNEY. Offhand, sir, I do not. I might make an estimate. I believe it was perhaps in the neighborhood of 35,000 individuals. I really would have to verify that figure, sir.

Mr. CHAPPELL. What was the creation of the Agricultural Stabilization and Conservation Service; do you know?

Mr. WHITNEY. The creation of the Service insofar as—since 1961, at least—is that it has been acting as a Federal agency. It was through the terms, as I pointed out, of Public Law 87-350, by which the Congress determined that these employees were fulfilling a Federal function rather than a State function, and as such should be logically—

Mr. CHAPPELL. As a matter of fact, the whole program was a Federal program?

Mr. WHITNEY. Yes, sir; it was a federally initiated program. Almost all of the moneys which were used to support that program prior to 1961 came out of the U.S. Treasury.

Mr. CHAPPELL. That is right. It was a Federal program from the beginning and always was and always has been a Federal program.

Mr. WHITNEY. Yes, sir; and I think that the law simply recognizes that fact. And also, of course, conferred civil service status protection for employees working for that agency.

Mr. CHAPPELL. On page 4, the last sentence of your partial paragraph at the top, you say: "Technicians must, as a matter of law, retire at the age of 60."

Is this by reason of their Guard status, or by reason of their civilian status?

Mr. WHITNEY. This is a direct result of their Guard status, sir, because as a condition of employment, 95 percent of these technicians must also be members of the National Guard. And once they lose that status as National Guardsmen, then they are no longer entitled to continue Federal civilian employment.

Mr. CHAPPELL. It does not cover everybody; does it?

Mr. WHITNEY. Ninety-five percent of them.

Mr. CHAPPELL. I thought you had some that did not have to be members of the National Guard?

Mr. WHITNEY. Approximately 5 percent of the total technician work force.

Mr. CHAPPELL. Are they included in this?

Mr. WHITNEY. No, sir; I don't believe that would affect these employees.

Mr. CHAPPELL. Who makes the determination on that? The State Adjutant General? That is to say, as to whether they must have dual membership?

Mr. WHITNEY. They must have dual membership as a matter of law.

Mr. CHAPPELL. Federal law?

Mr. WHITNEY. Yes, sir.

Mr. CHAPPELL. OK. You do not know what part of the law that is recited in, do you, by chance? We can look it up, but I thought maybe you might have it.

Mr. WHITNEY. I am referring to the Technician Act itself, sir, and I could possibly quickly put my finger on the section.

Mr. CHAPPELL. How did they except 5 percent?

Mr. WHITNEY. Sir, they were exempted because they are typically—in large part, at any rate—women employees.

Mr. CHAPPELL. Secretaries?

Mr. WHITNEY. Secretaries, clerical help, and things of this nature, whom they did not want in the National Guard itself.

Mr. CHAPPELL. And you fellows do not discriminate?

Mr. WHITNEY. I hope there is nobody from women's lib in the room, because we might be in a lot of trouble.

Mr. CHAPPELL. This legislation would also grant full credit for full previous technician service to persons who left the program prior

to 1969, but who are now or may in the future be employed elsewhere in the Federal service. Would you care to comment on that?

Mr. WHITNEY. Yes, sir. We do endorse that provision in the proposed legislation. There are a number of individuals employed in any number of other Federal agencies—some could be with other DOD agencies, some might be now with the Department of Commerce, with the Department of Housing and Urban Development—who in the past were full-time civilian technicians employed under the technician program and who subsequently left that program to accept appointments to other Federal positions. And I think it is only logical and it is only commonsense that if the technicians' service is deemed by Congress to be worthy of 100-percent credit for technicians presently serving as technicians, then the service then necessarily must be creditable for all people who are still on Federal rolls, who have past technician service.

Mr. CHAPPELL. This next question is really predicated upon what the Congress found when it passed this act before. And, of course, I can say I was not even in the Congress at the time, and I can say also that the Armed Services Committee kind of messed this thing up, you know, and now is asking us to straighten it out. Because, regardless of all those things, the report of the committee which accompanied the bills in the House and was a part of the consideration of the House, as I understand it, recognized the fact that in restricting the right to receive credit for the pre-1969 service to only those technicians in the program thereafter recognized the fact that such service was not Federal service and indicated the intent that credit be allowed only as an incentive for participation in the technician program.

I wonder if you have a comment on that?

What I am saying is, the Congress has already found that as a fact, and that was the predicate upon which this bill was passed. Now, what are your comments on that?

Mr. WHITNEY. Well, sir, our reaction to that line of thinking is that, by writing that restriction into the law, the Congress—at least to our mind—was not in so doing saying that this past technicians' service was not Federal service. I think purely and simply it comes down to the latter part of your statement, that they imposed this requirement because the National Guard wanted it imposed, to see to it the technicians would stay in the program.

Mr. CHAPPELL. All right. The record of the report will have to stand on its own. I just wanted your comment.

In other words, it is not your interpretation, regardless of the wording of that report, that it was the intent of Congress to find that you were not Federal employees beforehand or to actually grant this particular restriction?

Mr. WHITNEY. We have looked at the language. But, by the same token, we talked to any number of Congressmen who were involved in the consideration of that legislation at that time, and we could detect no hint of sentiment on the part of any of these individual Congressmen we spoke with that they intended to imply that the technician, prior to 1969, was not really serving in support of a Federal mission and thus qualifying as Federal civil servants.

Mr. CHAPPELL. Let me see if I can cover two or three questions real hurriedly with you here.

First of all, how many of your people who would be affected now have contributed to retirement programs before?

Mr. WHITNEY. The State retirement programs?

Mr. CHAPPELL. State retirement programs before.

Mr. WHITNEY. I really do not know. I do know, for example, that in the State of New Jersey, the number of our members who are in the Army National Guard and the Air National Guard—

Mr. CHAPPELL. Were all those just optional programs?

Mr. WHITNEY. I do not know if the New Jersey program was optional. I do know the members were participating in the New Jersey retirement program, and I understand it was mandatory.

Mr. CHAPPELL. Where you had a program of that sort, what options were given to them when you changed over to the Federal program?

Mr. WHITNEY. Not too many. As a matter of fact, I think we pointed out in our testimony that technicians in New Jersey, shortly subsequent to the passage of the National Guard Technician Act of 1969, that State legislation was passed in the legislature of New Jersey which precluded these individuals from continuing their vested interest within the State retirement system.

I have somebody here from New Jersey who could probably speak to that a little bit more concisely.

Mr. CHAPPELL. Did that State law divest them of any rights which they had earned prior to the changeover to the Federal system?

Mr. WHITNEY. If I may, Mr. Chairman, Mr. Guarriello is president of our New Jersey local.

Mr. CHAPPELL. Let the record reflect he is yielding to the other gentleman.

What is your title, sir?

Mr. GUARRIELLO. I am president of local R2-78 in New Jersey.

What happened with the New Jersey legislation? First of all, I believe the legislation was designed to avoid paying us the interest on the money we had paid into the system.

Also, it stated in the same legislation that the vestiture or the ability to vest your pension after 15 years in the State system would not apply to anybody who was entitled to go to the Civil Service Retirement System.

In other words, the only option that was given in New Jersey was to either stay with the State or go Federal. And if you went Federal, you lost all your benefits.

Mr. CHAPPELL. Which was in effect divesting your employee of any vested right he had in the pension system at that time?

Mr. GUARRIELLO. That is correct, sir. The only right they did have is—the only option you had is either stay or go.

Mr. CHAPPELL. When you say “stay or go,” what do you mean?

Mr. GUARRIELLO. You could stay with the State retirement system if you cared to. But if you left, they took away all of your rights that you previously had.

Mr. CHAPPELL. In other words, you either had to stay with the State or go with the Federal?

Mr. GUARRIELLO. Yes, sir.

Mr. CHAPPELL. Under that law, you could not go both ways?

Mr. GUARRIELLO. That is correct, sir.

Mr. CHAPPELL. I guess under the law you couldn't do it, period. But go ahead. What else? What were the other options?

Mr. GUARRIELLO. Like I said, the only option you had in New Jersey was either stay or go.

Mr. CHAPPELL. If you went, if you did not stay, what happened?

Mr. GUARRIELLO. That goes back to a longstanding—

Mr. CHAPPELL. Did you draw out all your money? That is what I am asking.

Mr. GUARRIELLO. That came back after a fight with the legal counsel and the State attorney. They finally gave us our money back. After a long period of time of fighting, they did pay us our interest back. But they have never given us back the right to vest. And I believe that the individuals that were involved in the suit still have a suit against the State asking for this right of vesting the pension.

Mr. CHAPPELL. Do you know how many of your people actually pulled out of that program and went Federal—or just pulled out of the program?

Mr. GUARRIELLO. In the case of my local, all but about five pulled out and went Federal.

Mr. CHAPPELL. The rest of them stayed?

Mr. GUARRIELLO. Yes, sir.

Mr. CHAPPELL. So we may assume that if this bill became law, it would be—

Mr. GUARRIELLO. I say that in the case of the local, not in the case of New Jersey.

Mr. CHAPPELL. I understand. But I would assume from what you say, though, that there are some who are still under State programs?

Mr. GUARRIELLO. Yes, sir; there are.

Mr. CHAPPELL. If they are under those programs, would they be entitled to participate in this other one?

Mr. GUARRIELLO. In the Federal program?

Mr. CHAPPELL. They would not; would they?

Mr. GUARRIELLO. No; they had one option by the law.

Mr. CHAPPELL. I think I said that once before and forgot it.

You said some civil suits were filed. Was that in New Jersey?

Mr. GUARRIELLO. Yes, sir; it was.

Mr. CHAPPELL. What was the result of it?

Mr. GUARRIELLO. They settled out of court to pay us back our money and to pay us interest. However, I believe the suit still continues on the right to vest.

Mr. CHAPPELL. Then on all of those who drew out of the program, who withdrew from that program, there would be some Federal moneys yet in the coffers of that State that have never been returned to the Federal Government or the employee for whom it was intended in the beginning; is that right?

Mr. GUARRIELLO. Right.

Mr. CHAPPELL. This brings us to the point you mentioned, Mr. Whitney, that is very intriguing to me, and one I had thought about. I commend you on that thought. It seems to me there ought to be a way to find out these things, if we are going to—whether we go this route

or not—make some efforts to get these moneys back in to help fund the situation.

Let me pursue one other question. On those who stayed, could they further contribute, or would they simply have a vested right at that time?

I assume they had simply a vested right at that time, and that was the end of it, and the State did not carry it on beyond that point; is that right?

Mr. GUARRIELLO. No, sir. If they opted to stay, they continue to make their contribution to the plan. And I believe the public law also allows the Federal Government to continue to make the employees deposit to the system, up to a rate of 6 percent.

Mr. CHAPPELL. The Federal Government continues to make deposits under those circumstances?

Mr. GUARRIELLO. Yes, sir.

Mr. CHAPPELL. Do you know whether or not the Federal Government has continued to do so in New Jersey?

Mr. GUARRIELLO. Speaking from past experience with New Jersey, I would bet on it. Because if they did not, they would relieve them of disability. They would just tell them, "You have to get out," that is all. They will not spring for a dime, if I may say so.

Mr. CHAPPELL. So the Federal Government—it would seem to me we ought to have the record show this—the Federal Government is still contributing to some State retirements?

Mr. GUARRIELLO. Yes, sir.

Mr. CHAPPELL. But you do not know how many? Either you or Mr. Whitney?

Mr. WHITNEY. I have just been advised that Michigan is also continuing this practice.

Mr. CHAPPELL. Do you people have any of that information? We can, of course, get this.

Mr. WHITNEY. We would be happy to provide it for the record, Mr. Chairman.

Mr. CHAPPELL. If you would, it would be helpful to us.

Mr. WHITNEY. Yes, sir.

(Information to be furnished. See p. 74.)

Mr. CHAPPELL. Do you have any good suggestions as to the best method for recouping these State moneys—aside from sending the National Guard down?

Mr. WHITNEY. There are several ways it could be done.

One that strikes my fancy would be to let those States involved know in no uncertain terms that their continued entitlement to Federal financial assistance in other areas might be jeopardized by their reluctance or failure to return these moneys to the U.S. Treasury.

Mr. CHAPPELL. That is effective sometimes, is it not?

Mr. WHITNEY. Yes; it is.

Mr. CHAPPELL. We thank you gentlemen very much.

Mr. WHITNEY. Thank you, sir.

Mr. CHAPPELL. I wonder if we might take a 5-minute recess? We will be right back in 5 minutes.

(Recess.)

Mr. CHAPPELL. The subcommittee will come to order.

Mr. Webber, you are representing the American Federation of Government Employees, and you are accompanied by Mr. Sadler. You may proceed.

Before you do, let me ask you to indulge this.

It seems to me that we have got about four different categories of people that need to be considered in this bill, and somewhere along the line the situation needs to be clarified. See if I am right on this.

First of all, you have the person who did not participate in any pension at all because there were some States that had none.

Second, you have the person who participated in a pension program for a while and withdrew, and that was the State pension program.

Third, you have the employee who participated in a State pension plan and stayed in that plan.

Fourth, you have those who came under the Federal plan when the law went into effect.

You, therefore, have four categories that seem to me have to be taken into consideration, together with the moneys which the States have received to take care of some of these pension plans.

I wanted to get that into the record because I know counsel will want to go back as we get into this bill and give us some enlightenment on that when we have further hearings on it. If we are going to do equity, we have to figure out how to do equity all the way through the program.

**STATEMENT OF CLYDE M. WEBBER, EXECUTIVE VICE PRESIDENT,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, WASH-
INGTON, D.C.; ACCOMPANIED BY CARL K. SADLER, LEGISLATIVE
REPRESENTATIVE, AFGE**

Mr. WEBBER. There may be a fifth category. That is the category of the former National Guard technicians who had some service with the State, were employed by the Federal Government in some other capacity, and who were left out of the previous act altogether.

But before I get into this, I would like to this morning, since this is the first opportunity since the action of the committee yesterday in regard to the pay for Federal employees, I would like to thank you and the other members of the committee who took the courageous action to see that Federal employees receive equity in the stabilization program.

Mr. CHAPPELL. Let me say that we appreciate your comment on that, and further state that I think most of us believe, and I think most of you are willing to make all the sacrifices and go all the way, but we are doing a better job when we all do it; is that not right? All the same, private, governmental?

Mr. WEBBER. Treat everyone else, true.

Mr. CHAPPELL. OK.

Mr. WEBBER. The American Federation of Government Employees, representing over 650,000 Federal employees in exclusive recognition units who perform every kind of service for the Federal Government, has a deep and continuing interest in legislation to provide equitable retirement program to all career Federal employees.

We have found it noteworthy that this growth in concepts has been reflected most of all in the legislative bodies of our country, especially the Senate and the House of Representatives, which has been especially responsive to new ideas and to changes in our national life.

Our organization, which is a voluntary union based on democratic principles, has always sought to obtain equity for all Federal employees. For this reason, we have sought to define more accurately the meaning of career service. Most of all, we have sought to update all the provisions of Federal personnel legislation to keep them all in general conformity with the evolution of the modern reforms which Congress has been successfully enacting on the basis of the bills emerging from the House and Senate Post Office and Civil Service Committees.

The National Guard Technical Act (Public Law 90-486) was signed into law August 13, 1968. The purpose of this act was to clarify the status of National Guard technicians. However, during the clarifying procedure, a retirement formula was developed which, though considered appropriate at that time, now seems in retrospect and in the light of more recent legislation, to need revision.

This compromise resulted first in a provision that a National Guard technician, serving in a National Guard program, on or after January 1, 1969, received credit for retirement purposes for only 55 percent of his past service as a technician. Second, the compromise denied to current Federal employees who at the time of the enactment of the National Guard Technician Act were no longer National Guard technicians any benefits or credit for their past National Guard service.

These two limitations on retirement credit contrast unfavorably with the general provisions of section 3(c) of Public Law 90-486 which reads as follows:

(c) All service under Section 709 of title 32, United States Code, or prior corresponding provision of law, performed before the effective date of this Act shall be included and credited in determination of length of service for purposes of leave, Federal employees death and disability compensation, group life and health insurance, severance pay, tenure and status. This subsection shall apply only in the case of persons who perform service under Section 709 of title 32, United States Code, on or after the effective date of this Act.

Retirement annuity computation should have been included among the list of benefits that accrue to all Federal career employees.

From the above quote of section 3(c) of Public Law 90-486, one can easily see what effect the law has had on the National Guard technicians who served prior to January 1, 1969. They lost all credit for their past service.

At the time of the enactment of the National Guard Technician Act, these dedicated Federal employees who had given many years of loyal service to the National Guard program, were working in other Federal service. Is this reason enough to deprive them of benefits and credit for their past service? The time has come to improve on the temporary formula that was approved 3 years ago.

The bills, H.R. 2530 and H.R. 9858, will give these Federal career employees full credit for all past service, not just the 55 percent as previously stipulated, and will grant all former technicians credit for their service as well.

For the above reasons, we urgently appeal to you for the earliest passage of these bills.

Before concluding our statement, we should like to anticipate and answer a criticism which we have heard in the past from representatives of the executive branch, specifically the Civil Service Commission.

The Commission has been opposed to similar bills in the past, not only on "principle" but also for alleged financial reasons. We believe that the "principle" that the Commission invoked is a "straw-man" argument and not revelant. As to the matter of cost, we wish to point out that the National Guard technician must pay retroactively to the Civil Service Retirement Fund with interest his own full share of contributions for years for which retirement is being granted.

It is thus quite clear that the National Guard technician will not be receiving "something for nothing." They will be paying their way in precisely the same way as other career employees. Thus equity towards the retirement fund will be safeguarded as well as equity toward the career employee.

Again, we urge the subcommittee and its members to pass favorably upon H.R. 2530 and H.R. 9858, bills which will open the doors to Federal career employees who are not yet benefiting fully in the matter of retirement credits for services rendered as National Guard technicians in the past.

In concluding, we wish to thank this subcommittee for the opportunity to testify in support of these two fine bills.

Mr. CHAPPELL. Mr. Webber, thank you very much for your fine statement.

Mr. Sadler, do you have anything to add?

Mr. SADLER. Amen.

Mr. CHAPPELL. Mr. Webber, we want you to understand that just because you got by without questions, that we do not put you in the same category as the rest, but we think we have covered the questions. We are trying to make the best record we can and we will give you every opportunity to get in additional information.

Did you want to speak to any question that has been previously asked?

Mr. WEBBER. I think they are very well covered.

Mr. CHAPPELL. All right, sir. Thank you very much.

Dr. Nathan Wolkomir, president of the National Federation of Federal Employees.

Dr. Wolkomir, we understand you are accompanied by Mr. George Margolis, legislative assistant.

**STATEMENT OF DR. NATHAN WOLKOMIR, PRESIDENT, NATIONAL
FEDERATION OF FEDERAL EMPLOYEES; ACCOMPANIED BY
GEORGE MARGOLIS, LEGISLATIVE ASSISTANT**

Dr. WOLKOMIR. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Nathan T. Wolkomir. I am president of the National Federation of Federal Employees, which is the pioneer and largest of the independent general

unions of Federal employees. The NFFE has many locals and members in virtually all Federal departments and agencies. For over 53 years our organization has been promoting the welfare of Federal employees and the public interest. It is to be noted that in the report of recognitions and agreements issued by the Civil Service Commission in November of 1970 NFFE represents National Guard Technicians in many States such as Alabama, Arkansas, Arizona, Colorado, Illinois, Louisiana, Maryland, Massachusetts, Montana, New Mexico, Oklahoma, Puerto Rico, Wisconsin, and others. NFFE does have an immediate and direct concern in their conditions of employment.

The subcommittee is addressing itself to the annuity computation figure for National Guard technicians in both H.R. 2530 and H.R. 9858. H.R. 2530 was initially sponsored by Congressman Fred B. Rooney of Pennsylvania and H.R. 9858 was initially sponsored by Congressman Samuel S. Stratton of New York. Both of these honorable Representatives, Chairman Waldie of this subcommittee, and members of the subcommittee are thanked for their interest in this equitable proposed legislation. We strongly support both bills which would raise the annuity computation figure for National Guard technicians from 55 percent to a full 100 percent and which would allow all former technicians in Government service on and after January 1, 1969, to receive service credit for their pre-1969 technician service.

During the last session of Congress, similar legislation was proposed on the Senate side of the House and we call to the attention of this subcommittee the following quote from an editorial taken from our convention issue of the NFFE newspaper the Federal Employee:

In a letter to the NFFE following his telegram to the union's national convention at Sacramento, Sept. 14-18, 1970, Senator Williams wrote in part:

DEAR NATE: It is indeed a pleasure to be able to sponsor this needed legislation. Workers who have the responsibilities of Federal service should be treated as others of the same status. They should enjoy the privileges and protections that accompany Federal employment, including equitable retirement benefits. Best personal regards * * *

In introducing S. 4352, Senator Williams made the following statement in the Senate, published in the Congressional Record of September 16, 1970:

"I am pleased to introduce today a bill that would correct several inequities of the 1968 National Guard Technicians Act. Under this law, the National Guard Technicians were granted status as Federal employees. Accordingly, I feel they should share the benefits of retirement and promotion. This bill will establish a uniform merit promotion system for these skilled technicians. It would also provide an equitable retirement program. A technician over 50 years of age with 20 years of service can, with the approval of the Secretary of the Military Department and the Civil Service Commission receive an annuity. This bill would make this annuity a right.

"Mr. President, the inequity is clear—the need for the proposed legislation is apparent. I am very pleased to state that this legislation has received the endorsement of the National Federation of Federal Employees."

Senator Williams then asked unanimous consent that the text of the bill be printed in the Congressional Record. This was granted and S. 4352 was referred to the Committee on Armed Services where prompt and favorable action is being urged by Senator Williams and the NFFE.

NFFE's sustained campaign to improve the employment conditions of National Guard Technicians * * * to bring them fully within the scope of civil service benefits * * * is widely recognized and acclaimed. Senator Williams' bill is a very important forward step. The NFFE joins Senator Williams in seeking favorable action on this key piece of legislation. The constructive actions on behalf of the Guard Technicians has attracted large numbers to the NFFE's ranks and they were well represented at the recent Sacramento national convention.

Legislation to provide retirement equity to these dedicated National Guard employees, in line with the provisions of the retirement law as it affects other Federal workers, is indicated by every consideration of fairplay and, I must emphasize, in the national interest as well.

The same considerations which quite properly and reasonably and logically pointed to the need for the legislation bringing these employees into the Federal career service also are operative as they affect the retirement rights of these skilled workers.

Section 709 of section 3(c) and (d), title 32, United States Code as amended by Public Law 90-486 conspicuously omits full credit for service rendered prior to the effective date of the National Guard Technician Act of 1968. Section 5(b) and (c) of said act thus also requires amendment to read "an amount equal to 100 percent of a deposit computed in accordance with such provisions."

Mr. Chairman and members of the subcommittee, the NFFE does not believe it is in the national interest to adopt an arbitrarily restrictive, hesitant, reluctant, and grudging attitude with respect to the full retirement rights and indeed other appropriate civil service benefits of the National Guard Technicians. Such an attitude, I hasten to add, obviously is not that of the chairman and the members of this subcommittee. Indeed, the introduction of the pending legislation, and the fact of these hearings in themselves, bespeak an entirely different and we believe proper point of view.

The skills and the dedication which these employees bring to their tasks need no extended comment from me at this point. You all are fully aware that to a very significant degree the instant readiness, the technical efficiency, the capacity of the National Guard to perform its absolutely vital functions throughout these United States in these critical times is dependent upon the technical skills and the high degree of dedication which these workers bring to their daily tasks. We see the risks to which they are exposed daily.

Therefore, it follows inevitably that the enactment of the legislation here under consideration not only represents an important step toward giving equality of treatment to this group of employees but is, as well, essential to the effectiveness of the Guard itself. One among many beneficial results of the enactment of the legislation, from the standpoint of the national interest, will be to stabilize employment, to prevent the loss of skills which the Guard can ill afford to lose, and to further enhance that esprit de corps which is so essential at this particular point in time.

Immediate public hearings on the problems affecting National Guard Technicians by the very nature of their hybrid existence should be called to the attention of this appropriate congressional subcommittee.

Mr. Chairman, you had raised a question earlier about the possibility for a need for an omnibus bill, and there certainly is a drastic need for such, although we do not want to contaminate the issues with reference to the problems of retirement at hand here.

At our last national convention, dozens of resolutions were introduced by our National Guard technician locals which clearly identified the dual type of administrative controls imposed on them. They are subject to the administrative whims of adjutant generals, normally appointed by Governors of States, and also controlled by general ad-

ministrative policies issued by the National Guard Bureau in Washington.

This Bureau, in turn, falls back upon Department of Defense policies and regulations. And this triumvirate type of control has led to much confusion and, might I state, much political innuendos.

As a matter of record, I would like to have this stated. One particular adjutant general, in our handling a series of grievances that were under his control, had the audacity in writing to state the following:

"This State does not belong to the State of the union and we will run our National Guard as we please."

This is an indication of the type of political innuendo we live with.

We did press charges, unfair labor charges, against this particular General. We went to the President of the United States, and it is still sitting before the National Labor Review and Relations Council. However, the Department of Labor did take action, and may I state that the unfair labor charges did hold up.

This is an example of what the National Guardsman is subject to in many States. This triumvirate type of control, as I stated, has led to the confusion. It can only turn to Congress, in many cases, in order to obtain equal and fair treatment, even on minor issues and normal grievances. Some of the proposed legislation covers such subjects as the present subject of our hearing, while others cover requests for universal standards on the wearing of uniforms, quarters allowances, medical and dental care, reserve training status, and so on. The diverse nature of these subjects themselves are an indication of the triumvirate type of administrative controls and the inadequacies of providing a clearcut administrative system for National Guard technicians.

A typical illustration of the foregoing—and this is the addition to my prepared statement—is found in the varied policies adopted among the 50 States in connection with the wearing of the uniform itself. In some of the more enlightened jurisdictions, the adjutant general has permitted a guardsman to wear civilian clothes when he is in a civilian capacity. On the other hand, in many States, the adjutant general insists that the uniform be worn all of the time. This causes considerable frustration and embarrassment among the guardsmen.

We regret that a matter of this type must be brought to the attention of Congress. It would appear that it would be appropriate and reasonable for the National Guard Bureau or the Defense Department to issue appropriate policies in this matter. The fact is that they have not and, as a consequence, the morale of the guardsmen in those cases is destroyed.

At a time when the Government is seeking to make the military career including the Guard more attractive, the Defense Department avoids its important responsibility in promulgating fair and reasonable policies. The chairman may wish to consider including within this bill, a policy which will permit guardsmen the right to wear civilian attire when not engaged in military activities.

The political ramifications that are involved today in the administration of the National Guard technicians, I think, is clearly apparent. If ever we needed an omnibus bill—what we need is a bill clearly taking the National Guardsman out of politics and make him a true civil servant. It could only be done by legislation.

May I state for purposes of emphasis this is brought to the attention of this committee because, in line with a previous question that you had asked, we feel that this is the appropriate committee, the House Post Office and Civil Service Committee is the committee that should initiate such legislation. The Military Affairs Committee is too involved in military affairs, and the innuendos that, by the very nature of their operation, render it a State's right function, and I think we should get out of this business for the National Guard technician.

Then may I state, in addition, our "amen" to all of the previous testimony. And I believe that the unanimity of opinion here by all organizations with reference to the Guardsmen is clearly an indication of the many inequities that exist for these people in the field.

We handle dozens upon dozens of grievances a day and very often wonder to whom do we go in order to resolve these, because of the particular type of administration that they live under.

In addition, thank you also for your wonderful action today. Being, with Mr. Webber and Mr. Griner, a member of the pay council that is so much involved in the legislation, we are certainly appreciative of what you did do for the Federal employee yesterday, sir.

Mr. CHAPPELL. Thank you, Doctor. Thank you very much for your statement and for your closing comments.

Do I understand that you recommend that the law ultimately be amended so as to not require—or make it such that the State could not require you to be a part of the National Guard?

Dr. WOLKOMIR. No. What I am saying is that we should place the jurisdiction of the National Guardsmen into the connotation of its title. It should be under the Department of Defense, just like other agencies are under the Department of Defense, with no political and, may I say, control, by either the State Governor or his adjutant general.

Mr. CHAPPELL. What you are saying is, it would be more reasonable to put you in an Active Reserve status? Is that what you are saying?

Dr. WOLKOMIR. They can maintain the same status they have now, except you would remove the administrative control from the adjutant general and place it as we do in the Department of Army, Air Force, and so on, into a national bureau. But give the national bureau some teeth to operate with.

Today the National Guard Bureau is really nothing more than an intermediary between either the State Governor or the Department of Defense. And, frankly, I do not think they know who their bosses are.

Mr. CHAPPELL. You made a comment there I do not quite understand. What is embarrassing about wearing the uniform? I did not quite follow that.

Dr. WOLKOMIR. No; I didn't say that the wearing of the uniform was embarrassing. The fact that in some States the adjutant general imposes a military discipline upon those who are in civilian status is embarrassing to these individuals.

Mr. CHAPPELL. That is 95 percent, though, of your people, except—what you are saying is that on 5 days a week—

Dr. WOLKOMIR. They are civilians.

Mr. CHAPPELL. Except for these weekends, they are civilians?

Dr. WOLKOMIR. They would be the same as any other civil servant 5 days of the week. And on their active status as military, as it was

testified previously, they would, by the very nature of things, have to resort to the doctrines of the military because they are in uniform and they are in the military. We have no objection to this, and our National Guardsmen do not. But during those 5 days, there should be no imposition on him as a civil servant, to say they are other than civil servants. But they are not treated as such.

Is this clear?

Mr. CHAPPELL. Yes, sir.

Prior to the passage of this act, was there any difference in the requirements of wearing the uniform? In other words, did some of the adjutant generals still require you to be in uniform?

Dr. WOLKOMIR. The general policy, up to the inception of this act, was for practically all adjutant generals to treat their civilians as military. This act sort of placed them in a hybrid condition and, consequently, those adjutant generals who are adamant in their military stance retain this to this very day. Others—who I may say have seen the light—have recognized the civilians as being civilians 5 days a week.

Mr. CHAPPELL. How far back did the practice start of requiring the civilian group to be a part of the National Guard? At least on the weekend, from a weekend standpoint?

Dr. WOLKOMIR. I believe this always existed.

Mr. CHAPPELL. It has always been that way?

Dr. WOLKOMIR. I think so. Someone in the audience may have to correct me.

Mr. CHAPPELL. I want to get that reflected in the record. I believe it is the consensus that that has pretty much all the way been true, all the way through.

Dr. WOLKOMIR. Since its inception, that is right.

Mr. CHAPPELL. How would you best describe the responsibility of the particular group of people you are talking about, the civilian employees of the National Guard?

Dr. WOLKOMIR. I do not quite understand the question.

Mr. CHAPPELL. What I am really trying to do is get back a little bit into the history, give you an opportunity to tie it, if you like, into the thought that your job is in essence, from the beginning, as I understand it—it has been pretty much one of caretaker of Federal property. Is that a fair and adequate statement? As a matter of fact, were you not at one time called caretakers in some respects?

Dr. WOLKOMIR. Yes; this is true.

Also, your reference to the term "State militia" is an indication of the fact that in emergencies in the State, the State Governor has the right to use the State militia, and I believe this right, of course, is still retained.

Mr. CHAPPELL. That is still retained under the Constitution. There has been nothing to change that.

As a matter of fact, the President, while he has the power to call everyone in in time of emergency, or like some other specific duties with reference to rioting, and so forth and so on, but without that sort of thing you are still at the call of the Governor of the State, as I understand it?

Dr. WOLKOMIR. This is right. Now, the delegation of the authority to the State Governor to call up, in times of emergency, a National

Guardsmen could be retained with, however, the final jurisdiction being retained by the President of the United States, since basically they do call upon him, anyway, in practically all emergencies, as you indicated, and what has happened lately.

For example, a good example is what happened at Attica, where the Governor of the State called on the Guardsmen in a state of emergency. But I think the President was clear in his immediate action to endorse the Governor's stand to indicate that he did have the backing of the President.

MR. CHAPPELL. This question is just a little bit technical, but are the properties which you handle—for example, where you have the Air National Guard, who in actuality owns the aircraft that remain there?

DR. WOLKOMIR. In actuality, it was given to many of the States by the Federal Government, the property itself.

MR. CHAPPELL. Wait just a moment. Since the record cannot get it accurately except from the witness here—it is your thinking that these are transferred literally to the State and belong to the State.

Now I notice that there is some disagreement among the group, so we will simply note in here in the record that we will check this out, legally, and see what the situation is. It may very well be all or a good substantial part of it is transferred—

DR. WOLKOMIR. Or subsidized by Federal funds initially in order to purchase the properties for the State.

MR. CHAPPELL. I was going to follow up, with reference to the Army units of the National Guard, the tanks and so forth, would there be any difference in ownership between a tank, let's say, and an airplane? If you know. You may not know.

DR. WOLKOMIR. I do not believe there would be any difference in the ownership.

MR. CHAPPELL. So whatever is true of one unit would be true of another?

DR. WOLKOMIR. That is true.

MR. CHAPPELL. That gets back to the question I asked earlier. If you are caretakers of Federal property, what property are you talking about? Are you talking about airplanes, tanks, or are you talking about records, accounts, or what?

DR. WOLKOMIR. We have sort of a contaminated condition in terms of property. For example, in some cases they are situated as tenants on Federal properties. In others they are on strictly State property.

MR. CHAPPELL. Can you give us an example of that?

DR. WOLKOMIR. Yes. An air base would have a National Guard or International Guard situated on the base. For example, we have this in California. They are a tenant organization and they have their own equipment. But this is on Federal property.

MR. CHAPPELL. One final question; I think it is a final question. What percentage of your National Guard is composed of noncivilian—non-military personnel?

DR. WOLKOMIR. I don't know of any.

MR. CHAPPELL. What you are saying is that all of the National Guard as such—

DR. WOLKOMIR. For 5 days a week they are truly civilians, including the Adjutant General who keeps wearing a uniform.

Mr. CHAPPELL. He is paid, though. He is head of the State's military organization, whatever you call it. He is a full-time military employee, is he not?

Dr. WOLKOMIR. He is a full-time State employee.

Mr. CHAPPELL. That is what I am saying so he—

Dr. WOLKOMIR. I wouldn't distinguish him as being military, because if he was military, he may have held the position of rank in the reserve just like the rest of the guardsmen. He may have the status of being a Lieutenant Colonel or a General or whatnot, but this title doesn't mean anything 5 days a week because to whom he is responsible during these 5 days a week as a General or as a Colonel or Lieutenant Colonel.

Mr. CHAPPELL. There is nothing that prohibits the various Constitutions of the States to take care of that, so that would be something else.

Dr. WOLKOMIR. May I call your attention to the fact that we have air technicians who work for the Air Force and they have a dual capacity, too. They are civilians also controlled by someone who would be similar to the AG during 5 days a week and during the weekend they serve in a military capacity.

They are in a hybrid situation but they are full civil servants 5 days a week with full retirement benefits just like the ASCF subject to DOD regulations.

What I am saying is that in order to clarify the muddle of National Guardsmen we should have something similar to technicians where they know they are Government employees and they know to whom they are responsible.

Mr. CHAPPELL. How did the technician become appointed to the job or hired?

Dr. WOLKOMIR. This was referred to earlier by a previous witness. And having spent 25 years in the Department of Defense, may I state that the term "technician" was a term used primarily for the purposes of hiring private sector employees from private industry, I think then within the DOD posture, and use them as technicians on a consolidated basis or contract basis.

During World War II, for example, we actually hired in DOD thousands of technicians from the various aircraft corporations who were sent overseas to assist our engineers and various—in those days—aircraft engineers who later became maintenance officers in the accomplishment of our repair functions, setting up installations. But they were contracted to us by private concerns.

In order to give them some kind of a title, and I think then within the DOD posture, we called them technicians.

Mr. CHAPPELL. I don't want to cut you off, but let's come right to today. How is a technician hired? Is it by competitive exam? The answer is no, isn't it?

Dr. WOLKOMIR. Are we speculating about the Guard? If you are, my answer would be no.

Mr. CHAPPELL. This is the National Guard technicians, that is what is covered.

Dr. WOLKOMIR. My answer is no. They are not generally selected on a competitive basis.

Mr. CHAPPELL. Are they employed because of military experience?

Dr. WOLKOMIR. In many cases, yes.

Mr. CHAPPELL. Many or most?

Dr. WOLKOMIR. I can't answer that. I don't know the answer. The only thing that is called to our attention are the incongruities and inequitable situations. There is too much favoritism for a distinct few in the appointment and this is a very subjective thing. Do they come from a competitive list, and my answer is generally, no. So it is an odd sort of operation.

Mr. CHAPPELL. Who would recruit the people?

Dr. WOLKOMIR. The source of recruitment, I imagine initially, was from the military equivalent of the technician and this is the reason for the imposition of the requirement that they serve in the National Guard.

Also, the encouragement of people to join the National Guard in the training programs and they select from those that volunteer for it.

I can't answer the question in terms of the complete sources because they don't use a competitive list, a register like the Civil Service Commission sets up for practically every other civil service job. It is an inherent and ingrown cancer.

Mr. CHAPPELL. Does State residence have anything to do with the position?

Dr. WOLKOMIR. No, sir; not that we know of.

Mr. CHAPPELL. You don't have to go to a Federal Registry or any competitive exam, nothing? It is simply an opening and you get in that and you become an employee?

Dr. WOLKOMIR. That is right.

Mr. CHAPPELL. So the first thing you have to be, unless it is the secretary or something, first you have to fill the military?

Dr. WOLKOMIR. That is right.

Mr. CHAPPELL. So when we require members to be a part of the National Guard, it is kind of the other way around, you have—the way you get into it is that you take, fulfill a billet in the National Guard first?

Dr. WOLKOMIR. Right. Then you qualify for an—

Mr. CHAPPELL. Then you try to qualify for what we are talking about in terms of—civilian employment, is it?

Dr. WOLKOMIR. Yes; which was under complete State jurisdiction and now a sort of a hybrid sort of civil servant.

Mr. CHAPPELL. Thank you.

Let me ask if there is anyone in the room—I only want to take a few minutes because I know your time is limited and so is mine. Is there anyone in the room that can answer for sure this idea of who owns the equipment that you take care of? Oh boy, we have a lot of people.

Take the gentleman who is closest to the Chair.

Tell us who you are.

Mr. WALTERS. I am James W. Walters, area 1 vice president of Act, Inc.

Mr. CHAPPELL. The question I ask, who owns the property which you care for?

Mr. WALTERS. Yes; in the New York National Guard, in which I have been employed as an administrative supply technician, I can say we have two sets of books that are kept. One set of books are kept by State employees, we call State superintendents, State people who work in the armories, strictly State employees. They care for all New York State property. That is, property purchased by the Division of Military and Naval Affairs of the State of New York which is a State organization.

We have another set of books called property books, voucher files. This has all military type equipment. Now when I say "military type" this includes down to the pencils that we use on the job. If it is purchased from Federal funds, there is a property or a supply catalog number in the Defense Department. This is Federal property which is loaned to the States through the united property and fiscal office of the State; in our case the State of New York.

He sends us out to military property and as I say, it can be anything from pencils up to and including aircraft on the Army side, and I assume the same on the Air Force side.

This is Federal property owned and serviced by Federal employees.

Mr. CHAPPELL. But loaned to the State?

Mr. WALTERS. Yes; because it remains in the Federal property system.

Mr. CHAPPELL. I am talking about not where it is recorded, but who has the final disposition, the State or Federal Government?

Mr. WALTERS. The U.S. property and fiscal office of the State of New York.

Dr. WOLKOMIR. U.S. Government?

Mr. CHAPPELL. One at a time now.

Mr. WALTERS. The U.S. property and fiscal officer of the particular State. In other words, there are 50 U.S. property and fiscal officers. These are officers in the Defense Department, usually in the Army, but they could be also in the Air Force, who are on active duty with their branches of service, either active military service with the Air Force or Army.

Mr. CHAPPELL. You would view him as a custodial officer?

Mr. WALTERS. Yes; and his auditors go to each installation, from his office, to each installation and account for all Federal property there in the particular installation.

Mr. CHAPPELL. So the property is not the property of the State?

Mr. WALTERS. That is correct, sir.

Mr. CHAPPELL. As far as you know, there is no instance where this is true? Who owns the armory?

Mr. WALTERS. The armories are State buildings. Serviced and maintained by the State. This is in the State of New York.

Mr. CHAPPELL. So you would have the responsibility of taking care of those buildings?

Mr. WALTERS. We do not.

Dr. WOLKOMIR. The State does.

Mr. CHAPPELL. All right, that is separate from you people.

Mr. WALTERS. Yes, sir; they are hired in the State.

Mr. CHAPPELL. Take tanks, for example.

Mr. WALTERS. Tanks are Federal control under my jurisdiction.

Mr. CHAPPELL. Thank you for clarifying that.

Mr. WALTERS. I would like to make one other point——

Mr. CHAPPELL. Hold your thought on that, and let me ask you this: Let's trace how you came into the National Guard.

How did you come into the National Guard? Were you a military man before?

Mr. WALTERS. I enlisted in the regular Army in 1949, when I was 17 years old. I hate to give away my age.

Mr. CHAPPELL. You don't look a day over 17.

Mr. WALTERS. I served for 6 years.

When I returned to civilian life, I had a friend who was a member of the National Guard in New York, and he knew I was back in civilian life, and knew I was looking for a Government job, and he asked me to come and visit with the colonel at an armory, which I did. And I was offered a civilian job based upon my qualifications, which I received while on active duty.

Mr. CHAPPELL. Military qualifications?

Mr. WALTERS. Yes.

Mr. CHAPPELL. Who offered you the job?

Mr. WALTERS. I was offered the job by the staff assistant of the battalion that I was going into.

Staff assistant would be, I guess, equivalent to a personnel supervisor in another job.

Mr. CHAPPELL. Is he a member of the—was he an officer in the National Guard?

Mr. WALTERS. He was also an officer of the National Guard; yes, sir.

Mr. CHAPPELL. Was the first prerequisite that you have military qualifications?

Mr. WALTERS. He never really said. They just——

Mr. CHAPPELL. What were you hired for?

Mr. WALTERS. I was hired for personnel and supply work.

Mr. CHAPPELL. Is this something that is comparable in the services?

Mr. WALTERS. Yes; it would be comparable to about four different positions in the active services.

Mr. CHAPPELL. Dealing with supply?

Mr. WALTERS. Yes; with supply and administration, personnel and funds.

Mr. CHAPPELL. Is he a supply officer?

Mr. WALTERS. No; you would have to take your personnel officer in the Navy, supply officer, your pay officer, and about every type of administrative functions right down the line.

Mr. CHAPPELL. Had you not had military experience, would you have been eligible for the job?

Mr. WALTERS. Yes, sir.

Mr. CHAPPELL. This was not a prerequisite?

Mr. WALTERS. That is right.

Mr. CHAPPELL. Were you first brought in as a member of the National Guard?

Mr. WALTERS. No, sir; I was a civilian.

Mr. CHAPPELL. You were not a member of the National Guard?

Mr. WALTERS. That is, I was forced to join the National Guard in order to get the job. I was forced to enlist.

Mr. CHAPPELL. Then that was a condition of employment?

Mr. WALTERS. That is correct.

Mr. CHAPPELL. And was based on—you say not only military background?

Mr. WALTERS. No, sir; it was based on the fact I made a good impression on the individual sitting on the other side of the table and if I had no military experience whatsoever, if I made a good impression, he would have allowed me to take the job provided I enlisted in the National Guard. Having present service in the National Guard is the prerequisite. It was at that time.

Mr. CHAPPELL. We are still essentially right, if you are talking about the chicken and the egg, you got to be military to come in?

Mr. WALTERS. That is correct. You must be a member of the unit in order to be working, except for the female personnel that they employ.

Mr. CHAPPELL. In other words, the easiest way to say it is that you have to perform that military function, and you have to be able to then—aside from the duties as an officer or enlisted man—you have got the responsibility of caretaking.

Mr. WALTERS. Let me say this, the responsibility is being put upon me by the supervisors on the other side.

It is not that I must be a military man to do this job. I could be a civilian all day long, which is proven, by the way, in the Army and Air Reserve technician program.

Mr. CHAPPELL. Did you start off wearing a uniform?

Mr. WALTERS. No, sir; never wore the uniform in the State of New York in the Army all two times I was there.

Mr. CHAPPELL. Did you have any weekend drill requirements?

Mr. WALTERS. Yes, sir.

Mr. CHAPPELL. In addition—

Mr. WALTERS. Yes, sir; let me make a point.

In order for me to get the job as civilian, I had to first enlist in the National Guard. Then fill out another set of papers for my civilian status.

They quasi-recognize the fact this was a civilian job by making me fill out another set of papers. Otherwise, they would say you are a member of the National Guard, go to work.

But there is a separate file of civilian and military work. There are two different files. We have an OPF and also a 201 file.

Mr. CHAPPELL. You had another thought?

Mr. WALTERS. That was the thought.

Mr. CHAPPELL. Let's go back to Dr. Wolkomir.

Dr. WOLKOMIR. Mr. Chairman, there are certain facts that should be brought in—

Mr. CHAPPELL. Can you make it kind of short?

Dr. WOLKOMIR. Yes; I will. I will not go through the whole history of World War II.

In training of the military during World War II, after the conflict was over, it is to be recalled that we had thousands upon thousands of military who were in still exactly the same type of work that the National Guard was needed for.

In the military mind of hiring for this sort of a position; and I am speaking about the AG's, what better source is there for their recruit-

ment than those who have been subject to the military discipline during their service time and to bring them into the National Guard.

It is this sort of regimentation that actually was accomplished in their recruitment. I think this has a bearing on the other aspects.

Mr. CHAPPELL. What is the purpose of the National Guard?

Dr. WOLKOMIR. Let the National Guard's men answer that.

Mr. CHAPPELL. You are not a member yourself?

Dr. WOLKOMIR. No, sir; I am not.

Mr. CHAPPELL. All right, let's come back.

What is the purpose?

Mr. WALTERS. It is twofold.

Mr. CHAPPELL. What is the primary purpose?

Mr. WALTERS. To be ready to augment the regular forces of this country in time of emergency.

Mr. CHAPPELL. All right.

Go ahead.

Mr. WALTERS. And it has a State function to be ready to go to the aid of civil authorities in case of emergency such as floods and riots and so on. These are the two main purposes. To be trained and ready to go.

Mr. CHAPPELL. Were you hired by a State official, or a Federal official.

Mr. WALTERS. In my opinion, it was a Federal official. Since I was hired prior to 1969, we were in that no-man's land, where I received my paychecks from the Federal Government, I was carried under leave and annual leave and sick leave, which was given to Federal employees.

Mr. CHAPPELL. The man that you talked to, was he a State employee, or Federal?

Mr. WALTERS. No, sir; he was a Federal employee as I was a Federal employee.

Mr. CHAPPELL. Was he an officer in the National Guard?

Mr. WALTERS. He belonged to the National Guard, also.

Mr. CHAPPELL. What was his rank?

Mr. WALTERS. He was a captain.

Mr. CHAPPELL. Was he a technician?

Mr. WALTERS. Yes; a GS-6, I believe, back in 1949. Or, was it NGC-6, which was a National Guard grade for civilian employees.

Grade 6 was equivalent to a GS-6.

Mr. CHAPPELL. Actually then, whatever he was as far as classification, on the day of your employment you became the same thing?

Mr. WALTERS. I think so, sir.

I asked this question many times, but nobody could give me an answer, so, whatever he was, I was, is correct.

VOICE. Very well put.

Mr. CHAPPELL. I could not resist.

Mr. WALTERS. I don't blame you, sir. Most people can't.

Dr. WOLKOMIR. I think to live in a state of limbo all these years, Mr. Chairman—this is what I meant by needing a look at the whole administrative control of the National Guard.

Mr. CHAPPELL. I was reading the constitutional provisions yesterday afternoon because I have known of the real hiatus in this situation ever since law school days, but it is an interesting question.

The Constitution is not clear. When you get into definitions there are all sorts. You find Air National Guard, National Guard, and National Guard of the United States. You have all kinds.

So, it is a confusing situation. That is the reason I wanted to get into some of this to see historically where we have been and where we sit today from a legal standpoint in the minds of you people.

Dr. WOLKOMIR. There is also a reluctance when they first established the Guard to interfere with the State's rights concept of State militia controlled by the Governor. So this played a factor.

Mr. CHAPPELL. That is one of the things that is confusing—the provision enabling every State to have a State militia.

And one of the next provisions in the Constitution is that the Federal Government, that is the Congress, should provide for equipping all these things, including State militias.

There are a lot of complications. You people have been most helpful and I want to thank each and every one of you.

Dr. WOLKOMIR. If I could speak for the entire audience, you have been most pleasant and most courteous. I have attended congressional hearings for 8 years now, and this is the first hearing where actually you opened it up to everyone and we certainly are appreciative for your wholesome attitude toward this entire thing.

Mr. CHAPPELL. Thank you, gentlemen.

I was about to forget our star witness here, Mr. Callahan. I understand you are with the International Union of Electrical Workers, and whom do you have with you?

Mr. CALLAHAN. He is Mr. Richard Spencer.

**STATEMENT OF JOHN H. CALLAHAN, LEGISLATIVE DIRECTOR,
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS, ACCOMPANIED BY RICHARD SPENCER, PRESIDENT
OF THE NATIONAL ARMY-AIR TECHNICIANS ASSOCIATION**

Mr. CALLAHAN. I would like to present my statement and then yield to Mr. Spencer for a few comments.

Is that all right with you?

Mr. CHAPPELL. Yes, sir.

Mr. CALLAHAN. Mr. Chairman, I am honored to have the opportunity to appear before you today, on behalf of President Paul Jennings and some 300,000 members of the International Union of Electrical, Radio and Machine Workers. My name is John H. Callahan and I am legislative director of the International Union of Electrical, Radio and Machine Workers, commonly known as the IUE.

With me is Richard Spencer, President of the National Army-Air Technicians Association. We, in the IUE, represent the National Guard technicians in New Jersey and we are here to give our wholehearted support to the legislation of H.R. 9858 introduced by our good friend, Congressman Samuel Stratton of New York.

The 1968 Act was adopted to meet certain aspects of technician employment which the Congress felt required long overdue clarification.

and improvement. The legislation was adopted with three general aims in mind: (1) to provide adequate and uniform retirement and fringe benefit program; (2) to recognize the military, civilian, and State characteristic of the National Guard; and (3) to clarify the Technicians' legal status as employees.

The House originally passed a bill providing for Federal employee status for National Guard technicians as part of the so-called Reserve Bill of Rights in 1967. The Senate refused to accept that part of the bill dealing with National Guard technicians, and it was ultimately agreed in conference that the problem would be given full consideration in the next session of Congress. The 1968 Act is the result of further review and study of the situation.

The bill confers Federal Civilian Employee status on technicians employed by the National Guard and expands the scope of the Technician employment program. With respect to past service as National Guard technicians, the bill provides that such service will be recognized in full for the following fringe benefits: (1) group health and life insurance; (2) annual leave; (3) severance pay. However, for the purpose of retirement, a differentiation is made.

Section 5(a) in effect recognizes past technicians' service for the purpose of computing eligibility for Civil Service Retirement. However, section 5(c) limits the recognition of past technicians' service for retirement benefit computation purposes to 55 percent of such service.

In support of the 55-percent formula, the House Committee considered the following factors: (1) approximately 20,000 technicians had already acquired (as of 1968) a vested interest in future social security payments; (2) approximately 4,400 technicians had acquired vested rights to future annuities under State retirement systems; (3) all technicians would become eligible for Reserve Retired Pay at age 60 if they completed 20 years of service.

In addition to the foregoing factors, the committee also observed that since 1955 the Federal Government has contributed approximately \$78 million to the Social Security Fund and State retirement funds, or approximately 54 percent of the amount it would have been required to contribute had technicians been covered by the Civil Service Retirement System during that same period of time.

The committee noted that it could have recognized and honored all past service. It concluded that based on the considerations discussed above, its formula of 55 percent, in light of the financial obligations of the Federal Government, was fair, equitable, and a generous treatment of the matter.

It is readily apparent, however, that the determination works considerable hardship upon a large number of technicians who have provided continuous and loyal service, but who unfortunately have not earned vested rights to either social security or State retirement annuities. Thus, approximately 20,000 technicians do not have vested social security rights, and nearly 38,000 technicians do not have vested rights under the State retirement systems. Therefore, although the committee claims it has made a generally fair resolution of the problem, it is readily apparent that the large majority of technicians are provided with no substantial improvement in their retirement situa-

tion, and in fact lose recognition of nearly half of their previous service.

Moreover, the consideration of the Reserve retirement pay program is specious, since that is a benefit to which all reservists are entitled. While not within the scope of H.R. 9858, it is nevertheless pointed out that technicians are discriminated against salary-wise with reservists who are employed by the Federal Government to perform work on military bases. Though both do identical work, the reservist is not subject to the requirement that he maintain a particular rank and parallel salary level as a condition of employment. Reliance upon that program, then, by the committee, in effect discriminates against the technicians as members of the Reserve.

Lastly, it must be noted that past service is not limited by the 55-percent formula in the computation of retirement benefits for technicians in the District of Columbia National Guard. There seems no reasonable basis for such a substantial differentiation in treatment based on the fortuitousness of the jurisdiction in which the technicians are employed. It is clear that the basic services rendered by the technicians, even when performed for the State, are directed toward the continuing security and state of preparedness of the Nation as a whole. Certainly it cannot be argued that only 55 percent of such service was rendered for those purposes. Manifestly, the discriminatory treatment of such past service must be remedied, and legislation must be adopted recognizing all such past service for retirement computation purposes.

Mr. CHAPPELL. Thank you, Mr. Callahan, we recognize Mr. Richard Spencer, president of the National Army-Navy Technicians Association.

Mr. SPENCER. Thank you, Mr. Chairman, I want to thank you for the opportunity to speak to you on these points.

I would like to forego the outline that I have here, and just touch on the points that you had questions which were really special questions for the technicians in the State of New Jersey.

Mr. CHAPPELL. You are recognized to proceed along that line. Your prepared statement will be made a part of the record at this point. (The prepared statement follows:)

STATEMENT OF RICHARD SPENCER, PRESIDENT, NATIONAL ARMY-NAVY TECHNICIANS ASSOCIATION

An article appearing in the Philadelphia Inquirer on Sunday, March 21, 1971 by William Vance of the Inquirer Staff pointed out the economic horror involving older Americans and their shattered dreams insofar as their pension plans are concerned.

Mr. Vance described the work being accomplished by New Jersey's Senator Harrison A. Williams, Chairman of the Senate Labor and Public Welfare Committee to expose the shortcomings in pension plans in the private sector, which leave the worker practically destitute in the Autumn years of his life.

My purpose in addressing you this morning is to point out the shortcomings in the Federal sector regarding the pension system and the cruel deception which has been perpetrated upon the National Guard Technicians in the Federal Service. These are the Technicians hired to maintain the equipment and records assigned to the Army and Air National Guard throughout the 50 States and Puerto Rico.

For over 30 years these dedicated Technicians accomplished an outstanding job. They were constantly reassured that their limbo status would be resolved

and they would be gathered into the fold of Federal Civil Service, their rightful place. They are *not* a full time Militia contrary to the status some try to place upon them.

Finally on 1 January 1969 the National Guard Technicians became Federal Employees. Public Law 90-468 the Technician Act of 1968 became the law of the land. But what a cruel hoax it turned out to be for the senior National Guard Technicians. In recognition of his past service, his willingness to face recall to active duty, his individual efforts that maintained one of America's reserve forces (*The National Guard*) strong, the senior technician was rewarded with 55% of his past Technician service creditable toward Federal retirement! On top of this he suffers the additional 10% penalty for non-contribution into the Federal Civil Service retirement plan. This means that the man that really made the system work, who patiently waited for the changes necessary in the Federal Government that would recognize his past service for what it always was, Federal Civil Service, now faces a retirement income which in most cases will render him destitute.

Prior to being recognized as Federal Employees the average Technician had no voice and no representation. We in New Jersey have affiliated with the IUE AFL-CIO because they are a strong union that represents people in the private sector that manufacture a goodly number of the products we end up servicing in our Federal Civil Service positions. They understand our work and have been willing to help us clear up some of the inequities so prevalent in the Technician program.

The subject at hand is being brought to your attention by the bonafide National Guard Technician—The men and women that do the actual work. We are the elected representatives of the Technicians. Our voices have been severely throttled in the past and now we are speaking almost in utter desperation. The Technician has been the pawn of the National Guard for too many years. We face a retirement that frightens and disturbs the majority of our colleagues. We can not allow our members to be separated from their Technician jobs only to face a retirement income that borders on poverty levels by today's standards. Our members have been trapped by a chain of circumstances and we feel this proposed legislation is needed to justify a shameful injustice dealt to them.

We would like to point out the following factors:

1. The Federal Government entered into agreement with several States, New Jersey being one of them, to pay the employers share of the Technicians retirement for those included in State retirement systems prior to the Technician Act of 1968. Insofar as we know that money is still in the State retirement systems and amounts to millions of dollars. This money should be recovered by the Civil Service retirement system and credited to the Technicians now in the Federal System. We do not feel that it is right or just that State employees should benefit from monies that were contributed in our behalf.

2. Although a good number of us in New Jersey had contributed for 15 years to the New Jersey Public Employees Retirement System which was supposed to give us vesting rights, we were denied this right and this denial prevails until this very hour.

To summarize, I would like to say it is our desire to communicate with this committee regarding this issue of the Technicians reduced retirement. We wish to point out that it is the Senior Technician, the ones that are near retirement age that have been made he victim of his cruel hoax. The younger Technician will outlive this penalty with time. We feel there is room for compromise on some points and wish to enter serious discussion with you.

Mr. SPENCER. I would like to point out that the Federal Government entered into several of the States to pay the employer's share of the technicians retirement for those included in State retirement systems prior to the Technician's Act of 1968.

Insofar as we know, that money is still in the State retirement system and amounts to millions of dollars. This money should be recovered by the civil service retirement system and credited to the technicians now in the Federal system.

We do not feel that it is right or just that State employees should benefit from moneys that were contributed on our behalf. Although a good number of us in New Jersey had contributed for 15 years to the

New Jersey public employee's retirement system, which was supposed to give us invested rights in that system, we were denied this right and this denial prevails until this very hour.

And this has really imposed a penalty upon most senior technicians. Technicians were dependent upon this right that they thought was theirs to invest in the system. They should have come out of this plan with something that resembled a living wage to retire upon.

This is denied to them right now. We entered into a suit with the State of New Jersey in regard to the moneys that were ours in the public employees retirement system, and had to sue our own State to recover the interest due us on our own money. This amounted to about a half a million dollars that we were successful in having returned to our members.

Now, we do know as a matter of fact that in the State of New Jersey, that out of 1,400 technicians that were in the system as of January 1, 1969, that 140 of them remained in the State retirement system. All the rest of the people, all the rest of the technicians, elected to go into the Federal retirement system for reasons that best suited their plans for the future.

So, there are 140 people in the State of New Jersey that remained in the State retirement system, and the Federal Government is still paying the employer's share of that retirement.

To summarize, Mr. Chairman, I would like to say that it is our desire to communicate with this committee regarding this issue of the technicians reduced retirement. We wish to point out that it is the senior technicians and, I think you can see by the audience that was there today there is a lot of gray hair and balding heads such as mine, which indicated the age group that is most interested in the thing being presented to you today.

This is the man that really took the penalty. He is going out of a system that he dedicated his whole life to with a retirement, in most cases, that comes to a figure somewhere about \$2,900. The younger technicians will outlive this penalty, he will have the service and the penalty will be behind him. But it is most important that this legislation be given careful consideration for the senior man, the man that really made this system work, he is the one that is taking it on the chin, he is the man that went away in World War II, he is the man that went to Korea, and he is the same man that was called up in the Berlin crisis.

Most of them called to active duty three and four times while performing as technicians.

You asked also, Mr. Chairman, for some points that would indicate to us why we feel we have always been Federal employees. And I would like to point out that our wage scales dating way back into the 1950's have always been the Federal wage scale, and when the Federal was allowed an increase by an act of Congress, we got the increase.

And this would certainly indicate to us that we were tied to the Federal system, and in fact, it was the Federal Government that paid out our wages.

We also, in regards to—

Mr. CHAPPELL. Would you let me interrupt you on that point?

Mr. SPENCER. Yes.

Mr. CHAPPELL. That follows on the pay you received for the military and civilian aspects of the job?

Mr. SPENCER. Yes.

Mr. CHAPPELL. Were they always raised at the same time?

Mr. SPENCER. Not necessarily, most of your—for instance, now, you have a proposed pay increase for the military being considered. If the military does receive this pay increase, we will receive this pay increase in our military status as strictly as guardsmen.

Now, the wage freeze that is upon us at the present time on Federal civil service employees as proposed by President Nixon, applies to us and our wages will be frozen not only for 3 months for the normal individual, but the 6 months that go on beyond that for a total of 9 months.

Mr. CHAPPELL. You mean if that prevails?

Mr. SPENCER. Yes; but that is the indication at the present time.

Mr. CHAPPELL. Excuse me for interrupting you. I wanted to get that point.

Mr. SPENCER. I would like to point out, Mr. Chairman, in regards to the wearing of the uniform which has been raised as an issue here, it is raised because—not because there is a stigma with our wearing the uniform. None of us have ever been ashamed of the uniforms we have worn, but the uniform in our case as technicians is now being used as a disguise or a blanket to hide our real identity and status, and our association does have in the Federal courts here in Washington, at the present time, a suit regarding wearing of the uniform and all the ramifications that are brought into it; that is, the job opportunities that are denied us in the technicians status because we happen to be enlisted people.

Also, the status for the female that she cannot apply for or receive compensation although she is capable of doing the job, because she is not in the military.

So, we are bringing this out in Federal court and I think this is the place this has to be settled on the wearing of the uniform.

But I thank you for your indulgence and I hope I have added something to this program today.

I don't wish to drag it on.

Mr. CHAPPELL. You certainly have added something and let me thank you and Mr. Callahan, too.

Do you hold a military position in the National Guard?

Mr. SPENCER. Yes, sir; I am in the Air National Guard, and I am in the super sergeant ranks, I am a chief master sergeant in the National Guard. My technical position in the National Guard is that of quality control supervisor.

Mr. CHAPPELL. Now, suppose you had the group of military people coming in for a weekend drill, what status would you obtain on that?

Mr. SPENCER. At the present time, Mr. Chairman, I have an assignment at our wing headquarters which is strictly in a technical advisory capacity in military status on the weekend drill.

Mr. CHAPPELL. Would you have men under your command?

Mr. SPENCER. No, sir; not in my present position.

Mr. CHAPPELL. But you could in your status?

Mr. SPENCER. There may be assigned enlisted personnel to that particular office and if I were senior noncommissioned officer they would be under me; yes.

Mr. CHAPPELL. Now, I assume the National Guard and Air National Guard take their people on active duty for 2 weeks during the year?

Mr. SPENCER. That is correct.

Mr. CHAPPELL. During that 2 weeks in which capacity are you?

Mr. SPENCER. In the military capacity.

Mr. CHAPPELL. What part of the—over the period of the year how much time do you spend in that capacity in dealing with your recruits, for example?

Mr. SPENCER. One weekend a month which is 2 days, a Saturday and Sunday, and the 2 weeks of active duty for what is commonly termed summer camp.

Mr. CHAPPELL. So you people, each one of you would only be in the military standpoint on 2 weeks during the year and 1 weekend during the month.

Mr. SPENCER. That's correct.

Mr. CHAPPELL. How do you have enough people to take care of—do you just have your units come at one time for the 2 weeks together?

Mr. SPENCER. Yes.

Mr. CHAPPELL. The reason I ask that, I am trying to relate it to my experience with the Navy. We have our various units and we have the people who seem to be in a similar situation who are full-time Navy officers who have the responsibility of keeping the planes and training and so forth and so on. Except that they are on full-time Navy or active Navy or reserve officers on active duty.

Mr. SPENCER. That is right.

Mr. CHAPPELL. And when our reserve units come in for training this may take over a period of 3 or 4 months even during the year if you had a lot of units.

Now in all that capacity, of course, they are there to take care of the property and help train the people. You take yours, though, for 2 weeks during the year, is that right?

Mr. SPENCER. Mr. Chairman, in my particular unit, which happens to be a fighter group which is manned with fighter aircraft, we do take our 2-week encampment all at one time. We do have people present here today from a group in New Jersey that has their "M" day assignment to the Military Air Lift Command. Their role is on a continuous basis. What they call the Texas plan.

This is where the man comes in any time during the week and their training goes on and on. Similar to what you are describing in the Navy.

Mr. CHAPPELL. When that happens what capacity would you people be in?

Mr. SPENCER. The technician would be in a civilian capacity for the 5 days a week that he normally works.

Mr. CHAPPELL. Let's say you had a drill sergeant, say you had him there, and this person that is coming in would be under his supervision, would be under military status or what?

Mr. SPENCER. He would be in civilian status.

Mr. CHAPPELL. Even for training?

Mr. SPENCER. For training purposes.

Mr. CHAPPELL. Those fellows that come on during the week, they have it made, right? They don't have anybody telling them what to do.

Mr. SPENCER. The training is—

Mr. CHAPPELL. What you are saying, if they come in for training, if you are training them you would be training them in a military capacity, wouldn't you?

Mr. SPENCER. You would be training them in military skills, that's correct.

Mr. CHAPPELL. So in that category that would be a military function.

VOICE. But you are a civilian at the time.

Mr. CHAPPELL. Okay, let me ask you these two final questions: Why did most of the New Jersey technicians choose to get out of the State and go to the Federal plan in 1969?

Mr. SPENCER. Well, in my case in the discussions that I have had regarding the Federal retirement system, Mr. Chairman, the biggest factor that caused the technicians to come over to the Federal system was the protection that it rendered for his widow. When he elected to take the annuity for his widow which reduced his retirement income the penalty was not as great as it was when he retained it in the State system.

Mr. CHAPPELL. In other words, you got more benefits if you came to the Federal?

Mr. SPENCER. That's correct, only in that instance for his family. This is the thing that he was mostly concerned about.

Mr. CHAPPELL. Do you have any idea what the rate of contribution was that you paid in New Jersey?

Mr. SPENCER. Yes; the rate in New Jersey was by your age. You fell in by age and it ranged to a maximum of 6 percent and I guess the low was about 4.7 percent, somewhere in there. So that was the agreement that was set up with the Federal Government that the maximum contribution would be 6 percent. And I believe that remains today.

Mr. CHAPPELL. Let me pursue this for a moment, if we were able to recover the Federal contribution from the State—you have heard talk about that here today—if we were able to recover the Federal contribution from the State do you believe that the divested individual should deposit in the retirement fund the refund which he got from his State?

Mr. SPENCER. You are asking my personal feeling?

Mr. CHAPPELL. Yes.

Mr. SPENCER. Yes, I feel that he should.

Mr. CHAPPELL. Thank you. I think that concludes it.

Let me take 2 minutes.

(Discussion off the record.)

VOICE. I have a point. Arthur Hines; I am from northern New York chapter. You asked about 1953 regarding employment in which you understand as it is now you must belong to the Guard. I came aboard in 1953 and worked until 1954 without being required to belong to the Guard. And I had formerly had prior self-service at the job before, in the job I was in. So there are those cases even though it was on the books, that there was a requirement, that didn't always hold true.

MR. CHAPPELL. Let me tell you again, for each and every one of you being here and for those of you who don't follow the day-to-day routine of this matter; let me tell you what happens: This is just one of several hearings which we will have. At least there will probably be others who will be given the opportunity to be heard. I am talking about the agencies and so forth.

But all that has transpired here today will be written up and be available for the other members of the committee. That is the reason we try to be so careful of getting your testimony in here so the other members who were not here, will be able to read it and study it.

Now, if the subcommittee—that is where we sit here today—will attempt to find the facts and if the subcommittee acts favorably on this bill, it goes to the full committee and if the full committee acts favorably on it, it goes to the House.

Of course, if it gets an unfavorable reaction from the subcommittee, it may linger there and die. If enough interest is beyond that in the full committee it could have further action.

I want to tell you that so you can understand what we are trying to do; to get the facts into the record.

Let me again thank each and every one of you, it has been a pleasure to work with you, I congratulate you, those of you who have come so far and those who have contributed so much for us here today.

Thank you very much.

We are adjourned.

(Whereupon, at 1:55 p.m., the hearing was adjourned.)

(The statements which follow were received by the subcommittee for inclusion in the hearing record.)

STATEMENT OF HON. FRED B. ROONEY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW YORK

Mr. Chairman, I deeply regret that a previous commitment prevents me from appearing in person to testify on behalf of H.R. 2530. I appreciate your permitting me the opportunity to submit a statement on behalf of this important legislation.

National Guard technicians are employed for the purpose of providing support in the administration and training of the National Guard military organization and for the daily maintenance and repair of equipment which cannot be accomplished during normal military training periods. Under the National Guard Technician Act of 1968, the technicians, previously State employees paid from Federal funds, were statutorily granted Federal employee status. In addition, they were brought under the civil service retirement law and accorded full credit for their pre-1969 technician service in determining length of service for leave, federal employee death and disability compensation, group life and health insurance, severance pay, tenure and status. For the purpose of annuity computation, however, only 55 percent credit was allowed for pre-1969 technician service. This arbitrary 55 percent limit was determined by the Senate Armed Services Committee. In its report on the bill, the Committee stated that it was "of the firm opinion that the recommended legislation provides for a generous and equitable retirement and fringe benefit program for the technicians within the 55-percent formula". I cannot agree. The men who serve our country as National Guard technicians are vital to the defense of this Nation. They deserve their full share of civil service benefits.

H.R. 2530, which I introduced on January 29, 1971, would have the multiple effect of granting retirement credit to all former technicians serving in any civil service covered position on and after January 1, 1969; allowing eligible technicians to pay the full amount of the optional deposit due for their pre-1969 technician service; allowing 100% retirement credit for pre-1969 technician service for annuity computation purposes; and allowing all former technicians in Government service on and after January 1, 1969 to receive service credit for their pre-1969 technician service.

The National Guard technicians have traditionally worked under a great number of hardships. Due to the dual military status that they must maintain, they are subject to earlier retirement than other civilian employees. A rigorous military physical must be passed, and failure to do so results in reduced rate involuntary retirement or deferred annuity, not disability retirement. Many technicians leave before the age 60 regulatory limit, long before they are eligible for social security or reserve military retirement. In addition, nearly 95 percent of the technicians do not have transfer rights to other agencies or career jobs, due to their "expected" category under law.

Before January 1, 1969, the technicians faced even greater hardships. Any group health or life insurance benefits they received they purchased themselves. In addition to having to purchase their own uniforms and other required equipment, and to travel without expenses, they were never paid for overtime and often had to work under unhealthy, and frequently hazardous, conditions.

Mr. Chairman, H.R. 2530, by eliminating the provisions of P.L. 90-486 that require the fifty-five percent computation, goes a long way toward providing the National Guard technicians with the civil service benefits to which they are rightly entitled. I strongly urge its enactment.

STATEMENT OF HON. JOHN W. DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF GEORGIA

Mr. Chairman, I am particularly pleased to speak in support of a bill I introduced on March 2, 1971, for the crediting of National Guard technician service to Civil Service retirement. The Seventh Congressional District of Georgia, which I represent, is a diverse and growing geographic segment of the state. The National Guard is highly trained and well-respected in our area, and we are keenly aware of the vital role both Guardsmen and civilian technicians play in maintaining a strong defense and civil emergency posture. We in the Seventh District and the State of Georgia are especially appreciative of the crucial contribution our highly skilled civilian technicians make to the readiness of Guard units.

On a number of occasions, I have expressed my concern for the inequities of the 1968 National Guard Technicians Act. Under the 1968 law, the National Guard technicians were granted status as Federal employees, but as you know, that transition has been incomplete. National Guard technicians have yet to receive the same assurances and rights that other Civil Service employees are accorded. They are still discriminated against in what amounts to a twilight zone of Federal service status—entitled to neither the security of the uniformed military service, nor the benefits of Civil Service. A good first step toward resolving these existing inequities has been the effort to allow the full crediting of National Guard technician service to Civil Service retirement.

H.R. 5382 will correct a basic inequity in the Civil Service retirement system as applied to National Guard technicians. Under current law, technical services completed prior to January 1, 1969, are only credited to the National Guard technician at a rate of 55% of the time served. Under the provisions of H.R. 5382, 100% credit will be given to National Guard technicians who completed technical services prior to January 1, 1969. In sum, a National Guard technician will receive full credit for services rendered at any time during his career. While the Federal government has gone a long way toward fairly distributing the retirement benefits of the Civil Service system, it seems only fair that we attempt to provide an equitable retirement program for the National Guard technicians.

Mr. Chairman, the inequality is clear and the need for the proposed legislation is apparent. I want to thank you for the opportunity to bring my testimony to the attention of this distinguished body. I am hopeful that H.R. 5382 will receive the enthusiastic support of this Committee and ultimate endorsement by the overwhelming majority of our colleagues in the Congress.

STATEMENT OF HON. SEYMOUR HALPERN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW YORK

In 1968 P.L. 90-486, The National Guard Technician Act of 1968 was enacted. For years prior to this enactment, the status of National Guard Technicians was not clear—there was considerable controversy as to whether they were Federal or State employees and whether they should be covered under the Civil Service Retirement System. During all the years that this controversy went on, the people

involved went without coverage under Civil Service Retirement. With the enactment of the 1968 legislation, the question was resolved in favor of their being Federal employees covered under the Federal Civil Service Retirement program. This legislation was a significant improvement over the situation which had prevailed earlier. However, the coverage under the Federal retirement program was for all practical purposes prospective only. It applied only to people who were employed when the bill became effective as well as to those who were employed later. Credit for service before the effective date was limited to 55 percent of the time worked before the effective date and then only if civil service retirement contributions were paid to cover this service.

These two aspects of the 1968 Act I believe are unfair. The coverage should be provided to all former National Guard Technicians. The coverage should be full and noncontributory, rather than partial and contributory. The cost of the partial, retroactive coverage is beyond the means of most technicians, perhaps \$6,000 for a man who earns \$8,000, or so, a year.

In order to cure these defects in the present law, I have introduced H.R. 5458 which would provide full retroactive coverage to all technicians, regardless of whether they were employed when the 1968 Act became effective. Moreover, this coverage would no longer be conditioned on the payment of a contribution that is far in excess of the financial means of most of the people who would be involved.

The present law originated in the 90th Congress as S. 3865. In its report on this legislation, The Senate Committee on Armed Services said:

"The committee had a wide range of choices in considering the degree to which past technical service (which is considered State service except for the District of Columbia) should be creditable for future civil service retirement. It could have recommended no credit for past service on the premise that the technicians were similar to any other non-Federal employee and as such would accrue retirement credit only from the period in which he was a statutory Federal employee covered under the civil service retirement system. The other extreme would have been to recognize past technician service to the extent of 100 percent for civil service retirement purposes. The committee, after long and careful examination of all aspects of this matter, has unanimously concluded that the 55-percent credit represents a fair, equitable, and generous treatment of this matter."

I do not think that this provision, which puts the benefits its purports to grant beyond the reach of most of the people involved, is fair, or equitable, or generous. The fair, the equitable, the generous thing to do is to provide full, noncontributory, retroactive coverage with no strings attached. This is what H.R. 5458 is designed to do. I hope that we can get early action on this measure to correct the inadequacy of the 1968 legislation.

STATEMENT OF HON. JOHN H. DENT, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF PENNSYLVANIA

The introduction of my bill, H.R. 5189, identical to several other bills introduced by my Colleagues, was prompted by mail and petitions which I received from approximately 700 people in my Congressional district. These people are all Federal wage grade employees of the National Guard technician service.

In the hope that the Committee will give this legislation its fullest and most favorable consideration, I would like to submit the substance of these petitions for the hearing records.

"We, the undersigned, being Federal Wage Grade Employees of the Pittsburgh, Pennsylvania Wage Survey Area do hereby, by our signatures appearing below, petition our Congressman for a complete investigation of the recently completed Full Scale Wage Survey in this area. Some facts are as follows:

"The approximate 2,000 Wage Grade Employees in this area are receiving a poverty increase that doesn't even average 4%, while many cities such as Philadelphia received 12% on the average. The current per hour rate averages 25 to 30 cents per hour higher. The Champaign, Illinois Area just received an average 13% and already were much higher. Richmond, Virginia and Indianapolis, Indiana just received a 6% average increase. Washington, D.C. averages 23 to 30 cents higher also.

"Therefore, we feel it is only simple justice to ask for an investigation in this area."

STATEMENT OF HON. ALVIN E. O'KONSKI, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF WISCONSIN

Mr. Chairman—I am very glad that the Subcommittee on Retirement, Insurance and Health Benefits of the House Post Office and Civil Service Committee is hearing testimony on H.R. 2530 to remove the present inequities in the computation method for crediting the service of National Guard technicians for Civil Service retirement. H.R. 9858, which I introduced on July 19, 1971, is identical to H.R. 2530.

The National Guard Technician Act of 1968, which became effective January 1, 1969, recognized National Guard technicians, formerly State employees paid from Federal funds, as Federal employees with all the rights and benefits of Civil Service employees, with the exception of giving them full credit for Civil Service retirement annuities. The legislation under consideration would raise the rate from 55 percent credit for service to 100 percent credit for service.

National Guard technicians are a vital link in the defense of our country. As such, I feel that they are entitled to full credit as Federal employees. Equal treatment for equal service should be accorded to all Federal Civil Service employees and I sincerely hope that H.R. 2530 and the identical bills will be passed to accomplish this end.

STATEMENT OF HON. JAMES H. QUILLEN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF TENNESSEE

Mr. Chairman, it is a pleasure to have the opportunity to express my support of H.R. 6983 to amend Title 5, United States Code, for the crediting of National Guard Technician service in connection with civil service retirement. The effect of my bill will be to provide a more equitable retirement system to the National Guard technician.

The National Guard Technicians Act of 1968 was the first step to grant more equity to National Guard technicians. The basic purpose of that legislation was to provide Federal employee status for the technicians, thereby establishing for them a uniform retirement and fringe benefit program. In addition, the legislation provided for statutory administrative authority at the State level for the technician program in recognition of the military requirements and State characteristics of the National Guard. Yet the 1968 legislation did not introduce complete equality to the National Guard technician.

The 1968 legislation retained a basic inequity in the civil service retirement system as applied to the National Guard technicians. With respect to past technician service the 1968 legislation recognizes such service in full for certain fringe benefit purposes, in full for civil service eligibility, but only 55 percent for the purpose of civil service retirement computation. It was argued that a 100 percent credit would have cost the taxpayer an enormous amount of money. While the National Guard technician is allegedly equal to other Civil Service employees, he is deprived of full credit for services rendered during his entire career.

H.R. 6983 will correct this basic inequity in the Civil Service retirement system. Under the provisions of the bill the National Guard technician will receive 100 percent credit for technical services completed prior to or after January 1, 1969. That is the gist of the bill. While it is not extensive and complicated, it has been carefully considered.

I firmly believe that these technicians deserve to have this inequity corrected, and I am hopeful your distinguished Committee will favorably report my bill.

STATEMENT OF ARTHUR HINES, PRESIDENT, ASSOCIATION OF CIVILIAN TECHNICIANS
INC., NORTHERN NEW YORK CHAPTER

Mr. Chairman, first, I have the support of the citizen-soldier-technicians to reply to your invitation to appear at this hearing on technicians (NG) of which 65 members ask that I extend their thanks to each of you here in taking time to listen and ACT.

Just a few words to formulate a mental picture of the people I speak for: average age male 40-45, majority veterans of WW II, Korea, married, 3-4 dependent children, home owners w/mortgages varying, pays federal, state, city, village taxes; has 1968 average year car with payments; take home pay \$120; all are members of the National Guard by mandate, to include one weekend per

month and 14 days during active duty training during summer as minimum requirement with additional requirement for non-commissioned officers to attend one additional administrative night w/o pay or credit as credit for retirement cannot exceed what is given for 48 drills plus 2 week A.D. time. Further requirement for all to participate in MOS Correspondence Courses which is done in on non pay or credit status but used for promotion and future retention. Without satisfying these demands continued employment and or promotions are in jeopardy as they are used as minimum requirements. Many personnel hours being expended by individual which are non job related in civilian technician employment, this also reflects in constant yearly changing of TOE and Manning assignment as technician. The Camp Drum installation involved with annual training, the scheduling of troop movement in and out of the cycles of training and the commitment of technicians being committed to parent unit training reflect back to the technician to the degree of not having a day or days off, working in one status or another 14 to 21 days, depending on unit training schedule.

These technicians in the civilian employment are subject to control of Adjutant General insofar as employment. He must if desirable negotiate any of his employment conditions with this military agency which following policies of Dept. of Army, National Guard Bureau, NYS DMNA, and U.S. Civil Service Commission in part.

Based upon legislation of Congress, technicians were accepted as federal employees. Full benefits of such status is evident from the above. No other Federal Civil Service employee can say they have such conditions existing in their employment as a civil service employer requirement. Technicians God Help Them if they become ineligible to meet any of the physical, age, attendance, or any of the many reasons that could mean discharge from the National Guard—his civilian employment ceases.

The retirement benefits for this citizen-soldier-technician at age 55 years and thirty years presently about $\frac{1}{2}$ of base 3 year high then continued additional 5 years to qualify for military reserve retirement at age 60. Most of these probably of EM category of about \$150 per month further reduced Social Security at age 65 years, these delays for eligibility to include inflationary changes. The many agencies involved in the process of retiring employees is reflected in the case of Mr. Harold C. Peterson a retiree at age 62 by mandate of those provisions for technicians, last day of employment being 7 August 1971. As of this date has received no retirement pay nor any communication covering other benefits such as; government medical coverage, life insurance, military retirement pay, or military privilege for retiree commissary. At the present time this man is pumping gasoline at a local gas station because he has to wait for even a period of time to qualify for unemployment insurance.

Gentlemen, I'm sure that it is not the intent of the people of the United States nor in fact your intent that such conditions would exist especially for those who serve not only as a civil servant but especially for those dedicated people who are serving in this dual capacity. We ask you to reevaluate this status and provide the fair share that is implied to national service to the United States.

Thank you for your consideration of this matter of technicians.

STATEMENT PRESENTED BY THE NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

The National Guard Association of the United States unequivocally supports the enactment of H.R. 9858, relating to retirement benefits for National Guard fulltime employees (technicians). The proposed legislation has been described most aptly by its sponsor, Representative Samuel S. Stratton, of New York, in his testimony before this Committee. He said his bill is "an effort to achieve merely simple justice for thousands of loyal Federal Government employees who, because of a very specialized situation, are not receiving that justice today."

A brief review of the background of this legislative proposal may be helpful.

From the time fulltime "caretakers and clerks" were first employed by the National Guard, soon after World War I, they were Federal employees in all but a narrow legal sense. Their duties were, and always have been, primarily related to the Guard's Federal mission, with only an inconsequential segment applied toward exclusively State responsibilities. They have drawn their pay from the

Federal Government, and the Secretaries of the appropriate military departments have been empowered by law to set their salary levels and other conditions of employment. They have existed to enhance the military capability and readiness of the National Guard as a first-line element of the national defense establishment.

In recognition of the Federal character of the technician work force, this Association initiated its effort to obtain Federal retirement benefits, as a minimum, in 1947, under mandate from the Association membership. The first breakthrough occurred seven years later, in 1954, when the Comptroller General of the United States ruled that monies appropriated to the National Guard for payment of technician salaries could be used to make the employer's contribution to Social Security. This was a small step toward the ultimate goal but it was significant because it gave implicit recognition to the Federal character of the technician function.

Efforts to obtain full Federal retirement benefits continued and more progress was made in 1961 when Congress legislatively authorized the payment from Federal funds of employers' contributions into those State Government retirement systems which would accept National Guard technicians. This too, however, could only be regarded as a stopgap, temporary solution, because only 16,000 technicians (40 per cent of the total technician work force as it then existed) were accepted into State retirement systems, in 19 States and the Commonwealth of Puerto Rico.

In the meantime, other legal and administrative findings were attesting to the Federal nature of technician employment. For example, the Department of Labor found the technicians to be Federal employees for purposes of the Federal Employee's Compensation Act (Workmen's Compensation), and the United States Circuit Courts of Appeals for five Circuits ruled that they were Federal employees for the purposes of the Federal Tort Claims Act.

Finally, through enactment of the National Guard Technicians Act of 1968, which became effective on January 1, 1969, National Guard technicians were granted legal status as Federal employees, 95 per cent of them in the non-competitive category, and granted the full benefits of that status *with two important exceptions*. First, Act specified that they would be credited with only 55 per cent of their past service as National Guard technicians in the computation of annuities. (Paradoxically, it recognized past technician service *in full* for all other purposes, including retirement eligibility, computation of average salary, etc.) Second, it restricted Civil Service retirement credit and credit in such areas as severance pay, tenure, group life and health insurance, leave eligibility and death and disability compensation, to those technicians who were employed on or after the effective date of the Act.

The first point that should be made in respect to the two exceptions stated above was that they were unprecedented in the history of the Civil Service retirement system. Federal Civil Service Retirement was originally enacted in 1920. Through the years between that date and incorporation of National Guard technicians into the system in 1968, numerous additional groups of Federal employees were brought under the Civil Service System legislatively from time to time. These included such groups, not covered by the original Act, as employees of the U.S. Soldier's Home, the Indian Service, the United States Courts, the Legislative branch of government, members of Congress, the National Library for the Blind, and numerous others.

Most nearly parallel to National Guard technicians, perhaps, were employees of County Committees established by the Soil Conservation and Domestic Allotment Act. They, like Guard technicians, had been performing a function that was held to be primarily Federal in character, and drawing Federal pay, though they were not legally designated as Federal employees. Under an Act of July 1, 1960, (74 Stat. 302), several thousand ACS employees, as they were commonly called, were brought into the Federal Civil Service Retirement system with full credit for all past ACS service and no reduction in annuity *although they had been covered by Social Security during the preceding years and the employers' share had been paid by the Federal government*. One year later, by an Act of October 4, 1969 (75 Stat. 770), an overly-restrictive "payback" provision was rescinded on grounds that the ACS employees should be brought under the Federal retirement system on equal terms with other Federal workers.

In a similar case, Cooperative Agricultural Extension employees were brought under Federal Civil Service in 1945 by administrative ruling with full credit

for all past service with no reduction in annuity *although they previously had been covered under State retirement systems with the employers' share being paid by the Federal government.*

In justice, the same principle should apply to National Guard technicians. It is difficult to discern any defensible reason why the technicians should be subjected to a harsher formula than were other groups brought into the Federal retirement system.

In no instance prior to that involving National Guard technicians was any group denied full credit for prior service for all Federal retirement purposes, and in all equity full credit should not be withheld from this one group.

In no previous instance was retirement credit for past service withheld from individual members of groups brought under the system merely because they no longer were employed by the same Federal agency, and neither should this distinction have been made for National Guard technicians who were no longer employed as technicians on the effective date of the Act.

(The effect of the latter restriction is obvious: a Federal employee with technician service who had terminated his technician employment prior to the effective date of the Act did not receive credit toward Federal retirement for that service although identical service *was* creditable for those who were still employed as technicians on 1 January 1969).

The inequity of the latter restriction is highlighted in a letter on the subject by the Director of the Bureau of Retirement and Insurance, United States Civil Service Commission, dated December 7, 1966, who stated that " * * * the Cabinet Committee on Federal Staff Retirement Systems has recommended, and the President has endorsed, that there be a statutory entitlement to Civil Service retirement credit for past National Guard technician service. I might add that, traditionally, service which is made creditable for retirement purposes is credited for all persons who may have such service, i.e. no distinction is made between classes of employees who may have had the same service."

Full credit for past service without arbitrary distinction, or a percentage reduction, would have been granted in a bill which received House approval not just once, but twice, before it was acted on by the Senate. It was in the 1968 Senate version of the measure, which prevailed when the measure went to conference, that the restrictive provisions were applied.

It was pointed out in Senate Report No. 1446 (July 22, 1968), in justification of the two restrictions that:

(1) The Federal government already had contributed \$58,348,000 as the employers' share to Social Security for the technicians, and \$19,606,000 toward State retirement systems, or a total of \$77,954,000. This was said to have satisfied some 54.59 percent of the Federal government's customary obligation to a like group of employees.

(2) Retirement credit was being withheld from Federal employees who no longer were technicians on the effective date of the Act because "the basic purpose of the legislation is to provide an incentive for participation in the technicians program."

In the view of this Association, both arguments are seriously flawed. In support of that view, we offer the following comments:

Service before 1954, for which *no* Federal contribution was being made to Social Security, is subjected to the same 45 percent reduction as subsequent service.

The technicians of Ohio and Massachusetts, who constituted almost seven percent of the total force, were never covered by Social Security, as provided in the laws of those States, yet were subjected to the 45 percent reduction.

Fewer than half the technicians in the force at the time the retirement measure was adopted had completed the necessary 40 quarters or 10 years of Social Security coverage as a result of their technician employment. Thus, a majority of the force may never become eligible for Federal Old Age and Survivor Insurance benefits, making the Federal contribution meaningless for them.

Even those who were fully insured, through completing the necessary 40 quarters of coverage, will suffer a reduction in Social Security benefits to be paid because no further contributions will be made, either employee or employer, while they are covered under the Federal Civil Service Retirement System.

The technicians in the 31 State or comparable jurisdictions not covered by State retirement programs incurred the same 45 percent reduction as those

in the 21 jurisdictions in which technicians were covered under State programs.

Nearly three-fourths of the technicians who on January 1, 1968, were covered under State retirement systems had not yet earned a vesting right, i.e., were not then entitled to a deferred annuity at retirement age, and the great majority of them will never derive any benefit whatever from the Federal government's contribution of the employers' share. Only 4,576 had earned vesting rights in State systems at the time the National Guard Technician Act of 1968 was enacted. This represented barely 11 percent of the total technician work force at that time.

A further point should be considered in respect to Federal payment of the employers' share into Social Security for Federal employees. Such payments are made on thousands of special category Federal employees annually under the terms of Pars 2-2 and 3-3, Federal Personnel Manual 831-7. These are individuals hired for a year or less, teachers overseas, employees hired on a fee or contract basis for not to exceed five years, etc. What should be noted is that, although considerable numbers of these so-called "temporary" employees later move into jobs for which Civil Service retirement is credited, no reduction or penalty is levied against their annuities to compensate for the amounts contributed by the Federal government to Social Security. If this is acceptable for thousands of Federal workers in other categories, why not for National Guard technicians?

Finally, it should be noted that approximately 95 per cent of National Guard technicians are subjected, for good reason, to restrictive conditions of employment that are not applied to other Federal employees. They must maintain military membership in the National Guard, along with the physical and professional standards which are imposed on other military members; they must retire no later than their 60th birthday, two years before payment of Social Security annuities commence; and they are categorized as "excepted," or non-competitive, Federal employees. This deprives them of the opportunities open to most Federal employees to qualify for jobs of higher grade in other Federal agencies.

It seems grossly unjust, therefore, that this group of Federal employees should be subjected to the retirement inequities which are imposed on them in the same measure that was to have given them, at long last, the status which they had long deserved.

We believe that a pair and equitable solution would be provided by enactment of H.R. 9858, which proposes to place National Guard technicians on equal terms with other Federal employees in respect to retirement computations. This belief is incorporated in Resolution No. 11, passed by delegates from all States to the 93d General Conference of this Association on September 23, 1971. A copy of that resolution is appended hereto.

NATIONAL GUARD ASSOCIATION OF THE UNITED STATES 93D GENERAL
CONFERENCE—23 SEPTEMBER 1971

RESOLUTION NO. 11

Submitted by Michigan, South Dakota, Alabama and California,
relating to amendment of Public Law 90-485 to provide full credit
for past technician service for retirement annuity computation purposes.

Whereas, Public Law 90-486, enacted 31 August 1968, granted National Guard Technicians Federal employee status effective 1 January 1969; and

Whereas, Provisions of this legislation recognized credit for past Technician service in full for Civil Service retirement eligibility purposes but limited the amount of credit in determining a retirement annuity to 55%; and

Whereas, There is already a provision of law that requires an additional 10% deduction of the balance due for any service for which retirement deductions were not made and for which the Technician or his survivor have not made a deposit, or if deposit payments are begun and not completed, resulting in a further reduction of this service to 45% credit in computing a retirement annuity; now, therefore, be it

Resolved, That this Association lend its full support to an amendment to Public Law 90-486, to provide full credit for past Technician service for retirement annuity computation purposes.

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES,
Washington, D.C., October 12, 1971.

CLERK,

*Retirement, Insurance and Health Benefits Subcommittee, Committee on Post
Office and Civil Service, Washington, D.C.*

DEAR SIR: During hearings conducted September 17, 1971, Representative Chappell requested the NAGE to furnish some additional information for the record regarding National Guard technician participation in State retirement systems.

Specifically, Representative Chappell asked us for a rundown of those States to which the Federal Government contributes to the employer's contribution into the State's retirement fund. The following listing is herewith provided in response to that request:

State retirement only: Massachusetts, Nevada, and Ohio.

State retirement or social security: Alaska, Connecticut, Florida, Hawaii, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, and Washington.

Sincerely,

ALAN J. WHITNEY,
National Executive Director.

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