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FAIR LABOR STANDARDS AMENDMENTS OF 1971

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UNIVERSITY
HEARINGS
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON
LABOR AND PUBLIC WELFARE
UNITED STATES SENATE
NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 1861 and S. 2259

BILLS TO AMEND THE FAIR LABOR STANDARDS ACT OF 1938,
AS AMENDED, AND FOR OTHER PURPOSES

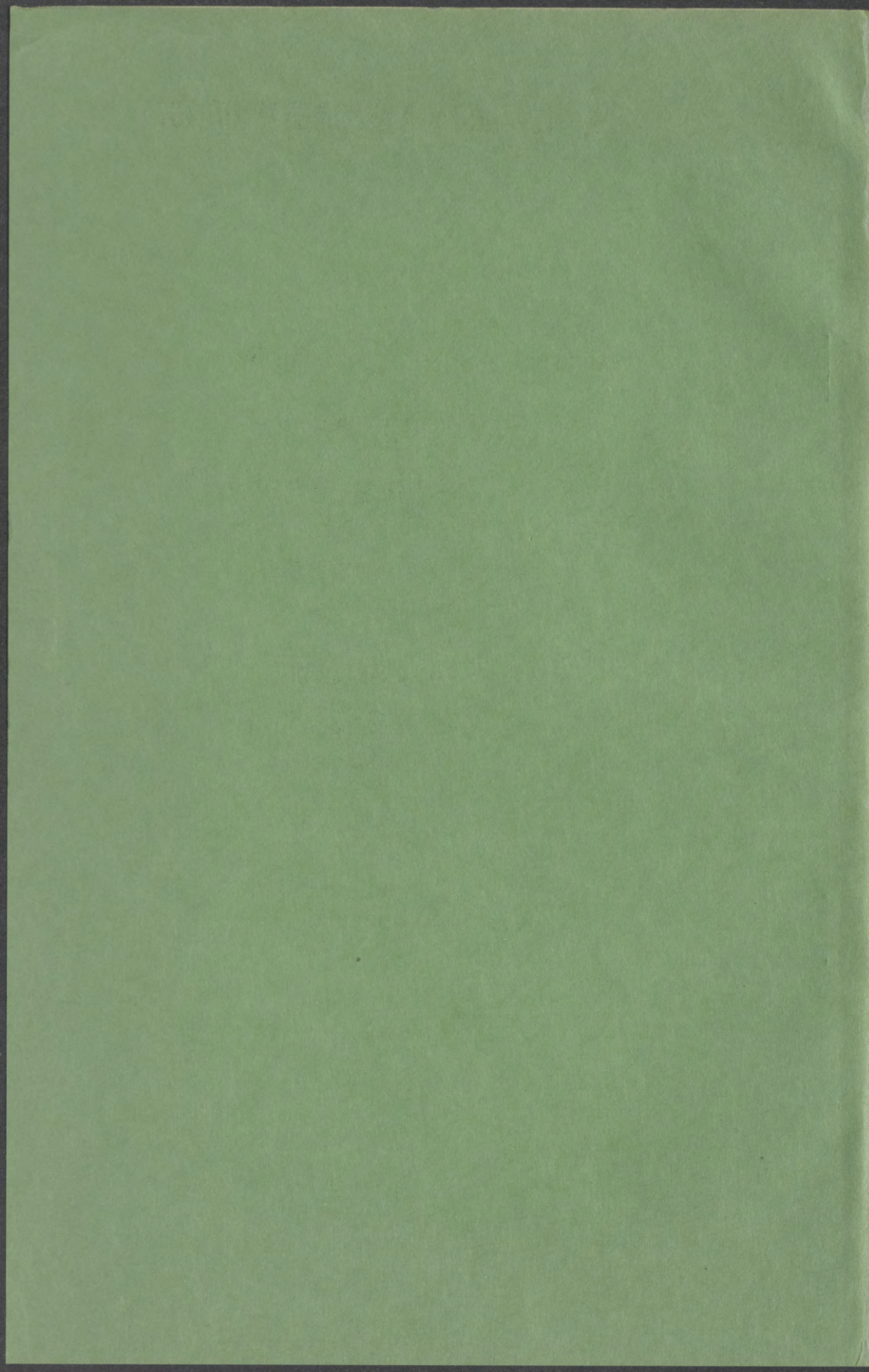
AND RELATED BILLS

SEPTEMBER 24, 27, AND 30, 1971

PART 5

(INCLUDING APPENDIX)





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Printed for the use of the
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WASHINGTON : 1972

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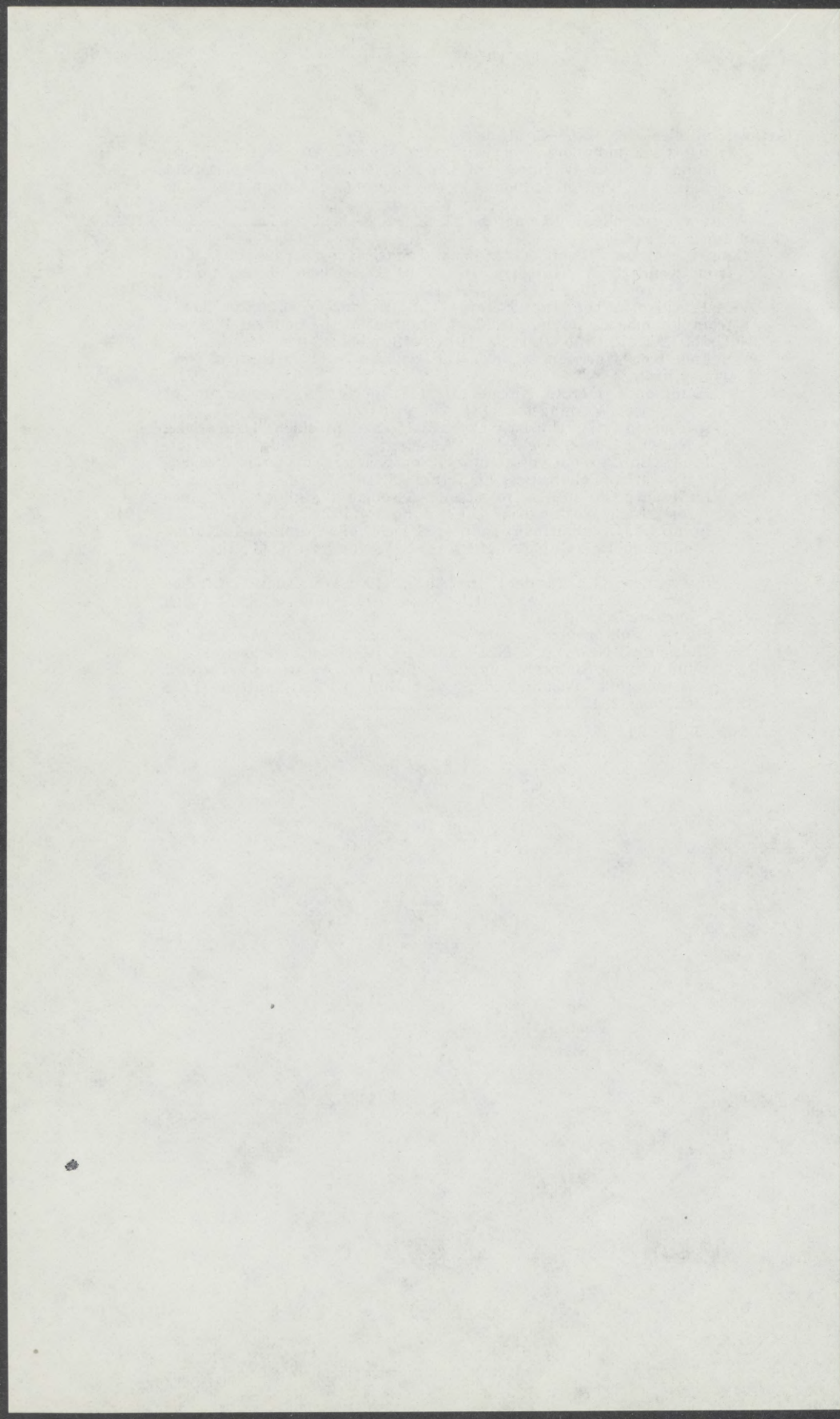
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FAIR LABOR STANDARDS AMENDMENTS OF 1971

FRIDAY, SEPTEMBER 24, 1971

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

The subcommittee met, pursuant to recess, at 1:30 a.m., in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee), presiding.

Present: Senator Williams.

Committee staff members present: Gerald M. Feder, counsel; Laurence D. Beck, professional staff member; and Eugene Mittelman, minority staff counsel.

The CHAIRMAN. I welcome you all to this Friday afternoon hearing on minimum wage legislation, S. 1861 and S. 2259.

We might as well begin even though there will be an interruption with a Senate vote, but let's start.

The Air Transport Association is represented by David J. Crombie, vice president, industrial relations, TWA, New York City.

We appreciate your appearance.

STATEMENT OF DAVID J. CROMBIE OF THE AIR TRANSPORT ASSOCIATION, VICE PRESIDENT, INDUSTRIAL RELATIONS, TWA, NEW YORK CITY

Mr. CROMBIE. My name is David J. Crombie. I am vice president, industrial relations, Trans World Airlines, Inc. I appear before you today on behalf of the Air Transport Association of America, a trade and service organization representing virtually all the scheduled airlines of the United States.

Association members include the domestic trunk carriers, the U.S. international airlines, the local service airlines, and the Hawaiian, Alaskan, and all cargo air carriers, which together form the backbone of the industry's air transport system.

We appreciate the opportunity to come before the committee and express our views concerning S. 1861 and any related bills insofar as their applicability would affect the provisions of section 13(b)(3) of the Fair Labor Standards Act of 1938, as amended, which provides that the overtime provisions of the act, as set forth in section 7 thereof, shall not apply with respect to "any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act." The carriers cited therein included the certified U.S. air carriers.

With respect to the airlines, S. 1861 would amend section 13 of the

Fair Labor Standards Act by repealing the overtime exemption for airline employees under the act. The industry opposes the repeal of this exemption.

Since 1938, airline personnel have been covered by the Fair Labor Standards Act minimum wage provisions, but they, along with railroad, trucking, and other transportation employees, have been exempt from the maximum hour provisions of the act. The reasons for the exemption were:

1. Airlines, like the railroads, are subject to the Railway Labor Act. It requires collective bargaining with unions on a craft or class, system-wide basis as to the rate of pay, rules, and working conditions of employees and subordinate officials.

2. Airlines, like the railroads, are closely regulated in terms of operational safety requirements. The Federal Aviation Administration has this responsibility as to airlines, section 601(a)(5) of the Federal Aviation Act requires the Federal Aviation Administrator to prescribe:

- (5) Reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen and other employees of air carriers;

Pursuant to that act, the Administrator has not only prescribed on-duty regulations for flight personnel, but has also adopted duty-time limitations for all maintenance and inspection personnel (Federal Aviation regulations, 14 CFR, 121.377).

Moreover, airlines, like all forms of transportation, operate round-the-clock with fluctuating schedules and varying workloads, depending upon the immediate demands of the public, traffic, and weather conditions.

The air transport industry respectfully urges the committee to continue the present overtime exemption for airlines and is opposed to any change in the Fair Labor Standards Act which would alter the exemption on the grounds that: (1) it is unnecessary and not responsive to the purposes of the act; (2) it will not result in any measurable benefits to airline employees, nor will it increase airline employment; (3) existing accepted personnel practices and union agreement provisions would be eliminated; and (4) difficulties in planning and conducting airline operations would be experienced.

Without thus producing any benefit, enactment of S. 1861 would, on the other hand, create burdens for the airlines and might result in less efficient service to the public.

Whatever the conditions in other industries which might call for the enactment or extension of the Fair Labor Standards Act, we can state unequivocally, they do not exist in the airlines.

In short, the obvious lack of benefits from the bill, compared with the readily apparent disadvantages to employees and companies alike, make extension of the maximum hours law to the airlines look like a change for a change sake.

The airline industry employs 297,500 people, 34,200 of whom are administrative, professional, executive, and outside sales personnel who are excluded from coverage of the act under the general exemption clauses thereof.

Thirty-two thousand, eight hundred and fifty are unionized flight

personnel who, under the Federal Aviation Act of 1958, may not fly in excess of 85 hours a month and, in many instances, may not fly in excess of 75 hours a month under applicable labor agreements. These employees are paid an average annual salary of \$28,000. Thus, for practical purposes, and to effectuate the purposes of the Fair Labor Standards Act, it is obvious that they should not be considered at all as a group for whom the overtime exemption should be removed.

There remains a total of 230,450 airline employees who possibly could be affected by the maximum hours provisions of the Fair Labor Standards Act. Of this number, 145,750 employees are currently represented by strong, national or international unions and have their wages, working conditions, and overtime protective contract provisions determined by the union and the airline at the bargaining table.

The Railway Labor Act explicitly requires that each airline negotiate with whatever union the employees select to represent them. The Federal Aviation Act further requires the airline to respect this mandate or lose its certificate to operate by action of the Civil Aeronautics Board.

The 147,750 ground employees represented by trade unions are well protected as to wages and hours and this bill would extend no benefits to them.

Some of the unions which represent these employees are :

- International Association of Machinists;
- Transport Workers Union of America;
- Brotherhood of Railway and Airline Clerks;
- Communications Workers of America; and
- International Brotherhood of Teamsters.

These unions have done a remarkably aggressive job for their members.

For example, contracts recently concluded with IAM established a \$5.79 per hour rate of pay for mechanics.

This will produce \$12,040 a year on a straight time basis, exclusive of longevity pay, shift differential premiums, and overtime pay.

The average rate for all airline ground employees is over \$10,260 per year, plus extremely liberal fringe benefits.

Deducting these 145,700 from the total of 230,450 employees who could possibly be affected by passage of S. 1861, there would remain 84,700 who are eligible for union representation, but who either have rejected union organizational drives or otherwise do not see any need to be represented by a union in their dealings with the airlines. As could be expected, these employees receive pay rates substantially above the minimums prescribed in the Fair Labor Standards Act and they also receive overtime pay at the rate of time and one-half and sometimes, double time.

Thus, in essence, no benefit would be bestowed on any airline employee in terms of greater dignity, purchasing power, or security. They are already well paid, well treated, and well represented.

On the other hand, enactment of S. 1861 would result in certain clear disadvantages. It may well disturb labor-management relationships and it will hamper the operational flexibility which the unions and the airlines have traditionally recognized in union contracts.

The airlines are a public service industry. They operate 24 hours

a day, 365 days a year, for the convenience and necessity of the traveling and shipping public, the postal service, and the national defense. Their only product is air transportation and it must be simultaneously produced, sold, and consumed. Otherwise, it is lost. We must be able to respond immediately to a variety of demands in a safe and efficient manner.

Flight schedules and terminal and ground support facilities must be geared to traffic fluctuations, on a round-the-clock basis, on week-ends, and on holidays. To meet daily and seasonable peaks and operational emergencies, we have traditionally negotiated flexibility into our labor agreements, such as special premium pay and provisions for relief assignments; the rotation of work schedules and days off; special provisions for combining long and short work weeks (a contractual compensatory time-off arrangement); and for other specialized work scheduling arrangements. We have likewise solved employment manning problems associated with seasonal traffic through various accepted union contract provisions and personnel practices.

To be sure, we pay for this needed flexibility. Our ground employees get overtime pay after 8 hours per day and for work on their days off. In a few special situations, due to the nature of our business, some airline employees may be required to work what is known as a rotating or relief shift.

In addition to his basic rate of pay, such an employee will receive special premium compensation for all hours worked. In no case would such an employee average more than 40 hours of work per week without being paid overtime. In the determination of this 40-hour week, however, that employee may actually have worked 4 days one week and 6 the next.

If S. 1861 is enacted, the airlines will, of course, be required to adhere to the strict maximum hours provisions of the law without the benefit of these negotiated operational exceptions.

The result is that individual companies and the unions will have to sit down and try to rearrange and rewrite contract provisions to accommodate a Federal overtime law which does not recognize the operational requirements of air transportation; does not recognize the plain truth that our employees enjoy the premium pay arrangements which are negotiated as the proper measure of compensation for rotating assignments.

The airlines will continue to attempt to avoid overtime work whenever possible. This is a simple matter of sound management practice.

However, the airlines see no realistic substitute for the existing rotating relief assignments and practices except by a very burdensome and awkward scheduling of employees. If S. 1861 is enacted, this is what the airlines will be forced to do whenever possible.

SUMMARY

In summary, therefore, we oppose that portion of S. 1861 which would extend the maximum hours provision of the Fair Labor Standards Act to the airline industry. Its passage would extend no measurable benefit to any airline employee. Added overtime pay would not be generated. No new jobs would be created.

On the contrary, it may, in fact, result in less efficient service to the traveling and shipping public; would probably cause employees to lose some of the advantages they now enjoy, and most certainly, would require the airlines to change some existing operational practices which enable them to conduct an efficient transportation service.

No useful purpose being served by that portion of S. 1861, which would repeal the overtime exemption for employees of air carriers, we respectfully urge that S. 1861, or any other bill to amend the Fair Labor Standards Act which may be considered, be redrafted to assure that section 13(b)(3) of the Act is retained.

The position I would like to urge on the committee is one that is in opposition to the proposed bill's removal of the overtime exemption for airline employees as set forth in section 13(b)(3) of the current act. This exemption from the maximum hours provisions of the Fair Labor Standards Act has been in effect since the inception of the act, and it has remained in effect and survived all amendments to the act since that time.

To my knowledge, and the knowledge of my colleagues, there are no circumstances whatever now current respecting hours of work of the employees of the air transport industry which have caused conditions detrimental to the standard of living necessary for health, efficiency and general well-being of the workers involved.

Indeed, the working conditions concerning maximum hours of said workers have, if anything, steadily improved over the years since 1938. Going to the findings and declarations of policies set forth in section 2(a) of the current act, removal of the exemption might well occasion or cause labor disputes in the industry obstructing commerce, as the industry and the labor unions involved attempted to adapt the peculiar circumstances of our industry to the requirements established by the removal of that exemption.

The air transport industry is a peculiar industry. It is characterized by a 24-hour day, 7-day workweek. There is constant movement on the part of a large number of employees from one location to another.

These circumstances make it necessary that special rules be established governing the hours of work of the employees, which of necessity has been recognized in the regulations established by the Federal Aviation Administration concerning the hours of work of the employees of this industry.

The employees of this industry for purposes of my statement may be divided roughly into two categories, those who fly and those who work on the ground.

Concerning those who fly, the so-called FAR's, which are the regulations of the Federal Aviation Administration, concerning flightcrew members, both pilot and cabin crews, are specific in establishing hours of work.

The principal preoccupation of the Federal Aviation Administration in establishing these rules is of course safe air transport, and safe air transport is related to minimizing fatigue on the part of the workers involved, so there are specific sets of rules governing the hours of work of the flightcrew members.

I would like to point out on all airlines, all scheduled airlines, both categories of employees, namely, pilots and cabin attendants, are represented by strong and militant labor unions. Over the course of the

years they have negotiated working conditions concerning hours of service, which have the effect of even going beyond the rules established by the Federal Aviation Administration insofar as the hours of work of the employees concerned are involved.

Really, these kind of employees, the nature of their work, makes the establishment of conventional shift-type divisions of work really impractical and not on point, but the Federal regulatory agency, principally charged with safety, taking cognizance of this has intervened in its regulatory power and established rules on maximum hours, to minimize fatigue and so forth. It is really not on point to have those maximum hours as far as flightcrew members are concerned dealt with through this legislation. I would assume this was recognized when the legislation was first drafted, and has continued to be recognized.

The other segment of air transport employees are what we call broadly ground employees. Ground employees are the employees most travelers see when they visit airports. They are roughly divided into about three classifications of people: those people who do the mechanical work, what we call the ramp work; those people who provide the interface with the customers at the station, the so-called agent group; and then finally there is a group of downtown workers, most of whom are employed in our reservations offices.

As far as these classes of employees are concerned, their work generally, as far as the great majority are concerned, lends itself to shift-type operation. Better than 50 percent of these employees are again represented by a strong national labor union, such as the IAM, Transport Workers Union, Teamsters Union, and on all except one carrier, all of the employees are so represented.

In the course of the years, collective-bargaining agreements have been negotiated with these unions covering these employees. The provisions in which insofar as maximum hours are concerned, go well beyond the provisions of the Fair Labor Standards Act. These provisions require the company to pay overtime after 8 hours a day, after 40 hours per week, and on the 6-day week. These are all time-and-a-half penalties. For the 7-day workweek, the penalty is double time.

For people who have chosen to remain unaffiliated, not represented by union, the policies of the companies involved concerning these people on maximum hours, indicates that they are indetical in all cases to their union counterparts on the same airline, and, of course, the reason for that is perfectly obvious.

So, again, here, the provisions of the Fair Labor Standards Act insofar as maximum hours of service are concerned are well met, and more than that for ground employees in the transport industry.

The summary of my position, Senator Williams, is that with respect to flight employees, the kind of work that is involved, insofar as the hours of work are concerned, they are well safeguarded by the FAA, and the FAA's rules have been implemented and complemented by labor agreements to the same end, to minimize the hours.

Insofar as the ground employees are concerned, the union agreements and the company policy in the case of nonunion employees go well beyond the stipulations in the act.

On the negative side, we feel that to accommodate the rules to the act, the rules between the employees and the companies in the transport industry, might well frustrate one of the purposes of the Fair

Labor Standards Act which is to foster smooth labor-management relations. Over the years, in excess of 30, there has developed a series of understandings of rules between the unions involved to accommodate the problems of our industry. To our knowledge, employees are satisfied with these rules, and we feel that they are not unreasonable considering the peculiarities of this industry. We feel that for all these circumstances, the exemption which has been in the act from the beginning should be retained.

I thank you very much.

The CHAIRMAN. There are two things that impress me.

As you describe your personnel situation in the airlines, it sounds as though the bulk of your employees do not need this exemption. They have hammered it out by contract, or those who are not under contract through a union. They evidently have the same situation as union employees, so the impact of the overtime provision here, the exemption could be limited.

In fact, if the exemption were removed, I do not see what employees would be affected.

Mr. CROMBIE. The flight employees.

The CHAIRMAN. Here we are talking not about the pilots?

Mr. CROMBIE. The flight employees are in two groups.

The CHAIRMAN. The pilots are not included, or the navigator?

Mr. CROMBIE. We do not have a navigator. Some people do, and they would not be included.

The CHAIRMAN. So we go out of the cockpit, and into the cabin, and there you have the attendant and the stewardess, they would be affected?

Mr. CROMBIE. Yes; they would. There would have to be a whole new set of rules negotiated between the parties.

The CHAIRMAN. I think maybe it must be a lot to say that your employees are happy with the situation as it is.

We have not heard from them.

Mr. CROMBIE. I suspect this is not a problem.

The CHAIRMAN. As a matter of fact, we have solicited a commentary.

Mr. CROMBIE. I am not at all surprised.

The CHAIRMAN. Thank you very much.

I have to go in response to a roll call vote on the Senate floor. I will be right back.

Mr. CROMBIE. Thank you. sir.

(Brief recess.)

The CHAIRMAN. The committee will now resume. The Association of American Railroads, represented by Hugh E. Greer, director of research, National Railway Labor Conference, is our next witness.

STATEMENT OF HUGH E. GREER, DIRECTOR OF RESEARCH, NATIONAL RAILWAY LABOR CONFERENCE, ON BEHALF OF THE ASSOCIATION OF AMERICAN RAILROADS

Mr. GREER. I appreciate the opportunity to appear before your committee on behalf of the railroad industry, in opposition to repeal of the exemption in the current law in section 13(b)(2) of the Fair Labor Standards Act.

The Association of American Railroads and the National Railway Labor Conference furnish the following comments on S. 1861 on behalf of their member railroads, which employ the great majority of all railroad workers in the United States.

Their comments are directed exclusively to the provisions of the pending bill that would repeal the exemption in 13(b)(2) of the Fair Labor Standards Act from the hours and overtime provisions contained in paragraph 7 of the act.

This exemption has been afforded to employees of employers subject to the provisions of part I of the Interstate Commerce Act uninterruptedly since the Fair Labor Standards Act was enacted in 1938. The railroads have always been covered by the minimum-wage provisions of the law, and railroad employees receive wages that substantially exceed the statutory minimum wages.

If the exemption in paragraph 13(b)(2) from the hours and overtime provisions of paragraph 7 should be repealed, the railroads would be required to compensate their employees on the basis of time and a half for all hours worked in excess of a standard workweek of 40 hours and—under one of the proposals of S. 1861—in excess of a standard workday of 8 hours.

The existing exemption from the hours and overtime provisions was supported by the railroad carriers and the labor organizations representing their employees when the Fair Labor Standards Act was enacted in 1938, and no reasons have been demonstrated why the exemption should now be discontinued.

On the contrary, the reasons that justified the railroad exemption in the beginning of the law are as valid today as they were then.

The following comments by Secretary Hodgson on the pending proposals to remove exemptions are especially applicable to the railroad exemption:

With regard to the other exemptions which S. 1861 would repeal, I am not aware of evidence or studies that would show why the earlier legislative determination to omit these categories from coverage is no longer valid in the absence of convincing reasons for change. (Statement of Secretary of Labor James D. Hodgson before the Subcommittee on Labor, Senate Labor and Public Welfare Committee, on the Fair Labor Standards Amendments of 1971, pp. 17-18, May 26, 1971).

1. The hours and overtime principle of the Fair Labor Standards Act is inappropriate for railroad operating employees for reasons inherent in the nature of railroading.

Railroad operations are not limited to confined locations at fixed places like those of manufacturing and most other businesses. They are extended through every State in the United States, reaching and serving thousands of cities and towns. In 1970, there were approximately 206,400 miles of railroad line on line-haul railroads, not including yards, sidings, and parallel tracks. All of the roads in the United States constitute a single connected network for cars and trains moving freely from railroad to railroad.

Railroad operations are moving operations, consisting of cross-country movements of trains between thousands of points.

There are different kinds of railroad operations and different kinds of service in which railroad operating employees work. The main types of service are train and yard.

The main kinds of train service are freight and passenger. Freight service is broken down into through and local freight and there are also converted-through freight, mine-run freight, and switching freight service.

In the different kinds of train service, crews may operate trains from a home terminal to an away-from-home terminal and after a brief layover operate back home, or they may remain at the away-from-home terminal for substantial periods before coming back.

Through-freight service consists of the operation of freight trains over a railroad line between major terminals or division points. Through-freight train crews usually run between fixed points.

Normally, a through-freight train is operated by a series of crews, each operating the train between a regular pair of terminals and turning it over to a new crew at the end of the run.

The new crew runs the train on between its pair of terminals. Typically, the crew that works a train out in one direction works another train back in the reverse direction after a layover of some duration at the away-from-home terminal. The outward trip is aggregated with the return trip.

The length of a run depends on the distance between points, traffic on the line, weather, terrain, and other factors.

Distances between freight terminals in through-freight service are ordinarily 100 to 175 miles.

In a typical operation, a through-freight train crew might work an outbound run in 3 to 7 hours. Crews stay at the away-from-home terminal for varying lengths of time which may last from 2 or 3 hours up to 8 hours.

Another kind of freight service is local freight, sometimes known as "way" freight. Local freight trains stop at numerous points along the line, drop off cars for delivery, and pick up cars for transportation elsewhere.

They usually work out from terminals or central points. They are slower than through-freights because of the stops they make and the amount of switching done. They make way for passenger trains and through-freight trains. Local freights often operate over branch lines and serve small towns and localities, rather than over main lines that serve larger cities.

Local freight crews are paid a higher rate than through-freight crews. Local freights may run from a headquarters to a point at the end of the run in 1 day and operate back the next day, in which case the crew takes rest at the away-from-home point. Or they may go out and back in 1 day. Hours on duty in local freight vary considerably. Locals often work long hours in harvest seasons and at times of heavy activity of industry along the line that have cars to be switched in and out.

Passenger trains are faster than freight trains and the distances of passenger crews are longer than those of freight crews. Runs of 150 to 300 miles are not uncommon. Passenger crews are often assigned to specific pairs of trains operating in opposite directions, this being referred to as "assigned" service, and crews often aggregate passenger runs. A familiar illustration is the service between Washington and New York. Train and engine crews work up and back on the same day.

Typically, they are on duty 6 hours going up and 6 hours coming back with a release in New York of about 3 hours. The 6-hour periods include not only actual travel time over the road but preliminary time on duty before the trip begins and time on duty at destination after the trip has ended but before employees are relieved.

These descriptions indicate briefly some of the complexity of the operations of a railroad.

These operations obviously do not permit the use of narrow limits in scheduling the work of operating employees such as those found in manufacturing industries where the 8-hour day is the rule.

Cross-country movements of trains take time. Railroads operate around the clock every day of the year. Different kinds of trains move at different speeds. Trains must connect with other trains on the same line and at junction points with other railroads.

Outside factors often influence the amount of time that trains take in getting over the road. These include weather, equipment problems such as hotboxes, traffic density, loading and unloading requirements at the plants of shippers, and the arrival of connecting trains.

Time, in a word, is an ever-present consideration in the day-to-day operations of a railroad.

It is absolutely essential that a railroad have flexibility in the conduct of these operations and that it should not be hamstrung and inhibited by rigid requirements such as those of an 8-hour day.

2. In 1907, Congress passed the Federal Hours of Service law, establishing allowable working limits for railroad employees actually engaged in or connected with the movement of trains and for other special classes of railroad employees, and prohibiting work in excess of the limits prescribed by law (45 U.S.C.A. paragraphs 61-66).

This statute was popularly known as the "16 hour law" from the principal limit provided therein.

In 1969, Congress amended the statute to provide for a reduction of the 16-hour limit to 14 hours, effective December 26, 1970, and for a further reduction to 12 hours, effective 2 years thereafter, and to provide lesser working limits for special classes of railroad employees such as telegraphers and train dispatchers.

Violations of the law by railroads are now punishable by penalties of \$500 for each violation. The Hours of Service law was enforced in the Federal courts for many years by the Interstate Commerce Commission and has been enforced by the Department of Transportation since the creation of that Department in 1966. This statute has always been a fundamental ground rule of the railroad industry, of which all persons connected with the operation of trains and the railroad system are constantly aware.

To the extent that the hours and overtime provisions of the Fair Labor Standards Act of 1938 are intended to mark out proper limits for the working time of persons engaged in industry, that purpose had already been accomplished by Congress in the Hours of Service law especially directed to the railroad industry and a large class of its employees.

Congress has recognized that until December 26, 1972, a 14-hour limit is appropriate for employees covered by the law, and that thereafter a 12-hour limit will be appropriate.

In fixing special working limits for railroad employees covered by the Hours of Service Act that are different from those contained in—or proposed for—the Fair Labor Standards Act, Congress clearly took into account the special nature of the railroad industry and of railroad employment, as is abundantly shown in the hearings before the committees of the House and Senate on the bills that were enacted in 1969.¹

To the extent that the hours and overtime provisions of the Fair Labor Standards Act are intended to discourage and penalize the performance of work beyond the working limits determined by Congress to be desirable, that purpose—so far as railroad operating employees are concerned—is achieved by the flat prohibitions and penalties of the Hours of Service law.

Congress has seen fit to deal with the working time of railroad operating employees as a special problem to be covered by a special statute. There is no occasion to apply the hours and overtime provisions of the Fair Labor Standards Act to those employees.

3. A major reason why a statutory rule of time and a half for overtime in excess of a standard workweek and a standard workday should not be imposed on this industry is that it would disrupt the specialized system by which a great many railroad employees have long been compensated pursuant to collective bargaining agreements that already provide for the payment of overtime.

This committee is no doubt familiar with the main features of the railroad industry's pay structure and the kind of work that is done by many railroad workers as has already been described.

There are two main classes of railroad employees:

(1) Operating employees, who are directly engaged in movement of trains, such as engineers, conductors, and brakemen.

(2) Nonoperating employees: those not directly associated with the movement of trains, such as clerks, maintenance-of-way employees, signalmen, and various others.

Road freight service employees are compensated on a dual basis of pay which has been developed in collective bargaining over a long period of time.

They are paid on the basis of both hours worked and mileage run.

The dual basis system is illustrated by the rules for a standard basic day and for overtime contained in the collective bargaining agreements for employees in road engine service.

These rules provide that in all classes of road freight service, 100 miles or less, or 8 hours or less, shall constitute a day's work, with miles run in excess of 100 to be paid for at specified mileage rates.

The rules provide that on runs of 100 miles or less overtime begins at the expiration of 8 hours, while on runs of more than 100 miles overtime begins when the time on duty exceeds the number of miles run divided by $12\frac{1}{2}$.

Overtime is paid on a minute basis at an hourly rate equal to $\frac{3}{16}$ of the applicable daily rate, or $1\frac{1}{2}$ times the hourly rate.

¹ Hearings before the Subcommittee on Surface Transportation of the Committee on Commerce, U.S. Senate (91st Cong., 1st sess.) on S. 1938; hearings before the Committee on Interstate and Foreign Commerce, House of Representatives (91st Cong., first sess.) on H.R. 8449, H.R. 84, and H.R. 9515.

Thus, the time at which overtime starts—the “threshold of overtime”—will vary with the length of the run.

Overtime pay will begin at the end of 8 hours or later, depending on whether the trip mileage is long or short. A similar situation applies in passenger service, except that overtime is paid for at $\frac{1}{8}$ of the daily rate.

The rules comprising the dual basis of pay—along with other wage-related rules which have developed in connection with problems created by irregular runs, extra service, and the wide variety of work required on different runs under different operating conditions—have led to an extremely complex system of compensation.

The Presidential Railroad Commission, which issued in 1962 the most authoritative report by a neutral body on the wage structure of railroad operating employees, described the existing method of compensation as “probably the most complicated of any major industry in the United States.”

The Presidential Commission emphasized the highly interrelated and interdependent character of the component rules that constitute this system, as follows:

The pay rules and wage relationships within an industry are significantly shaped by the technology of that industry. Many railroad operating employees—as the name implies—have a mobile work place rather than a fixed work community as in factory employment.

Managerial and supervisory arrangements are different where employees are away from direct and immediate contact with their superiors for long periods. The hours of many operations are around the clock. The train crew has direction of expensive equipment and cargo, and the consequences of accidents are severe. The volume of freight car loadings is very sensitive to general business conditions resulting in fluctuations in employment.

These and other features of the railroad environment have shaped over the years a distinctive set of compensation rules.

The methods of compensation of railroad operating employees, and the associated pay rules, are probably the most complicated of any major industry in the United States;

First, there are a great many separate components to the wage rate structure, such as daily rates, mileage rates, overtime rates, graduated rates with different locomotive power and length of trains, guaranteed special allowances called arbitraries for the performance of particular tasks or for particular inconvenience or delays, mileage limitations, and the like, many of which in turn vary with the class of service and craft.

Second, the effect of any one pay rule upon earnings depends upon other components of compensation: they are highly interdependent as illustrated in the dual basis of pay to be explained below.

Third, the railroad wage structure and its various components is not an accurate indicator of the earnings to the men or the labor costs to the carriers. As William Z. Ripley said in an historic study of the industry's wage structure over 40 years ago:

“No rate per hour, day, month, trip or mile is a reliable index of the amount of compensation in the aggregate which the men receive; and all comparisons purporting to show relative earnings which deal in terms of rates per unit of performance are worse than misleading.”

Proposals to change daily, mileage, overtime, or mileage limitations pay rules are to be appraised in terms of their impact on earnings and labor costs, but estimates of the effects of changes in the wage structure or its components on earnings per trip, week, month, or year are most difficult to project. (PRC Report, pp. 78-80).

Overtime pay is one strand on a complex fabric that has been developed through collective bargaining.

A legislative change in the overtime rules—such as would result from S. 1861—would produce consequential effects throughout the entire system of compensation.

A new basis of overtime pay would be added having no relevance to the peculiarities of the railroad industry.

Although new overtime payments would be required by law, the old method of compensating for overtime—the dual basis of pay system—would remain in effect under the collective bargaining agreements until those agreements were changed by further bargaining.

Attached as an appendix to this statement is a tabulation of average annual earnings and wage supplements for employees in different American industries in 1970, showing that railroad workers are a top group of wage earners.

Attached as a second appendix to this statement is a comprehensive table showing the classes and numbers of railroad employees who receive overtime compensation at a level equal to or in excess of that prescribed by the Fair Labor Standards Act.

This table also shows the classes and number of railroad employees whose overtime compensation is calculated in accordance with different and specialized railroad rules of long standing that have been arrived at pursuant to collective bargaining.

4. The other class of railroad operating service; namely, yard service, more nearly approximates the conditions of industry generally outside the railroads in its work schedules and methods of compensation. Employees in yard service work regular 8-hour shifts at fixed locations and are not away from home as are road service employees.

In addition to receiving a basic daily rate which guarantees them 8 hours' pay per day regardless of whether less time might be worked, yard service employees also receive overtime pay at time and a half rates for all time worked over 8 hours a day.

The great majority of these employees are also assigned on a 5-day 40-hour-week basis and receive time and one-half rate for all time worked in excess of 40 hours in their workweek. These employees already receive what S. 1861 would give them, so far as overtime is concerned.

5. The other major class of railroad employees is the nonoperating group. Most railroad nonoperating employees work a regular 5-day 40-hour week. Under their various collective-bargaining agreements they already receive pay at the rate of time and a half for work in excess of 40 hours per week. However, there is a substantial segment of the nonoperating work force which is paid on a monthly basis.

The monthly rates of pay comprehend varying amounts of compensated hours—whether actually worked or not—ranging from 169 hours to 244 hours per month with most such rates based upon 211 hours of compensation per month.

These varying hourly quotas can be related historically to the time when employees occupied positions when 6 or 7 assigned workdays per week. However, since the adoption of the 40-hour workweek in the railroad industry, most of these monthly rated employees are not required to work on the sixth day or the sixth and seventh days but work a regular 5-day, 40-hour week.

There has been, however, no corresponding reduction in the number of hours used in determining their regular monthly rate or compensation, although in most cases these employees do not work the total number of hours comprehended in their monthly rate.

In fact, when employees receive cents-per-hour increases in their wage rates, the increases are also calculated on the basis of the total number of hours comprehended in the monthly rates regardless of whether such hours are actually worked.

Although monthly rated employees are compensated for hours not actually worked, they generally do not receive additional compensation for overtime work performed during their regular workweek or on Saturdays, such as track maintenance or signal maintenance forces who work a regular 8-hour day and a regular 40-hour week but who also must respond to emergencies during their off-duty hours. These employees frequently do not receive additional pay for this emergency overtime work because it has already been anticipated—or comprehended—in their monthly rate, which is predicated on their working a certain number of additional hours per month beyond the number of hours in the regular workday.

To require the railroad industry to pay these monthly rated employees at the rate of time and a half for all time worked above 8 hours a day or 40 hours per week would destroy the basis upon which the monthly rates were established.

By repealing the overtime exemption, S. 1861 would bring about a situation in which monthly rated employees would receive overtime pay on two separate bases: (1) That established in their collective bargaining agreements whereby they are paid on a basis that comprehends pay for a certain number of hours above the regular workweek which are not normally worked; and (2) that established by S. 1861 whereby all employees would receive compensation at time and a half rates for all hours over 40 in the workweek and over 8 hours in any one day.

In other words, the result would be double overtime.

The railroad industry would expect to encounter strong resistance from these employees to any effort on the part of the carriers to eliminate the duplication of overtime payments by the processes of collective bargaining.

Labor agreements in the railroad industry have no fixed termination dates and remain in effect until the parties voluntarily agree to proposed changes or until the procedures of the Railway Labor Act are exhausted and the parties resort to self-help.

Thus, the railroad industry would be burdened for a considerable time with duplicate overtime payments to monthly rated nonoperating employees.

Every nonoperating craft in the industry has some members who

are compensated on a monthly rate. These include clerks, telegraphers, maintenance-of-way employees, shopcraft employees, and signalmen.

Duplicate overtime would represent a windfall to such monthly rated employees and would be a burden to the carriers. These employees are already adequately protected in terms of the purposes of the Fair Labor Standards Act, since overtime compensation is in fact afforded to them under existing pay practices.

It is afforded to them in keeping with the peculiarities and special characteristics of a continuous service industry and the specialized kind of work that they perform.

6. An inexplicable aspect of S. 1861 is the fact that while it would repeal paragraph 13(b)(2), it would not repeal the parallel exemption contained in paragraph 13(b)(1) of the law that is provided to employees with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to paragraph 304 of title 49 of the United States Code.

These are truckdrivers employed by motor carriers. There is no doubt ample justification for exempting these employees from the hours and overtime provisions, and it is reasonable to surmise that it is based on the nature of the work that they perform and the system under which they are compensated as employees in a continuous service transportation industry.

In other words, the reasons for their exemption are the same as the reasons that fully justify the exemption for railroad employees and that led to the enactment of such an exemption in 1938.

The motor carriers whose exemption would not be repealed are, of course, competitors of the railroads; and it would obviously be discriminatory to continue the motor carrier exemption and to eliminate the exemption for railroads.

In summary, the repeal of paragraph 13(b)(2) of the Fair Labor Standards Act would subject the railroads to a principle of compensation that is wholly inappropriate and ill-adapted to the character of the industry's operations; it would provide hours and overtime protection to employees who are now amply protected in this regard; and it would discriminate against railroads and in favor of motor carriers.

For these reasons the railroad industry opposes the provision of S. 1861 that would repeal paragraph 13(b)(2) and urges that it be removed from the bill.

I enclose table 1, estimate of railroad employees subject to daily and weekly overtime rules which equal or exceed the requirements of the overtime provisions of the Fair Labor Standards Act.

I also enclose table 2, average annual wages and salaries and supplements.

(The following information was subsequently supplied for the record:)

Table 1

Estimate of Railroad Employees Subject to Daily
And Weekly Overtime Rules Which Equal or Exceed
The Requirements of the Overtime Provisions of the
Fair Labor Standards Act

Class I Line-Haul Railroads

		Estimated number of employees subject to other than the <u>standard railroad overtime rule ^{1/}</u>	
<u>Classes of Employees</u>	<u>Total Employees</u>	<u>Percent</u>	<u>Number</u>
<u>Nonoperating employees:</u>			
Clerical and Station	109,142	5%	5,457
Maintenance of Way	71,431	3	2,143
Shop Craft	97,252	1	973
Stationery Engine and Shop Laborers	16,018	2	320
Signalmen	9,839	15	1,476
Telegraphers	21,412	15	3,212
Marine employees	1,743	10	174
Dining car employees	2,733	100	2,733
Total - 73 classes	329,570	5	16,488
<u>Operating employees: ^{2/}</u>			
Road operating employees	84,068	100	84,068
Yard operating employees	84,607	9	7,914
Total - 22 classes	168,675	55	91,982
<u>Miscellaneous group - 31 classes</u>	51,533	50	25,767
Total - 126 classes ^{3/}	549,778	24	134,237

Note: Footnotes on following pages.

1/ The standard railroad overtime rule provides for overtime at the time and one-half rate for work in excess of eight hours per day and for work on the sixth and seventh day of the work week or after forty hours of work in the work week. Thus, the great majority of railroad employees, including 95% of the nonoperating employee group, are working under labor agreements which exceed the overtime provisions of the Fair Labor Standards Act. The 5% of nonoperating employees working under agreements which do not conform to the Act are mainly monthly rated employees whose monthly rates comprehend hours of service in excess of forty hours. Such employees are paid the full weekly or monthly rates regardless of whether or not they work any hours in excess of the equivalent of forty hours a week. Most of these employees in the main work a normal 5-day 40-hour week. They receive cents per hour wage increases on the basis of the number of hours comprehended in the rate. Thus a monthly rated employee granted a wage increase of 10¢ per hour whose monthly rate comprehends 211 hours will receive an increase of \$21.10 per month, whereas the monthly rated employee whose rate comprehends a forty hour work week will receive an increase of only \$17.40 per month. Rates comprehending more hours than the normal work week have been receiving these additional increments in the monthly rates for many years. Dining car and other nonoperating employees who work on trains are paid monthly rates which comprehend hours the approximate equivalent of a 40-hour week. Overtime is not paid on a daily basis but is paid on a monthly basis.

2/ As to operating employees, all yard employees, with the exception of about half of the yard locomotive engineers, are working under forty hour week agreements. The engineers have had the right to adopt a five-day week for a number of years, but have not elected to do so on a universal basis. All yard operating employees receive overtime at the rate of time and one-half for hours in excess of eight per day, and except for about half of the engineers, all yard operating employees receive overtime at the rate of time and one-half for work performed in excess of forty hours in a work week.

Road operating employees work under the dual basis of pay, a complex pay system which neutral experts, including the public members of the Presidential Railroad Commission in 1962 and the members of Emergency Board in 1970, have found to be in desperate need of overhaul. However, any overhaul must take into account all the elements of the pay structure, not a single aspect, such as the question of overtime. The basic concept of the dual basis of pay is the payment of miles or hours, whichever produces the greater compensation for each trip. The basic day in all classes of freight service is 100 miles or less, eight hours or less. In passenger engine service the basic day is 100 miles or less, five hours or less, in passenger train service the basic day is 150 miles or less, 7-1/2 hours or less.

For all miles run in excess of the basic day, overmiles are paid at a rate of approximately 1/100 of the daily rate (1/150 in passenger train service). In addition, a host of arbitrary payments or constructive allowances have been engrafted onto the system, including such items as initial terminal delay, final terminal delay, switching enroute, and switching at the initial terminal, the final terminal or at intermediate points.

- 3 -

Overtime in straight-away passenger service is paid at the prorata rate when the time on duty of a trip exceeds the miles paid for divided by 20 mph. In short turnaround (commutation) passenger service, overtime is paid for all hours in excess of eight within a spread of nine hours (only release periods of at least one hour are deductible). Because of the nature of commutation service, long periods of release between the peak morning and afternoon rush-hours are the rule rather than the exception.

Overtime in freight service is paid at the rate of time and one-half when the time on duty of a trip exceeds the miles paid for divided by 12-1/2 miles per hour. Thus on all trips of 100 miles or less overtime is paid for on a minute basis at the rate of time and one-half for all time on duty in excess of eight hours. On a 125 mile trip, overtime starts at 10 hours, etc.

Road train service is operated 24 hours a day, seven days a week, 365 days a year. The earnings of road service employees are regulated by mileage limitation agreements. Many assignments in road service are set-up to double the road on one day and be off at the home terminal for two days. Other assignments are set up to work two days and be off three days, or to work every day for ten days and be off ten days.

The effect of the dual basis of pay, including arbitraries and special allowances, and mileage regulations, is reflected on the following 1969 road service statistics:

<u>Item (Averages)</u>	<u>Passenger Service</u>	<u>Through Freight</u>	<u>Local Freight</u>
Hours worked per trip	5.7	6.1	9.8
Hours paid for per trip	11.8	13.5	13.1
Miles run per hour on duty	28.5	20.2	9.8
Miles paid for per hour on duty	30.7	21.3	12.0
Hours worked per week	31.3	29.4	52.3

The estimated hourly earnings of road operating employees as of January 1, 1971 are:

<u>Class of employees</u>	<u>Hourly rates</u>	<u>Straight time hourly earnings</u>
Passenger service	\$3.70	\$7.98
Freight service	3.89	5.68
Passenger and freight	3.86	6.03

- 3/ This group includes substantial numbers of employees who would be exempt under the Executive, Administrative, Professional and other exemptions in the Fair Labor Standards Act. Many of these employees are not subject to labor agreements, whereas practically all of the 95 classes are covered by collective bargaining agreements.

Table 2

Average Annual Wages and Salaries and Supplements

Year 1970

<u>Industry Group</u>	<u>Average Annual Earnings - 1970</u>		
	<u>Wages & Salaries</u>	<u>Wage Supplements</u>	<u>Total Compensation</u>
Railroads	\$9,775	\$1,518	\$11,293
Other Transportation	9,980	1,094	11,074
Agriculture, Forestry and Fisheries	3,063	220	3,283
Mining	9,262	1,140	10,402
Contract Construction	9,293	948	10,241
Manufacturing	8,150	1,202	9,352
Communication	8,401	1,394	9,795
Electric, Gas and Sanitary Services	9,695	1,576	11,271
Wholesale and Retail Trade	6,886	569	7,455
Finance, Insurance and Real Estate	8,026	1,085	9,111
Services	5,946	384	6,330
Government and Government Enterprises	7,965	814	8,779
All Private Industries	7,462	852	8,314
All Industries	7,564	845	8,409
All Industries except Railroads	7,544	839	8,383

Source: Survey of Current Business, U.S. Department of Commerce, July 1971, Tables 6.1, 6.2, 6.4, pp. 35-36.

Mr. GREER. The persuasive reasons for the railroad exemption from hours and overtime provisions of the act, as enumerated in detail in the written statement, are:

(1) The hours and overtime principles of the FLSA are inappropriate for railroad operating employees for reasons inherent in the nature of railroad operations. I shall later discuss the intricacies and ramifications of the pay system for operating employees in detail.

The operating employees include engineers, firemen, conductors, and the yard operations, and those over the road.

The CHAIRMAN. One of the problems was under the contracts, you have to break up those crews every once in a while?

Mr. GREER. Every 100 miles, yes, that is one of the problems.

The CHAIRMAN. No crew goes more than 100 miles then?

Mr. GREER. No, there are lots of crews that operate in excess of 100 miles.

The CHAIRMAN. Here it says railroad operations, or moving operations. That is obviously true, but the crews do not go more—

Mr. GREER. No, but the crews go from one terminal to another terminal, which may be 75 miles, 50 miles, 150, or 200 miles, from A to B.

The CHAIRMAN. It is a little different than the airlines?

Mr. GREER. Yes. The airplane goes much faster, and it covers much more distance.

The CHAIRMAN. And the crews do not get off. They make the route.

Mr. GREER. The transcontinental service now, yes, they do, they make the complete operation.

The CHAIRMAN. What is the point here?

Mr. GREER. The point with respect to the dual basis of pay, I think will become clearer in my statement if you will let me proceed with it, in that I will show you, I intend to show you the groups of employees that are now covered by overtime provisions which exceed those provided in the act.

The CHAIRMAN. That is layover at the other end of the line, before they come back?

Mr. GREER. Some have layovers, and some double the road.

For instance, many assignments are set up so that they will make a trip out which will take 5 or 6 hours, and without any rest, or with only a minimum amount of rest, they will double back the same day.

Those kind of trips are much favored by the employees, because the mileage regulations limit the total compensation they can make in a month.

They work under mileage regulations in road service, and the typical mileage regulation is 3,500 miles a month.

If they can make 200 or 250 miles in a day by working 7, 8, 10 hours, then they will have assignments that will permit them to be off maybe 10 days out of the month.

The CHAIRMAN. This has the analogy of the 10-hour day, 4-day week?

Mr. GREER. Yes.

(2) The second point I wish to mention is that in 1907 Congress passed the Federal hours of service law, establishing maximum allow-

able working limits for railroad employees actually engaged in or connected with the movement of trains and for other special classes of railroad employees involved in railroad operations and therefore performing work essential to the safety of railroad service.

The law was amended by the Congress in 1969, reducing the previously existing 16-hour limitation to 14 hours effective December 26, 1970, and 12 hours effective December 26, 1972.

Thus to the extent that the hours and overtime provisions of FLSA are intended to mark out proper limits for the working time of persons engaged in the industry, Congress has seen fit to deal with the working hours of railroad workers as a special problem to be covered by a special statute. There is no basis now which justifies removal of the longstanding exemption.

(3) A statutory requirement of time and a half for overtime in excess of a standard workweek and a standard workday would disrupt the specialized system, reached through collective bargaining, by which railroad employees are paid.

This is particularly true as to the so-called dual basis of pay for road operating employees, which has been the subject of intensive factfinding by expert neutrals and of equally intensive negotiations by the parties.

The pay structure consists of many separate components, such as daily rates, mileage rates, overtime rates, graduated rates based on locomotive weight and length of trains, guarantees, special allowances called arbitraries for the performance of particular tasks or inconvenience or delays, mileage limitations and other factors which in turn vary with the class of service and the craft.

As the PRC in its 1962 report, after a particularly exhaustive study found—"The effect of any one pay rule depends upon other components of compensation: They are highly interdependent . . ."

Hours and overtime are key components of the pay system. Introduction of FLSA restrictions will add additional anomalies and inequities to an already complicated pay system.

(4) I have already alluded to the collective bargaining agreements which have been made between the parties since 1938 relating to hours of service and overtime.

This bargaining has been premised on the fact that for good and sufficient reason the FLSA exemption was included in the original enactment and in all subsequent amendments.

Nothing has changed in the railroad industry that would justify elimination of that exemption.

The basic premise of the dual basis of pay, which applies to road operating employees, is the equation of 100 miles of road service to 8 hours of work.

This premise was established during Federal control in World War I and has not been changed, although the average speed of railroad operations has more than doubled, and on many freight runs has more than quadrupled, over the intervening years.

(5) Except for road operating employees, all other operating employees, representing more than half of the total operating group, work

under collective-bargaining agreements which provide for premium pay at the rate of time and one-half for work in excess of 8 hours a day or 40 hours a week, or such employees have the option to adopt a 40-hour workweek.

All crafts of yard operating employees have exercised their option to adopt the 40-hour workweek with the exception of yard employees represented by BLE.

That union has not exercised its option on a national basis, although some 50 percent of the yard engineers are working on assignments which provide for overtime after 40 hours of work in a week. All yard operating employees work under agreements providing for overtime pay after 8 hours a day.

(6) The majority of railroad employees (60 percent of the total, and almost two-thirds of the employees subject to collective-bargaining agreements) are included in the 73 classes of nonoperating employees.

Ninety-five percent of these employees work under collective-bargaining agreements which provide for hours and overtime provisions which exceed the requirements of the FLSA 40-hour-week overtime provision and the proposed 8-hour daily overtime provision. The exception only applies to approximately 16,500 monthly rated employees whose monthly hours comprehend more than a 40-hour workweek. These monthly rates have been built up by applying cents-per-hour increases over a number of years on the basis of the hours above the equivalent of a normal workweek.

Thus an employee on a hourly or daily rate will receive an increase in pay of \$17.40 per month for a wage increase of 10 cents an hour, whereas a monthly rated employee whose hours comprehend 211 hours (the most common type) will receive a monthly increase of \$21.10 for the same 10 cents an hour increase.

Most of these monthly rated employees whose hours comprehend more than a 40-hour workweek in fact work close to a normal 40-hour week, and the average hours worked in excess of 40 hours a week would, except in unusual situations, result in less compensation than if they had in fact received overtime at the time-and-one-half rate for the hours worked in excess of 40 hours per week.

The existence of these monthly rates throughout the history of the FLSA provides no basis for removing the hours and overtime exception for railroad employees at this late date.

(7) The final point is the fact that while S. 1861 would repeal the hours and overtime exemption for railroad employees it would preserve the parallel exemption in section 13(b)(1) applicable to employees subject to qualification and maximum hours of service provisions of the Motor Carrier Act, the railroad industry's principal competitor.

There is no doubt ample justification for exempting these motor carrier employees, but the same justification applies equally to railroad employees.

Both industries have a pay basis involving miles and hours, and both industries are regulated as to the maximum hours of service which may be performed to meet safety standards.

In summary, the railroad industry is opposed to repeal of the section 13(b) (2) exemption of the FLSA because it would subject the industry to a principle of compensation, that in many cases is inappropriate to the character of the industry's operations; it would impair labor relations by disrupting existing collectively bargained agreements which have been built up over many years, including over 30 years working under the current FLSA exemption; it would provide hours and overtime protection to employees who are now amply protected in this regard; and finally, it would discriminate against railroads in favor of motor carriers.

Furthermore, there is serious doubt that removal of the exemption would result in increased employment opportunities in the railroad industry, in view of the fact that 95 percent of the nonoperating employees and 100 percent of the yard operating employees now work under collective bargaining agreements which are equal to or exceed the proposed limitations.

Only the road operating employees working under the dual basis of pay system are not subject to such provisions.

The nature of their work, combined with the dual basis of pay system, strongly argue that the proposed limitations are neither practicable nor required.

That is all I have to say, Mr. Chairman.

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

You have presented a strong case, and, of course, we have the complete statement you have presented.

I believe counsel would like to ask you a question.

Mr. MITTELMAN. Sir, what would the total number of railroad employees be? Would they be all covered by the Fair Labor Standards Act?

Mr. GREER. That are now covered by the Fair Labor Standards Act?

Mr. MITTELMAN. Who would be?

Mr. GREER. I would say in the neighborhood of 500,000 employees.

Mr. MITTELMAN. Of these 500,000, how many of the labor unions are represented in bargaining with their employers?

Mr. GREER. They would be distributed among some 14 or 15 major unions.

Mr. MITTELMAN. Not under the unions.

Are all of those employees union, those 500,000 that would be under it?

Mr. GREER. Yes, practically all of them.

Mr. MITTELMAN. So they already have labor bargaining for them in the wage areas?

Mr. GREER. Yes.

Mr. MITTELMAN. Thank you. That is all.

The CHAIRMAN. Thank you very much.

Our next group represented is the National LP Gas Association, represented by Arthur Kreutzer, executive vice president, Chicago, Ill.

STATEMENT OF ARTHUR KREUTZER OF THE NATIONAL LP GAS
ASSOCIATION, CHICAGO, ILL.

Mr. KREUTZER. Thank you, Senator Williams, for the opportunity to present this statement on behalf of the gas industry.

My name is Arthur C. Kreutzer. I am executive vice president of the National LP Gas Association and I appear on behalf of the members of that organization to offer commentary on S. 1861 and such other proposed legislation that may have a like effect upon the industry we represent.

The National LP Gas Association represents 85 percent of the domestic companies engaged in the production, distribution, and sale of liquefied petroleum gas and in the manufacture and sale of handling and utilization equipment.

Its membership is primarily comprised of more than 2,800 LP gas dealers, and who sell and deliver this fuel to consumers who are predominantly located in small towns and rural areas.

Included in our membership are 40 affiliated States. The vast majority, some 70 percent, of our membership is engaged in the retail business of selling LP gas and LP gas-burning equipment in local markets.

It is to express the concern of these members that I appear.

LP gas is a fuel commonly known as propane, butane, and "bottled gas," used principally in the household and on the farm, and to a lesser degree commercially and in industry, as a source of heat or power.

The industry serves over 12 million customers, with an estimated two-thirds located on farms and in small towns.

On the farm it has a wide variety of uses, including tractor fuel, irrigation pumping, weed and pest control, poultry and animal brooding, crop drying, frost protection, and so forth.

As stated, ours is essentially a retail and service fuel supplying industry, rural in character.

There are wide variations in both delivery circumstances and employment conditions in different areas of the United States.

There are also equally wide variations in the size of businesses; however, substantially all come within accepted definitions of small businesses.

Most LP gas dealer operations are truly very small business enterprises with few employees.

For example, NLPGA has group hospitalization and insurance programs that it offers for its members' use.

The participating companies have an average of five employees.

Other available industry statistics support this picture. Some 15 State associations have similar employee benefit programs for their members and it is believed that their averages on number of employees may be even slightly lower.

The total number of industry employees is estimated at 75,000.

We are first concerned with proposals that would amend section 3(s) of the Fair Labor Standards Act by striking out all that relates to the definition of "enterprise engaged in commerce or in the production of goods for commerce" in terms of dollar amount of business.

At present, an enterprise whose annual gross volume of sales made or business done is less than \$250,000 is not covered by the definition of section 3(s) and so is excluded from the coverage of the act.

This dollar-amount yardstick is also utilized in determining the exemption from overtime requirements provided for retail and service establishments in section 13(a) (2).

We believe it to be a matter of vital importance to retain the present distinctions benefiting small businesses, especially as they relate to overtime pay requirements for retail and service establishments.

The competitive structure of this Nation's economy is well-served by the small businessman. Furthermore, it is the small businessman engaged in retail and service establishment enterprises who has traditionally provided jobs for marginal employees such as older persons of retirement age, part-time workers and school-age employees.

To withdraw the dollar-amount exemption at this time could result in many small businesses curtailing employment of marginal workers.

This is unfortunate during a time when the Nation is struggling to reduce unemployment. Consequently, we urge that sections 2(f) and 5(a) (3) of S. 1861 be reversed to restore the exclusion and exemption for small businesses and retail service establishments doing less than \$250,000 in business per year.

We are most vitally concerned with retention of the present overtime exemption to the FLSA and strongly oppose any elimination of LP gas industry related exemptions.

We would urge complete exemption for a fuel-supplying business. Our industry is extremely susceptible to overtime costs and relies equally upon the present exemptions of section 13(a) (1) and section 13(a) (2) and the exclusion of section 7(b) (3) from overtime coverage of certain businesses engaged in wholesale or bulk distribution of petroleum products.

The supplying of LP gas, like all fuels, has extreme seasonal demands. In the case of LP gas, the fluctuation is even more severe because of close involvement with agriculture and agricultural processing. These seasonal variations are shown in the following monthly demand:

(The following information was subsequently supplied for the record:)

NATIONAL LP-GAS ASSOCIATION

LP-GAS DEMAND (000 GALLONS)*

January	1,156,721	1,353,966	1,361,199	1,625,400	1,937,964
February	1,081,044	1,181,963	1,200,266	1,369,200	1,412,460
March	1,155,568	1,043,049	1,136,737	1,216,866	1,353,156
April	868,538	902,717	891,011	916,566	1,089,900
May	800,861	849,794	892,718	966,882	970,662
June	808,517	818,770	855,383	878,262	998,556
July	794,894	814,219	903,926	989,688	1,034,712
August	826,411	891,716	938,405	964,782	1,092,294
September	877,170	927,346	973,637	926,226	1,151,388
October	986,781	1,048,276	1,107,533	1,166,424	1,382,346
November	1,079,799	1,208,918	1,366,641	1,302,840	1,533,966
December	1,289,736	1,378,758	1,417,508	1,561,602	1,725,906
1965 - 6 months - April - September			4,976,391 Gallons		42.4%
6 months - October - March			6,749,649 Gallons		57.6%
1966 - 6 months - April - September			5,204,562 Gallons		41.9%
6 months - October - March			7,214,930 Gallons		58.1%
1967 - 6 months - April - September			5,455,080 Gallons		41.8%
6 months - October - March			7,589,884 Gallons		58.2%
1968 - 6 months - April - September			5,642,406 Gallons		40.6%
6 months - October - March			8,242,332 Gallons		59.4%
1969 - 6 months - April - September			6,337,506 Gallons		40.4%
6 months - October - March			7,589,884 Gallons		59.6%

*Source: Monthly Natural Gas Liquids Reports; Mineral Industry Surveys;
U. S. Department of Interior, Bureau of Mines
(1969 figures are the latest available)

The 1969 figures indicate that January demand is almost double that of June.

It should be noted that the simple annual figures do not present the full picture.

The national summer dip is moderated in some northern vacation areas where peak demand is encountered during this period.

In many areas the peak demand is over double the reverse season.

There is also heavy temporary agricultural demand within the entire picture for uses mentioned before, particularly in heating applications, crop drying, and frost protection.

This load variation cannot be forecast for we are at the mercy of the weather.

These variations necessitate overtime work during sudden peak periods of demand. The current shortage in other sources of energy has intensified the problems of fuel periods of demand and requirement for overtime.

A proposal which would amend section 7(b)(3) and repeal section 13(a)(2) eliminates the existing exemption from the overtime restriction or pay requirement that had been recognized as reasonable and necessary. It is of grave concern to the LP gas dealer.

Maximum hours permitted under section 7 of the act are most important to our industry, which, by its very nature, is subject to these marked seasonal variations.

The current standard for maximum hours is expressed in terms of a workweek not to exceed 40 hours.

S. 1861 would extend the application of maximum hours to a workday not to exceed 8 hours.

Moreover, while further restricting maximum hour, S. 1861 would repeal overtime exemptions which have meant so much to our fuel supply industry.

These exemptions have meant even more in providing customer service at critical times. An 8-hour day limitation would drastically curtail our ability to serve consumers.

It is also suggested that an 8-hour day may also discourage the development of the 4-day week, which is currently being explored on many levels of American business and industry and seems to be gaining favor in many quarters.

We submit that in light of this development, the tying of maximum hours to a workday may be ill-advised at this time.

We urge that maximum hours and overtime exemptions remain as they are now constituted under the law.

The LP gas dealer, a small retail businessman opposes such amendment of the FLSA that would penalize necessary and uncontrollable overtime.

We recommend continued exclusion, and if feasible adoption of a complete and specific exclusion for fuel supplying services.

Control or minimization of overtime to further employment, an objective of proponents of overtime penalties, requires fixed production and a stable labor force not possible for many small retailers, and particularly impossible for the fuel supplier whose business is highly seasonal.

Overtime penalties have an unnecessary and unreasonable harmful effect on the employee, the LP gas dealer, and the customer.

The general exemptions for retail and service business, the overtime exemption for petroleum bulk plants and provisions of section 13(a)(1) and section 13(a)(2) exempting administrative personnel and outside salesmen and employees of certain retail and service establishments are well founded and have contributed to employment and business stability.

These provisions have been most helpful to our industry in handling the widely fluctuating seasonal demands for our product.

Historically the LP gas industry employees contemplated by present exemptions have been fairly treated by their employers and their wages have been satisfactory.

They are not a segment of the labor force which might be deemed to be exploited by employers. Moreover, the extension of overtime penalties to these classes of employees will certainly result in retrenchments by many small businesses with a resultant reduction in employment.

It has been advanced that the extension of overtime pay requirements will have a salutary effect on employment with an increase in the labor force dictated by economic practicality.

While this may be true in the case of industrial plants whose management can arrange work schedules and production patterns, it is most assuredly not true of retail fuel businesses serving rural customers.

Again, while it may hold true in occupations whose time of performance is not affected by weather and temperature, it will not work where these factors create the necessity for longer hours in periods of peak demand.

The LP gas dealer is susceptible to seasonal variations over which he has no control. He can only meet increased wage costs through adjustment in his general cost of doing business.

Present margins in this intensely competitive industry do not provide funds for a substantial hike in payroll. Money to pay these increases must be generated or overhead lowered where possible.

At the customer level this might be passed along through a price increase, where possible. Of course, this is inflationary. In the absence of ability to increase consumer price, which is quite likely in many areas, the only alternative at the customer level is to curtail the service that is now given the public. This is, of course, not in the interest of the consumer.

Again, this industry is in competition with other fuels that in many respects will not be affected by overtime penalties. Competitive fuels, distributed through wires or mains do not require a comparable labor force as in truck delivery of fuel.

LP gas will be placed at a competitive disadvantage with such fuels. A loss of markets to these lesser labor employers will reduce the overall labor force.

If the LP gas dealer hires additional employees to come within new overtime restriction, he is faced with certain alternatives.

If these employees are to work during regular work hours, additional trucks must be purchased at substantial cost—another element of increased business cost.

However, neither these employees, nor the trucks, will be needed

except during short periods. The unrecoverable costs rule out this approach. As a reasonable estimate a 15-percent increase in cost is involved. Another alternate is to secure temporary help for these demand peaks.

This is neither wise nor practical. The temporary employees will be untrained in the handling of a fuel that requires skill and the unforeseen timing and short period of employment will only bring about moonlighting.

There will be no spreading or increase in employment. Under this course of action, the end result is that present employees' take-home pay will be reduced.

The third alternate is to continue with the same work force, paying increased overtime. The cost of this must come from some source, for present margins are not adequate. These sources are either an increase in consumer cost or curtailment of service and present work force. Neither of these results meets the objectives of the legislation but presents a damaging picture to the consumer or the employee.

The more likely solutions are in a change in general conditions of employment.

This industry's overtime demands are most substantial particularly during the winter heating season. Employees recognize overtime as part of the job in a fuel supplying business and expect to work longer hours at the peak of demand.

Employees receive compensation by other methods, such as time off during periods of slack, year-round employment at a steady wage level, payment of volume commission on deliveries, bonus, et cetera.

Overtime is most substantial and in some areas payment could reach 25 percent of total wage payments.

The dealer cannot absorb this increased cost of doing business and would be required to drastically revise his operations.

The marginal employee, whose contribution is not worth the minimum, will lose his job.

Year-round employees who receive time off in slack season will to the degree possible be replaced by seasonal workers.

Employees receiving compensation in the form of commission, bonus, or fringe benefit, or annual compensation at a high level, will lose these benefits in the necessary adjustment.

The end result of legislation increasing overtime penalty is to unnecessarily penalize the LP gas dealer or his customers without any compensatory factor in the form of increased employment.

It is our conclusion that such proposals, if enacted, will increase consumer cost, or result in lesser service to the consumer; result in unfair competitive situations with other fuel suppliers not employing labor to the same degree, or not subject to overtime requirements; create another inflationary step which will be felt by the small businessman both as an employer and consumer: develop moonlighting rather than additional employment because of the extreme variable nature of overtime requirements; or adversely affect present employees.

For the reasons above expressed, we recommend that any amendment or modification of the Fair Labor Standards Act at a minimum continue the treatment of maximum hours as now defined and continue the present exemptions of the retail and service establishment

on minimum wage and overtime pay, as well as the overtime exemption granted to business engaged in wholesale or bulk distribution of petroleum products.

Full exemption of a fuel supplier will not adversely affect employment rates. Overtime needs cannot be solved with additional employees.

We accordingly urge that the seasonal and weather problems of all fuel suppliers be recognized through exempting fuel suppliers from overtime provisions.

Briefly, the liquefied petroleum-gas industry supplies the fuel that serves 12 million customers, mainly located on farms and in small towns.

On the farm, it has a wide variety of uses, and many of them are related to seasonal problems and temperature conditions.

Some of those uses include tractor fuel, irrigation pumping, weed and pest control, poultry and animal brooding, crop drying, frost protection, et cetera.

Most of these come in the category of small business, and on the average, many of them employ about five employees. There are some larger companies, but this is the average of the members we have.

Our major concern is with the rules that exist. We, of course, would like to see a complete exemption of fuel supply businesses because of these problems, but our industry is extremely susceptible to the problems of season, temperature, and the exclusion of section 8(b) (3) from the overtime coverage of certain businesses engaged in wholesale or bulk distribution of petroleum products is important.

The exemption of 13(a) (2) also relates to the retail and services establishment exemption, and the definition is in the existing bill, so they would accordingly be involved.

The table that accompanies our statement illustrates the extreme seasonable demands of liquefied petroleum gas.

The fluctuation indicates the January demand is almost double that of June.

Now, these are the averages during the season. There is also a heavy temporary agricultural demand within the entire picture for the uses that I have mentioned, particularly in those that involved some heating application, such as crop drying and in frost protection, and this load variation cannot be forecast.

We are at the mercy of the temperature and the weather, in connection with that.

The maximum hours that are presently permitted under section 7 of the act are important to our industry, because by our very nature, we are subject to these variations.

The current standard of course is 40 hours. We have more immediate concern with the provisions of S. 1861, which would extend the application of the maximum hours to a workday not to exceed 8 hours.

Moreover, while further restricting the maximum hour, S. 1861 would repeal the overtime exemption that I have mentioned.

These exemptions have meant much in providing the customer in service at critical times.

An 8-hour day limitation would drastically curtail our ability to control these services to customers.

The control, which sometimes advances the reason for exemptions,

would not effect any particular objective as far as a reason in this industry is concerned.

In essence, it amounts to an overtime penalty insofar as the dealer is involved.

Again, while it may be true in some businesses or occupations, where time or performance is not affected by weather or temperature, or where you have a fixed production and stable labor force, it might increase employment, but certainly you cannot forecast these conditions.

We have no control over these conditions. Again, we are in competition with some other fuels, that in many respects will be affected by the overtime penalties, such as those that are distributed through wires or through mains, do not require a labor force as our industry does.

Our answer to an elimination of the overtime exemption that exists would require us to purchase additional trucks, additional trucks to serve only during these temporary periods.

An estimated cost would be about 15 percent increase in current operating cost of the business.

Another alternative would be to secure temporarily for these demand peaks personnel, which is not particularly wise, because we would be hiring personnel who would be untrained, and unskilled in the handling of a product that requires certain knowledge.

About the only answer to it would be some moonlighting on the part of the employees.

The most likely condition, the most likely situation, would mean that there would be a change in the nature of employment of employees, who presently are well satisfied with the conditions, because they are compensated for the overtime they may put in, by time off during other seasons.

For the reasons we mentioned here, we recommend that any amendment or modification of the Fair Labor Standards Act at a minimum continue the exemption that exists for the retail and services establishment.

Senator Williams, I thank you for this opportunity.

The CHAIRMAN. I am not quite sure I have the correct understanding of the delivery problems here in your industry.

The heavy demand, it is not an emergency that puts you into an unusual overtime demand on your workers?

Mr. KREUTZER. That can be involved. You have two factors.

You have the seasonal picture, which is due to customary temperature changes that exist between winter and summer.

You have a doubling in summer, that to some degree can be forecast, but in addition to that, you have the emergency conditions that may arise insofar as fuel supply is concerned. We can have a severe cold spell in such critical fuel or heat supply situations as the poultry business, crop drying, and frost protection. These kinds of situations cannot be foreseen.

The other answer as far as emergency conditions are concerned, is where a safety problem is involved, and it is necessary to get people off in a hurry to take care of the situation, so there are two emergency situations that develop.

The CHAIRMAN. What is the employment in this industry?

Mr. KREUTZER. About 75,000.

The CHAIRMAN. This overtime impact, you would feel during the 4-month period, is that about it?

Mr. KREUTZER. Primarily in the 4-month winter period, that is correct, except in the cases of the emergencies, that might be related to some safety problem.

The CHAIRMAN. You are talking about your competition. What is it?

Mr. KREUTZER. Electricity and natural gas. They do not use the same number of employees in supplying the amount of fuels to a household or a farm.

The CHAIRMAN. They can bring in their deliveries by wire?

Mr. KREUTZER. By wire or by mail, as we have truck delivery.

The CHAIRMAN. Is this industry showing an increase of demand, decrease, or is it about stationary?

Mr. KREUTZER. It is showing an increase of demand. It has been up until last year, running about a 6 to 7 percent annual increase.

Last year the increase was somewhat tempered in the area that is affected here, it was about 3 percent.

The CHAIRMAN. Am I right in thinking that this liquefied gas is commonly consumed by the mobile home, or the trailer?

Mr. KREUTZER. They would be one of the customers. The mobile homes are a customer, although the more substantial amount of the product goes to the rural area, household, and the farm.

The CHAIRMAN. But this mobile home use is increasing, isn't it?

Mr. KREUTZER. That is correct.

The CHAIRMAN. And you are basic to that?

Mr. KREUTZER. No, not in volume. The more substantial volume goes to the rural areas.

The CHAIRMAN. In volume, but of the mobile homes, do they use electricity?

Mr. KREUTZER. The mobile homes use electricity, and they also use natural gas.

The CHAIRMAN. They do?

Mr. KREUTZER. Yes.

The CHAIRMAN. Those are two regulated industries, electricity and natural gas, and you are not?

Mr. KREUTZER. No, we are not. We are not economically regulated. In safety we are.

The CHAIRMAN. Everybody is making a pretty clear case here.

Mr. MITTELMAN has a question.

Mr. MITTELMAN. Mr. Kreutzer, are you familiar with the fact that one of the reasons for the overtime provision of the bill is to try to provide or spread employment and actually discourage use of overtime?

Mr. KREUTZER. That is what I understand.

Mr. MITTELMAN. On page 5 of your statement you refer to alternatives which a dealer might have if the overtime is eliminated, and one of the things the committee would like to consider whether it would be feasible, for dealers to hire additional employees, rather than pay any additional overtime.

Mr. KREUTZER. The problem with hiring additional employees

would be that they are only required during the short periods of time, during the seasonal variation period, and during the period where there is a heavy demand due to some weather condition that you cannot anticipate, a frost, a severe cold spell, things of that nature.

Mr. MITTELMAN. Do these employees require any training?

Mr. KREUTZER. Yes; they do.

Mr. MITTELMAN. Is it a substantial amount of training?

Mr. KREUTZER. It is a fair amount. The association conducts training schools for the servicemen. We have a rather elaborate service manual that was prepared for us at the University of Texas a few years back under a grant, and the schools are conducted locally, both by industry associations, and also by the safety regulatory people which cooperate in these programs.

Mr. MITTELMAN. How long is the training period, the average training period?

Mr. KREUTZER. The training period is generally short courses.

There is the longest one, and this was to create technicians; this was an 18-month course.

The other courses are conducted at times when an employee can be free for the purpose of the courses, and they are generally conducted in local and State areas, on a 3-day training course schedule. The 3 days is not the complete course because they participate for 3 days now, and for 3 days at a later time. The companies also themselves conduct their own training courses internally, through the use of training aids that we furnish to our company members.

Mr. MITTELMAN. Would it be accurate to say the need for training to prevent a dealer in time of peak demands on overtime, would ordinarily be required, this would keep him from his going out and hiring somebody?

Mr. KREUTZER. He could not go out on the street to hire somebody to carry on a delivery job.

He certainly could not hire a man on that shortness of time to do a serviceman's work.

Mr. MITTELMAN. During these peak periods, I guess it must be in the winter?

Mr. KREUTZER. It varies according to geographic area.

In the northern area, it would probably be in the winter, but in some of the Southern States, it might be in the summer.

Mr. MITTELMAN. Looking at the figures—

Mr. KREUTZER. These are national figures.

Mr. MITTELMAN. Does it get to the point where there are peak periods, where a dealer knows in advance that he is going to have overtime, would it pay a dealer to hire somebody else rather than pay overtime?

Mr. KREUTZER. Maybe I better explain. Under these circumstances, most of the dealers operated in a fashion whereby the employee during the peak season may be working longer hours, but during the off-season, he is given free time, vacation time.

In other words, there is a balancing of time.

Mr. MITTELMAN. Any of these employees represented by unions?

Mr. KREUTZER. Not to a major degree, because they are largely located in rural areas, small towns, and the number of employees are not too many.

There is some unionization in the metropolitan areas.

Mr. MITTELMAN. Do you have any figures on the average earnings of these employees?

Mr. KREUTZER. The average earnings vary quite significantly and substantially from one area of the country to another area of the country.

In other words, the level of the wages in the North are much higher than the level of the wages in the South.

We are not particularly concerned about \$1.80 minimum.

Mr. MITTELMAN. Thank you.

The CHAIRMAN. Thank you very much.

Our next witness is Mr. Milton E. Meyer, Jr., secretary and general counsel of C. A. Norgren Co., of Denver, Colo.

STATEMENT OF MILTON E. MEYER, JR., SECRETARY AND GENERAL COUNSEL, C. A. NORGREN CO., DENVER, COLO.

Mr. MEYER. Thank you very much, Mr. Chairman, for the opportunity to appear.

The C. A. Norgren Co., a nonunion manufacturer of air processing systems and devices employing 450 people near Denver, Colo., established a 4-day, 37-hour week on August 31, 1970.

Although we were not the very first industrial operation to adopt the shortened workweek, we have, because of this action, been the subject of a vast amount of publicity in the form of news articles appearing throughout this country and abroad, feature stories in national magazines and periodicals, and a substantial amount of radio and television commentary.

As a result, this company has been deluged with hundreds of phone calls, letters, and visitations by representatives of industries and governmental agencies from all over the country, each interested in exploring the pros and cons of embarking upon the shortened workweek.

Personnel of our company have, upon invitation, presented numerous talks to groups and industries interested in pursuing the subject.

The author of this statement was a witness earlier this month at hearings conducted by the Department of Labor regarding possible changes to the overtime requirements of the Walsh-Healey Public Contracts Act and the Contract Work Hours and Safety Standards Act that would permit a broadening of the availability of the 4-day workweek.

The question of the 4-day week has also been received substantial and enthusiastic treatment by economists, sociologists, and other scholars in recent months and I particularly call your attention to Senator Cook's statement on the 4-day week when he introduced S. 2463 now before the Committee on Labor and Public Welfare, said bill having also been sponsored by Senators Packwood and Taft of this subcommittee and Senator Cranston of the full committee.

An obvious conclusion from the foregoing, then, is that substantial segments of industry and government and presumably their employees—have developed a keen interest in taking a look at, and perhaps adopting, a shortened workweek and will move in that direction un-

less inhibited by law or existing union contracts. It is heartening that some Members of Congress now share this interest.

Has the 4-day week actually worked for Norgren? What has been employee reaction? What problems, if any, were incurred under State law?

Dealing with the last question first, we were able to get without difficulty an emergency relaxation permit from the Colorado Division of Labor permitting us to employ women for more than 8 hours a day without paying overtime.

On July 1, 1971, the Colorado law creating different employment standards for women was entirely repealed, removing any lingering State law impediments to use of the 4-day workweek.

We now have 1 year's experience with the 4-day week under our belt.

Our vice president of manufacturing tells us that work content per direct hour of labor during the first 57 weeks subsequent to our 4-day week has increased to 106.2 percent of the standard output per hour for the 47 weeks immediately preceding the introduction of the new workweek.

This means that we now equal in 37 hours what we previously produced in a 40-hour week.

When activity in our industry recovers to prior levels, we are confident production gains in absolute terms will result.

Our experience suggests that the fatigue factor inherent in working more than 8 hours a day for 4 days is negligible or nonexistent when coupled with an extra day off.

We have further noted a marked decrease in tardiness and in absence requests for medical and dental appointments and for other personal matters.

Employee turnover, never a big factor in our company, has been further reduced since the 4-day week and employment applications have increased threefold, again evidencing worker enthusiasm for the idea.

We undertake professionally conducted attitude surveys at Morgan every 2 years or so.

Our last survey, made a short time ago, contained the new question, "Do you like the 4-day workweek?"

Ninety-two percent of all employees on both shifts answered favorably. A similar poll of employees' wives and husbands produced almost identical results.

Other advantages accruing to our employees as a result of our 4-day week include (in addition to the obvious benefits of more time with the family, greater opportunity to handle shopping and personal business, and additional recreational and free time) the tax-free economic savings resulting from reductions in transportation, clothing wear and tear, purchased meals and babysittings expenses.

In testimony before the Department of Labor earlier this month (and possibly before this subcommittee) some union spokesmen have made the assertion that working more than 8 hours a day creates a number of problems including accumulated fatigue, higher accident rates, reduction in the worker's ability to participate in community affairs, and impairment of worker educational programs.

While it may be true that not all industries are suited for the 4-day week or some variation thereof, we can certainly say that none of the above cited alleged disadvantages of working more than 8 hours a day have appeared to develop in our use of the 4-day week.

We have had no increases in sickness or accident rates and that added free day permits a great deal of community and educational activity to be engaged in by those so inclined.

Although going to the 4-day week was a management decision in our case, if we should be forced, by action of Congress or otherwise, to revert to a 5-day week, the most vocal objectors will certainly be our employees.

There are benefits also, of course, from management's point of view in utilizing the shortened workweek.

In our case (in addition to the aforementioned improvement in employee morale and reduction in employee turnover) these advantages have included an ability to do more selective hiring to fill vacancies, elimination of a weak third shift, better equipment maintenance, less time loss in startups and shutdowns, production efficiencies resulting from longer machine runs, more efficient use of supervision and support personnel, improved flexibility to react to emergencies by having 3 nonwork days instead of 2, reduction in overhead expense, and improved service to customers because of longer shipping days and week-end deliveries to carriers on Thursdays instead of Fridays.

Although we feel there are valid and compelling reasons for not including in the proposed amendments to the Fair Labor Standards Act a general requirement that overtime be paid in all cases for hours worked in excess of 8 per day (testimony by spokesmen for the American Road Builders Association and the Associated General Contractors of America at the Department of Labor hearings this month was especially forceful in favor of a flexible workweek that would require overtime only after 40 hours in a given week), our precise recommendation to Congress, and particularly to this subcommittee of the Senate, is that in no event (Walsh-Healey Public Contracts Act, Contract Work Hours and Safety Standards Act or Fair Labor Standards Act) should there be a requirement that overtime be paid for hours worked in excess of 8 hours per day where the standard work week is 40 hours or less.

As a practical economic fact, the very attractive advantages to employee and employer flowing from the 4-day workweek are presently denied those industries covered by Walsh-Healey and Contract Work Hours and will be denied to virtually all employees and employers if the provisions of S. 1861 are enacted as presently drawn.

We therefore urge this subcommittee to refrain from making the payment of overtime after 8 hours a requirement of proposed amendments to the Fair Labor Standards Act, and to take steps to remove such requirement from existing Federal laws.

I would just like to say I would like to make sure this committee is aware of the growing impact of the 4-day week in industry, and I ask you to realize, if S. 1861 is adopted as it is now constituted, to include the requirement that overtime be paid for hours in excess of 8 in any given day, this would for all practical purposes bring the 4-day week movement to something of a screening halt for economic reasons.

The reason that I am here speaking for the C. A. Norgren Co., a relatively small manufacturing company near Denver, Colo., is that more than a year ago we did adopt the 4-day week, and for one reason or another, we are the recipients of a tremendous amount of publicity, newspaper articles, feature stories in national magazines, radio commentaries, so I suppose we have come to view ourselves as quite identified with the movement, and we wanted to be sure this committee understood that in our judgment the 4-day week is a very viable concept.

The CHAIRMAN. You have an interesting 4-day week, 37 hours?

Mr. MEYER. Yes, sir. We moved from a 40-hour week to a 37-hour week at the time we inaugurated it.

The CHAIRMAN. Go ahead.

Mr. MEYER. We at this time have three 9½-hour days and one 8½-hour day, Monday through Thursday, except when the holiday falls on the Monday, we shift the week to Tuesday through Friday.

The CHAIRMAN. Three 9½ and one 8½?

Mr. MEYER. Yes, sir; and we operate two shifts.

We feel that the advantage both to our employees and to management is such that this kind of a restriction on the natural evolutionary growth of the 4-day week should not be deliberately employed by Congress.

At the present time many industries are not even eligible to try.

We happen to be a nonunion company, not normally covered by Walsh-Healey and Contract Work Hours Act, so we are free at the present time to use the 4-day week.

Consequently, it would be our urging to this committee, and to Congress as a whole, if we get to that stage, that irrespective of what may happen to a general requirement that time in excess of 8 hours a day be compensated on an overtime basis, that there at least be an exemption, where the employer is on a maximum 40-hour standard workweek, and/or 4-day week, or some variation thereof. We feel there are substantial advantages to both employee and employer, and urge that these advantages be preserved for those people willing to experiment in this area.

The CHAIRMAN. Let's examine that a little more. You say there has been an increase in productivity?

Mr. MEYER. Yes, sir.

As I said, we moved from a 40-hour week to 37-hour week.

In the weeks subsequent to the time we inaugurated the 4-day week, the work content per direct hour increased to 106.2 percent of the standard output for the 47 weeks prior to that time.

When we multiplied the figures, we found they put us back to where we were.

We are getting the same production for a 37-hour week as we previously had for a 40-hour week.

Like a lot of segments of industry, we have not been pushed to capacity in recent months.

I am confident, however when our business does pick up to prior levels, we will see a production increase in absolute terms, not just getting even with the 40-hour week.

The CHAIRMAN. What has been the employee reaction?

Mr. MEYER. It has been outstandingly favorable. Each 2 years, as a matter of practice, our company undertakes a professionally conducted attitude survey.

On the most recent one conducted a few weeks ago, we asked the question, "How do you like the 40-hour week?"

All answered affirmatively to the extent of 92 percent.

We sent a modified survey to the husbands and wives of our employees, and the results are almost identical.

The CHAIRMAN. What do your employees do with that extra day, is there a tendency to get another job, a part-time job, as a fill in?

Mr. MEYER. I am not sure I have the answer to that. We have made clear what they do with this extra time is their decision, but we expect them to do nothing that will impair their ability to perform for us.

I would say there is some moonlighting. I do not think there is much evidence it is extensive.

Living where we do in Colorado, most of them have ways of employing their time that are related to where we work.

The CHAIRMAN. You note that there is a marked decrease in tardiness, and in absence requests for medical and dental reasons.

How do you account for that?

Mr. MEYER. I suppose that historically a lot of tardiness results from the necessity to take care of private business during working hours and now that they have an extra full day, not a part of the weekend to do this, it just seems to have created a tremendous benefit in that regard.

The CHAIRMAN. What about the kind of tardiness, like late Monday morning?

Mr. MEYER. That is a good question.

I really do not know if I can comment meaningfully on that.

It has never been a substantial problem with us, and certainly, if anything, the 3-day weekend has improved that aspect of it, the Monday morning tardiness.

Our experience has been most satisfactory, I would say, in that connection.

The CHAIRMAN. Where is your plant?

Mr. MEYER. We are just outside Denver.

The CHAIRMAN. What does that mean, just outside Denver?

That would be how many miles?

Mr. MEYER. We are contiguous.

The CHAIRMAN. This is my curiosity, just what would be your estimate for the average portal-to-portal time for your employees, home to work?

Mr. MEYER. Some walk, 10 to 20 minutes most.

As an example, I spend half of my time there, as I am also in private practice with a law firm in downtown Denver.

Where I live, a nice part of the metropolitan area, I am 5 minutes away by auto from this firm.

The CHAIRMAN. It just impresses me that there must be some reflection of the home-to-work journey in the work product, in that the more time people have to put in going to and from work, the less will be their productivity.

Where people have to battle traffic for an hour and a half to get

to the job, they cannot be quite as spirited as the employee who walks 10 minutes down the street.

Mr. MEYER. Are you suggesting, by extending out the workday, you maximize the problem?

The CHAIRMAN. I am talking about where transportation is a basic morning and night enemy, and it has to reflect on the work product.

I am reminded in those areas where it is an hour to 2 hours getting to work, that does extend the workday.

You do not know anything about metropolitan congestion, I am sure, because you are in this happy land where you can get to work so easily, but we know all about it.

You do not know about it personally.

Mr. MEYER. Well, I am not sure. I was informed just this week that Denver has more cars per capita than any city in the country.

We are a two-car-plus community, because of the special complex and the lack of metropolitan transportation.

The CHAIRMAN. But you do not have the kind of metropolitan density that exists in some areas, as we do in the Northeast, and where I live, I know that people, many people, an hour and a half they use to get to work.

Mr. MEYER. I am sure that is correct, and I am sure many of our workforce do live in the southern part of the metropolitan area where the plant is located.

The CHAIRMAN. How about those on the north?

Mr. MEYER. We have some as far as Boulder, Colo., which is 25 miles north of Denver but there is a turnpike system that brings them down in about 20 to 25 minutes.

The CHAIRMAN. Well, that was just for my curiosity.

Mr. MITTELMAN. You mentioned something about shifting holidays.

Mr. MEYER. Yes, sir.

Mr. MITTELMAN. Will you explain that?

Mr. MEYER. Yes. Previously we had nine paid holidays. When we moved to the 4-day week, we reduced this to five, and when a national holiday falls on a Monday, we move our workweek from Tuesday to Friday.

Mr. MITTELMAN. So you reduced the number of holidays?

Mr. MEYER. Yes. We feel this is a fair exchange, 4 days for 52 extra days. By taking away four holidays, we give them 52 holidays, so we think that is a fair exchange, because every Friday is a holiday now.

Mr. MITTELMAN. But you reduce the hours of workweek?

Mr. MEYER. We reduced the hours from 40 to 37.

Mr. FEDER. Mr. Meyer, one short series of questions.

You said at the beginning that the provision of S. 1861 would bring this experimentation of the 4-day 40-hour week to a screeching halt.

Mr. MEYER. Yes, sir.

Mr. FEDER. Now, in your prepared testimony, you enumerated what seemed to me, at least, to be one of the best examples of how the company can do very well by changing its work schedule.

You have got about 10 moneysaving propositions there, that come your way, by virtually changing the schedule, and yet the employees are only putting in 37 hours.

Have you done any calculations on how that balances out, the bene-

fits to you of the shift in schedule, as opposed to the cost, if you had to pay overtime, for those 5 hours above 32?

Mr. MEYER. I am certain that we would be less harmed than a company that must maintain a 40-hour week, like four 10-hour days.

Obviously, the economic impact would be somewhat less, where we only have fewer overtime hours to be concerned with.

Mr. FEDER. Do you know offhand what your gross annual sales are?

Mr. MEYER. The domestic sales exceed \$10 million.

Mr. FEDER. And foreign?

Mr. MEYER. The foreign are about \$12 million.

Mr. FEDER. So \$22 million.

Do you know what the average hourly worker gets?

Mr. MEYER. I could not state accurately, but it is comparable to the local union scale.

Mr. FEDER. What would that be, about \$3 per hour?

Mr. MEYER. I would say so.

Mr. FEDER. If that is the case, it comes out to about \$150,000 a year, it would cost you to pay overtime after 32 hours a week, do you know how much this enumeration of benefits to Norgren has saved Norgren during the course of that 47 weeks?

Mr. MEYER. On a year's experience, we cannot be too accurate about that.

As to what it has done for our bottom line, there are too many extenuating factors to measure, and the economy is not that good at the moment.

Mr. FEDER. Can you measure the financial benefits, the longer use of machines, you mentioned that is one benefit to the company.

Mr. MEYER. I cannot put a dollar sign on it, Mr. Feder, but it is an ingredient that gets us back to the equivalent production.

The CHAIRMAN. Air processing systems and devices, briefly, what are these?

Mr. MEYER. We make filters, regulators, lubricators, directional control valves, and fluidic devices and systems, all of which are used by any industry which uses compressed air and gases as its power source.

Automobile assembly plants would be powered by compressed air, and they would also use our type of equipment as protective and regulatory devices on their equipment.

The CHAIRMAN. Thank you very much.

Mr. MEYER. Thank you.

The CHAIRMAN. Our next witness this afternoon is Dr. Justin Voss.

STATEMENT OF DR. JUSTIN VOSS, ECONOMIST, WASHINGTON, D.C.

Dr. Voss. Thank you very much, Senator Williams.

The CHAIRMAN. I do not have you in any representative capacity.

Dr. Voss. I would like to explain that. I am an economist. My speciality is leisure economics.

Gentlemen, I am here today to voice my strong opposition to section 4(b) of the proposed amendment to the Fair Labor Standards Act.

Section 4(b) would require employers to pay time and one-half for any work over 8 hours per day. I find this provision ironic in view of the fact that not 3 weeks ago, in response to strong public

demand, the Labor Department held a public hearing to determine whether the same provision should be stricken from the Walsh-Healey Public Contracts Act.

Why was the Labor Department hearing called and why do I oppose section 4(b) of Senate bill 1861?

The answer is a managerial innovation that has been sweeping the country, benefiting employers and employees, raising productivity, and in general achieving the goals set forth in President Nixon's economic message of August 15.

The managerial innovation to which I am referring is the 4-day workweek.

What is the 4-day workweek?

A rescheduling of working hours so that the standard 40-hour workweek is compressed into 4 days instead of 5. This, of course, means lengthening the working day from 8 to 9 or 10 hours.

I should add that in nearly all cases, adoption of the 4-day schedule has meant a reduction in the work week of about 2 hours, with no reduction in pay.

In other words, very few 4-day workweeks involve working 10 hours a day.

What have been the results of the 4-day workweek?

Reduced absenteeism, tardiness and labor turnover; improved incentive and morale; greater labor productivity; a reduction in job alienation; and easier recruitment of better labor.

For example, the C. A. Norgren Co., a manufacturing firm in Littleton, Colo., who converted to a 4-day workweek over a year ago reports that its accident rate is one-tenth the national average; absenteeism about half the national average; and labor turnover about one-third the national average.

Moreover, since converting to 4-day employment applications have gone up about 300 percent.

Firms on the 4-day workweek report productivity increases of as high as 10 percent, and in some cases even higher. Such productivity advances are particularly significant in view of the fact that over the past 5 years productivity increases in the U.S. economy have lagged far behind other industrial nations, averaging only around 2 percent a year.

Whereas a wide variety of firms have converted to a 4-day workweek, one type of convert, I think, deserves special attention—that is, employers involved in public service.

We are all too aware of the severe budgetary problems faced by our cities.

In an effort to improve public services and reduce costs, a growing number of cities have been experimenting with the 4-day workweek—particularly in the area of municipal police departments.

The results have been spectacular. For example, since going on a 4-day schedule over a year ago, the Huntington Beach, Calif. police force reports that the rate of increase in crime has been cut in half.

After a 3-month test period on the 4-day workweek, the following questions were asked:

"Do you feel that the department has increased its efficiency by implementation of the 10-hour patrol shift?"

Fifty-three answered yes, six answered no.

"Would you like to see the department retain the 10-hour patrol shift?"

Sixty-one answered yes. One answered no.

"Do you feel that you are as efficient during the last 2 hours of your patrol shift under the 10-hour plan?"

Fifty-six answered yes. Five answered no.

Further examples of the 4-day workweek's success in raising labor productivity are too numerous to mention.

In fact, the best measure of 4-day's success is in its exponential rate of growth. In November 1970, when Mrs. Riva Poor's study of the 4-day workweek was published only about one company every 3 days was converting to the 4-day work schedule. In January of this year it had climbed to one a day.

By June it had hit two a day. Today, Mrs. Poor reports that nearly five firms a day are converting to 4-day work schedules.

Now, I do not want to leave you gentlemen with the mistaken impression that most of the firms in the country are about to go on a 4-day work schedule.

In total, out of a labor force of some 83 million, less than 1,000 firms and 200,000 employees are working 4-days a week.

But totals at this point in time are really beside the point. After all, this innovation has been popularized for less than a year.

What is important is what the 4-day workweek is accomplishing in terms of the American economy and our national goals, and that the 4-day workweek is spreading rapidly.

This innovation in work scheduling is moving our economy toward the bipartisan economic goals set forth by President Nixon in his speech of August 15.

By raising productivity this innovation is both fighting inflation and making our products more competitive in foreign markets.

In other words, it is easing the balance-of-payments problem. Moreover, it encourages employment by permitting employers to experiment with variations in working hours which expands options in manpower scheduling. These added options encourage the employment of more part-time personnel—a sector of the labor force that will be growing rapidly in the seventies.

In short, the 4-day workweek is strongly in the public interest by promoting a healthy and vigorous economy.

What effect does section 4(b) have on the 4-day workweek, and hence on our national economic goals?

Quite simply, it nips 4-day work scheduling in the bud by substantially raising the cost to any employer trying to innovate.

By doing so it discourages innovation and managerial initiative at a time when our economy desperately needs these qualities.

Requiring employers to pay time and one-half for work over 8 hours a day, means that a 4-day, 40-hour workweek costs employers 10 percent more than a 5-day, 40-hour workweek.

Put differently, section 4(b) of the proposed amendment, forces any employer to pay a 10-percent premium on his desire to innovate. In an economic system based on profits this means that since a 4-day, 40-hour workweek raises labor costs by 10 percent, labor productivity must rise by at least 10 percent or a firm will not innovate.

If labor productivity rises by only 9, 8, 7, or 6 percent, the firm will not innovate.

Gentlemen, given the present state of the American economy, how many of you are willing to reject the opportunity to raise the productivity of the American worker by 7 percent?

I would like to turn now from the effects of section 4(b) on the economy in general, to the effects of this provision on the worker as a consumer.

Testimony at the recent Labor Department hearings on the 4-day workweek indicated how badly consumers need their interests represented.

On the whole labor union representatives argued against the 4-day workweek with working hours longer than 8 per day unless overtime were paid.

They defended their position on two grounds—neither of which took into account the worker as a consumer.

First, they pointed to their commendable and time-honored struggle for the 8-hour day—a battle that ended successfully over 30 years ago.

But in 1971 there is nothing hallowed or sacred about the 8-hour workday in terms of either the health, or the productivity of the American worker.

Reverence for the 8-hour day rests purely on its role as a historical rallying point for the labor movement.

In the past 30 years a combination of collective bargaining and social legislation has made great strides in improving work conditions. In 1971 the 8-hour workday has become a matter of custom rather than social necessity.

Union representatives also opposed the 4-day workweek with its longer working days on grounds of fatigue.

Although evidence was presented, no evidence showed that the 4-day, 36- to 40-hour workweek was more fatiguing and less productive than the 5-day, 40-hour workweek.

Most investigators agree that as long as working hours do not exceed the 40–48 hour per week range, fatigue is not a major factor reducing average output.

Since nearly all 4-day workweeks also fall within this fatigue-free range—even on the basis of a 9–10-hour workday—it is no shocker that Gallup found the 4-day workweek most popular among manual workers.

Mrs. Poor's study of the 4-day workweek gave similar results: 86 percent of the workers on the 4-day workweek did not cite fatigue as a disadvantage, and of those who did cite fatigue as a drawback "almost every one" was "pleased or very pleased with 4-day."

All of this evidence, I think only goes to confirm what unfortunately most of us already know—that is, for most Americans overweight is a more pressing problem than overwork.

A disappointing aspect of the Labor Department hearings on the 4-day workweek was that labor union leaders tended to oppose the 4-day workweek without citing any evidence as to the preferences of their members.

Aside from Mrs. Poor's book, several polls show that a substantial number of workers would like to try the 4-day workweek.

The American Federation of Government Employees Union, at the Social Security Administration's Baltimore headquarters, asked their 15,000 members to vote on a 4-day, 40-hour workweek.

Of the 9,300 who responded, union sources say that 7,700 or 83 percent said it sounded like a good idea. At present the union is trying to have the Federal overtime law amended—this law requires overtime payments for working over 8 hours per day.

In March 1971, before the 4-day workweek had become widely publicized, a Gallop Poll asked "Which would you prefer—a 40-hour workweek consisting of four 10-hour days, or a 40-hour workweek consisting of five 8-hour days?"

Union members were equally divided, half preferring 4-day, half preferring 5-day.

Clearly, labor union leaders opposition to the 4-day workweek is a questionable representation of the preferences of their members.

If the results of this Gallop Poll are projected to the labor force as a whole, it provides a rough, but meaningful, measure of the 4-day workweek's importance to the American public.

The poll was conducted before the 4-day workweek had become widely publicized so those surveyed were presented with a new idea of revolutionary proportions.

Moreover, since most workdays under 4-day are less than 10 hours the wording of the question tended to portray the 4-day workweek in its worst possible light.

Nevertheless, 38 percent of those surveyed said they preferred the 4-day, 40-hour workweek. Projected to the labor force as a whole, this means that we might reasonably expect to find over 30 million workers who would like to try a 4-day workweek—even if they had to work as much as 10 hours a day.

Whereas I think such a projection is useful, in my judgment it understates worker preferences for a rearranged workweek.

Gallop's poll only shows that a sizable proportion of the American public would like to try a 4-day, 40-hour workweek.

Mrs. Poor's study shows that after workers tried a 4-day workweek they liked it even more.

The Gallop Poll also indicates that the younger, better educated workers tend to prefer 4-day the most. It is this group of workers that will increase by 49 percent in the seventies, and will provide the dynamic element in the labor force.

Gentlemen, this afternoon I've attempted to present the latest available evidence as to why it is in the public interest not to discourage the spread of rearranged workweeks by enacting section 4(b). But what of the future? As Redskins Coach George Allen has been telling Washingtonians so often lately—"The future is now." This certainly holds true for social legislation in a rapidly changing world. What we need to know is what section 4(b) means in the future for the worker as a consumer.

An often neglected aspect of consumer behavior is that workers actually spend from two resource budgets—a money budget and a time budget. This simply means that the enjoyment of most commodities comes from spending time on them as well as spending money. As consumer's incomes rise, they also need more time. How do consumers

increase the size of their time budgets? Employers are primary suppliers of leisure time for traditionally consumers have augmented time budgets by reducing working hours. In this century workers have taken productivity gains two-thirds in the form of added income and one-third as added leisure. But regaining leisure hours from employers for most workers has become increasingly difficult as the process has become institutionalized and inflexible. Contrary to popular belief, in the post-World War II period consumers have not been swamped with leisure time. In fact, just the opposite has occurred—while money budgets have grown rapidly the flow of leisure hours has slowed to a trickle.

Two other important trends have developed in the post-war period. First, Americans have become more and more leisure conscious. From 1965 to 1969 alone the leisure industry grew by some 42 percent. Today Americans spend more on their leisure than on national defense and indications are that the leisure industry is just beginning to grow. For consumers, the goods and services of the leisure industry mean spending time as well as money.

Second, American workers have changed the form in which they prefer to have their leisure time. Historically, leisure gains have been in the form of a shorter working day and workweek. Since 1950, however, the average workweek has remained relatively constant, hovering around 40 hours. Instead, workers have preferred to take their leisure gains as blocks of leisure time—that is in the form of paid vacations and holidays. In the sixties the total number of weeks that workers spent on vacation grew from 87 to 129 million weeks—nearly 50 percent—and by 1971 five 3-day weekends had been added to the calendar. This shift represents a major change in worker preferences.

How are these trends related to section 4(b)? They indicate that as incomes rise in the future workers as consumers will be demanding more leisure goods and services and more time in which to enjoy the fruits of their labor. In the future, leisure time will grow more valuable and will be demanded in a form in which employers will be the prime suppliers. Meeting the needs of workers as consumers requires employers that are able to respond to these demands.

Rescheduling workweeks into 4 days instead of 5, clearly reflects the worker's needs as consumers. It provides workers with more leisure time—since they spend considerably less time commuting—and with leisure time in blocks—the form in which workers prefer their leisure with longer weekends the worker's freedom of choice as a consumer is expanded. It is not surprising, therefore, that the 4-day workweek is so popular with American workers.

By discouraging employers from rearranging their workweeks, section 4(b) is clearly legislating against the needs of workers as consumers. Unless employers are encouraged now to accommodate these needs, the future will bring growing numbers of dissatisfied consumers. The effects of dissatisfied consumers on the public welfare and the health of the economy are too well-known to bear repeating.

My opposition to section 4(b) of the proposed amendment can be summarized quite simply: Section 4(b) is not in the public interest. It unjustly penalizes employers who attempt to innovate through rescheduling the workweek. It is at cross purposes with the immediate

goals of our national economy and it ignores the present and future needs of workers as consumers.

I think the 4-day week, and rearranged work is probably one of the most important managerial innovations that the country has seen, in quite some time and I agree with Mr. Meyer, this particular section would greatly hinder the spread of the 4-day workweek, and the written testimony I have submitted, I think it goes into this in great detail.

The other reason I am here is that the taxpayers, through the National Science Foundation financed my study of the economics of leisure for a number of years, and I am here trying to pay back a little of the debt I owe to the American public.

I would be more than happy to answer any questions you might have regarding the 4-day workweek, in addition to my written testimony.

There are several things that are quite important, however.

I find it very ironic that here we are considering a bill in which we would extend overtime payments to any work over 8½ hours per day, when at the same time, the Labor Department is considering amending this particular provision of Walsh-Healey, and the American Federation of Government Employees Union at Baltimore's Social Security Headquarters, after surveying 15,000 members, of whom 9,300 responded, the union found that 83 percent of their members favored, said they felt the 4-day workweek sounded like a good idea to them, and this amendment to the Federal law striking out, or at least amending this provision for time and a half, overtime, for over 8 hours per day will hurt the movement.

I spent a good deal of time studying the history of the workweek over the past 8 years, and it is my professional opinion that on grounds of either productivity, health, or safety, there is no real evidence to indicate that it is not in the workers interest to work over 8 hours per day.

In reference to the time and a half over 8 hours per day provisions, any evidence that I have seen tends to show that if an employer wants to hire people, he needs more work done, he will go ahead and hire the individual, regardless of the time and a half.

The real question I think as far as this particular law is concerned, that many of the marginal firms may be interested in experimental innovation with this 4-day workweek, they will find their labor costs will rise by ten percent, if they attempt to shift from a 5 to a 4-day workweek.

This will cut out any potential productivity increases of less than 10 percent.

I find this is not really in the interest of the national economy.

The CHAIRMAN. What are the motivating factors leading to companies to propose to their workers the 4-day 40-hour workweek?

Dr. Voss. These are listed. Reduced absenteeism, reduced tardiness, increased worker moral.

Workers seem to have also submitted strong evidence that workers do prefer 4-day workweek, because it gives them more time on their own.

The CHAIRMAN. There is a productivity factor from the company's standpoint. From the worker standpoint there is additional leisure?

Dr. Voss. Right. The evidence that is existing at the present time, shows that after, particularly after young people enter the labor force, that you find a great deal of worker alienation. Workers are not particularly happy with their jobs. There is quite a bit of evidence to this alienation, and part of it is inherent in the nature of the job.

What the 4-day workweek is doing is compressing the amount of time people have to spend at a job they might not like into 4 days.

I think it is possibly misleading to talk about 4 days, 40 hours.

Most 4-day firms actually shorten the workweek to somewhere between 36 to 38 hours, and yet keep the pay the same, so when you are talking about an increasing number of hours per day, generally the workday actually only increases by maybe an hour, an hour and a half the most. What this tends to do, particularly in heavily populated urban areas, is to help spread the traffic congestion problem out; that is, if you work a 4-day week, you do not commute in 1 day of the week, so commuting time is cut down by 20 percent in that sense.

It takes these cars off the major thoroughways to and from work, and reduces the pressure on other people as well. The net result is to reduce congestion peaks and increase everyone's leisure time.

It is part of the traffic congestion problem, the fact that such a high proportion of the labor force now works the 8-hour day, 5-day week.

For example, in New York City, over 60 percent of the workers all leave work within a 15 minute period, and this just clogs the traffic flow and creates bottlenecks in commuting, so what I am saying is the idea cuts down on the traffic problem.

Certainly there will be some extra time for the worker, but he could save, just off the top of my head, approximately 15 minutes to a half hour each way in his commuting time.

The CHAIRMAN. You are an economist?

Dr. Voss. Yes, sir.

The CHAIRMAN. Now, this is personal, but you have moved into an area of specialty, leisure time, or leisure economist?

Dr. Voss. Yes, sir. Leisure economist.

The CHAIRMAN. How did you move into this area? Frankly, it is the first I have heard of a leisure economist.

I think it is new to us here.

Dr. Voss. Basically, in order to train for this, I studied a great deal in a wide variety of areas.

I studied institutional economics, labor, labor productivity, I have studied economic history and the history of the workweek in England and the United States from 1700 to the present.

I have studied history of recreation, looked at it from both the economic and the sociological point of view.

Actually, what I did, is like any other specialist, I added several years to my Ph. D. program. The National Science Foundation got me interested in this problem, and the crux of the problem. As a young man, I could not see any justifiable reason that we all had to work a 40-hour week, or 8 hours per day.

There did not seem to be any economic logic. My father is a university professor, he has a Ph. D. in economics also, and we spent a good deal of our time talking about this, and it finally led me to write to the National Science Foundation, and they have sponsored some of my work.

The CHAIRMAN. Have you submitted your work to the committee?

Dr. Voss. Yes, I have.

The CHAIRMAN. We have not seen it.

Dr. Voss. Well, I submitted it downstairs yesterday.

The CHAIRMAN. No, I mean your thesis, your works, any of your writings.

Dr. Voss. Not in that sense. I was not asked to.

The CHAIRMAN. I thought maybe if you volunteered, I think it would be good and useful.

Dr. Voss. Anything I can do to help you in this respect.

The CHAIRMAN. It seems to me this will be increasingly a matter of discussion and analysis.

We have a Senator coming on here Monday to talk about this, Senator Cook from Kentucky.

Dr. Voss. Yes, I am aware that he is interested, I think he has an amendment to title 5 of the United States Code, which is the Federal overtime provision.

They are trying to encourage him to—

The CHAIRMAN. The Labor Department has been conducting hearings on this.

Dr. Voss. I think it might be helpful for the committee to obtain the copies of my testimony at the 4-day workweek hearings that the Labor Department held.

The CHAIRMAN. If there is anything else you would care to submit, you may do so.

In your studies, are you aware if this has become an employment fact? Have you followed the leisure time of the workers?

Dr. Voss. Yes, sir.

The CHAIRMAN. Could you give me a little bit about that?

What do people do in their leisure time?

Do they get another job?

Dr. Voss. What the studies indicate is that people who are moonlighting, they quadrupled from roughly 4 percent.

Mrs. Poor's studies showed people moonlighting rises from 4 to 17 percent. It is something like that.

Of course, this means that roughly 83 percent of the people who were involved in this, rather intensive study of the 4-day workweek were interested in the leisure time and consuming more leisure activities and this is my real concern.

I am interested in primarily the worker as a consumer, and I know from studying the history of the workweek, what we have done is to legislate sporadically on reducing working hours, and the Federal Government of course has led the way in reducing working hours, particularly during the thirties.

Mr. MITTELMAN. Dr. Voss, have you done any followup to ascertain, for example, the effects on family life, of the people who are working the 4-day week, 10-hour day, what are the effects?

One of the points against the 4-day week as I understand was voiced by the labor movement in hearings now being conducted by the Labor Department, this is very disruptive of family life, and it stops a worker from seeing his children, this kind of thing.

Have you done any work on that?

Dr. Voss. I think probably the relevant question is has labor, the only studies that have been done on the 4-day workweek in terms of worker preference, and I cite this in my written testimony, has been either from management or interested scholars, but the main study done tends to indicate that is what workers prefer. Ninety-seven percent of the people on the 4-day workweek like it, although they said initially there were some adjustments that had to be made, particularly regarding women in the labor force.

In general, they favored it. They felt that the work, and they have statistics showing the time spent with the family, time visiting relatives, time spent engaged in self betterment education, and so forth, all increase when workers are on a 4-day workweek and I think the odd thing that occurred to me, that although you are right, labor union leaders were very much against the 4-day workweek, at least the ones that were at the Labor Department hearings, but the interesting thing, the Gallup Poll, people by occupational type that favored the 4-day week.

Mr. MITTELMAN. Do you know what the Gallop poll showed as to married women?

Dr. Voss. They tended to show they were 2 to 1 against it.

Mr. MITTELMAN. So there is somewhat of a problem for a worker, to go to a 4-day workweek, and a number of married women on the payroll that do not like it, they cannot do anything about it.

Dr. Voss. Certainly some minor adjustment problem at first but at the same time, the main thing I am stressing, we need some type of workweek rearrangements.

Institutionally, we have been quite inflexible, regarding the workweek and now management is starting to wake up, and to improve, and the movement is just getting started and growing.

I found out today that Volkswagen of America is putting their 45,000 employees on the 4-day workweek.

I have not had a chance to check this statement, but I have read it published.

We all know how progressive Volkswagen is.

Mr. MITTELMAN. Turning to a different aspect, in terms of purpose of overtime employment of fair labor standards, which is one of them, which is to spread employment out.

Dr. Voss. Anything I have read, shows it to be fairly unsuccessful in spreading employment.

Mr. MITTELMAN. In your opinion, have you done any work which would indicate whether the 4-day, 40-hour week would tend to spread employment and discourage additional overtime?

Dr. Voss. One of the parts of this is just deductive reasoning on my part, and sort of an historical feel I have in studying these problems, but one of the inherent advantages of the 4-day arrangement, it causes employers to think in terms of additional part-time workers.

There are a lot of workers in this country, where they do not particularly want to work full time, they may very well want to work a 20-hour week, and what I am suggesting is that good part-time help, particularly among very well educated married women, would be fostered tremendously by this type of 40-hour arrangement.

What this means, it does not mean a firm is only open 4 days. It means you work 4 days. If a firm stayed open an extra day, it would lead to an increase in part-time employment, and the Labor Department indicates this will be a growing area in the seventies.

I heard testimony in the Labor Department hearings from a girl in New York that runs an employment agency, called the 25-hour week employment agency, and what she found, her organization will go out and find jobs for qualified, and most of them young, who just are not interested in the rat race.

They do not want to fight the hour and half to and from work problem, but they would be more than happy to work 5-hour days and take a reduction in pay to do it, and she has placed over 185 employees with various firms in the New York area, and she said although the idea is new, it worked out quite successfully, and many times they have found a highly motivated individual can do in 25 hours what another employee previously had done in 40, so what I am saying, the additional flexibility, I think it should add a great deal to the labor force.

The CHAIRMAN. On that point, I think this is one of the problems.

I think the workers' representatives see an increased productivity through this route, which is of course of benefit to the company, but they do not see this increased productivity reflected in the wages of the workers.

Dr. Voss. Well, if labor productivity goes up by 7 percent, I am quite sure this will provide an interesting new base on which labor can bargain for wage increases.

The CHAIRMAN. Yes. This also could be used in argument for the overtime provision.

At any rate, I am glad you are here.

Do you have any further questions?

Mr. MITTELMAN. No.

Dr. Voss. Could I make this one observation. You may find it interesting, and I have done some work in youth marketing too, because youth and leisure is so closely related, and I think it is very interesting to think about the fact, we have a lot of nonconsumers.

We call them hippies.

I have statistical evidence and surveys to show that young people are more leisure time oriented than ever before, and it is my own feeling that literally forcing an individual who comes out of high school or college, to enter a job where he has to work 40 hours a week, 50 weeks a year with 2 weeks off, is a very big cultural shock to them, and I think fails to provide some meaningful alternatives.

The CHAIRMAN. Do you know what a bigger cultural shock it is, if he cannot get a job?

Dr. Voss. A lot of them are not looking for jobs, but I think in terms of growth for a national consumer, this anti-consumerism has been built up, and I think it has been fostered by the reason there are not more alternate jobs available, this has had a major effect on the growth of the economy, although this is off the top of my head, and I have not attempted to verify it statistically, I think it could be a very interesting question to look at.

The CHAIRMAN. What was that point, that last point?

Dr. Voss. What I said was that if young people cannot find jobs

to their liking, say perhaps 6 days, 5 days instead of a 4-day week, that they might just drop out of the labor force, and we have many youngsters doing this.

The CHAIRMAN. I thought I heard you say something about attributing something to the growth of the economy.

Dr. Voss. That is what I am saying, if these people are effectively nonconsumers, I am saying they do not work at all, they work at menial jobs, they earn only \$3,000 a year, and earning and consuming much less than they could. But if we give them other alternatives, they may take them, thus increasing consumption and stimulating the growth of the economy.

The CHAIRMAN. Thank you. You are looking forward to growth.

Dr. Voss. And over the last 2 years this may have been a factor in the economy's lagging.

Mr. MITTELMAN. I think it is a little hard to argue in the face of the statistics that youth are unemployed.

The jobs do not seem to be there for youth on any basis.

If you look at youth employment, do you have any opinion on youth differentials as proposed by the administration?

I am referring to the proposal by the Nixon administration.

Dr. Voss. I will have to check into this, for I have not studied it.

I will be glad to answer you on it at a later time.

I would like to say that I am at the disposal of the subcommittee, and I would always be glad to be helpful.

The CHAIRMAN. Fine. We thank you very much for your help.

Your testimony will be very helpful.

We will now receive for the record the statement of the senior Senator from Louisiana, Mr. Ellender, along with the statement of The American Sugar Cane League.

STATEMENT OF HON. ALLEN J. ELLENDER, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator ELLENDER. The bill S. 1861 presents many problems to agriculture and to industry. The seriousness of the problem to the sugarcane processors of Louisiana and to the farmers of our entire Nation compels me to address these remarks to you concerning the impact on them of at least two provisions of S. 1861. I refer to that section of S. 1861 which would repeal section 13(b) (15) of the Fair Labor Standards Act which grants the overtime wage exemption to employees engaged in the processing of sugarcane and sugar beets into sugar or syrup and that section which would repeal section 13(b) (12) of the act which grants the overtime wage exemption to employees employed in agriculture.

Sugarcane is produced in only three states—Louisiana, Florida, and Hawaii. There are 41 commercial sugarcane processing establishments in Louisiana, exclusive of a small experimental factory operated by Louisiana State University and an establishment operated with inmate labor by the Louisiana State Penitentiary. There are approximately 5,000 sugarcane farmers in Louisiana. These sugarcane farmers and processors contribute much to the economy of the entire State of Louisiana. Not only is the welfare of these processors and farmers de-

pendent on the growing and processing of sugarcane, but there are thousands of workers who are similarly dependent, and countless other commercial and business enterprises whose welfare is directly, or indirectly, dependent on the growing and processing of sugarcane in Louisiana.

Therefore, I am vitally concerned with any legislation which adversely affects the sugarcane processors and the farmers of my State and the many others who are dependent upon them.

The elimination of these exemptions cannot be justified under any existing facts or reasonable hypothesis. My purpose is to attempt to impress upon this committee the seriousness of the situation that would result from the elimination of these exemptions.

In Louisiana, the sugarcane harvest and processing season is extremely short. It cannot commence until the cane ripens or matures in the early fall, usually about mid-October, and the season must be completed before the cane becomes valueless as a result of freezing temperatures, usually in December. Also, sugarcane is highly perishable and must be processed shortly after being harvested. Therefore, our harvesting and processing season has a duration of from about 50 days to about 70 days, controlled solely by the natural elements. During this relatively short period of time, the processing establishments must, and do, operate continuously 24 hours each day, 7 days each week. If the processing overtime exemption were eliminated, sufficient skilled and semiskilled workers are not available to work the more than four shifts that would be required in the processing establishments to avoid the payment of overtime wages. At the same time, the processors do not have the financial ability to pay the premium overtime wages that would be required to maintain these continuous operations in the absence of employing this number of shifts.

For these good and valid reasons, when the Fair Labor Standards Act was adopted in 1938, the Congress included in section 7(c) a complete overtime exemption for the processing of sugarcane and sugar beets. Under the 1966 amendments to the Act, limited overtime exemptions were retained in the Act for certain operations under sections 7(c) and 7(d). However, under the provisions of section 13(b)(15), as then amended, the processing of sugarcane and sugar beets and the ginning cotton were again granted their complete overtime exemption.

Last year the Department of Labor submitted to the Congress a comprehensive study entitled "Agricultural Handling and Processing Industries—Data pertinent to an evaluation of overtime exemptions available under the Fair Labor Standards Act—Submitted to the Congress—1970". An analysis of the facts disclosed by that study relating to the processing of sugarcane in Louisiana clearly shows the justification for the continuation of the complete overtime exemption as contained in section 13(b)(15).

As a member and chairman of the Agricultural Committee of the Senate for many years, I also believe I can intelligently address myself to the problems of the farmers of this nation. Agriculture is in many respects vastly different from industry. This is due largely to the fact that most agricultural endeavors are dependent entirely on the seasons and the weather. Tasks must be timely performed in conformity with the dictates of nature, or the opportunity is irretrievably

gone and irreparable loss results. During peak periods of the year there are not enough agricultural workers available to perform the essential tasks required to produce and harvest an agricultural crop if the workers are employed only 8 hours a day or 40 hours a week. At the same time the farmer's financial return is far from sufficient to permit him to defray the very substantial increase in costs that would be required in paying premium wages for overtime work.

The American Sugar Cane League, a Louisiana nonprofit association, organized many years ago to protect the interests of the Louisiana sugarcane farmers and processors, has prepared for submission to your committee a comprehensive analytical statement directed solely to the justification for the continuation of these overtime exemptions. I fully concur in the statement in its entirety. Therefore, I now desire to file that statement in the record of the hearing as an extension of my remarks, and ask that the statement be incorporated in the record in its entirety.

(The statement of the American Sugar Cane League follows:)

STATEMENT OF
 AMERICAN SUGAR CANE LEAGUE
 TO - SENATE SUBCOMMITTEE ON LABOR
 COMMITTEE ON LABOR AND PUBLIC WELFARE
 SENATE OF THE UNITED STATES

HEARING ON S. 1861
 AMENDMENTS TO FAIR LABOR STANDARDS ACT

This statement is submitted by the American Sugar Cane League of 416 Whitney Building, New Orleans, Louisiana. This organization is a non-profit association, formed almost 50 years ago for the protection and preservation of the welfare of the Louisiana sugar cane farmers and processors. The organization is composed of all of the Louisiana sugar cane processors and sugar cane farmers who produce more than 95% of the sugar cane grown in the State of Louisiana.

This statement is submitted to express our most serious, earnest and solemn opposition to S. 1861, particularly insofar as that bill would repeal Section 13(b)(15) of the Fair Labor Standards Act and thereby eliminate the complete overtime exemption which is there provided for employees engaged in "the processing of sugar beets, sugar beet molasses, sugar cane or maple sap into sugar (other than refined sugar) or syrup" and would repeal Section 13(b)(12) of the Act and thereby eliminate the complete overtime exemption which is there provided for employees employed in agriculture.

Our opposition is compelled by self-preservation. The members of your Committee and of the Congress of the United States must understand and appreciate the gravity of the situation that would result from the elimination of these exemptions. Simply and briefly stated, the sugar cane farmers and the processors of sugar cane into sugar could not operate if these exemptions should be eliminated. The following analysis of the facts should justify this statement.

We shall first discuss the sugar cane processing overtime exemption, Section 13(b)(15).

Sugar Cane and Sugar Beet Processing Exemption - 13(b)(15)

During the short sugar cane harvesting and processing season in Louisiana, lasting from about 50 to about 70 days, when the processing establishments must operate continuously 24 hours each day, 7 days each week, sufficient

skilled and semi-skilled workers are not available to work the more than four shifts that would be required to eliminate overtime employment, and the processors do not have the financial ability to pay the overtime wages that would be required in the continuous operations without the employment of such shifts.

Necessarily, the results of the elimination of this processing exemption would be disastrous not only to the processors, but also to the approximately 5,000 Louisiana sugar cane farmers who are dependent on the operations of the processing establishments.

At the outset, we should point out that the processing of sugar cane and sugar beets into sugar, syrup and molasses was completely exempt from the payment of overtime under Section 7(c) of the Fair Labor Standards Act as originally enacted in 1938. When the act was rather drastically amended in 1966, limited overtime exemptions were retained in the act for certain operations under Sections 7(c) and 7(d). At the same time, the processing of sugar cane and sugar beets, together with the ginning of cotton, were permitted by the Congress to retain the complete overtime exemption under the special provisions of Section 13(b)(15).

There have been no changes in any condition justifying the exemption. Nevertheless, S. 1861 proposes to deny the exemption to the processing of sugar cane and sugar beets and to the ginning of cotton. There is no justification for such proposed Congressional action.

We have carefully examined the two-volume study made by the U. S. Department of Labor entitled "Agricultural Handling and Processing Industries - Data pertinent to an evaluation of overtime exemptions available under the Fair Labor Standards Act--Submitted to the Congress - 1970". We have particularly studied and analyzed those portions of the study relating to the processing of sugar cane into sugar in the State of Louisiana. Also, we have examined the January 1970 Report made by the Secretary of Labor to the Congress which contains

certain findings and recommendations relative to the phasing out of overtime exemptions under Sections 7(c), 7(d), and 13(b) of the Act. The facts disclosed in the study made by the Department relative to the processing of sugar cane in Louisiana, clearly and conclusively demonstrate that there is valid and sound justification for the continuation of the complete overtime exemption provided for our processors in Section 13(b)(15); that the exemption is, indeed, being fully taken advantage of by all processors in Louisiana; and that the complete exemption should not be eliminated or limited in any manner.

Sugar cane is grown and processed into sugar in only three of our fifty states, Louisiana, Florida and Hawaii, and also in Puerto Rico. Sugar cane has been processed into sugar in Louisiana more than 175 years. Sugar cane for the production of sugar is grown in nineteen parishes (counties) of South Louisiana. This is the most northerly located sugar cane producing area in the world. In 1971 under acreage restrictions imposed by the Department of Agriculture under the Sugar Act of 1948, as amended, there are 330,061 acres of sugar cane in Louisiana. There are 41 processing establishments that will operate in the processing of the 1971 crop. This number does not include a small experimental establishment operated by the Louisiana State University and Agricultural and Mechanical College and an establishment operated by the Louisiana State Penitentiary and which uses only inmate labor. Neither of these establishments should be considered in any study involving wages and hours of employment.

The Department's two-volume study was made in 1968. During the 1968 processing season there were 44 processing establishments, excluding the experimental establishment at the Louisiana State University and the establishment operated by the Louisiana State Penitentiary, both of which were presumably omitted from the Department's study. For economic reasons, three establishments which operated during the 1968 season will not operate during the 1971 season. One of these was destroyed by fire and was not rebuilt because anticipated low return on the investment required would not justify rebuilding.

Sugar cane is extremely perishable and, therefore, the harvesting and processing of sugar cane is necessarily highly seasonal. In Volume I of the two-part study of the Department of Labor, at Page 210, it is stated:

"The perishability of sugar cane limits the length of the processing period to that of the harvesting season. Since cut sugar cane can be kept for only a very few days without significant loss of sucrose and there are no specific controls on perishability, special provisions concerning harvesting are relevant."

In Louisiana the harvesting and processing of sugar cane commences each year as early in the fall as the maturity and sucrose (sugar) content of the cane permits. The time of starting and completing operations by the various processing establishments in Louisiana varies among establishments and from season to season. Operations are usually commenced from about October 5 to October 15 and are completed between December 15 and December 31. Sugar cane begins to deteriorate rapidly after subfreezing temperatures and in Louisiana such temperatures are not uncommon in December and as early as November.

The 1963 crop in Louisiana was the largest in our history, and the average length of that season for all Louisiana processors was 83.8 days, or less than twelve weeks. The average processing season for all establishments in Louisiana in 1968, the year studied by the Department, was 67.2 days, or less than ten weeks. In 1969 the average was only 49.7 days, or less than eight weeks.

Beginning with the first day of the processing operations of each establishment in Louisiana and ending with the last day of such operations, the processing of sugar cane into sugar is a continuous one, twenty-four hours each day, seven days each week. The tables prepared by the Department and found in Volume II of its study appear to indicate that in Louisiana processing establishments there is a "peak" week in terms of man-hours of employment during the operating season, followed by other weeks shown as the seventh, tenth, fourteenth, seventeenth and twentieth highest week; and that during each succeeding week after the "peak" week the total hours worked decrease and the number and percentage of hours worked over forty and over fifty each week decrease (see Volume II, Tables 15, 19, 23, 27, 31, 35, 39, 43, 47, 51, 55, 59, 63 and 67).

This is not correct in Louisiana. In each Louisiana sugar cane processing establishment there is little, if any, difference between the man-hours of employment or the hours of employment over forty or fifty each week during the first week of operations, the last week of operations and any intervening week between the first and the last. We have no such thing as a "peak" week. Each week during the harvest and processing season is a "peak" week. The changes reflected in the Department's tables in the weeks succeeding the so-called "peak" week apparently result from combining the figures of all processors, and the diminution in total hours of employment and diminution in hours of employment in excess of forty or fifty hours per workweek results from various processors starting and/or completing their processing operations before other processors. After the processing season for each processor is completed, and during the remainder of the year, a small single shift of maintenance workers is employed, usually forty hours each week, without any overtime exemption. The combining of these maintenance workweeks with seasonal operating workweeks, as has apparently been done in the Department's tables is misleading.

In this same connection, although the Department's tables would indicate to the contrary (see Volume II, Tables 27, 31, 43, 55, 59, 63 and 67), there is no difference in the number of shifts at any establishment during any week of the processing season. Also, these tables and Table 11 indicate there are some processing establishments in Louisiana that during the processing season operate on only one shift. This is not correct. There is no such commercial establishment in Louisiana processing sugar cane into sugar. In all except two of the Louisiana establishments which process sugar cane into sugar, two shifts of twelve hours each are employed, and these two shifts are employed from the first to the last day of the processing season of each establishment. The two establishments which use three shifts during the processing season are also cane sugar refineries.

We call attention to these facts because a processor cannot manipulate deliveries of sugar cane in Louisiana and thereby control man-hour requirements, overtime requirements, and shift requirements. The perishable nature of sugar cane and the vicissitudes of the natural elements preclude any such control.

We also make reference to the earlier report of the Department of Labor made to the Congress dated February 1962 showing the results of the study of the handling and processing of agricultural products. That study showed (Part I, Page 37) that the processing of sugar cane was one of the two processing industries in which the need for the overtime exemption was the greatest. That need, which was great in 1961 and 1962, is equally great today.

In presenting our position, it is highly pertinent to review and analyze the particular findings and recommendations of the Secretary of Labor with respect to the overtime exemptions currently available to the agricultural handling and processing industries under Sections 7(c), 7(d) and 13(b)(14), (15) and (16) of the Fair Labor Standards Act. These are the findings on the basis of which the Secretary of Labor recommended to the Congress that the exemptions be phased out, and could well be the reason for the exclusion of our processing overtime exemption under S. 1861. This analysis will show that not one of the seven reasons found on Pages 18 and 19 of the Secretary's Report of January 1970 is applicable to the processing of sugar cane in Louisiana, and, in fact, they are in conflict, in most part, with facts reported by the Department in its two-part study submitted to the Congress early in 1970.

The Secretary has given as his first reason for phasing out the exemptions:

"Existing exemptions are not fully utilized. The degree of utilization, however, varied among the industries studied--it was markedly higher in two of the industries than in the rest."

The Department's study shows that the Secretary's first reason or finding is not correct insofar as sugar cane processors in Louisiana are concerned. On Page 221 of Volume I of the study submitted to the Congress by the Department of Labor this direct, unequivocal statement is found:

"The relationship between man-hours over 40 and man-hours paid for at premium rates in workweeks of over 40 hours clearly indicates that sugar cane processors in Louisiana made maximum use of the overtime exemptions available to them."

As the study states, and as is true, we do make maximum use of the overtime exemptions available to us. We have no alternative.

The Secretary gave as his next reason:

"Many establishments are presently paying premium rates of not less than one and one-half times the regular rate for hours worked in excess of 40 a week. Consequently, the continued existence of seasonal variations or the prevalence of long employee workweeks is not necessarily a conclusive indicator of the need for an overtime exemption."

This reason is wholly inapplicable to the processing of sugar cane in Louisiana, as shown by the Department's study. In Volume I, at Page 220, the study declares:

"During the peak, seventh, and tenth weeks, 1 percent or less of total man-hours were paid for at premium rates of not less than one and one-half times the regular rate in Louisiana's sugarcane processing industry. Moreover, in the other selected weeks only about 3 percent of total aggregate man-hours were paid for at premium rates."

Actually not one processor in Louisiana pays premium rates to processing workers during its processing season for hours worked in excess of forty per workweek.

The three per cent referred to in this quotation who were paid premium overtime wages in selected weeks after the tenth week undoubtedly results from combining maintenance workweeks with seasonal processing weeks after some of the processors have completed their seasonal operations, as we have previously commented upon.

The Secretary next said:

"Under the current exemptions provisions, some industries that qualify for 20 weeks of exemption under sections 7(c) and 7(d) appear to be less seasonal than others that qualify for only 14 weeks of exemption either under section 7(c) or section 7(d)."

This reason or finding of the Secretary has no applicability to our complete overtime exemption under Section 13(b)(15) of the Act. However, in terms of degree of seasonality, which is here referred to, our processing industry is most seasonal.

The fourth reason given by the Secretary for his recommendation of phasing out was:

"A universal 40-hour workweek standard would remove intra-industry inequities which currently exist for employers who pay premium rates for hours over 40 because such rates are required in labor-management agreements, or to maintain a competitive position in a specific labor market area, or simply because they believe in fair labor standards."

There are no such intra-industry inequities in our Louisiana processing industry. Although wages and hours and other conditions of employment in six of our

processing establishments are affected by collective bargaining agreements, none of the agreements require the payment of premium overtime pay to processing employees during the processing season of the establishment. This is made clear from the Department's study, Volume I, Page 223, where it is stated:

"In Louisiana, only 6 of the 43 sugar cane processing plants had collective bargaining agreements covering 200 of the 900 nonsupervisory employees in the six plants. Maintenance workers were covered in all six agreements, however, plant workers were included in only one agreement. These agreements provided overtime pay after 40 hours a week and 8 a day; however, waivers nullified such overtime pay provisions for 8 to 14 weeks (Appendix Tables N-71 and N-75)."

The 8 to 14 weeks referred to in the study undoubtedly include all of the weeks of seasonal processing operations.

The fact that there are collective bargaining agreements in some of the Louisiana processing establishments and in not one of these establishments is premium overtime pay required for processing workers during the processing season is conclusive evidence of the need for the complete exemption during our processing season. Obviously, the union leaders at these establishments who are fully cognizant of all conditions pertaining to the seasonal processing operations and man-hour requirements, recognize that the exemption is justified and necessary. No other evidence of justification should be required.

The next reason offered by the Secretary to support his recommendation of phasing out was:

"The use of second and third shifts could be increased in some industries. This is one adjustment that could be made to ease the pressure of intensive deliveries of raw materials in relatively short periods of time while at the same time reducing the need for employee workweeks in excess of 40 hours."

As we have pointed out, no Louisiana processing establishment could operate on one shift. In all establishments, except two, two shifts are now employed. To operate continuously, as is essential in our seasonal industry, if we are denied our overtime exemption, then, in order to avoid premium overtime pay, it would be necessary to employ more than four shifts in every twenty-four hour period. Actually, qualified workers even for three shifts are not available. Today, with only two shifts, we do not have enough qualified United States citizens to fill

available jobs. We now have to import some aliens to serve in several specialized categories, such as sugar boilers.

In addition, many qualified workers now employed during our seasonal operations would not accept employment if they could work only forty hours, fifty hours or fifty-six hours during a workweek. Many years of experience show that the nature of the work permits a worker to be employed twelve hours a day without causing undue mental or physical strain. The opportunity to earn twelve hours pay each day has been one of the main attractions to the seasonal workers who have traditionally accepted employment at our sugar cane processing establishments during the processing season.

We should also point out that the skills required in many of our processing jobs cannot be easily or quickly acquired. Most of the more skilled seasonal workers in our processing establishments return year after year. Fortunately, they have other employment during the remainder of the year which permits their seasonal work at our processing establishments each year. To repeat, it would be absolutely impossible to find double the present number of such workers which would be required if our overtime exemptions are phased out.

The Secretary, for his sixth reason to justify the phasing out, said:

"In some of the agricultural processing industries, the processing period has been lengthened as a result of technological advances in methods of extending the storage life of perishable products through temporary treatment such as fast freezing, cold storing, waxing and the use of chemicals. Control over the length of the processing season is also exerted through the grower-processor contract which often permits the processor to specify the precise time for planting, harvesting and delivery."

What may have been done in some agricultural processing industries to lengthen the processing season, has not been done and cannot be done in the processing of sugar cane into sugar. As previously stated, the length of the sugar cane processing season in Louisiana is that short period of time between maturity of the sugar cane and the loss of the cane due to subfreezing temperatures, both of which occurrences are controlled by nature, not by man. Actually, because of this situation, the Louisiana sugar cane farmers and processors have, of

necessity, through technological improvements, shortened their harvesting and processing season. This is recognized by the Department's two-part study in Volume I, at Pages 213 and 214.

Finally, the Secretary said to justify phasing out:

"There was a sharp drop in man-hours over 40 a week during the periods the exemptions were most likely to be claimed. The drop in man-hours over 40 a week generally occurred before the expiration of the exemption period. Thus, over the exemption period presently provided--14 weeks or 20 weeks--the exemptions declined in importance to handlers and processors as man-hours over 40 a week diminished. This indicates that a gradual annual cut back in the length of the exemption period would provide for orderly adjustment to the standard applied in other industries 30 years ago."

This reasoning is also completely inapplicable to the processing of sugar cane into sugar in Louisiana. As previously pointed out, there is no "peak" week in any Louisiana processing establishment. From the first to the last day of processing, substantially the same number of total man-hours and man-hours in excess of 40 per week are required. It is true that some of the tables in the Department's study, Volume II, and some of the explanations in Volume I appear to indicate the contrary. However, this results from combining seasonal weeks of overtime exempt employment with maintenance weeks of non-exempt employment, as previously pointed out.

To illustrate the incorrect impression created by these tables, on Page 215 of Volume I of the study, it is stated:

"In Hawaii, the ranking of workweeks showed that in the twentieth week processing plants were still using 88 percent of the man-hours used in the peak week. In contrast, man-hours worked in Louisiana declined between the peak and the fourteenth week by 82 percent."

The decline referred to has no relevancy to man-hour requirements of any processing establishment during the seasonal processing operations. It merely indicates that between the so-called "peak" week and the fourteenth week most, if not all, of the establishments in Louisiana have completed their seasonal operations, and the man-hours employed during the fourteenth week consist almost exclusively of maintenance work during a one shift 40-hour week with no overtime exemptions.

As to Louisiana processors of sugar cane, and very probably to others, this obviously does not indicate in any manner that "a gradual annual cut back in the length of the exemption period would provide for orderly adjustment to the standard applied in other industries 30 years ago." Such reasoning, based on a misunderstanding of facts, could also explain the proposed elimination of our processing overtime exemption under S. 1861.

It might be contended that while we cannot increase our employment schedule to four shifts during our processing season, we can remain on a two-shift basis and pay the overtime penalty. Let us hastily point out that the utilization of two shifts with payment of time and a half over 40 hours a week in our processing industry would have the effect of increasing non-supervisory labor costs 26% during the processing season.

For non-supervisory workers, the total man-hours worked during the processing season are about two-thirds of the total man-hours for the entire year. Labor costs are (1) about one-third of the total costs (not including the price paid for cane, which is set by the U. S. Department of Agriculture), and (2) more than half of the operating costs incurred in the processing establishment in the processing of sugar cane into sugar.

Although the continued operation of Louisiana sugar cane processing establishments is absolutely essential to enable our farmers to continue growing cane (for which they have no satisfactory alternative), many such factories are marginal operations as far as costs and returns are concerned. The Louisiana State University and Agricultural and Mechanical College has for more than 30 years conducted annual costs studies of the Louisiana sugar cane farms and processing establishments. The results of those studies have been published and their examination discloses that the profit margin, if any, of the Louisiana processors in most years is exceedingly small.

Economic attrition has taken its toll among our sugar cane processors in Louisiana. Thirty years ago there were 66 sugar cane processing establishments in our State. Today, in 1971, only 43 will operate, including the experimental factory of the Louisiana State University and the factory at our State Penitentiary. Three have discontinued operations since 1968.

Agricultural Exemption - 13(b)(12)

S. 1861 would also, if enacted, in repealing Section 13(b)(12) of the Fair Labor Standards Act, eliminate the present exemption of farm workers from the overtime provisions of the Act. As stated at the outset of this presentation, the results could be only disastrous.

Much testimony will appear in the record of the Hearing before this committee to conclusively show why agricultural workers should not be covered by the overtime provisions of the Act. A statement of those reasons would only be repetitious and burdensome on the members of the committee.

Nevertheless, for emphasis and even though repetitious, the committee must bear in mind that farming (as well as processing of perishable farm products) is completely and distinctly different from industrial pursuits. This difference results primarily from the fact that Mother Nature sets the time schedule for the production and harvesting of agricultural crops. In agriculture, what must be done today will not await tomorrow. Various operations included in the production and harvesting of agricultural crops depend entirely on the seasons and the weather. These operations must be timely performed to avoid irreparable loss. Frequently, these operations require that farm employees work longer than eight hours a day and substantially more than forty hours a week.

Here again, if the exemption were eliminated, farmers would have two alternatives. They would be required to attempt to substantially increase the number of employees and work shifts, or pay premium wages for overtime employment. There has always been a shortage of farm workers during peak periods of the year when seasonal demands were high. This condition in recent years has become more acute with the well-known migration of workers from the farm to urban areas. Therefore, to increase the work force sufficiently to perform the necessary tasks during the periods when nature commands their performance is impossible. The other alternative is equally impossible. Farmers, in general, cannot afford the substantial increase in cost that would result from the payment of time and a half the regular wage rate for overtime work. With the ever-increasing level

of basic hourly wage rates paid by farmers, the imposition of the overtime penalty becomes even more unrealistic and economically impossible.

General

To conclude, it is most pertinent to point out that neither the sugar cane farmer nor the processor of sugar cane into sugar has any control whatever over the price received for his product. The price of sugar is controlled by the Secretary of Agriculture of the United States through his estimate of consumption requirements of sugar in the United States pursuant to the provisions of the Federal Sugar Act. The changes made from time to time in his consumption estimate regulate the quantity of sugar that is permitted to be placed on our domestic market and, thereby, controls the price. The price the sugar cane farmer receives for his sugar cane is tied directly to the price of sugar under a formula established by the Secretary of Agriculture. Therefore, if our farmers and processors were required to pay the substantial increase in wages that would result from the elimination of the overtime exemptions provided under Sections 13(b)(12) and 13(b)(15) of the Act, this increase in cost could not be passed on to the consumers. Our farmers and our processors would, therefore, be caught and destroyed in the closing jaws of this vise of substantial cost increase with no compensating increase in the price of sugar and sugar cane.

These facts and conditions which I have presented and over which the farmers and processors have no control, were applicable in 1938 when the Fair Labor Standards Act was originally adopted, were applicable when the Act was amended in 1966, and are equally applicable today. Therefore, the Congress on each occasion when the question has been under consideration, for good and sound reasons, has made available to our farmers and our processors the complete overtime exemption. Today, there is no reason to eliminate or to limit in any manner those exemptions.

Respectfully submitted,

AMERICAN SUGAR CANE LEAGUE

By Thos. H. Allen
President

The CHAIRMAN. At this point I order printed into the record all statements and other pertinent material submitted by interested persons and organizations unable to be with us today.

(The following information was subsequently supplied for the record:)

STATEMENT OF JOHN M. ELLIOTT, INTERNATIONAL PRESIDENT
AMALGAMATED TRANSIT UNION, AFL-CIO
ON S 1861, A BILL TO AMEND THE FAIR LABOR STANDARDS ACT
BEFORE THE COMMITTEE ON LABOR AND PUBLIC WELFARE
U. S. SENATE

Mr. Chairman:

My name is John M. Elliott. I am presenting this statement on behalf of the members of the Amalgamated Transit Union, AFL-CIO, which I serve as the International President.

Our purpose in presenting this statement is to express our support and endorsement of the position of the AFL-CIO concerning proposals to amend the Fair Labor Standards Act.

The Amalgamated Transit Union is the dominant Union in the field of over-the-road, and local bus industries. The membership of our International Union is in excess of 130,000. Approximately 72,000 members are engaged in the local transit industry and thus come under the purview of the existing Act and the proposed amendments contained in S. 1861. A careful review of our existing agreements discloses that approximately 9,900 of the local transit employees are covered by labor agreements that do not provide for a 40-hour work week, whereas 62,000 are covered by a 40-hour work week contract.

In examining the pending bill, S. 1861, we are pleased to note that it proposes to expand coverage to include all public, as well as private, employees engaged in the local transit industry without any special exclusions. We estimate that more than 57% of our local transit membership is covered by contracts with publicly owned transit systems. We especially note that the bill proposes to end the disparity in the maximum hours coverage that has denied operating employees the benefits extended to other workers in the industry which are also enjoyed by the vast majority of other American workers. I am referring to the proposal in the bill to remove the overtime

exemption for operating employees of all transit systems, which we heartily endorse and support.

As a matter of history, it should be noted that ever since 1938 when the Fair Labor Standards Act was first enacted, the management side of the industry has argued that extension of the 40-hour week to local transit operating employees was impracticable. Through the process of collective bargaining, however, the problems of applying the 40-hour week have been quite capable of mutually acceptable resolution. The 40-hour week established by 86% of the industry recognizes the needs of the transit worker for a reasonable work week, while at the same time providing better operating conditions for the welfare and safety of the riding public.

Thus, the norm for the industry has been established by collective bargaining. Repeal of the existing exemption will have no adverse impact on the 86% of the industry operating under the accepted norms, since they now provide by contract what FLSA would require under the maximum hour provisions. In fact, that portion of the industry where the 40-hour week prevails by contract stands to benefit by removal of the exemption now provided by law. Retention of the exemption, on the other hand, will be advantageous only to those who can be categorized as the scavengers of our industry - the marginal operator who can exist only by underpaying and undercutting prevailing wages and normal work standards. The scavenger, because he pays less, forces operating employees to work overly long hours in order to earn a living wage. Thus, the scavenger employer enjoys a low wage advantage which he uses to underbid and undercut the norms prevailing in the responsible sector of the industry on charter and other contract work. Such "sweat shop" conditions subject the public to the jeopardy of loss of life, limb, property, and endanger the health and well-being of the individual employee.

The FLSA was enacted for the purpose of providing appropriate minimum wage and maximum hours standards protecting the health and safety of American workers and the general public. Therefore, in these days when the transit worker is constantly reminded of his personal responsibility in the national effort to reduce the loss of lives on our streets and highways, a clear benefit to the public health and safety can be attained by closing the loopholes in the present overtime coverage under which many local transit drivers have been required by their employers to work beyond their safe capacity to do so. This capacity was long ago established at 40 hours by the Congress for most of American industry, and by collective bargaining for 86% of the transit industry.

It seems to us, then, that the committee and the Congress should be less concerned about the possible demise of some marginal company - a circumstance which we doubt will happen and certainly not for that reason alone - and much more concerned about their responsibility for the health and safety of the general public.

The employers of the 62,000 who are now covered by a 40-hour contract are rightfully disturbed because of the unfair competition based upon low wages and poor working conditions. It is right, and it is just that the Congress should do for the people what they cannot do for themselves or what the government can do better. The continuation of this unfair advantage by a small minority of employers through the continuing failure of the Congress to provide for equitable guidelines based upon a universal 40-hour work week for the entire industry, brings about economic pressure on the employers complying with the prevailing norms to demand relief from the unions representing their employees and in some cases, outright abandonment of the

40-hour contractual work week. Failure of Congress to repeal this grossly inequitable exemption will most certainly increase the impetus of these employer demands for contractual exemptions and relief from existing 40-hour work contracts. It is high time, that after 32 years, Congress should at last provide the essential underpinning for an established, equitable work week for all employees in the industry across-the-board. We want only to be provided with the same degree of coverage under FLSA as the Congress and the Department of Labor has determined that workers are entitled to. By its demand for continued exemption from the maximum hour provisions of the Fair Labor Standards Act, the industry is misguidedly seeking to perpetuate loopholes which tend to break down the norms now prevailing by mutual agreement in our industry. On the premise that overtime coverage might fall too heavily upon many small transit operations, what the industry is really seeking is a further opportunity under the law to extract wage and overtime hours concessions from employees thru collective bargaining to the detriment of the riding public.

In its testimony before the House committee, the American Transit Association representing the employers sought to confuse the issue of maximum hour coverage under the Act by injecting such items as 8-hour day, report time, travel, or deadhead time, pull-in time, time spent on making out accident reports, and numerous other such items. In doing so, the industry seeks to distinguish itself from all other components of American industry by suggesting that they have special problems such as report time, turn-in time, meal period, and other similar types of time and work categories. Any such problems with regard to the application of the Hours Standards of the Fair Labor Standards Act to transit should be met by the Wage and Hour Division

of the Department of Labor in its administration of the Act, just as has been the practice elsewhere as coverage has been extended to other segments of the American economy.

Such problems as piecework, on-call time, meal periods, rest periods, and other pay practices of a special nature, have been considered and resolved successfully in many differing industries by administrative procedure. This administrative procedure has led to the development of a body of law and regulations that, over the years, have won acceptance by the courts, and by the Congress which has had an opportunity to review these practices whenever amendments to FLSA have been considered. The body of law which I have reference to is the INTERPRETATIVE BULLETIN, Code of Federal Regulations, Title 29, Part 785. I am enclosing a copy of that Bulletin for committee reference.

The transit association further suggests that imposition of the maximum hour provisions of the Act would result in the demise of small companies and with consequent loss of jobs. Such arguments have been made before by spokesmen for other industries throughout the history of the Act. The reports to the Congress by the Secretary of Labor after each amendment to the Act are replete with evidence to the contrary. Experience under the FLSA confirms that the Secretary has found few, if any, examples of business failures which have occurred by reason of Fair Labor Standards Act coverage. We are confident that it will be no different in the transit industry if overtime coverage is extended to the driving occupations.

But even if that should occur in rare situations, it will be a very small price to pay when compared to the benefits to the health and safety of the public and of individual employees.

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The demise of the scavenging companies - small or not so small - who are able to exist only by payment of low wages and requirement of long work hours, can only be classified as a "good riddance."

Moreover, it should be noted that many of the so-called small companies are not really so small or so poor. They are, in fact, parts of huge combines. Four of the principal combines - holding companies - are the American Transit Corp. (itself wholly owned by the giant Chromalloy Corp.); American Transit Enterprise, Inc.; City Coachlines; and National City Lines. Transit systems in over 60 cities are owned or controlled by these absentee-owner-combines. Centralized management, purchasing, accounting, maintenance, payroll, etc., are exercised by these companies. These so-called companies, owned or controlled by the combines range in size from as few as 13 employees to approximately 400 employees.

In addition, the smallest of companies not included in these combines, are excluded from coverage of FLSA, simply because they do not meet the Commerce test of \$250,000 volume, and therefore are not - and will not - be subject to any of the provisions of FLSA.

As an appendix, we are attaching a partial listing of transit systems owned or controlled by the above mentioned combines or holding companies. A list of many transit systems that do provide 40-hour work weeks by collective bargaining is also attached. Other data attached includes separate lists of systems ((1) public, (2) private) with contracts providing work weeks in excess of 40 hours, and a statistical analysis of local transit employees.

It is not likely that there are many members of this Union - perhaps none at all - that would be directly affected by the proposed increase in the minimum wage. Nevertheless, we do wholeheartedly support the proposal to raise the minimum wages to an amount that

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would be compatible with at least the minimal living standards suggested by the Department of Labor. We concur that it would best serve the public interest if the minimum wage were set at least at \$2.00 effective immediately.

We strongly urge, then, that the committee report favorably and support enactment as speedily as possible of S. 1861 which would include in its provisions the repeal of the current exemption of transit operating employees from coverage of the maximum hour provisions of the Act.

We wish to express our appreciation for being permitted to express our view on this legislation which we deem to be very important to the transit worker and to the workers in all industry in America.

Respectfully submitted,

John M. Elliott
John M. Elliott
International President

PARTIAL LIST OF COMPANIES WITH AMALGAMATED TRANSIT UNION
CONTRACTS WHICH PROVIDE FOR 40-HOUR WEEK

<u>DIVISION</u>	<u>LOCATION</u>	<u>COMPANY</u>
22	Worcester, Mass.	Worcester Bus Company
26 *	Detroit, Mich.	Department of Street Railways
85 *	Pittsburgh, Pa.	Port Authority of Allegheny County
103	Wheeling, W. Va.	Co-operative Transit Company
169	Easton, Pa.	Lehigh Valley Transit Company
956	Allentown, Pa.	" "
192 *	Oakland, Calif.	Alameda-Contra Costa Transit District
215 *	Aurora-Elgin, Ill.	City of Aurora
241 *	Chicago, Ill.	Chicago Transit Authority
241	Chicago, Ill.	Evanston Bus Company
241	Chicago, Ill.	West Towns Bus Company
256 *	Sacramento, Calif.	Transit Authority of the City of Sacramento
265 *	San Jose, Calif.	San Jose City Lines
268 *	Cleveland, Ohio	Cleveland Transit System
272	Youngstown, Ohio	Mahoning Valley Transit Authority
276 *	Stockton, Calif.	Stockton Metropolitan Transit District
281	New Haven, Conn.	The Connecticut Company
425	Hartford, Conn.	" "
443	Stamford, Conn.	" "
282	Rochester, N. Y.	Rochester Transit System
308 *	Chicago, Ill.	Chicago Transit Authority
441	Des Moines, Iowa	Des Moines Transit Company
448	Springfield, Mass.	Springfield Street Railway Co.
459	Bridgeport, Conn.	Connecticut Railway & Lighting Co.
570	Waterbury, Conn.	" "
1103	New Britain, Conn.	" "
1455	Bridgeport, Conn.	" "
517	Gary, Ind.	Chicago & Calumet Dist. Transit Co.
537	Holyoke, Mass.	Holyoke Street Railway Co.
540 *	Trenton, N. J.	Mercer County Improvement Authority
568 *	Erie, Pa.	Erie Metropolitan Transit Authority
580	Syracuse, N. Y.	Syracuse Transit Co.
587 *	Seattle, Wash.	Seattle Transit System
589 *	Boston, Mass.	Massachusetts Bay Transportation Auth.
600	Waltham, Mass.	Middlesex & Boston Street Railway Co.
618 *	Providence, R. I.	Rhode Island Public Transit Authority
620	Frammingham, Mass.	Boston-Worcester Corp.
627	Cincinnati, Ohio	The Cincinnati Transit Co.
682 *	Ft. Wayne, Ind.	Ft. Wayne Public Transit Corp.
689	Washington, D. C.	D. C. Transit System, Inc.
697 *	Toledo, Ohio	The Toledo Area Regional Transit Auth.
713 *	Memphis, Tenn.	Memphis Transit Management Co.
725	Birmingham, Ala.	Birmingham Transit Co.
726 *	Staten Island, N.Y.	New York City Transit Authority
732	Atlanta, Ga.	Atlanta Transit System, Inc.
757 *	Portland, Ore.	Tri-County Metropolitan Transportation District of Oregon
758 *	Tacoma, Wash.	Tacoma Department of Transit
770 *	Mobile, Ala.	Mobile City Lines, Inc.
788 *	St. Louis, Mo.	Transportation Services Co. of Metro. St. Louis
819	Newark, N. J.	Public Service Coordinated Transport
820	Union City, N. J.	" "
821	Jersey City, N. J.	" "
822	Paterson, N. J.	" "

823	Elizabeth, N. J.	Public Service Coordinated Transport
824	New Brunswick, N. J.	" "
825	Edgewater, N. J.	" "
880	Camden, N. J.	" "
836	Grand Rapids, Mich.	Grand Rapids City Coach Lines, Inc.
842*	Wilmington, Del.	Greater Wilmington Transportation Auth.
851	Springfield, Ohio	Springfield Bus Co.
858	York, Pa.	York Bus Co.
878	Evansville, Ind.	Evansville City Transit Inc.
900	Waukegan, Ill.	Waukegan North Chicago Transit Co.
993*	Oklahoma City, Okla.	Oklahoma Transportation & Parking Auth.
998	Milwaukee, Wis.	Milwaukee and Suburban Transportation Co.
1001	Denver, Colo.	Denver Metropolitan Transit
1005*	Minneapolis and St. Paul, Minn.	Twin Cities Area Metro. Transit Comm.
1015*	Spokane, Wash.	Spokane Transit System
1028	Des Plaines, Ill.	United Motor Coach Co.
1037	New Bedford, Mass.	Union Street Railway Co.
1056*	Flushing, N. Y.	New York City Transit Authority
1061	Floral Park, N. Y.	Schehck Transportation Co., Inc.
1070	Indianapolis, Ind.	Indianapolis Transit System, Inc.
1112	Philadelphia, Pa.	Continental Trailways Terminal of Washington
1112	Philadelphia, Pa.	Trailways Garage of Philadelphia, Inc.
1112	Philadelphia, Pa.	Philadelphia Union Bus Terminal
1112	Philadelphia, Pa.	Safeway Trails, Inc.
1119	Wilkes-Barre, Pa.	Frank Martz Coach Co., Inc.
1131	Alexandria, Va.	Alexandria, Barcroft and Washington Transit Co.
1134	Mt. Vernon, N. Y.	Westchester Surface Ways, Inc.
1138	Washington, D. C.	The Gray Line, Inc.
1141	Revere, Mass.	Service Bus Line, Inc.
1146	Saugus, Mass.	Rapid Transit, Inc.
1179	New York, N. Y.	Green Bus Lines, Inc.
1181	New York, N. Y.	Pioneer Bus Corporation
1181	New York, N. Y.	City Wide Transportation
1181	New York, N. Y.	Varsity Transit, Inc.
1181	New York, N. Y.	Hempstead Bus Corporation
1195	Philadelphia, Pa.	Capital Bus Company
1195	Philadelphia, Pa.	Trans-Bridge Lines, Inc. and Delaware River Coach Lines
1195	Philadelphia, Pa.	Tri-City Coach Lines
1197	Jacksonville, Florida	Jacksonville Coach Company
1208	Jackson, Miss.	Jackson Transit Corporation
1225	San Francisco, Calif.	Bay Rapid Transit Co.
1225	San Francisco, Calif.	Betty's Tours
1241	Lancaster, Pa.	Conestoga Transportation Co.
1248	Jersey City, N. J.	The Hudson Bus Transportation Co., Inc.
1249*	Springfield, Ill.	Springfield Mass Transit District
1276	Jersey City, N. J.	North Boulevard Independent Bus Owners Association
1277	Los Angeles, Calif.	Southern Calif. Rapid Trans. District
1277	Los Angeles, Calif.	Long Beach Public Trans. Co.
1279	Johnstown, Pa.	Johnstown Traction Co.
1287*	Kansas City, Mo.	Area Transportation Authority

1300*	Baltimore, Md.	Metropolitan Transit Authority
1303	Detroit, Michigan	Detroit and Canada Tunnel Corporation
1307*	St. Louis, MO.	Transportation Service Corp. of Metropolitan St. Louis
1309*	San Diego, Calif.	San Diego Transit Corporation
1313	Kansas City, Mo.	Bus Terminal Co.
1317	Clifton, N.J.	De Camp Bus Lines, Inc.
1319	Minneapolis, Minn.	Jefferson Lines, Inc.
1498	Joplin, Mo.	" " "
1321	Albany & Troy, N.Y.	United Traction Company
1338	Dallas, Texas	Dallas Public Transit Department
1342	Buffalo, N.Y.	Niagara Frontier Trans. System, Inc.
1345	Reading, Pa.	Reading Bus Company
1358	Atlantic City, N.J.	Atlantic City Transportation Company
1384	Seattle, Wash.	Pacific National Lines, Inc.
1385	Dayton, Ohio	The City Transit Company
1409	Wichita Falls, Texas	Wichita City Lines, Inc.
1437	Raleigh, N.C.	Carolina Coach Co. Bus Terminals and Norfolk Union Bus Terminal
1437	Raleigh, N.C.	Durham Union Bus Co.
1437	Raleigh, N.C.	Wilmington Union Bus Terminal
1456	Hamilton, Ohio	Ohio Bus Line Co.
1456	Hamilton, Ohio	St. John Transportation Company
1464	Tampa, Florida	Tampa Transit Lines, Inc.
1478	Plainfield, N.J.	Somerset Bus Company, Inc.
1522	Lombard & Lyons, Ill.	West Suburban Transit Lines, Inc.

*Publically owned

PARTIAL LIST OF COMPANIES OWNED OR CONTROLLED
BY COMBINES OR HOLDING COMPANIES

Nashville Transit Company, Nashville, Tenn.
 Penn Stages, Inc.
 United Transit Co., Richmond, Va.
 Wilkes-Barre (Pa.) Transit Corp.
 Keystone Charter Service, Inc.
 Cincinnati, Newport & Covington Transportation Co., Newport, Ky.
 Baton Rouge Transit Co., Baton Rouge, La.
 Virginia Transit, Norfolk and Richmond Divisions
 Southern Coach Co., Chattanooga, Tenn.
 Omaha (Nebr.) Transit Co.
 Lehigh Valley Transit Co., Allentown, Pa.
 Lookout Mountain Incline Railway, Chattanooga, Tenn.
 Harrisburg, Pa. Railways Co.
 Asheville City Coach Lines
 Charlotte (N.C.) City Coach Lines, Inc.
 Flint (Mich.) City Coach Lines, Inc.
 Grand Rapids (Mich.) City Coach Lines, Inc.
 Greenville (S. C.) City Coach Lines, Inc.
 Jacksonville (Fla.) Coach Co.
 Winston-Salem (N.C.) City Coach Lines, Inc.
 Beaumont City Lines, Inc. (Texas)
 Canton City Lines, Inc. (Ohio)
 Davenport City Lines, Inc. (Iowa)
 Decatur City Lines, Inc. (Ill.)
 El Paso City Lines, Inc. (Texas)
 Lake Motor Coach Lines, Inc.
 Montgomery City Lines, Inc. (Ala.)
 Rapid Transit Lines, (Texas)
 Wichita City Lines, Inc. (Texas)
 Austin Transit Corp., Austin, Texas
 Beach Transit Inc., Ft. Lauderdale, Fla.
 Birmingham Transit Corp., Birmingham, Ala.
 Cape Transit Corp., Cape Girardeau, Mo.
 Chicago & Calumet District Transit Co., Inc., Hammond, Ind.
 Florida Transportation Co., Miami, Florida
 Gray Line Sightseeing Tours of St. Louis, St. Louis, Mo.
 Gray Line Tours, Inc., Seattle, Wash.
 Great Lakes Transit Corp., Birmingham, Mich.
 Hattiesburg City Lines, Hattiesburg, Miss.
 Kentucky Bus Lines, Inc., Louisville, Ky.
 LaSalle-Peru City Lines, Inc., Pery, Ill.
 Lexington Transit Corp., Lexington, Ky.
 Lubbock Transit Corp., Lubbock, Texas
 Municipal Transit Lines, Inc., Gulfport, Miss.
 Paducah Transit Corp., Paducah, Ky.
 Pensacola Transit, Inc., Pensacola, Fla.
 Pontiac Transit Corp., Pontiac, Mich.
 Port Arthur Transit Corp., Port Arthur, Texas
 Rockford Transit Corp., Rockford, Ill.
 Santa Ana Transit Corp., Santa Ana, Calif.
 Texas Motor Coaches, Inc., Fort Worth, Texas
 Tucson Transit Corp., Tucson, Ariz.
 Twin City Transit Corp., Texarkana, Texas
 Waco Transit Corp., Waco, Texas
 Westside Transit Lines, Inc., Gretna, La.

(NOTE: Less than 5,000 employees involved totally in this group of combines.)

PARTIAL LISTING OF PRIVATELY OWNED TRANSIT SYSTEMS WITH ATU
CONTRACTS WHICH PROVIDE FOR WORK WEEKS IN EXCESS OF 40 HOURS

LOCATION	COMPANY	HOURS
Colorado Springs, Co.	Colorado Springs Coach Company	48
Pottsville, Pa.	East Penn Transportation Co.	48
Wilkes Barre, Pa.	Wilkes Barre Transit Corp.	48
Scranton, Pa.	Scranton Transit Company	48
Dubuque, Iowa	Interstate Power Company	45
Boise, Idaho	Boise Bus Company	48
Ogden, Utah	Ogden Bus Lines	48
Pittsfield, Mass.	Yellow Coach Lines, Inc.	45
Charleston, S.C.	South Carolina Elec. & Gas Co.	48
Columbia, S.C.	" " " " "	48
Lexington, Ky.	Lexington Transit Corp.	43
Wilmington, N.C.	Safeway Transit Company	48
Hamilton, Ohio	Hamilton City Lines	45
Bloomington, Ill.	Bloomington-Normal City Lines	48
Norristown, Pa.	Schuylkill Valley Lines, Inc.	44
Clarksburg, W.Va.	City Lines Of West Virginia, Inc.	45
Paterson, N. J.	Garfield-Passaic Bus Company	44
Grand Rapids, Mich.	Grand Rapids City Coach Lines, Inc.	43
Green Bay, Wisc.	Wisconsin Public Service Corp.	44
Macon, Ga.	Bibb Transit Company	48
Wheeling, W. Va.	Wheeling Rapid Transit	48
Beaumont, Texas	Beaumont City Lines, Inc.	45
Anderson, Ind.	Anderson City Lines, Inc.	45
New Brighton, Pa.	Beaver Valley Motor Coach Company	44
Champaign, Ill.	Champaign-Urbana City Lines, Inc.	48
Austin, Texas	Austin Transit Corp.	43
Providence, R.I.	Rhode Island Bus Corp.	48
Providence, R.I.	Shoreline Bus Company	54
Minneapolis, Minn.	Wisconsin Coach Lines, Inc.	48
Knoxville, Tenn.	Knoxville Transit Corp.	48
Tucson, Arizona	Tucson Rapid Transit Company	48
New Orleans, La.	Lafayette Bus Depot	48
Norfolk, Va.	Virginia Transit Company	44
Richmond, Va.	" " "	
Waterloo, Iowa	Waterloo-Cedar Falls Transit Co.	48
Nashville, Tenn.	Nashville Transit Company	41
Macon, Ga.	C.R. Willingham Bus Terminal	48
Lafayette, Inc.	Greater Lafayette Bus Company	50
El Paso, Texas	El Paso City Lines, Inc.	42
Miami, Florida	Broward Transit Company	48
Los Angeles	Eastern Cities Transit Inc.	48
Detroit, Mich.	Great Lakes Transit Corp.	48
Eau Claire, Wisc.	Eau Claire Transp. Co.	44
Raleigh, N.C.	Raleigh City Coach Lines, Inc.	45
Rockford, Ill.	Rockford Transit Corp.	44
Topeka, Kansas	Topeka Transportation Co. Inc.	48
Phoenix, Arizona	Phoenix Transit Corp.	48
Boston, Mass.	The Gray Line, Inc.	48
Charleston, W. Va.	Charleston Transit Company	48
Muncie, Ind.	Muncie City Lines	45
Huntsville, Ala.	Huntsville Transit Company	48
Boston, Mass.	Brush Hill Transportation Company	48
Hampton, Va.	Citizens Rapid Transit Company	48

PUBLICLY OWNED TRANSIT SYSTEMS WITH ATU CONTRACTS
WHICH PROVIDE FOR WORK WEEKS IN EXCESS OF 40 HOURS

<u>LOCATION</u>	<u>COMPANY</u>	<u>EMP.</u>	<u>HOURS</u>
New Castle, Pa.	New Castle Public Trans. Auth.	23	54
Asheville, N. C.	Asheville City Coach Lines, Inc.	59	9/day
Joliet, Ill.	Joliet City Lines, Inc.	43	48
Steubenville, Ohio	Steubenville Bus Co.	24	46-50
Salt Lake City, Ut.	Salt Lake City Lines	100	8-9/day
Michigan City, Ind.	Municipal Coach Co.	10	40
Utica, N. Y.	Utica Transit Commission	90	8½/day
Cedar Rapids, Iowa	Regional Transit Authority	32	48
Pueblo, Colo.	Pueblo Transit Commission	34	N.A.
Springfield, Mo.	City Utilities of Springfield	75	9/day
San Antonio, Texas	San Antonio Transit System	436	N.A.
Portland, Ma.	Greater Portland Trans. Co.	130	48
Sioux City, Iowa	Sioux City Board of Trans. Trust.	76	8.5/44
Altoona, Pa.	Trans. and Motor Buses for Public Use Auth.	60	42
Everett, Wash.	Everett Bus System, Inc.	18	46
Tulsa, Oklahoma	Metro. Tulsa Transit Corp.	65	48
Amsterdam, N. Y.	Mohawk Valley Transit Inc.	7	48
Alexandria, La.	City of Alexandria Mun. Bus Dept.	14	54
South Bend, Ind.	South Bend Public Trans. Corp.	100	44
Columbus, Ga.	Columbus Transp. Corp.	25	N.A.
Fresno, Calif.	City of Fresno	60	N.A.
Lansing, Mich.	Lansing Metro. Transit Co. Inc.	32	10/50
Jamestown, N. Y.	Jamestown Mgmt. Serv. Corp.	27	8/48
Portland, Ore.	City of Vancouver Transit System	540	48
Terre Haute, Ind.	Terre Haute Transit Utility	52	8½
Kalamazoo, Mich.	City of Kalamazoo, Inc.	45	48
Jackson, Mich.	Jackson Public Trans. Co.	13	51
Binghampton, N. Y.	Broome County Transit System	74	42
Monroe, La.	City of Monroe	44	54-63
Battle Creek, Mich.	Battle Creek Transit Auth.	24	46
Schenectady, N.Y.	County of Schenectady	12	8.5/42.5
Jackson, Tenn.	Jackson Transit Auth.	17	7-6½
Savannah, Ga.	Savannah Transit Auth.	116	48-56
Kingsport, Tenn.	Kingsport Transit Utility	8	51
Muskegon, Mich.	Muskegon Transit Auth.	17	48
Amarillo, Texas	City of Amarillo	35	N.A.
Williamsport, Pa.	Williamsport Transit Auth.	26	N.A.
Lake Charles, La.	City of Lake Charles	14	8-11
TOTAL		2,637	

N.A. = Not Available

AMALGAMATED TRANSIT UNION
ANALYSIS ATU LOCAL TRANSIT MEMBERSHIP
IN RE: 40-HOUR WORK WEEK CONTRACTS

Total Local Transit Membership		(100%)	72,028
Publicly Owned	41,774	58%	
Privately Owned	<u>30,254</u>	42%	
	72,028		
Total Publicly Owned		(100%)	41,774
40-Hour Contracts	39,137	93.7%	
Over 40-Hours	<u>2,637</u>	6.3%	
	41,774		
Total Privately Owned		(100%)	30,254
40-Hour Contracts	23,770	78.6%	
Over 40-Hours	<u>6,484</u>	21.4%	
	30,254		
Total Under 40-Hour Contracts		(100%)	62,907
Publicly Owned	39,137	62.4%	
Privately Owned	<u>23,770</u>	37.6%	
	62,907		
Total Local Transit Members		(100%)	72,028
40-Hour Contracts	62,907	87.3%	
Over 40-Hours	<u>9,121</u>	12.7%	
	72,028		

Revised as of June 1, 1971

ASSOCIATION OF OIL PIPE LINES

SUITE 1208, RCA BUILDING
1725 K STREET, N. W.
WASHINGTON, D. C. 20006

J. DONALD DURAND
GENERAL COUNSEL

September 30, 1971

TELEPHONE 333-2226

The Honorable Harrison A. Williams, Jr.
Chairman
Committee on Labor and Public Welfare
United States Senate
Washington, D. C. 20510

Dear Senator Williams:

The comments of the Association of Oil Pipe Lines, hereinafter referred to as "AOPL," are directed solely toward Section 5(b)(1) of S. 1861, which, if enacted, would repeal Sections 13(b)(2) and (3) of the Fair Labor Standards Act, U.S. Code, Title 29, Section 213(b)(2).

Enactment of S. 1861 containing Section 5(b)(1) would remove from the Fair Labor Standards Act provisions which exempt from the overtime provisions, but not from the minimum wage provisions, of the Act employees of oil pipelines and railroads which are subject to Part I of the Interstate Commerce Act, as well as personnel of certificated carriers by air. These exemptions have been part of the Fair Labor Standards Act since enactment of the original statute in 1938.

The AOPL recommends strongly that Section 5(b)(1) of S. 1861 be amended so that the existing exemption of employees of regulated oil pipelines from the overtime provisions will be retained in the Act.

AOPL is a voluntary, unincorporated association composed of substantially all of the interstate, common carrier oil pipelines in the United States. The eighty members of AOPL transport over 97% of the crude oil and petroleum products moved by pipeline in this country. They do not buy or sell crude oil or petroleum products but merely transport those commodities, as common carriers, for their customers. An oil pipeline system of more than 200,000 miles is required to perform the service. As interstate common carriers, oil pipelines are subject to Part I of the Interstate Commerce Act, and thus to economic regulation by the ICC.

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Likewise, they are subject to safety regulation by the Department of Transportation. Employees of the common carrier oil pipelines have been exempt from the overtime provisions of the Fair Labor Standards Act, under the provisions of Section 13(b)(2) of that Act, throughout the entire period of time during which the Act has been in effect. AOPL believes that this exemption should be continued for the following reasons.

First, for 33 years, Congress has recognized consistently that employees of the regulated oil pipelines and of certain other regulated carriers should be exempt from the overtime provisions of the Act. There is no reason to change this policy and to do away with these exemptions at this time. Sections 13(b)(1), (2) and (3) of the Fair Labor Standards Act, U.S. Code, Title 29, Sections 213(b)(1), (2) and (3), which exempt employees of regulated motor carriers, railroads, oil pipelines and airlines from the overtime provisions, but not from the minimum wage provisions, have been part of the statute since enactment of the original Act in 1938. The Congress has reexamined these exemptions on numerous occasions during the 33-year history of the Fair Labor Standards Act. Each of the carriers covered by the exemptions, including the oil pipelines, has from time to time presented to the appropriate Congressional committees reasons for continuation of the overtime exemption applicable to its employees. Each time the Congress has seen fit to continue the exemption without change. There is no change in conditions which would justify a different conclusion in 1971. This was recognized by the Secretary of Labor in his statement to this Committee on May 26 of this year.

Upon each reexamination of the statute, Congress has concluded that the very nature of the transportation business, with its requirements for the continuous movement of goods 24 hours a day, makes it necessary that some, though not all, employees of transportation companies work at intervals which cannot be scheduled on a regular daily or weekly basis. Working hours of these employees cannot be scheduled for a fixed number of hours per day, or a fixed number of hours per week, because their services are needed at varying times in order to keep the traffic moving. This practical consideration undoubtedly has been a major factor in the decision of Congress to continue the exemption through the years down to the present time.

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S. 1861, in its present form, recognizes the need to continue the transportation employee exemption of the past 33 years to the extent that it applies to employees of regulated motor carriers, for the bill contains no provision for the repeal of the existing Section 13(b)(1), which applies to such employees. It is submitted that the same considerations which warrant continuation of the overtime exemption for employees of motor carriers are equally applicable to the employees of the regulated oil pipeline companies, which, in some situations, are in competition with motor carriers.

Second, the concern of the oil pipelines with the proposal to repeal the overtime exemption arises from the desire to avoid needless disruption in the pipeline business, which would produce no benefit to employees or to society.

It should be noted that very few employees would be affected by repeal of the oil pipeline overtime exemption.

Total employment in the oil pipeline business is considerably less than 20,000 persons. The ICC's Bureau of Economics estimates the total in 1970 at 17,600. This figure includes a substantial percentage of executive, administrative, and professional employees who are exempt from both the minimum wage and the overtime provisions of the Act. The status of these employees would not be affected in any way by enactment of S. 1861.

The remaining employees, usually hourly-paid, are subject to the minimum wage, but not to the overtime provisions, of the Act. Many of these employees work in offices or at other locations where it is practicable to schedule their hours on a regular basis. As to those employees, it is the general practice in the oil pipeline industry to voluntarily pay overtime for hours worked in excess of 40 in one week. Enactment of S. 1861 would have no practical effect as to those employees.

The overtime exemption is of practical significance in the oil pipeline industry only with respect to a limited number of employees, which we estimate at about 1,000 throughout the entire industry, who work in a limited number of job classifications. While the job titles vary, the pipeline companies, who must receive, dispatch, control, and deliver streams of liquids moving constantly, 24 hours a day, 365 days a year, through their systems,

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require the services of several types of employees, who must work irregular numbers of hours at irregular intervals, to keep the oil moving continuously. Typical job titles are those of gaugers, deliverymen, station attendants, repairmen, and mechanics, all of whom must be available when needed, but only when a need arises. The industry pays these men fairly, although not necessarily under a formula which complies literally with the overtime provisions of the Fair Labor Standards Act. Some examples of employees within these categories are as follows:

1. Deliverymen

Typically, employees in this category work at terminals from which products are delivered out of pipeline systems, and perform duties which have been described as follows:

Works without supervision and is responsible accurately to deliver into shipper's tank lines refined products owned by the shipper; exercising due regard to the specifications of the product as to color and gravity; furnishes to shipper a receipt for the product so delivered and to all intents and purposes, for the period of responsibility, is the agent for the pipeline. Hours of work are controlled by dispatching cycle, frequency and quantity of delivery to a specific point.

Deliverymen must be available for work at times when a batch of product is to be delivered out of the pipeline at a destination for which the particular employee is responsible. At other times there are no duties for the deliveryman to perform. During some weeks a specific employee might work for less than 40 hours. In other weeks he might work more than 40 hours. One large company follows the practice of paying its employees in this category time and one-half for each hour worked in excess of 173 hours per month, with a guaranteed payment of 173 1/3 hours in those cases where the actual monthly work hours might be less than 173.

2. Gaugers

Among the pipeline companies which receive crude oil in the oil fields for transportation, one category of employee performs duties which have been described as follows:

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Has responsibility and authority to hire and supervise contract services. Receives oil from producers. Assures that crude oil meets certain minimum specifications. Gauges crude tanks.

Normally, it is impossible to schedule such employees to work a specific number of hours per day or per week. Receipts and deliveries cannot be scheduled strictly within an 8-hour day, nor can the time of mechanical failures be forecast. When a failure occurs, remedial action is usually necessary immediately. Because of various production rates, gaugers cannot always schedule their working hours within a precise 8-hour period. It is essential that these employees have a flexible schedule.

3. Technicians

Pipeline companies require the services of mechanical, electrical and other technicians to keep the pipelines in condition so that they can operate continuously. The duties of mechanical technicians have been described as follows:

Applies expert knowledge and skills to the repair, maintenance, installation, and fabrication of pipeline operating equipment, components, and facilities.

It will be noted that, due to the fact that it is impossible to predict the time of occurrence of failures requiring maintenance or repairs and length of time to make necessary corrections, it is impracticable to schedule a specific number of hours per day or week for these skilled employees. In general, these employees are paid a salary such that it would equate to standard pay plus overtime if the employee had been paid on the overtime formula set forth in the Fair Labor Standards Act.

Third, wages within the oil pipeline industry are not substandard.

The overtime exemption has not produced substandard pay conditions in the oil pipeline industry. According to statistics compiled by the Transportation Association of America, average total annual compensation, including the value of supplemental benefits, for oil pipeline companies during the year 1969 was \$10,611. The corresponding figure for the manufacturing industry was \$8,872.

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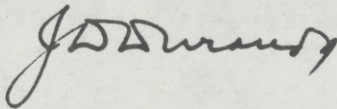
It has not been contended that pipeline wages are substandard, and such a contention, if made, could not be supported.

Fourth, repeal of the overtime exemption would not result in any material increase in employment.

As previously noted, certain categories of employees work irregular hours because the nature of their jobs requires their duties to be performed at times which cannot be scheduled in advance. Elimination of the overtime exemption would not create a need for more employees. It would merely create a need to reexamine and to renegotiate the terms of employment of the employees who are needed and who are already on the payroll, to comply with the mechanical overtime calculation formula of the Fair Labor Standards Act. Whether such renegotiation resulted generally in a windfall to a few employees who already are well paid, or whether it resulted in the adoption of new formulae for calculating pay, is of far less importance than the unrest, the potential for controversy where none now exists, and the disruption within the industry which would result from repeal of the exemption. This disruption would not benefit our economy or our society, and should be avoided.

Summary. In view of the foregoing, it is submitted that the decision of Congress to exempt regulated oil pipeline company employees from the overtime provisions of the Fair Labor Standards Act, a decision which has been reexamined and reaffirmed by Congress on numerous occasions during the 33-year history of the Act, is sound, that nothing has transpired to justify changing that decision, and that, consequently, the exemption should be continued in its present form.

Very truly yours,



The CHAIRMAN. The committee stands adjourned.
(Whereupon, the committee was adjourned at 3:30 p.m.)

FAIR LABOR STANDARDS AMENDMENTS OF 1971

MONDAY, SEPTEMBER 27, 1971

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

The subcommittee met, pursuant to notice, at 10 a.m. in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senator Williams.

Committee staff members present: Gerald M. Feder, counsel; Laurence D. Beck, professional staff member; and Eugene Mittelman, minority staff counsel.

The CHAIRMAN. We will convene the Senate Labor Subcommittee in consideration of the Minimum Wage bills, S. 1861 and S. 2259.

Mr. Alan Wurtzel, representing the National Appliance and Radio-TV Dealers Association.

STATEMENT OF ALAN WURTZEL, REPRESENTING THE NATIONAL APPLIANCE AND RADIO-TV DEALERS ASSOCIATION

Mr. WURTZEL. Thank you, Senator. Knowing that your time is brief, I will summarize my statement rather than read it in full.

The National Radio-TV Dealers Association represents 5,000 members, most of them small to medium-size independent TV and appliance dealers. I personally am president of a company known as Wards of Richmond, Va. We are a multiunit retailer operating TV and appliance stores in 17 States including New Jersey. Our members are concerned about a number of the provisions of the act and I will review our concerns briefly.

The first, of course, relates to the proposed increase in minimum wage. Retailing is a service industry. More than 50 percent of a retailer's costs, other than the cost of merchandise which he resells, goes to salaries and wages. So that any change in the minimum wage laws, and therefore in the structure of wages generally, has a very great impact on retailers.

Retailers generally do not operate at a margin of profit that would enable them to pass on substantial increases in the costs of labor—and therefore would have to pass minimum wage increases on to the consumer in the form of higher prices. Labor is particularly important as a factor in the TV and appliance industry where articles are sold by a one-to-one contact between a salesman and customer, and not picked up off the shelf as in a discount or department store.

(1655)

So we are concerned about increases in the minimum wage from the standpoint of how it will affect our cost of doing business.

The second point that causes us concern is the proposed reduction of exemptions for the small stores with annual volume of less than \$250,000, and that for a small dealer creates a severe recordkeeping and administrative burden.

The CHAIRMAN. \$250,000.

Mr. WURTZEL. Yes; if I said otherwise, that is what I meant to say, \$250,000.

Small dealers have to be competitive in attracting employees and we think for the most part they pay at least the minimum wage law, but the recordkeeping burden applied to a small entrepreneur, maybe his wife and himself and one or two others, can be a problem for them.

The third area that I would like to comment on, Senator, relates to the white-collar work test. One of the provisions of S. 1861 that causes us concern is the amendment that would prohibit employees from qualifying for exemption from overtime penalty pay as bona fide executive or administrative employees. S. 1861 would in effect reduce that test from 40 percent to 20 percent. That is, reduce the amount of time that a management-type employee may spend doing nonexempt work such as selling. I understand your counsel had some questions as to how this reduction came about.

The regulations provide a 20-percent test and 40-percent in the case of retailing. If the 40-percent exemption is removed from the law in the case of retailing, then presumably retailers will be covered by the regulations on the same basis as all other industries, and the 20-percent rule would apply. Ever since the retailing industry has been covered by the law, Congress has recognized the need for management employees in retailing to be permitted to work alongside the employees they supervise.

In recognition of this need the wage-and-hour law specifically allows bona fide and retail employees to devote as much as 40 percent of their time to nonexempt work of the type customarily performed by the employees they supervise. By reducing this from 40 percent to 20 percent, the bill would add a substantial burden to the TV and appliance retailers.

The next point that concerns us, and this may be the most difficult point of all in the proposed changes in the law, is the 8-hour day, the rule requiring that overtime be paid after 8 hours of work in any given day, rather than 40 hours in any week. The trend in this country is certainly toward longer shopping hours. The stores are open later into the evenings than they were 5 and 10 years ago. Many stores are open on Sunday.

The American consumer seems to want to be able to shop every day of the week and in some cases, almost around the clock. This creates serious scheduling problems for retailers, and this bill, if it is enacted, would greatly magnify the difficulty of scheduling personnel to cover retail establishments during the hours which the American public demands that they be open.

A typical store, say a department store opens two or three evenings a week, a discount store is generally open 12 hours, 6 days a week, some-

times on Sunday. The scheduling problems become enormous if an employee is limited to 8 hours in any given day.

As I am sure you have been notified, this would work against the tendency of the 4-day week.

The CHAIRMAN. Let me ask you now at that point, what are your heaviest selling days?

Mr. WURTZEL. They are generally around the weekend, Friday, Saturday, and in those communities where those stores are open on Sunday, it would be Sunday.

The CHAIRMAN. What is your experience?

Mr. WURTZEL. In our business it would be the weekend and Mondays.

The CHAIRMAN. What are the hours that your people work on those busy days?

Mr. WURTZEL. Frequently they work 10 hours on those days.

The CHAIRMAN. What time do they come in?

Mr. WURTZEL. Well, many of the stores would be open from 10 to 10; that is 12 hours, so a limited number would come in from 10 to 12 and work through until 8 o'clock at night; others would come in at 12 and work to the end of the day.

Any restrictions of this kind just severely complicate the scheduling problem that a retailer faces.

The CHAIRMAN. What are your average hours a week now?

Mr. WURTZEL. In most of the outlets that we operate we would be open an average of 72 hours a week.

The CHAIRMAN. Your workers, how long do they work?

Mr. WURTZEL. It varies. I would say on an average, 48 hours. We pay time and a half for 8 hours a week. We also think that this interferes with the employee's freedom of contract, if you like. The employee's ability to negotiate with his employer and get a workweek which is acceptable to him—or to her.

Women who have children in school want to schedule around their commitments at home. Maybe they will be able to work 10 hours one day but not to work at all the following day, or if an employee wants a long weekend, or 2 days in a row time off, he might prefer to work 10 or 11 hours in a day in order to get for himself 2 free days.

This would be a limit, I think, on the employee's ability to negotiate a mutually satisfactory workweek with his employer.

The next point, Senator, that I want to spend a few minutes on, is the problem that our industry uniquely faces with respect to high earning commission sales people. I regret that the discussion here may get a little technical, but it's a technical point that causes us some concern.

Under section 7(i) of the law, there is now an exemption from the overtime provisions of the wage and hour law for commission sales people providing that they earn one and a half times the minimum wage for each and every hour that we work. The necessity for this is obvious; if in a given workweek a commission salesman, say, worked 50 hours, and had \$500 of earnings because he sold a large volume of merchandise, maybe an extraordinary week, if we didn't have section 7(i), the wage and hour administrator would have to say you would have to divide the \$500 by 50 hours to come up with an average of \$10. So with the average overtime he would get one and a half times the 8-hour average or \$15 for 1 hour of overtime.

That becomes astronomical where you have employees whose earnings vary from week to week. So, to meet this problem, 7(i) provides that if an employee who is a commission salesman earns one and a half times the minimum wage, it's not necessary to compute his overtime hours in the way I have just described to in effect average the total and double it or add 50 percent for the overtime hours.

The CHAIRMAN. How do you compute it?

Mr. WURTZEL. We do compute it—what most retailers who have commissioned sales people do is to guarantee \$2.41 an hour. That is one and a half times the current minimum wage. So long as they make \$2.41 every hour of every workweek as a guaranty, then you are not concerned with how many dollars an hour they made.

The CHAIRMAN. So for the time and a half you use the \$2.41?

Mr. WURTZEL. No, for every hour. The law says for every hour. So if they work 50 hours they must make 50 times \$2.41 or roughly \$120.

Now the problem that this presents, Senator, is that in high ticket retailing, particularly TV and appliances, there being often substantial fluctuations, even from week to week, it would not be atypical for a salesman on an appliance and TV floor to earn let's say, \$480 the week preceding Christmas. That would be an average of \$10 an hour, and because it's well over the \$2.41 required by section 7(i), no overtime would be paid. But the week after Christmas or early in January, it would not be unlikely that the business would have fallen off to the point where this same man would earn, say \$96 for 48 hours or an average of \$2 an hour. The law now provides no mechanism for averaging a workweek in which a man makes \$10 an hour with the following workweek where he may make \$2 an hour.

Salesmen are by and large well-paid people, making \$8,000, \$10,000, \$12,000, and in some cases, \$15,000 and \$20,000 a year. The law is not designated, as I understand it, to increase these people's earnings. The basic philosophy is to provide a floor under which the lowest paid will be assured of a fair wage. But the effect of this law is that in the case of that \$10,000 or \$15,000 commissioned salesman, he may make \$10 in one week and you end up paying him the following week overtime pay because he didn't make one and a half times the minimum wage, although on an annual or semiannual basis he may well average out to be a well-paid employee far above the minimum wage.

The testimony that I have presented suggests a technical change in the law that is designed to overcome this problem with specific language that I am sure your counsel will consider.

The only other point I wish to make, Senator, at this time is that our members would support the concept of a reduced minimum wage for teenaged employment or employees. We think the overall concept makes some sense.

That concludes it.

The CHAIRMAN. Would you repeat that?

Mr. WURTZEL. NARDA members would be able to employ teenagers for positions in which they are equipped to fill; therefore we support special minimum wage rates for teenagers and urge the committee to give consideration to the presentation of Secretary Hodgson to employ teenaged youth.

The CHAIRMAN. That is rather cryptic, but you have a very short paragraph here.

Mr. WURTZEL. Yes, sir.

The CHAIRMAN. "Willing to help reduce teenage unemployment by employing teenagers for positions they are equipped to fill." And "special rates for teenagers"—is there anything different about this employment of teenagers other than their age? Is there any seasonal rationalization for your position or any apprenticeship training or any part time, working your way through college, or what is this?

A teenager you know is just as qualified as any of us in every capacity, a little more qualified because he is subject to the draft, but—I just don't see what you are urging here. A fellow selling a radio is a fellow selling a radio unless he doesn't know anything about selling a radio, and then there is a 2-week training period.

Maybe there is a special reason there, but what is there special about a teenager in selling a radio?

Mr. WURTZEL. I think the point is, Senator, that a retail manager, a man who runs a store on a day-to-day basis if he has a choice between hiring a teenager and hiring an experienced adult who has to support a family and is likely to be there for a regular period of time, you know—

The CHAIRMAN. I hope you are going in a certain direction, now, tell me—

Mr. WURTZEL. I think the average store manager I know, given the choice would prefer to have the choice.

The CHAIRMAN. Thank you.

Mr. WURTZEL. If there were a wage differentiation, this, together with the fact that you could schedule teenagers around their school hours, use them for seasonal employment, with the air conditioning season and so on when the business generally picks up in our industry, would give the man on the hiring line, who makes the decisions, incentive to hire teenagers as opposed to a qualified adult, where he has that choice.

That is the only point I am making. This would encourage teenage employment if there were a differentiation.

The CHAIRMAN. The way you just said that, I don't think you meant it; you're discouraging older adults. We're dealing with adults, younger and older, and the way you described it, encouraging younger adult employment, you're discouraging older adult employment, and that doesn't rest well right here.

Mr. WURTZEL. I have no further comments on it.

The CHAIRMAN. There are industries, you know, that come in here and tell us that but for the opportunity to employ teenagers at a reduced rate, they wouldn't be in business. Now amusement park people said that.

Mr. WURTZEL. We are not saying that.

The CHAIRMAN. If they are accurate in their estimate, that is a rather compelling thing; it comes through with some force and persuasive effect—but this one doesn't.

Mr. WURTZEL. Senator, this is not the most important point—

The CHAIRMAN. I see, and you have given it only seven lines. I make more of it than you did.

Mr. WURTZEL. That's right. We think it makes sense, but it's not the most important thing in our industry.

The CHAIRMAN. I will say you are right in your description of going into the complexity of overtime in your industry; it's highly technical and——

Mr. WURTZEL. Yes, it is.

The CHAIRMAN. I didn't follow all the complexities all the way through but I have a feeling that after I study it more with a lot of help, you may have something there, something persuasive there.

Mr. WURTZEL. We would be happy to have our counsel meet with you or your staff at any time.

The CHAIRMAN. That might be a good idea later on.

Thank you.

Mr. WURTZEL. Thank you very much.

(The prepared statement of Mr. Wurtzel follows:)

Testimony of the
NATIONAL APPLIANCE & RADIO-TV DEALERS ASSOCIATION
on
Minimum Wage Bill, S. 1861
Presented to the
Subcommittee on Labor
United State Senate
September 27, 1971

Mr. Chairman, my name is Alan L. Wurtzel. I represent the National Appliance & Radio-TV Dealers Association, a national trade association of retailers of appliances, radios, TV, stereo, and other electrical and electronic equipment used in the home. I am President of Wards Company, Inc. of Richmond, Virginia, a multi-unit retailer operating TV and appliance stores in 17 states. I am appearing here today as Chairman of the Legislative Committee of NARDA. The 5,000 members of the National Appliance & Radio-TV Dealers Association would be directly and significantly affected by the changes in the Fair Labor Standards Act that are proposed in S. 1861.

Our members are concerned about provisions of S. 1861 that:

--would increase the hourly minimum wage rate from \$1.60 to \$2.25,

--would extend the Wage-Hour law to cover the small store with sales of less than \$250,000 a year,

--would reduce the amount on non-exempt work, such as selling, that a white collar employee can do and still qualify for exemption from overtime penalty pay as an Executive or Administrative employee,

--would dictate an 8 hour day for employees by requiring overtime penalty pay after 8 hours a day as well as after 40 hours a week,

--would not permit averaging of commission income for high earning commission salesmen,

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--would not permit high salaried salesmen to be exempt from the overtime penalty pay provisions of the law,

--would not permit teen-agers to work at rates less than \$2.25 per hour.

\$2.25 Hourly Minimum -- S. 1861 would increase the minimum wage rate from the current \$1.60 per hour to \$2.25 per hour in a period of 14 months. For larger stores the minimum would be increased in 60 days to \$2 per hour, and a year later to \$2.25. Smaller stores with sales of \$250,000 to \$1,000,000 would be required to increase their minimum rates from \$1.60 to \$1.70 in 60 days, from \$1.70 to \$2 at the end of one year, and from \$2 to \$2.25 at the end of the second year. These are huge increases amounting to more than 40% over a brief span of 14 to 26 months. The increases would bear heavily on the smaller retailer who was "newly-covered" by the 1966 amendments to the Wage-Hour law. For these smaller stores, minimum rates have been increased at accelerating rates, as illustrated by the following chart.

<u>Year</u>	<u>Minimum</u>	<u>% Increase</u>
1967	\$1.00	--
1968	\$1.15	15%
1969	\$1.30	13%
1970	\$1.45	12%
1971	\$1.60 & \$1.70	17%
1972	\$2.00	18%
1973	\$2.25	13%

The cumulative effect of these minimum wage increases would amount to 125% over a period of about 6 years. This is an average increase of more than 20% per year, an amount far in excess of the increase in the cost of living which has been reported as 23%, or an average of 4.6%, over the past 5 years.

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In addition, these increases would work against the Wage-Price Freeze which has been so widely accepted by employers and employees throughout the nation.

Government imposed wage increases not only boost wage costs for the lowest paid employees, but ripple through the store's entire wage structure as higher paid employees also demand pay increases to keep their wages in step with less skilled employees. The effect of S. 1861 would be to increase the annual pay of each employee no less than \$1350 per year. These increases imposed by government edict would be entirely unrelated to increases in employee productivity, and thus would be passed along to our customers in higher prices for the products sold in the stores of our members. The net effect, therefore, of forced increases in minimum wage rates would be more rapid inflation of our economy which would decrease the purchasing power of the dollar and wipe out potential economic gains to employees resulting from higher minimum wage rates.

As a result, NARDA supports the continuation of the existing minimum wage rate of \$1.60 per hour and opposes the provisions of S. 1861 that would increase the minimum to \$2.25 per hour.

Small Store \$250,000 Exemption -- Many appliance retailers operate small stores with annual sales of less than \$250,000. Typically, these are family owned and operated businesses.

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They do, however, employ a limited number of employees who are not family members. To secure and retain employees who are adept at meeting the needs of the small store's customers, the employer must pay no less than the statutory minimum wage paid by other employers in the community. The competitive pressures of the labor market, therefore, force the smaller store to substantially meet the basic minimum pay objectives of the minimum wage law.

Because the basic objectives of the minimum wage law are being met by most smaller store owners, there is no need to subject them to the heavy recordkeeping and administrative requirements of the law. Understanding the complexities of the law requires more time than the small businessman can devote to keeping up with government regulations -- and still operate his business so that it produces an acceptable income for himself and his family. Even larger stores that employ the services of skilled accountants or experienced lawyers are often tripped up by technical violations of some of the complex provisions of the law. Imposing these complicated requirements on the small businessman would serve little useful purpose and would tend to drive more small businessmen to a decision to close up or to sell out to one of the large national chains or conglomerates that have been moving in to take over what traditionally have been family businesses.

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Therefore, NARDA supports the continuation of the \$250,000 exemption that exempts small stores from the recordkeeping and administrative burdens of the Wage-Hour law.

White Collar Work Test -- Another provision of S. 1861 that causes considerable concern among appliance, radio and TV retailers is the amendment that would prohibit certain employees from qualifying for exemption from overtime penalty pay as bona fide Executive or Administrative employees. S. 1861 would reduce from 40% to 20% the amount of time a management-type employee may spend in doing non-exempt work, such as selling. We recognize the need for reasonable protections to assure that only persons who truly serve a management function are eligible to qualify for the "white collar" exemptions. We accept the need for realistic work and duty tests, such as those established in the Regulations issued by the Wage-Hour Administrator.

Ever^{*} since the retail industry has been covered by the Wage-Hour law, Congress has recognized the need for management employees in retailing to be permitted at times to work alongside the employees they supervise. In recognition of this need, the Wage-Hour law specifically allows bona fide Executive and Administrative employees in retail and service industries to devote as much as 40% of their time to "non-exempt" work of the type customarily performed by the employees

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they supervise. S. 1861 would reduce from 40% to 20% the amount of time that these white collar employees could spend doing non-exempt work.

In addition to reducing the flexibility of store management to assign employees to get the work done most efficiently, the change would create inequalities in the treatment of white collar employees. Although bona fide white collar employees earning between \$125 and \$200 per week would have to comply with the lower 20% non-exempt work test, white collar employees earning \$200 or more do not have to meet the non-exempt work test at all because the short form (or upset) test for determining an employees' eligibility for exemption does not apply to the higher paid white collar employees.

For these reasons, therefore, NARDA supports the continuation of the 40% test for retail and service employees and opposes the provisions of S. 1861 that would reduce the non-exempt work test to only 20%.

The 8 Hour Work Day -- Daily overtime pay would be required after 8 hours of work as well as weekly overtime pay after 40 hours of work under provisions S. 1861. This would result in nothing more than mandatory overtime pay by federal fiat. By the characteristic service nature of the retail appliance, radio-TV business, our member's stores must be

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open more than 8 hours a day. Our members must plan the working time of their employees within the limits of a 40 hour week to assure that employees are available to serve customers when they are most likely to visit their stores. Many employees work more than 8 hours a day on a regularly scheduled basis, while retaining a work week of no more than 40 hours. Forcing employers to give up additional flexibility in scheduling employees work times would not only create government-spawned inefficiencies, but would go counter to the employee supported trend to the often sought leisure of long weekends made possible by a 4 day, 40 hour week.

Because current restrictions of the 40 hour week are effective in "dividing up the work", NARDA opposes the provisions of S. 1861 that would set an 8 hour ceiling on the work day and force the payment of additional overtime pay to some employees who work 40 hours while denying it to other employees who also work 40 hours a week but on a different time schedule.

High earning Commission Salesman -- The majority of merchandise sold by our member stores is "big ticket" merchandise sold by salesmen who are compensated on a commission basis. These commissioned salesmen earn substantial incomes, ranging from \$8,000 to \$15,000 or more per year.

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The special problems concerning the compensation of commission salesmen were recognized by Congress when it enacted the provisions of the Fair Labor Standards Act (Section 7 (i)) that permits certain high earning commission salesmen to be exempt from the overtime pay provisions of the law. The terms of the exemption are:

(1) that the "regular rate" of pay of the employee is in excess of one and one-half times the minimum hourly rate applicable to him, and

(2) that more than half his compensation for a representative period (not less than one month) represents commissions on goods or services.

Thus, if a salesman's commission earnings during a slow week average as little as \$1.60 per hour, his "regular rate" of pay is \$1.60 and the employer must pay him \$2.40 ($1\frac{1}{2}$ times \$1.60) for every hour over 40. This penalty must be paid, notwithstanding the fact that in the preceding and subsequent weeks the salesman's commissions may have averaged as much as \$3.00, or even more, per hour. In those weeks, of course, the employer need not pay overtime, since the salesman earned more than \$2.40 ($1\frac{1}{2}$ times the present minimum wage) for each hour worked.

In a seasonal business, such as retail sales of air conditioners and refrigerators, in summer, and a high proportion of television and other electronics, in winter, this interpretation of the law can mean high overtime penalties during slow periods,

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notwithstanding the fact that on an annual basis the salesman's hourly earnings far exceed one and one-half times the minimum wage.

This problem has been a difficult one ever since retail stores came under the coverage of the Wage-Hour law, but it has become more serious each year as the minimum wage for our industry has increased from \$1.00 to \$1.60 per hour, and now potentially to \$2.25.

We believe the actual effect of Section 7(i) is not in accord with the basic Congressional intent to exempt high paid, big-ticket salesmen from the overtime provisions of the Act.

The solution we propose is a simple one:

In Section 7(i) (1), following the words, "the regular rate of pay of such employee," add a comma and insert "as determined over a representative period (not less than one month)."

This amendment would require the Administrator to allow employers in a seasonal industry, such as NARDA's, to average the salesman's weekly commissions over a period of several weeks.

The amendment we propose would not weaken the basic protection of the law. In order to qualify for the exemption, commission salesmen would still have to be paid no less than one and one-half times the minimum wage for each and every hour worked.

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The language proposed would also bring Section 7(i) (1) into harmony with Section 7(i) (2) which already requires the Administrator to average commissions "over a representative period (not less than one month)" to determine whether the salesman's earnings are more than half from commissions.

Therefore, NARDA supports amendment of Section 7(i) to remove the overtime penalty pay which the Wage-Hour law forces employers to pay to high earning commission salesmen who are paid \$8,000, \$10,000, \$12,000, \$15,000 or more annually.

High Salaried Salesmen -- Closely related to the matter of income averaging for high earning commission salesmen is the inavailability to our industry of the relief from overtime penalty pay granted in Section 13(b) (10) of the Wage-Hour law for high salaried automobile salesmen. Under Section 13(b) (10), automobile salesmen are exempted from penalty overtime pay when they work more than 40 hours per week. We see little difference in the selling requirements for automobiles, trucks, trailers and farm equipment than in the selling requirements for appliances, television, stereos, and similar big ticket merchandise.

Therefore, rather than eliminate Section 13(b) (10), as S. 1861 would do, NARDA proposed that the Committee eliminate the inequities of 13(b) (10) by permitting all retail salesmen

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primarily engaged in selling big-ticket merchandise to be exempt from the overtime penalty pay provisions of the Wage-Hour law.

Teen Age Employment -- NARDA members would be willing to help reduce teen age unemployment by employing teen-agers for positions they are equipped to fill. Therefore, NARDA supports special minimum wage rates for teen-agers and urges the Committee to give careful consideration to the recommendation of Secretary of Labor Hodgson designed to increase employment opportunities for teen age youths.

NARDA's Recommendations -- The National Appliance & Radio-TV Dealers Association:

- supports the continuation of the existing minimum wage rate of \$1.60 per hour and opposes the provisions of S. 1861 that would increase the minimum to \$2.25 per hour,

- supports the continuation of the exemption from minimum wage coverage for small stores with annual sales less than \$250,000,

- supports the retention of the 40% non-exempt work test and opposes the reduction of the test to 20%,

- opposes an 8 hour ceiling on the work day,

- requests amendment of Section 7(i) to eliminate overtime penalty pay for high earning commission salesmen,

- proposes broadening Section 13(b) (10) to permit all high salaried retail salesmen to be exempt from overtime penalty pay -- not just automobile salesmen, and

- supports special minimum wage rates that will help increase employment opportunities for teen age youths.

The CHAIRMAN. Howard Raether representing the National Funeral Directors Association, Milwaukee, with attorneys David Murchison and Richard Gimer.

STATEMENT OF HOWARD RAETHER, REPRESENTING THE NATIONAL FUNERAL DIRECTORS ASSOCIATION, MILWAUKEE, WIS., ACCOMPANIED BY DAVID C. MURCHISON, RICHARD H. GIMER, THOMAS H. CLARK, AND W. BEVERLY MOUNTCASTLE, MEMBER OF THE BOARD OF DIRECTORS, NFDA, OF ALEXANDRIA, VA.

Mr. RAETHER. Senator, I am Howard C. Raether. I have been representing funeral director associations for over 30 years.

Since 1948 I have been the executive secretary of the National Funeral Directors Association. I appear with W. Beverly Mountcastle, an Alexandria funeral director and a member of the NFDA board of governors, and with our general counsel, Thomas H. Clark of Cincinnati. I am also pleased to have with me today, David Murchison and Richard Gimer, of the law firm of Howry, Simon, Baker & Burchison, representing National Selected Morticians.

The membership of our association for the present year is 14,061. All but a very few of these members belong to associations in one of the 50 States and in the District of Columbia. The organization has a few members in Puerto Rico and in some foreign countries. It is estimated that the funeral homes or mortuaries of members of NFDA conduct about 75 percent of the funerals in our country each year.

FUNCTIONS OF FUNERAL DIRECTOR MAKES HIS POSITION UNIQUE

The functions of the funeral director or mortician or undertaker—depending on what you want to call him—are many and varied. They run the gamut from calling for the dead body to post-funeral counseling with the survivors. Many of the facets of a funeral service practice are for the living. But all of them involve or are related to death.

Death takes place at all times, under many different circumstances, and wherever people are. When death occurs, the body may be wasted away by a devastating illness or affected by medication. It may be one mutilated by an act or accident of violence. It may involve one person or many who die during or as the result of a disaster. Or, it might have nothing unusual about it.

Regardless, when someone dies—whether it be at home, on a highway or in a medical institution—the body must be moved quickly from the place of the death. And, in most times this becomes the responsibility of the funeral director who then must give the body immediate and proper care. Additionally, he and his staff must meet the needs of those who survive.

There are just so many deaths in the United States, in each State, and in each community. The total number of funerals cannot be increased or decreased. Consequently, death and that which must be done following it cannot be scheduled. There will be so-called long days with much to do and short days with little or nothing to do. In the language of the economist, a new market to increase the number of funerals cannot be created nor can the number of the existing markets be

expanded. The market may be shifted where there are two or more funeral homes serving a community. But even meeting the immediate needs created by death cannot be shifted in many communities because they are served by only one funeral home.

To the best of our knowledge up to this point in time, no representative of a funeral director's organization has asked for consideration regarding an amendment to the Fair Labor Standards Act. The retail establishment exemption for those whose gross annual volume is less than \$250,000 includes many funeral homes. And, for those in covered employment, work schedules can be arranged, although sometimes with difficulty, within the 40-hour week concept.

However, under the language of S. 1861 there is no retail exemption. Taking into consideration the increase proposed in the hourly rate, we respectfully suggest consideration be given to continuing the retail exemption specifically as it applies to funeral homes by using an annual gross volume of \$200,000 a year.

As we make this request, it is important to point out that determining the annual gross volume of a funeral home is unique to funeral service.

The Labor Department has held that moneys paid to funeral homes as repayment for cash advanced by the funeral home for the convenience of the family must be included in gross annual volume to determine exemption under the present law.

These cash advances are for many items. They involve the practices of the community and the persons being served. They also depend on the circumstances of death and the wishes of the family. However, most times, while serving a family, a funeral director advances money for one or more of the following items of expenses: Transportation of the body when death occurs other than where the funeral and/or burial will be held, cemetery expenses, newspaper notices, services for the clergy, organist, singer, flowers, and other miscellaneous items.

The moneys constituting advances average out to somewhat less than 10 percent of total annual gross volume of funeral homes. But in some operations it is considerably more. In fact, there are times when the amount of cash advanced by the funeral director for the family equals his charges.

We feel that our request as to an exemption is a valid one. It would include primarily funeral practices in smaller communities where the number of deaths is less, as well as those in metropolitan centers which involve a minority or ethnic group or a particular religious denomination.

Funeral homes with small volume covered by the minimum wage law would have difficulty serving most people the way they want to be after a death takes a member of their family. Using the 40-hour week alone as a basis for considering overtime would bring about employee confinement, increased recordkeeping, create serious management problems and restrict service to the public. Of course, extending overtime pay to the 8-hour day would multiply these problems.

Prior to the 1966 amendments to the Federal minimum wage law many funeral service operations used staggered schedules, created or requested by their employees, in order to consolidate time-off periods to make them long enough to be meaningful. Such arrangements were

a welcomed compensating factor for the necessary periods of confinement.

For example, many firms used a schedule of 4 days on, 3 days off, followed by a 6-day week. This gave employees 3 consecutive days off which they preferred. Some also found it possible to schedule these 3 days combined with the single day off of the following week which, when workable, was even more appreciated by the staff. It was also possible for employees, by mutual agreement, to exchange work periods thus further extending their periods of free time. This, too, was generally appreciated by the employees.

In 1967, scheduling of time and the payment for overtime had to be worked out for those who then were or subsequently became covered by the law. As pointed out previously, often this was done with difficulty within the 7-day week requirements.

Now the S. 1861 proposal limits the scheduling period to an 8-hour day with overtime payments beyond that time. This would not only present extremely severe problems to covered funeral service operations regarding both employers and employees, it would necessarily involve the public.

The largest expense category in providing a funeral is salaries. It is nearly half of the total operational expense of a funeral home or mortuary. And it amounts to about 30 percent of the total cost of the services and merchandise provided by the funeral director. With the funeral homes' net returns less than 10 percent, additional overtime costs could not be absorbed. If the period of the funeral is to be sometime within 3 days after death for the convenience of the family, there will have to be some overtime for more than an 8-hour day. The cost of funerals will be increased thereby.

In conclusion, then, Senator, we respectfully suggest:

1. A retail exemption specifically as it applies to funeral homes by using an annual gross volume figure of \$200,000 per year. This would merely be a continuation of the retail exemption with a lowering of the limits to \$200,000.
2. The elimination of the 8-hour day as a basis for overtime payments for those practicing funeral service.

With me today also is a representative of National Selected Morticians which is a well-known organization of funeral directors. This group concurs in our statement and requests.

Thank you for the privilege of appearing before you.

The CHAIRMAN. There are two organizations, is that right?

Mr. RAETHER. Yes; two organizations are represented here. Mr. Murchison represents the National Selected Morticians along with Mr. Gimer.

Mr. MURCHISON. Yes, Senator, we support Mr. Raether's statement and endorse his views.

The CHAIRMAN. Are you different in geography, or just two representing the Nation?

Mr. RAETHER. No; we are an affiliation of State associations. Senator, with about 14,000 members. The National Selected Morticians have a direct membership with membership around 1,000.

Mr. MURCHISON. That is correct. The geography is not different, however, Senator, but the composition of the membership does differ somewhat. We are a totally separate organization, however.

The CHAIRMAN. You work with State associations, is that right? Is that your method?

Mr. RAETHER. Yes. Our direct members are State associations who report their individual members to us. NSM has a direct membership. Many of their members are also members of our State associations who in turn then are members of our organization.

The CHAIRMAN. Is there a difference in size or is yours the larger?

Mr. MURCHISON. Our membership is limited to establishments or funeral homes and they vary in size and the total number is approximately 1,000 funeral homes throughout the country, whereas I understand Mr. Raether's membership is composed of State associations and their members are reported to NFDA.

Mr. RAETHER. Some States have firm memberships, others have individuals as members.

The CHAIRMAN. Yours is a firm membership?

Mr. MURCHISON. That is correct. We think between the two of us we do fairly represent the entire field, however.

The CHAIRMAN. Now, you both—emphasis here is the establishment of an exemption at \$200,000?

Mr. RAETHER. Yes, sir.

The CHAIRMAN. And the elimination of this ruling that cash outlays be considered as part of the gross volume?

Mr. RAETHER. Not necessarily that, Senator, we just pointed that out because this has been the ruling of the Labor Department and our people have lived within it. But, if there is an exemption of \$200,000, for instance, across-the-board, that would mean \$180,000 of it would be income to the funeral director as such, and \$20,000 would be moneys that he has taken in because he first paid it out in the form of a cash advance.

The CHAIRMAN. That is a Labor Department ruling? That is not in the law?

Mr. RAETHER. It is a Labor Department ruling as to what is included in annual dollar volume of business.

The CHAIRMAN. Have you been to the Labor Department on occasion to advocate the change of that ruling?

Mr. RAETHER. Yes, sir. We made a formal request to them. They made a ruling that where a funeral director as a part of his services incurs obligations on his own credit or pays directly in cash for items, that such items are to be included in annual gross volume of sales.

The CHAIRMAN. How long ago did you go to the Labor Department on this?

Mr. RAETHER. The ruling is dated November 8, 1966. The Department of Commerce in its business census formerly asked for the moneys paid directly to the funeral director, not including cash advances.

Now, the Department asked for all receipts of the funeral director including cash advances included in the receipts.

The CHAIRMAN. I know about this.

Why don't you take a chance with a new Labor Department? Is this an industry where the minimum wage is frequently paid to your employees?

Mr. RAETHER. I would say under most circumstances it is paid. Certainly to those who are licensed within funeral service.

The CHAIRMAN. The employees that get \$1.60 an hour—are there many employees that make that kind of money?

Mr. RAETHER. Oh, yes, most.

The CHAIRMAN. Is that all, just \$1.60?

Mr. RAETHER. Just \$1.60—no. At least \$1.60.

The CHAIRMAN. How many are at the minimum wage in your industry?

Mr. RAETHER. That I would not be able to answer, but we have some data based on two studies made recently, Senator, which involve funeral service licensees who earned, according to our study, \$9,729, including fringe benefits. In 1969 the average salary paid all funeral home employees, including those not licensed, such as maintenance personnel, was \$7,988. These studies were just of employees, not funeral home owners.

The CHAIRMAN. So the number of workers that would be affected by the increase from \$1.60 to \$2 an hour are very few?

Mr. RAETHER. Right.

The CHAIRMAN. The impact of the overtime is another matter.

Mr. RAETHER. That is right, Senator.

The CHAIRMAN. The overtime, really the combination of factors of basic concern to you are that the volume tests should be removed and the overtime rate would have the greatest impact on your industry; is that right?

Mr. RAETHER. Yes, Senator.

The CHAIRMAN. All right.

Mr. Murchison, would you have anything further to add?

Mr. MURCHISON. No; I think Mr. Raether has fairly reflected our views, and you have correctly restated them.

The CHAIRMAN. Thank you very much.

Mr. RAETHER. Thank you, Senator.

The CHAIRMAN. Mr. William C. McCamant, representing the National Association of Wholesaler-Distributors.

Mr. McCamant.

STATEMENT OF WILLIAM C. McCAMANT, DIRECTOR OF PUBLIC AFFAIRS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

Mr. McCAMANT. Thank you.

The CHAIRMAN. We appreciate your being here, and we think you are the one pretty much on the early schedule.

Mr. McCAMANT. I believe so; yes.

The CHAIRMAN. Go ahead.

Mr. McCAMANT. My name is William C. McCamant. I am appearing here today as the director of public affairs of the National Association of Wholesaler-Distributors.

The NAW is composed of 76 national commodity line associations, which in turn are comprised of 26,000 merchant wholesale establishments. Our members purchase, break bulk, sell, deliver, and extend credit. Approximately 50 percent of our sales are to retail establishments and dealers for resale and the other 50 percent are to industrial, commercial, institutional, and professional business users. In 1970 merchant wholesaler-distributors sales totaled nearly \$250 billion.

The association wishes to express its opposition to the proposal contained in S. 1861 which would require the payment of overtime wage rates after 8 hours in any 1 day. Briefly stated, our opposition is based upon the following:

1. No new jobs would be created by the proposal;
2. Increasing the cost of doing business is bad economics; and
3. No economic or social need has been demonstrated.

Within NAW are 76 national commodity line wholesaler-distributor organizations. They are called upon to service not only retail establishments, many of which are open up to 15 hours a day, such as drug-stores, but also many businesses which operate 24 hours a day, such as utilities, hospitals, and transportation companies. Most wholesale firms are open 5½ days a week, with employees scheduled to work from a 40- to 44-hour week. Many others are open only 5 days. The industry seldom uses extra labor, but meets the fluctuating demands for labor with overtime of regular employees.

In 1964 we conducted a survey on employment practices in the industry and found that 96 percent of the establishments that participated gave all—and I emphasize “all”—employees 52 weeks of paid employment a year. While some may be critical of this policy, the industry is proud to rank in the forefront of those that have the least layoffs. The general practice is that in slack times employees are retained on the payroll at full pay. If and when new jobs develop, additional employees are hired, and they too enjoy the continuity of employment and pay that is characteristic of the industry.

In that same survey we found that 30 percent of the nonscheduled overtime was caused by seasonal peaks; another 25 percent was caused by customer emergencies and 23 percent was caused by peak days in the week. Other causes were employee absenteeism, 10 percent; weather, 7 percent; and demurrage, 5 percent. None of these causes provides the basis for increased employment, as they are unanticipated.

Customer emergencies arise because of a critical need and the wholesaler who is responsive to the customer's needs may ask an employee to work overtime. If this overtime results in more than 40 hours of work in 1 week, time and one-half wage rates are paid for the hours over 40 in accordance with existing law. Enactment of the measure for overtime rates after 8 hours in any 1 day results in overtime rates even though the 40-hour workweek was not exceeded.

It is appropriate to examine how overtime rates after 8 hours would differ from overtime rates after 40 hours in a week. Our survey in 1964 indicated that less than 1 percent of the wholesalers reported that they were open less than 40 hours in a week. Therefore, in 99 percent of the establishments, for employees who work 5 days, any time worked in excess of 8 hours in a day would receive the time and a half rate because they would be working more than 40 hours in a week. Therefore, as a practical matter, the overtime rate calculated after 8 hours in any day would have an added effect only if the employee does not work 5 days in the week.

There are many weeks in the year which are essentially 4-day work-weeks, caused by holidays. Yet all our customers expect deliveries, and if Monday is a holiday and so observed, the customers scheduled to

receive their regular deliveries on Monday still must be serviced. In the wholesale distribution industry the employees would be paid for the holiday. On the following day they may be asked to work 2 hours overtime to provide needed service. Time and one-half rates would significantly increase the labor costs for that week, which would be on top of the pay for the nonworked holiday. It certainly would not encourage employers to pay workers for holidays, and it is noted that in some industries, employees are not paid for holidays.

We also wish to call attention to the increasing use of the 10-hour, 4-day week. We have not heard of its use in the wholesale industry, but from reports of its experience in other industries, it is highly popular with employees. Apparently no hazard to employees' health has arisen, nor have there been any other undesirable aspects which offset the value of 3 days off every week.

It would be well to consider when an employer would be called upon to pay for overtime for over 8 hours which would not result in over 40 hours a week. From our analysis we conclude this event will take place under two general conditions. These are:

(1) During a short workweek. In a workweek which contains a holiday it is very possible to have more than an 8-hour day but not more than a 40-hour week. Now virtually all of our employees are salaried, receiving a set sum for each week or month. Thus they are usually paid just as much for a 4-day week as they are for a 5-day week, if 40 hours is not exceeded. Now, it is during this week, a week when the employee receives a day off with pay, that the employer may be required under the proposal contained in S. 1861 to pay overtime for over 8 hours. The needs of the customers must be met. A revised delivery schedule requiring longer delivery times, or within the warehouse, more orders to fill may require a 10-hour day following a day off or preceding a holiday weekend. This bill would then require higher labor rates because the employees were granted a holiday.

(2) The other time is the absence of the employee. Often an employee will ask for a day off for personal reasons. It could be his own illness, illness in the family, a day to go hunting, an extra day following a holiday. For this employee this particular week then is a 4-day workweek, or maybe a 3-day workweek. Because of absence to fill his own needs, there could easily arise a requirement for a 10-day, but his worktime would still be less than 50 hours in the week.

Again I emphasize that almost all our employees are salaried, so very likely he would receive a check for the full 40 hours. Hence he is really paid on his day off. Now, because the employer has granted the day off, he would be required to pay for overtime over 8 hours in a day. We see no justice to the employee in the requirement, because it would discourage the employer from being generous in granting time off.

Wholesale distribution is composed of mostly smaller business enterprises. Probably over half of our members have less than 20 employees. A day off for one employee either requires the others to pitch in to cover the job, or requires the employee to make up some of his absent time. Now, if the other employees are called upon to work longer hours, they will be working more than 40 hours in the week, and they will receive time and one-half rates. But to require overtime

rate for the employee who has been granted some time off during that week is simply an unjust requirement. It should not be made part of the law. In the long run, it will not be in the best interests of the employees. It could result often in the absent employee receiving a weekly paycheck larger than those who put in a full week's work.

Because our members are smaller business enterprises, they attempt to reduce the number of computations necessary for making up the payroll. Hours over 40 in any week are recorded and overtime is paid. But the foundation is a weekly paycheck based on 40 hours, plus time and a half for work over 40 hours.

Therefore, there are no deductions for the 4-day workweek for occasional days off, for sickness or absence for personal needs. For the employee this means he can rely each week on a paycheck for 40 hours of work as a minimum. His rent, food bills, and other expenses continue at the same pace during weeks with holidays, and his paycheck continues at a constant amount except for weeks when he works more than 40 hours.

The industry believes it desirous to retain this stability for the employees. Therefore, we see no benefit either to the employees, to our customers, or to others who are seeking employment if the proposal for overtime after 8 hours in any day is enacted. It would not stimulate the creation of new jobs, it could increase the cost of doing business, but without true benefits to the employees, and we know of no apparent economic or social need that will be met if enacted.

Accordingly we respectfully recommend that there be no statutory or regulatory requirement for time and a half wage rates to be paid for work over 8 hours in 1 day.

The opportunity afforded to express these views is appreciated.

The CHAIRMAN. Mr. McCamant, you state that most of your employees are salaried employees; is that right?

Mr. McCAMANT. That is right.

The CHAIRMAN. What are the job descriptions of your employees in this wholesale-distributors business?

Mr. McCAMANT. We have outside salesmen, many on commissions, but they are exempt from the provisions of the act anyway; so many of them are commissioned and some are salaried. Within our office we have bookkeepers and inventory control clerks, accounting personnel, and in the warehouse we have counter men, stock pickers, and—

The CHAIRMAN. Are these salaried too?

Mr. McCAMANT. They are salaried in the sense that that is basically the way the industry operates; yes. Now, in some places they may call them wage rates. But when an employee is hired he is usually told he will be paid \$2.50 or \$3 an hour and we work a 40-hour week, so therefore your pay will be so much, and therefore that is set.

Now, if there is a holiday coming along in the week, they do not recompute the salary, the weekly wage rate. They are paid pretty much the same all the time except for over 40 hours.

The CHAIRMAN. If he works less than 40 hours a week, what does the employee described make?

Mr. McCAMANT. When he works less than 40 hours?

The CHAIRMAN. Yes.

Mr. McCAMANT. He probably would be paid for the 40 hours, un-

less it is a very extended absenteeism. But this is not an industry where a person is granted a day off that he would not be paid. That is not the case. There are small business enterprises involved, and that is usually the way the employment is handled.

The CHAIRMAN. We sit here in a little confusion as to just exactly what the employment pattern and wage pattern is here in your industry, I will tell you.

Mr. McCAMANT. Let me say, on average employees in wholesaling are paid more than they are in manufacturing. So there is only a very few employees in the very lowest wage areas in the country that would be paid near the minimum wage. It is a much better paid industry than some. So we are not dealing with the poorer paid employees in general.

The CHAIRMAN. You are not dealing with the major changes in the minimum wage bill, are you?

Mr. McCAMANT. No. We are concerned with the overtime after 8 hours in 1 day. Now, here you have a group of employees and they work the whole week. They work, each one, all but one, let's say, who works 8 hours a day, 5 days a week, and they put in 40 hours. Now, you have an employee who has been off, for example, and because he has been off, say, for a day he may work 2 extra hours the following day. He may be an inventory control clerk and because he works extra he would be called—he would get a higher weekly pay than those who put in a full 40-hour week. That is how it would work.

Now, ordinarily, if he is—if on Tuesday—and that is a long delivery day, and he is delivering and he has heavy traffic and he works 2 hours overtime, at the end of the week if he puts in a full week he will have worked over 40 hours and he would be paid the time and a half under the overtime provision of over 40 hours.

I am just trying to relay to the committee that the only time essentially where these people are going to benefit under the bill is when they work less than 40 hours, when they get a day off and therefore their pay rate would be more that week than for employees who put in a full 5-day, 40-hour week. We just do not think that is the kind of legislation that would help.

The CHAIRMAN. You are worried about the situation where the days go longer because there are catchup hours, because for some reason or another the employee has not worked the regular 8-hour day for the other days of the week; is that right?

Mr. McCAMANT. That is correct.

The CHAIRMAN. How about the regular guy that gets caught in the tunnel traffic and he does come in 2 hours late—you are not talking about that emergency overtime? He gets overtime because—

Mr. McCAMANT. He would be working more than 40 hours.

The CHAIRMAN. He would be working 10 hours that day, but he would be doing it not as a catchup, or having missed a day for any reason or another, but because—

Mr. McCAMANT. If he got caught in traffic and had to work 2 more hours, his workweek—the rest of the hours that he is scheduled to work for the rest of the week would not be reduced.

The CHAIRMAN. That is right.

Mr. McCAMANT. So he would get paid, paid under the more-than-40-hours-a-week provision.

The CHAIRMAN. He would get it either way, as an 8-hour proposition or 40-hour week proposition.

Mr. McCAMANT. That is correct. But under the 40-hour proposition he is working more than employees who are working 40 hours. Under the 8-hour-a-day overtime provision he could work less hours during the week than the other employees and get paid more.

The CHAIRMAN. Now, you say no—I think you said no social purpose.

Mr. McCAMANT. Well, we believe in a sense that no economic or social need has been demonstrated.

The CHAIRMAN. Yes; the third point.

“No new jobs would be created by the proposal.” You say that. I have a feeling in your industry no new jobs would be created in your industry the way you described it: “Increasing the cost of doing business is bad economics.”

Well, just as a flat statement you cannot argue with that. But now No. 3 is where we get stuck, and we have to put three with two. There is a purpose to be served by a minimum wage, and that is so that it will bring to those who are near that minimum wage a wage that at least lets them subsist. That is what this bill is all about.

With the overtime we hope there will be more employment and that people will not be worked beyond the hours that all now have come to feel are fair for the marketplace, and that others will be employed to some extent to reduce the overtime for those who were already employed.

Mr. McCAMANT. Of course, I am commenting on the experience and practices of the wholesale-distribution industry, the effect of the proposal. We feel it will be really an undesirable effect to have to encourage an employer to make some arrangement whereby the man who worked the shorter workweek did not make more than the man who worked the longer workweek.

I have no legislative remedies to offer because I—you have many industries to consider. It could be, of course, where more than 8 hours also resulted in more than 40 hours, for example, but I cannot help but feel that passage of the legislation would not be of benefit to the employees in our industry, really.

The CHAIRMAN. Thank you very much.

Mr. McCAMANT. Thank you, sir.

The CHAIRMAN. Senator Marlow Cook, U.S. Senator from the State of Kentucky. We are right on schedule for you, Senator.

STATEMENT OF HON. MARLOW W. COOK, A U.S. SENATOR FROM THE STATE OF KENTUCKY

The CHAIRMAN. We are honored, and I will say that this legislation has not presented the committee with any scheduling problems with Senators. You are one of the first to appear.

Senator COOK. Fine. Thank you, Mr. Chairman.

The CHAIRMAN. We are doubly honored.

Senator COOK. Mr. Chairman, I very much appreciate the opportunity to testify today on S. 1861, the minimum wage bill, the bill introduced by the distinguished chairman of the subcommittee.

Before commencing, however, I would like to take this opportunity to say that the distinguished Senator from New Jersey and my esteemed colleagues of this committee have done what I consider to be an outstanding job throughout the course of these hearings. Your accomplishments and able leadership have been truly commendable. I sincerely thank you for all your fine efforts in this crucial area of need.

As you well know, Mr. Chairman, on August 6, 1971, I introduced S. 2463, a bill to amend the Walsh-Healy Act and the Contract Work Hours Standards Act to permit certain employees to work a 10-hour day in the case of a 4-day workweek. In the beginning of September, the Department of Labor held public hearings on just this issue.

Mr. Chairman, I realize this subcommittee is working double time in order to complete its already burdensome schedule, but it would please me immensely if time could somehow be found to schedule separate hearings so that this important matter receives every consideration. I thank you for these brief comments that I am about to make in that regard.

At this time, I would like to address to your bill, S. 1861; and more specifically, to section 4(b) of the bill which states that:

No employer shall employ any of his employees * * * for a work day longer than 8 hours, unless such employee receives compensation for his employment in excess of such hours above specified at a rate not less than 1½ times the regular rate at which he is employed.

It is this provision with which I must take exception. Not because I feel the others contained in this bill to be unimportant, but for the very reason that I am more familiar with its intricacies and convinced that it is strangling much of our industry.

As I have previously stated, I have introduced S. 2463 which is the antithesis of section 4(b) of the minimum wage bill. In discussing this section of the minimum wage bill, I will allude to my bill S. 2463 being that it is my belief that what is applicable to S. 2463 is likewise germane to the way I believe section 4(b) of S. 1861 should be amended to read.

Mr. Chairman, the debilitating aspect of a mandatory 8-hour provision is that it is compulsory. The choice as to the most advantageous course to follow is all but eliminated. Rather than being able to manipulate each unique problem, a strict rule of action would be required by Federal legislation.

This, in my mind, is commensurate with saying "Sink or swim." I certainly do not think this was what Congress intended when it passed the FLSA in 1938, just as I am certain that Congress would want to afford management and labor every opportunity to utilize innovation to overcome their many unique problems.

Adoption of provisions as contained in my bill would allow this to happen. It would remove the shackles constraining industry and thereby allow an industry to change its structure to best suit its needs. S. 1861 will annul this possibility.

It is no doubt common knowledge that for years both management and labor have wrestled over the number of hours of servitude in any one day. As long as the 1890's, Samuel Gompers was the champion labor organizer. Through his efforts, the labor force transcended the 16-hour day and evolved to the, at that time, unpopular 8-hour day.

Although unions negotiated hours of work per day, whether it be 8, 10, or 12, it was not until 1938 with the passage of the FLSA that 40 hours of work with time and one-half overtime was established as the maximum. That was 33 years ago. Certainly now is not the time to add an 8-hour provision.

Today we are witnessing the birth of a neoteric era. It is characterized by a completely divergent focus on the traditional workweek structure. In describing this phenomenon, some choose to call it "revolution," "deviation," or "therapy." I prefer the latter application. It is the hallmark of innovative challenge which is vital to cure our corporate ills.

The 8-hour day, in many cases, no longer fits the role it was meant to play at its conception. It has been our touchstone for more than four decades and has been more than adequate for the needs of both management and labor in its time.

Today, however, industry is faced with new challenges which call for comprehensive changes if the challenge is to be met. Many feel, as I do, that the 10-hour day, 4-day week with no overtime for the ninth and 10th hour is the only direction in which to turn. So long as Federal regulations are inhibiting this change, many of our corporate concerns are threatened with doom.

Mr. Chairman, within 3 years in excess of 650 firms have adopted the "4-40 plan," where previous to that time few were aware of its advantages over the traditional 5-day week, 8-hour day. The idea has caught on and now the surge to adopt the restructured workweek is overwhelming. The literally hundreds of queries to management consulting services are indicative of this fact.

What does the seemingly widespread popularity of this innovative plan mean? It means that the arguments used to object to the proposed implementation of the 4-day week today, those same arguments used to object to the 5-day week in 1930's, are nothing but inane quips with no gravity of support.

The first known 5-day week appeared in the United States in 1908 and many had doubts about its feasibility: Would it work? Is it too fatiguing? What happens to wages? Is an extra day off necessary? Today, we have the same doubts about the 4-day week—the same arguments are put forth opposing it, and they are just as senseless as ever before.

Mr. Chairman, the word is spreading rapidly about an exciting workday revolution. Of those companies implementing the 4-40 in one form or another, it has been shown in studies that they employ between 100-500 laborers. But this is not to negate the possibility of a larger company adopting a "4-40" plan. Greater in-depth study is a prerequisite where larger companies are concerned, but it is entirely feasible for a company of several thousand employees to implement a 10-hour day, 4-day week. Although many of our larger unions believe we are evolving to a 4-day, 32-hour week, I feel that the 4-40 plan offers greater possibilities.

Mr. Chairman, one is easily convinced of the attractiveness of the 4-40 plan and its numerous lucrative advantages upon reading reports of those companies that have adopted it. One company in particular has had tremendous success with the 4-day week. Kyanize Paints, Inc.,

of Everett, Mass., adopted the 4-40 plan several years ago. This company reports that "production has gone up 7 percent in 26 months, sales are up 18 percent, absenteeism has practically disappeared and employee morale is sky high. The 90 Kyanize production workers put in 35 hours and 20 minutes from Monday through Thursday, but are paid for 40 hours.

Reports such as the above are not the exception, but rather the general rule for the firms using the 4-day schedule. They disclose that the following result upon implementation of 4-day week:

- (1) An extra day off is a considerable boost to morale,
- (2) With the shorter workweek, absenteeism, turnover, recruitment activity, expenses and payroll for overtime are dramatically decreased,
- (3) Productivity is increased, in most cases, considerably,
- (4) Equipment can be used more efficiently with longer shifts, and
- (5) The 4-day week means added time for hobbies, shopping, leisure, and family activities.

Mr. Chairman, I will not elaborate any further on what others have found to be the advantage of the 4-day week over the 5-day week. I will say, however, that the conversion rate from the 5- to the 4-day week is currently reported at four firms per day. I think this sufficiently illustrates the argument that the 4-day week is spreading.

Mr. Chairman, it is my belief, however, that it would spread at an even more accelerated pace if the Government were not impeding its growth. One cannot help but notice that adoption of provisions requiring time-and-a-half overtime compensation for hours worked in excess of 8 in 1 day would have significant adverse effects upon those firms weighing implementation of a 4-day, 40-hour workweek. Not only is flexibility in scheduling to meet specific needs eliminated, but also, an 8-hour provision unnecessarily forces a firm to become noncompetitive.

To enumerate for a moment, take for example, employee *X* who works a 4-day, 40-hour schedule. He works 10 hours a day at straight pay. Let us also take, for example, employee *Y* who works a 4-day, 40-hour week, but because of Federal regulations, he is paid straight pay for 8 hours and premium pay for the ninth and 10th hours. For the same amount of work, you can see that employee *Y* receives 11 hours of pay for 10 hours of work, while employee *X* receives 10 hours of pay for 10 hours of work. In the course of 1 week, employee *Y* receives 4 hours more pay. This amounts to 200 hours more pay in 1 year than employee *X* receives.

When hundreds of workers are involved, how obvious it is that an undue hardship is worked on the employer. He cannot realistically pay such wages.

This is my reasoning for introducing S. 2463. The same reasoning would apply to and call for an elimination of section 4(b).

Mr. Chairman, it is my sincere belief that businesses and industries, and their employees, who deem change to be propitious, should have the opportunity to rearrange their work week schedule and still remain competitive. Enactment of section 4(b) of S. 1861 will not allow for the emancipation that is essential to their operation.

Passage of the 8-hour provision, in my opinion will have both a deleterious and ominous impact upon management and labor. It eliminates the possibility of the voluntary negotiable 4-40 plan which clearly is lucrative in its essence.

The importance of the 4-40 was noted by Hon. James D. Hodgson on May 26, 1971, when he testified before this very subcommittee. In speaking about the 8-hour requirement, the Secretary of Labor stated:

The 8-hour requirement apparently poses serious scheduling problems for firms desiring to work more than 8 hours a day as part of their 4-day workweek plan.

At that time Secretary Hodgson further stated:

In view of the growing interest in the 4-day workweek and the problems already being encountered with the 8-hour standards under the public contract laws, I believe that adoption of such a standard under the Fair Labor Standards Act, the federal law with the greatest applicability to hours of work, would be inappropriate at this time.

Now, the implication of this statement seems quite lucid. There is a growing desire and evolving impetus to adopt the restructured workweek. An 8-hour provision under FLSA would totally nullify this possibility.

An additional aspect in this tumultuous time in our economy is that there is significant reason to believe that the 4-40 plan will help stave off the rising unemployment threatening our Nation today. Recently, the BLS reported that the percentage of the civilian unemployed labor force has climbed in August to 6.1 percent as opposed to the July figure which was reported to be 5.8 percent. These figures clearly expose the failure of already existing economic measures to arrest unemployment.

However, I have every indication to believe the 4-40 plan will reverse the spiraling climb of unemployment. This rearranged workweek will permit firms to operate profitably, thus enabling retention of workers. In cases where the margin of profit is considerable, the 4-40 will also foster the opening of new company branches, thereby spreading job opportunities. Clearly, then, what the economy needs at this time is the 4-day, 40-hour workweek.

Those who are skeptical of the many advantages rendered by the 4-40 plan should be cognizant of the fact that the Nation's 85 million plus labor force is already having a taste of the 3-day weekend, 4-day workweek. Under the new Federal Monday holiday law, five of our 10 national holidays fall on Monday. In effect, this means that laborers are already working a 4-day week 10 percent of the year.

From every indication to date, this law seems to have been an auspicious change. Having been afforded a preview of favorable reactions to the 4-day week, I believe the time is ripe for Congress to take the initiative to allow the 4-day week 100 percent of the year. It just seems ludicrous for the Federal Government to mandatorily provide for the 4-day week in the instance of the holiday law, and to discourage it in another.

I don't pretend to be convinced, however, and I hope others are not, that 4-40 legislation will be beneficial to all facets of industry. Certainly, problems arise for companies utilizing three 8-hour shifts. Three 10-hour shifts just do not work very well in a 24-hour day, and I recognize this. But, for companies that see changing the workweek as a feasible alternative to poverty, it is not within the authority of Congress to deny them that right. We, as elected officials, cannot renege on our responsibilities to be responsive to the needs of our citizens.

Mr. Chairman, for years workers and management have been content to remain within the structured workweek schedule. There has been little deviation from the norm and less willingness to experiment. Now, however, a crusade has come to the fore to allow an optimum of flexibility within the workweek. To provide this maximum of pliability, I believe the 4-day, 40-hour week is the most feasible alternative.

I would hope that the time has come for people to candidly recognize the workweek as a variable rather than a fixed element and that through conformation of work schedules, the wants and needs of management and labor will be reconciled.

In closing, let me add that I am sincerely convinced that passage of permissive legislation, which would allow for—and I might say a great distinction from require—the possibility of a 4-day week is totally appropriate at this time.

Enactment of an 8-hour-per-day provision would be an insurmountable obstacle. I therefore, think it desirable that this subcommittee candidly examine the many aspects of a 4-day, 40-hour workweek.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, very much, Senator Cook.

I will say it has been a long time since my schooling and when you suggested the neoteric era, why, we had to hasten out and find out what type of era that was.

Senator COOK. That is just an innovative, fast-thinking, I would expect, era, one which calls for modern and good and logical—

The CHAIRMAN. That is what we established; I feel better.

Senator COOK. That meant I could cut down one sentence, Senator.

The CHAIRMAN. I recommend to you testimony we had late Friday afternoon on this bill from Dr. Justin Voss, who was an economist, doctor's degree in economics. He specialized in leisure economics and he testified in support of this proposition that you are offering in the form of a bill. Very excellent testimony.

Some bit of irony, it was Friday afternoon after rollcall, we discovered that perhaps some of our Members have already gone on the 4-day week.

Senator COOK. As I recall, we had 51 votes Friday afternoon.

The CHAIRMAN. We had not anticipated your legislation and you and I were both there, but I will say, it is certainly a challenging concept, and I certainly will give full, full consideration here and also to the bill dealing with the Walsh-Healey Act.

Senator COOK. As you can understand, Mr. Chairman, we received inquiries starting some time ago of companies in my own State who unfortunately did more than \$10,000 a year business with the Federal Government and the result of that \$10,000 figure, they were stuck with the Walsh-Healey and they were stuck with the Contract Work Hours Standards Act, which meant they couldn't do this even if it were agreeable between labor and management.

So this brought in the concept that we should do this and allow it to be permissive based on negotiations, and that they would not be penalized in regard to their ability to do business with the Federal Government as a result thereof.

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

Senator COOK. Thank you, very much, Mr. Chairman.

The CHAIRMAN. Senator Chiles. We appreciate your understanding of our necessity for some schedule changes.

**STATEMENT OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE
STATE OF FLORIDA**

Senator CHILES. Thank you.

The CHAIRMAN. We are pleased to have you here.

Senator CHILES. Thank you, Mr. Chairman. I wanted to speak to the committee about S. 2557 which I have introduced which perhaps could be considered an amendment if and when the committee comes out with an increase of the minimum wage, which I know is the legislation before the committee in that regard.

We have always talked about small business as the backbone of America—men who started out with an idea and a belief in themselves and have gone on to financial success, contributing much to our great country. This small business sector of our economy is responsible for over 40 percent of U.S. employment. Of an estimated 5,400,000 independent businesses in the United States today, 95 percent of them are small by SBA standards.

However there are some people employed in the small businesses who could lose their jobs if and when minimum wage and hour rates are increased. Ironically, these people will lose their jobs as a direct result of our efforts to assist them.

Small businesses work. They provide the opportunity for Americans to enjoy a measure of success. But along with that success there are a host of problems small businesses also experience. One of these is meeting the cost demands of increasing the minimum wage. In fact, there are employees who will soon be out of a job because of a rise in the minimum wage. Some of our small business enterprise owners would be forced to convert their operation to an automated one because increases in the minimum wage present such financial problems. They find it is more economical to release many employees and turn the operation over to machines—which don't require an ever increasing minimum wage.

There seems to be two types of mechanization occurring in this country—one "normal" and the other "forced." The first occurred on a broad scale in the United States where labor has always been relatively expensive. As education and skills have gone up, it was hard to find enough workers at the prevailing wage. So employers raised the wages to attract the needed workers. With these rising wages, employers have found it more profitable to introduce machinery—which in turn meant that machinery manufacturers produced more machines. This caused a substitution, not of machines for labor, but rather a substitution of workers who produce machines for the workers who do the job without the machines.

The second kind of automation seems to occur when wages are forced up by other means such as legislation. The wages go up not in response to competition from other employers offering more productive jobs, but only as a response to an outside source. It is this kind of automation which forces workers into unemployment—not into some other higher paying job.

There is a vast difference between mechanization that gives workers better tools to work with and mechanization that causes unemployment because it means using machines to do jobs that workers are fitted to do, willing to do, and have no other alternative but to do.

My bill, S. 2557, now before the committee, would amend the Fair Labor Standards Act of 1938. It would provide for the Secretary of Labor to grant a waiver in the increases in the minimum wage provisions of this act to protect the continued operation of certain small businesses faced with the automation alternative.

In my own home State of Florida, I know of one good example of the kind of business that would be assisted by my proposal. There is a shrimp processing company in Florida which has no alternative but to automate if the minimum wage is increased. Right now the deveining of the shrimp is done completely by hand. About 50-70 people are employed at the plant. They have a steady income—and the shrimp processing gets done. But just as soon as a minimum wage increase is signed into law they will be out of a job. Their work can be done more economically by machine and it would certainly be to the owner of the processing company's advantage to automate rather than give these workers the wage demanded by law.

Now I am sure these people would choose to pass up the increase rather than lose their entire paychecks. In this particular little community, those shrimp deveiners are not going to be able to find other jobs when theirs are eliminated. My bill would allow the owner to keep his people on at the plant, would discourage him from converting to automation, would save from 50 to 70 people from unemployment.

My proposal provides that a minimum wage increase could be waived if the small business applies for relief and demonstrates that the increase would result in the replacement of a "substantial percentage of the employees" of that business by the conversion to automated equipment. Under S. 2557's terms, the criteria for a "small business" would be established by the Secretary of Labor. He would consider the factors of independent ownership and operation; nondominance in the field or market of operation; annual gross sales in relationship to the industry of which it is a part; number of employees, not to be in excess of an appropriate number for that particular industry.

This proposal would set a policy for constructive relief of those small businesses who qualify and authorize the Secretary of Labor to set up the ground rules under which it would work. It is designed to assist those certain small businesses whose employees would not be helped by increased minimum wage, but rather adversely affected by such legislation in that they would just be neglected.

If raising the minimum wage means forcing small businesses to automate and add workers to the growing list of the unemployed, then clearly something must be done. Relief must be provided for those few cases where raising the minimum wage is not an advantage. S. 2557 would provide that relief.

I thank the committee for its time.

This came to my attention in talking to small businessmen in Florida, there are times when the effect of the minimum wage, and increase, is to actually cause some employees to lose their jobs.

I don't think that is the effect in all instances. But it seems to me

that perhaps the legislation should give to the Secretary some discretion if he makes a finding of fact in a small business; that this is actually what is going to happen.

Automation, at times causes people, the work force, to shift and I think automation occurs sometimes in two ways, one way through the normal process such as evolution of the work. That seems to be a more gradual process and many times the automation itself causes a further increase in production, further jobs for workers or they go into the industries that are making the machines.

I think automation also comes about from an increase in minimum wage as an artificial means of bringing that about. The particular instance I think about is a person that is a shrimp processor in my State, who has 50-70 workers now employed deveining shrimp. And they do this by hand. These are people on marginal skills as far as any education or any aptitude for other jobs, and he just confided to me that if an increase in minimum wage comes he is so close as to whether he is going to go to machines that would do all of this automatically, that it would push him to making that decision. He says he hates to make that decision because many worked for his daddy before him and he has been providing employment for these people, and they will be out of employment, and I think in many instances these people would have a hard time finding another job.

I think that same would be true in processing work generally in Florida, canning houses and so on where much of the labor is done by hand. Much of it is done in seasonal capacities and done by many women that do this to supplement their income.

They come in and peel grapefruit or process fruit.

I think if the Secretary has some discretion where he could make a finding of fact that this increase would in effect cause people to lose their jobs, that they would not have an opportunity to be gainfully employed somewhere else, it might be wise to allow something where the Secretary could waive an increase in the minimum wage if he felt it would be to the express benefit of the workers themselves. This would not be a way of allowing the manufacturer to make a windfall but help where otherwise you would be putting people out of work.

I saw this problem or appearances of it recently when I was traveling in South America and Brazil where they are doing everything they can in a poverty area to increase employment. They passed massive tax benefits that would have allowed manufacturers to write off 50 percent of the tax they pay if they created business in the northeast.

A number did that, they put in every capital improvement they could put in, every automated factory, and they didn't really hire any people, they didn't create jobs.

The Government is looking at that, to write that off because that didn't increase jobs.

I would point out that sometimes where we try to help people we turnaround and put some people out of work if a machine will put them out of a job.

To allow the Secretary to have flexibility in this respect might be wise in legislation of this type.

The CHAIRMAN. Historically, that is not followed, but it certainly is wise to consider the impact in these terms, and I appreciate that.

The bill that you introduced, Senator Chiles, you introduced that last week?

Senator CHILES. Yes.

The CHAIRMAN. It has been referred here, and certainly we will get complete hearings on it.

Senator CHILES. Fine, thank you.

The CHAIRMAN. Fine, we appreciate your testimony very much.

We turn now to transportation, Mr. James F. Conway from the Bee Line, Rockville Center, N.Y., and who else is here within this transportation panel?

STATEMENT OF JAMES F. CONWAY, BEE LINE, INC., ROCKVILLE CENTER, N.Y.; ACCOMPANIED BY HAROLD DAVIS, ASSISTANT GENERAL MANAGER, PERSONNEL, AC TRANSIT, OAKLAND, CALIF., AND D. J. GIACOMA, ST. LOUIS, MO., REPRESENTING THE AMERICAN TRANSIT ASSOCIATION

Mr. CONWAY. I am James Conway, vice president and general counsel of Bee Line of Rockville Center, N.Y. I am appearing before you today on behalf of what is commonly called ATA, and Bee Line.

ATA is a voluntary trade association made up of private and urban transportation systems throughout the United States. Members of our association provide transportation for approximately 85 percent of the Nation's urban transit riders.

Accompanying me are D. J. Giacoma, chairman of the board and chief executive officer of the American Transit Corp. of St. Louis, and Mr. Harold Davis, assistant general manager of personnel, for AC Transit of Oakland, Calif.

The Fair Labor Standards Act, as amended in 1966, for the first time made public transit systems subject to the act if the rates and services of such systems were "subject to regulation by a State or local agency . . ." and it also broadened the coverage by reducing the gross revenue figure for transit systems from \$1 million to \$250,000, thereby bringing under the act several hundred more transit systems—both privately and public owned.

The privately owned transit systems with gross annual revenues of over \$1 million were already subject to the minimum wage requirements of the act.

The 1966 amendments applied the overtime requirements of the act to employees of urban transit systems except for operating employees—bus operators, motormen, and conductors.

The pending bill, S. 1861, would affect the urban transit industry in three respects; first, by expanding coverage to include all public employees which means that the act would apply to public transit systems whether or not their rates and services are subject to regulation by a State or local agency; second, by repealing the overtime exemption for operating employees of urban transit systems; and third, by removing the exemption for systems with annual gross revenues less than \$250,000.

We here today are primarily opposed to the overtime provision.

When this subcommittee was considering amendment of the act in 1966, we made it clear that we had no objection to expanding the

number of urban transit systems subject to the minimum wage provisions of the act. The wage rates of the urban transit systems throughout the United States were at that time and continue to be far above the suggested minimum wage.

As a matter of fact, Mr. Chairman, wages in the urban transit industry have more than kept pace with wage increases in general and with the increased cost of living despite the fact that the urban transit industry has been working under increasingly difficult financial pressures over many years.

According to the April 1, 1971, publication of the Amalgamated Transit Union, quoting the Bureau of Labor Statistics, the average hourly wage of operating employees in the urban transit industry is over \$4 an hour and this does not take into account fringe benefits.

For example, Mr. Chairman, in 1960 when the statutory minimum wage rate was \$1, the average annual earnings for transit employees was \$5,481 and in 1970 with the minimum wage rate at \$1.60 an hour, the average earnings per transit employee was \$9,230.

But what we did object to in 1966 and today is repealing the overtime schedules for the operating employees. We indicated in our testimony in 1966 that we did not object to having the overtime provision apply to nonoperating personnel and they were, in fact, brought under the overtime section.

As we understand it, the purposes of the Fair Labor Standards Act are to offer protection to employees whose rates of pay and working conditions are substandard and to assist employees who are in a position where they are basically unable to help themselves. The employees in the urban transit industry are certainly not in this category.

We believe there are sound and fundamental reasons for the exemption of transit operating employees from the legislative requirement to pay overtime after 40 hours per week. The most basic reason is the fact that the exact length of the workday and workweek of transit operators is a function of trip running times on routes that extend throughout the community, with the result that it is impossible to establish runs at exactly 8 hours or at any other given target figure.

Thus, establishment by law of a given length of weekly hours after which overtime applies would create penalty payments which, by the nature of the physical circumstances, would be totally unavoidable. We don't believe that this is the intent of the Congress.

As a practical matter, one must consider this question within the framework of the collective bargaining history of the transit industry. One would have to be naive in the extreme, with even a rudimentary knowledge of the labor background of this industry, to believe that transit operating employees somehow need protection of a legislative requirement establishing artificial and unavoidable penalties.

It is difficult to define within a reasonable time limit the variety and complexity of work rules evolved in this industry with respect to penalties, guarantees, and allowances. But if one were to examine 100 labor agreements in this industry, he would probably find 95 different combinations of work rule provisions.

There is wide variation, but one fact is fundamental—the question has been dealt with in great detail in collective bargaining over generations of contract negotiations.

Collective bargaining in transit is a mature process. Few industries can match the length and experience and the breadth of coverage represented by labor agreement negotiations in this industry. If transit labor unions today support the application of legislative overtime rules to transit operators, it is not because they have a legitimate need for the protection of the law. It is because they want the law to superimpose one more provision which would add unavoidable cost to many transit systems without recourse to the collective bargaining process.

In any given situation, the entire complex of work rules, guarantees and penalties has been worked out over many years by the "give and take" of the collective bargaining process. The end result is an aggregate package which the parties have evolved in free bargaining as representative of fair and equitable arrangements, all factors considered. If there is any weakness in the collective bargaining process in transit, we believe that it is fair to believe that that weakness does not lie with the labor organizations.

It may be helpful to comment briefly on some of the types of arrangements which have evolved over the years in transit with respect to the workday and the workweek.

As everyone is aware, there are many small transit operations, privately and publicly owned, which by reason of low productivity are struggling to stay in business. In general, these operations provide good and steady earnings for their workers, but the realities of their situations have led to the avoidance of artificial penalties such as overtime after any given or stated number of hours. A large number of small bus companies have worked out, in almost every case by collective bargaining, a concept of a standard workday and workweek which establishes a range of hours without the imposition of overtime penalty after any given number of hours.

Thus, for example, such an agreement might provide that regular runs shall be not less than 8 hours and not more than 9 hours daily and will be paid at straight time, with overtime rates applying to any work performed in addition to a regular run, either on a regular workday or on an employee's scheduled offdays.

Such an arrangement involves a fully adequate guarantee of earnings; it establishes a standard for the workday; and, it provides for overtime penalty rates for work beyond that standard. However, in practical recognition of the impossibility of scheduling runs at exactly 8 hours, and with the knowledge that such an overtime rule would merely add unavoidable cost, the parties have created a range within which daily assignments must be established and provided for the penalties that apply outside that range.

There is nothing inequitable about such an arrangement. That is why it exists in so many smaller transit systems. As a matter of commonsense, it permits higher hourly wage rates than could be paid if artificial overtime penalties were to be imposed.

It should be remembered that these small bus systems are not moneymakers. The public or private owners of small bus systems today are fortunate indeed if their revenues cover all operating costs. Their situation is precarious. We suggest that the imposition of these new costs on many smaller systems is not necessary to serve the remedial purposes of the FLSA maximum hours provisions but would re-

sult in the demise of these operations with consequent loss of jobs as well as less of transit service to the community.

Now, if we look to the large transit systems of the country, the situation is somewhat different—although both large and small operations share in the crisis of declining productivity which makes it increasingly difficult to meet spiraling wage costs with stable or declining revenues.

It is obviously difficult to describe in meaningful terms the work-rule arrangements which have evolved on, for example, the 50 or 75 largest transit systems in the Nation. However, we can perhaps attempt to sketch in broad terms the nature of the problems imposed by a legislative requirement for overtime after 40 hours a week.

In general, and with some exceptions, the collective bargaining agreements on major transit systems do now provide for overtime after a stated number of hours—usually after 8 hours per day and after 40 hours per week, or after 8 hours daily and for work on two scheduled offdays, an arrangement more restrictive and more costly than overtime after 40 hours.

The crucial point with respect to the major labor agreements which already contain a 40-hour overtime rule is the relation of the overtime rule to the collateral allowances. These allowances include items such as report time (make ready), travel or deadhead time to and from work assignments, pull-in or turn-in time at the end of the day, time spent making out accident reports, and numerous other such items.

Negotiated agreements now contain a variety of treatment of these collateral allowances both in relation to the overtime rule and in relation to the minimum daily guarantee for an assignment. For example, some transit agreements provide that report and turn-in (or pull-in) time at the beginning and end of a run is to be an arbitrary addition to the pay at straight time—irrespective of the actual length of the run. Hence, a run may be only 7 hours in driving time and the employer must pay 1 hour of guarantee or makeup time to the 8-hour minimum plus the daily allowance for report and turn-in time in addition the minimum day.

Conversely, under such an arrangement, if the total of platform and travel or deadhead time reaches 8 hours, the report and turn-in continues to be paid at straight time, since it is unrelated to the actual worktime in the run.

This is the key point. If, under these conditions, the law were to require the transit systems to pay overtime on report and turn-in, the result would be grossly unfair since the report and turn-in time would be worktime for overtime purposes but would not be worktime under the contract for purposes of the minimum day.

If the Congress makes these collateral allowances subject to overtime, by the same token the Congress should make them worktime for guaranteed purposes. For example, it is not unusual for contracts to provide that where the regularly scheduled worktime is over 6 hours the employee is guaranteed 8 hours plus report time adding from 15 to 30 minutes more pay per day. The employee works 6 hours and by contract receives pay for $8\frac{1}{4}$ to $8\frac{1}{2}$ hours.

In our judgment, if the transit labor unions were offered a true 40-hour workweek without the daily overtime they now receive and col-

lateral allowances, they would quickly lose interest in the entire subject.

There is another area in which a legislative overtime requirement after 40 hours would be very costly and self-defeating as applied to many situations in transit. We refer to charter work. In many cases collective bargaining has resulted in special pay provisions for charter assignments, which modify the normal application of the contract overtime rules. This is an equitable arrangement. It has been done to enlarge the market for charter work—to promote business for the employer and additional work for the men.

Charter jobs are desirable work. In general, charter assignments are eagerly sought by the employees. The artificial addition of 40-hour overtime to these jobs, many of which are voluntarily performed on offdays, would simply price many of these jobs out of the market and everyone would lose as a result.

Collective bargaining has often treated charter work as a special category for overtime purposes. This has been done deliberately and in the self-interest of the employer and the employees. It should not be disturbed.

Mr. Chairman, I know that the members of this subcommittee, and particularly the chairman, are well aware of the serious financial crisis of urban public transit. The transit industry in the United States had an operating deficit of \$332 million this past year, and there will be an even greater deficit in 1971.

Passage last year of the \$3.1 billion capital grant program was acknowledgment by Congress of the crisis and the need for large-scale Federal assistance to reverse the present trend and to provide more adequate up-to-date transit systems.

It seems paradoxical that at the same time that Congress indicates its awareness of the urban transit crisis it would impose a new burden by way of this overtime amendment which will seriously affect a good many systems throughout the country. The systems which would have this added burden imposed upon them are in most cases those least able to bear it. These same systems invariably pay a wage rate approaching twice the proposed minimum and pay daily overtime by contract.

Mr. Chairman, it just doesn't make much sense to legislate wage increases for an industry with a wage approaching or in excess of \$4 an hour, which needs Federal support for operations as well as capital financial assistance and which to all intents and purposes is 100 percent organized by the labor unions.

Furthermore, the Amalgamated Transit Union which represents two-thirds of the operating employees in the industry, as a stated policy, will not negotiate a labor contract without the inclusion of the cost-of-living escalator.

In conclusion, Mr. Chairman, we respectfully request that this proposed overtime amendment for operating transit employees be deleted. To impose an overtime requirement by legislative fiat onto presently negotiated contracts is not necessary to protect the employee and is contrary to the public interest.

Thank you, sir.

The CHAIRMAN. Very strong statement, clear, and ending on a note that is familiar. I'll say that after the presidential freeze last month,

from some quarters there was a clamor for a freeze on profits. I didn't hear this industry mentioned.

Mr. CONWAY. That is right.

The CHAIRMAN. That was a very good statement, I appreciate it.

Mr. CONWAY. Thank you.

These gentlemen represent special segments of the industry. The public sector is represented by the gentlemen on my left and the private sector represented by Mr. Giacomina on my right, and they have statements they would like to make at this time.

The CHAIRMAN. Yes.

Mr. GIACOMINA. Mr. Chairman, and members of the subcommittee, I am Dominick Giacomina. I am founder and chairman of the board of American Transit Corp. of St. Louis, Mo. I am also a member of the American Transit Association's legislative committee.

First, let me thank you for the opportunity to appear before you today on behalf of ATA and the American Transit Corp. Our company, which manages and operates local and suburban transit systems, is located in 24 cities in 15 States and provides employment for approximately 2,500 people.

In 14 of these cities, the local governments are providing either full or limited financial assistance in order to sustain mass transportation in their area.

Recently, we have been forced by substantial losses to discontinue local operations in Port Arthur, Tex.; Danville, Ill.; the Hammond-East Chicago-Whiting, Ind., area; Gulfport and Biloxi, Miss., area and in Pontiac, Mich.

Included in the systems which we own and operate are those located in Birmingham, Ala.; suburban Chicago, Ill.; Jackson and Hattiesburg, Miss.; LaSalle-Peru, Ill.; suburban Detroit, Mich.; Lexington and suburban Louisville, Ky.; suburban Seattle, Wash.; suburban Dallas and Fort Worth, Tex.; Shreveport and suburban New Orleans, La.; and Texarkana, Tex. and Ark.

We have notified Shreveport, La. and Hattiesburg, Miss., that we cannot renew franchises which expire within 1 year. Birmingham, Ala.; Texarkana, Tex. and Ark. and LaSalle-Peru, Ill., have also been notified that local transit service will soon have to be discontinued. Our operations in Lexington, Ky., and suburban Seattle now receive limited financial assistance from local governments.

Each of these systems has collective bargaining agreements. However, not one has the stringent requirements for overtime pay both for after 8 hours per day and after 40 hours per week. To build schedules to enable busdrivers to complete their runs in an 8-hour period is almost impossible. A driver may be at the far end or middle of a route when he completes his 8 hours and to relieve drivers at that point would be impractical and work a hardship on both the driver and relief driver and, in my opinion, create many problems and dissatisfied employees.

Realizing that such overtime requirements would either hasten the demise of these transit systems or place additional tax burdens on these cities, our employees and their union representatives with their understanding of the problems peculiar to transit, and the plight of our industry, have helped preserve these urban transit systems by not pressing the issue of overtime after 8 and 40 hours. To legislate such

requirements would be an injustice to our employees, residents of these cities, and our transit systems.

In a typical city operation where wages, payroll taxes and fringe benefits now equal 60 to 75 percent of all operating costs, the impact of the proposed revisions to the Fair Labor Standards Act—through Senate bill S. 1861—would have catastrophic results. Realizing that the repeal of the present exemption would have varying results in different cities, we have analyzed the effects of the revision on a couple of typical operations. Based on current schedules and contractual requirements, we would be faced with a 4- to 10-percent increase in wage and related costs.

The additional 4- to 10-percent increase in wages and related costs, with no possible recovery through increased revenues, would necessitate our discontinuance of mass transit services in six of the 14 cities previously mentioned and further jeopardize the ability of the remaining eight to survive.

For those cities where we operate their transit systems under management contracts, Austin, Lubbock and Waco, Tex.; Fort Lauderdale, Hollywood and Pensacola, Fla.; Knoxville, Tenn.; Madison, Wis.; Phoenix and Tucson, Ariz.; Rockford, Ill. and Santa Ana, Calif., repeal of the present overtime exemption for operating employees of urban transit systems would be an additional financial burden and necessitate more taxes for their citizens.

To further stress the impact of additional wage costs on the transportation operations of American Transit Corp., I would like to give you a few figures pointing out our problem.

In the year 1966 with revenues of over \$221½ million, our companies realized a profit of \$1,315,000 and at no cost to the cities in which we operated. In 1970 with revenues of \$32 million, an approximate increase of \$10 million, our companies required public subsidies of nearly \$600,000.

We urgently request that you retain the present overtime exemption for urban transit systems.

Thank you.

The CHAIRMAN. Thank you very much.

I don't have any questions.

Mr. Davis.

Mr. DAVIS. Mr. Chairman, members of the committee, I am Harold M. Davis, assistant general manager for personnel of AC Transit in Oakland, Calif. I appreciate this opportunity to comment on Senate bill 1861 on behalf of the American Transit Association and AC Transit, and I might add, Mr. Chairman, I consider it a privilege to testify before this committee.

AC Transit is a public agency of the State of California created in 1956 by the voters of the area it serves.

The district provides local public transportation in the metropolitan area of the east side of the San Francisco Bay as well as commuter service to and from the city of San Francisco.

The district fleet of 700 buses carries 52 million passengers per year and operates in excess of 26 million miles per year.

AC Transit, as a publicly owned transit system, receives support from the property taxpayers and other public sources in order to provide essential transportation service. AC Transit is typical of public

agencies operating in major cities in California which would be adversely affected by passage of this legislation.

From its beginning AC Transit has been a pioneer among publicly owned transit systems in collective bargaining with unions certified to represent its employees.

Our major item of expense is labor costs. Wages now paid are more than double those paid when the district first became operational in October 1960.

As a matter of fact, during the past 10 years, through the collective-bargaining procedure, our bus drivers' top hourly rate of pay is now \$4.93, the fourth highest in the Nation exceeded only by Boston, New York, and Chicago. Consistent improvements in wages and working conditions clearly demonstrate that the representatives of our employees, through the collective-bargaining process, have ably enhanced the employees' economic status with respect not only to the transit industry but also to other occupations as well. This is amply evidenced by the fact that the average annual wage and fringe benefits of our bus drivers exceeds \$12,750 per year.

This district, through its elected board of directors, has carried out its responsibilities to the riding public and the taxpayers who support its operation. The stabilization of fares is one of utmost importance in attracting and maintaining transit riders. Such stabilization can only be accomplished by keeping labor costs and expenses at a level arrived at by good faith collective bargaining and not by legislative action.

We do not believe that public agencies, such as AC Transit, with the fourth highest in the Nation hourly rate of pay for bus drivers, which provides good wages and working conditions, should be penalized by adoption of legislation removing our exemption from the Fair Labor Standards Act. In fact, adoption of such legislation would tend to negate collective-bargaining procedures which have worked satisfactorily in the past.

As we understand the proposed provisions should S. 1861 be adopted by the Congress and signed by the President, in its present form, the overtime provisions would require an additional \$350,000 annually in labor costs to this district. This increase in operating expense would not be unique to AC Transit. Other transit properties would find themselves faced with corresponding increases in labor costs and expenses arrived at outside the collective bargaining process.

In conclusion, we respectfully urge that the present exemption from the maximum hours be maintained.

Thank you, Mr. Chairman.

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

Just a couple of questions. Do you have a contract or contracts with anything comparable to the contracts described by Mr. Conway in regard to the guaranteed 8 hours with really an on-the-road 6-hour day but with the report time and—

MR. DAVIS. Yes, sir, we have in our current contract with the American Amalgamated Transit Union—and the provisions of that provide for 8-hour minimum daily wage guarantee.

The CHAIRMAN. Part of that is as with the Bee Line?

MR. DAVIS. Yes, that is correct. Under the provisions of our collective agreement, report time, travel time, turn-in time, that is all paid at straight time and not considered as time worked per se.

The CHAIRMAN. All right, will you be in competition with the new subway out there when it gets underway?

Mr. DAVIS. You asked me a very embarrassing question, Senator. May I put it this way: Our board of directors has not yet made a final determination. It is the opinion of staff, and so far it has been the policy of our board of directors, to provide the best coordinated service for the people of the bay area.

And I say that with all due respect and not try to hedge because we are in the process of attempting to work out the details of the feeder service, which is to provide what level of service to what section of the area, and in which we serve.

I would doubt very much, and I express a personal opinion here, I would doubt that we would be in competition with them.

The CHAIRMAN. When is startup time for the subway now?

Mr. DAVIS. According to the last information I had when I left the coast as of Friday, it was anticipated they will start the first segment of their operation which is the Hayward-MacArthur section, East Bay, in March 1972, sir.

The CHAIRMAN. That serves Oakland.

Mr. DAVIS. Yes, it is a portion of Oakland, sir.

The CHAIRMAN. Thank you very much.

Mr. CONWAY. Thank you.

The CHAIRMAN. Shift gears, now, out of transit into the area of municipalities testimony.

Pat Healy.

**STATEMENT OF PATRICK HEALY, EXECUTIVE VICE PRESIDENT,
NATIONAL LEAGUE OF CITIES, ACCOMPANIED BY LARRY SNOW-
WHITE AND RICHARD E. THOMPSON OF THE NATIONAL LEAGUE
OF CITIES**

The CHAIRMAN. Now we have Patrick Healy, executive vice president, National League of Cities. We are very pleased to have you here.

Mr. HEALY. Thank you, Mr. Chairman. The National League of Cities is pleased to have this opportunity to comment on the proposed amendments to the Fair Labor Standards Act of 1938.

At the outset, we would like to make our position clear: We do not object to the Fair Labor Standards Act as it presently exists, nor do we oppose raising the minimum wage to \$2 an hour. Our concern is completely limited to those provisions in the proposed amendments which would extend coverage of the Fair Labor Standards Act to municipal employees. Specifically, we object to the definition of political subdivisions of States as "activities performed for a business purpose."

We believe municipal government should not be included under the Fair Labor Standards Act for several reasons:

1. Our national municipal policy has a strong and clear policy which objects to inclusion of municipal government under the Federal law.
2. The American people can be best served by decentralizing decision-making to the governmental level closest to them. This can be accomplished by maintaining and strengthening the autonomy of local government. We find that the proposed amendments would do the opposite. They would adversely affect municipal home rule.

3. Serious constitutional questions are raised in expanding the definition of the commerce clause to include municipal government.

4. Our survey of the Nation's cities indicates that the proposed amendments would have an adverse financial impact upon municipal government.

5. The economic structure of a city is significantly different from that of a business enterprise (or a State). We find that the extension of the Fair Labor Standards Act may cause cities to reduce municipal services and a rise in unemployment. This comes at a time when unemployment is a serious national problem and Americans are asking their Federal Government to reorder national priorities to provide more, not less, domestic services.

6. Extension of the Fair Labor Standards Act to municipal government may have an adverse social impact, particularly on the poor. The poor, who largely inhabit our cities, must be protected from further abuse in a country as affluent as America.

NATIONAL LEAGUE OF CITIES POLICY

The National League of Cities policy is very carefully developed through an internal democratic structure that represents all the Nation's cities. This structure consists of nine committees, one of which—the municipal government and administration committee—has carefully considered the possibilities, problems, and consequences of extending the Fair Labor Standards Act to include municipal employees. As a result of the committee deliberations, the National League of Cities, which, by the way, represents 15,000 cities in this country, has adopted the following policy:

"We oppose any extension to cover municipal employees by the provisions of the National Labor Relations Act, the Federal Wage and Hour Act or any other Federal law which affects directly or indirectly the establishment of hours of work, scales of salaries and wages or any other working conditions which must be determined at the discretion of local management or which are inconsistent with functional requirements of public employment."

A very clear statement.

The CHAIRMAN. Yes.

Mr. HEALY. Now, the National League of Cities policy statement is based upon our belief in home rule. Municipal home rule is a fundamental part of the American federalism. Municipal home rule is a consequence of the American principle of sovereignty of the people. This doctrine states that the best interests of the people of this Nation require the maintenance of a strong, healthy city government which has the right of home rule. Because city governments are closest to the people, they respond directly and best to their needs. The greater the exercise of government power by general purpose local government, the better.

The bill before us is not the only one proposed in this Congress to regulate or establish minimum standards for municipal governments. Other bills include the Equal Employee Benefits Security Act (H.R. 1769) and the National Public Employees Relations Act (H.R. 1225). These bills indicate a tendency to subject municipal decisions to a much greater Federal Government scrutiny. They would interpose

Federal regulatory agencies into the center of establishing municipal priorities and budgetary decisionmaking. In many cases, municipal officials' freedom of action in budgetary planning and priorities setting is already circumscribed by State imposed revenue raising limits and mandates for spending to support municipal services and salary levels. Federal regulatory decisions preempting municipal decisions could further constrict this limited freedom and significantly reduce the local capacity to be responsive to the will of the local electorate.

We view the extension of the Fair Labor Standards Act to municipal governments as only the beginning of a number of Federal acts to regulate, control, and establish standards for municipal government. This could represent a severe setback to American federalism. Municipal government, under the concept of home rule, is that level of government most responsible to the will of the people it governs. The Federal Government should not preempt municipal decisionmaking. Rather, it should strengthen municipal government. Strengthened municipal government can then more directly respond to the desires of the citizens it serves. And the cities, in turn, will come to rely more on their municipal government for their common needs.

Why, it is commonly asked, hasn't municipal government done a better job? Why are cities in such bad shape, plagued with pollution, poor and substandard public facilities. The answer, we would suggest to this subcommittee, has never had adequate public attention. It is precisely the question we are considering here today. Cities have not been able to solve the problems of their citizens largely because they are not given home rule powers by their States, particularly taxing powers.

States tell cities what taxes they may raise, and in some cases, how high they may raise them; States designate who may and who may not be taxed, and in some instances, State exemptions have stripped more than half the local property off the tax rolls; States set limits on how much debt may be incurred and what interest rates may be paid; States sometimes mandate services which must be performed and mandate salaries people must be paid to perform them.

One urban observer, William Coleman, former Director of the Advisory Commission on Intergovernmental Relations, has noted:

Most * * * State governments have been hesitant if not fearful in grasping the urban needle. The road to the present urban hell was paved with many major sins of omission and commission that can be ascribed to the States. Cities and suburbs, counties, townships, and boroughs alike, are after all, legal creations of the State. The deadly combination of restricted annexation and unrestricted incorporation; the chaotic and uncontrollable mushrooming of special districts; the limitation of municipal taxing and borrowing powers; the abjection of all important police powers of zoning, land use and building regulation into the hands of thousands of fragmented and competing local governments—these are but a few of the byproducts of decades of State governments' nonfeasance and malfeasance concerning urban affairs.

The bill before this subcommittee to extend the Fair Labor Standards Act to municipal government is one of central control and preemption. We believe the American people want a greater voice in their government. This can be achieved not through greater Federal control, regulation, and standards, but through strengthening municipal government.

Not only does the extension of the Fair Labor Standards Act run against our philosophical grain of home rule and power to the people,

but we believe that it raises a very serious and fundamental constitutional issue.

Mr. Chairman, we have a couple of pages of constitutional arguments, if you want me to, I can read into the record or you can just run them into the record, unless you want me to read them. There are a couple of pages but I would like in the interests of your time to skip over them.

The CHAIRMAN. Summarize the point, will you, please.

Mr. HEALY. The point is that we interpret the Court, in the case of *Maryland v. Wirtz*, to say that Congress may only regulate a State under the commerce power when the State is engaged in an enterprise for a business purpose indistinguishable from private business. Congress may not regulate under the commerce power a State or its political subdivisions as whole entities.

The CHAIRMAN. Where would transit fit into that?

Mr. THOMPSON. Senator, I assume transit would be an activity of local government with comparable activity in private enterprise, and therefore, anything regulated in private enterprise could probably be regulated as though the municipality was performing the activity.

The CHAIRMAN. That is a tough statement. It is hard to get its impact.

Now, take water supply.

Mr. THOMPSON. The same. The distinction is those functions that are unique to municipal government, which you know are zoning, the police force, fire protection.

Mr. HEALY. Sanitation.

The CHAIRMAN. Will you except garbage collection, that can be sliced either way, public or private.

Mr. THOMPSON. But that is—

Mr. HEALY. It is a municipal government function. They may let it out to private contract in some cases, but they are responsible for the public health.

The CHAIRMAN. Yes, I see your point. Transit has not been so established, that has been appropriated as a function in certain areas.

Mr. HEALY. That is right.

Now, States, and most especially local governments, are factually distinguishable from business enterprises. To expand the definition of "business purpose" to include governments in their entity, would arbitrarily define them, contrary to common understanding of words and their meaning. This was explicitly recognized by the Court when it stated:

The dissent suggests that by use of an "enterprise concept" such as that we have upheld here, Congress could under today's decision declare a whole state an "enterprise" affecting commerce and take over its budgeting activities. This reflects, we think, a misreading of the Act, of *Wickard v. Filburn*, *supra*, and of our decision.

To expand the definition of "enterprise" and declare State and local governments to be operated for a "business purpose" goes far beyond the holding of *Maryland v. Wirtz*. Such expansion violates a fundamental principle that State and local governments hold a unique and protected place in our Federal system.

(The following information was subsequently supplied for the record:)

Constitutional Considerations:

Not only does the extension of the Fair Labor Standards Act run against our philosophical grain of home rule and power to the people, but we believe that it raises a very serious and fundamental constitutional issue.

Article I, Section 8, Clause 3 of the U. S. Constitution states that: "The Congress shall have power to regulate commerce...among the several States..." The Supreme Court has stated that the commerce power, "though broad indeed, it has limits."¹

When Congress amended the Fair Labor Standards Act in 1966 to extend coverage to employees of state and local governments in hospitals, institutions, and schools, the State of Maryland argued that the commerce power must yield to State sovereignty in the performance of governmental functions. The Supreme Court, in Maryland vs. Wirtz,² stated: "This argument simply is not tenable."

The Court found that when a state engaged in an economic activity that would be readily regulated if engaged by a private enterprise, the state places itself within the reach of the commerce power.³ The Court said the Fair Labor Standards Act extends to every employee who "is employed in an enterprise engaged in commerce or in the production of goods for commerce."⁴ The distinction we are making is that the Court never found that states as whole entities are "enterprises" within the definition of the Act. The Court did find that certain limited functions of state government constitute "enterprises". It held that the state by employing persons performing medical and educational functions (other than executive, administrative or professional) was "subject to the same restrictions as a wide range of other employers whose activities affect commerce, including privately operated schools and hospitals."⁵ Strikes and work stoppages would interrupt the flow of interstate commerce, so therefore Congress had a "rational basis" for "prescribing minimum labor standards for schools and hospitals, as for other importing enterprises".⁶

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We do not argue (as did the State of Maryland vs. Wirtz) that "state sovereignty" precludes Congress from regulating state and local governments. The Court itself recognized⁷ that there is a unique position for state and local governments within our Federal system. The Court said: "If a State is engaging in economic activities that are validly regulated by the federal government when engaged in by private persons, the State too may be forced to conform⁸ its activities to federal regulations."

⁹
The Court discussed at length its "ample power to prevent what [the States] purport to fear,¹⁰ the utter destruction of the State as a sovereign political entity".

It quoted in part from the Act's definition of "enterprise".

"Enterprise means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose... (emphasis added)

The Court continued:

"We uphold the enterprise concept on the explicit premise that an enterprise is a set of operations whose activities in commerce would all be expected to be affected by the wages and hours of any group of employees, which is what Congress obviously intended. So defined, the term is quite cognizant of limitations on the commerce power." ¹¹

¹²
The Court rejected the traditional distinction of "governmental" and "proprietary" in favor of the statutory one of "enterprise." The Court declared that it will not exempt "enterprises indistinguishable in their effect on commerce from private businesses, simply be-¹³ cause those enterprises happen to be run by the states for the benefit of their citizens. The Court added:

"Nor is it relevant that Congress originally chose to exempt all state enterprises and latter partially removed that exemption. Congress was as free to include state activities within the general regulation at a later date as it would have been to omit the exemption in the first place. ¹⁴

Our key point is that we interpret the Court to say that Congress may only regulate a state under the commerce power when the state is engaged in an enterprise for a business purpose indistinguishable from private business. Congress may not regulate under the commerce power a state or its political subdivisions as whole entities.

States, and most especially local governments, are factually distinguishable from business enterprises. To expand the definition of "business purpose" to include governments in their entity, would arbitrarily define them, contrary to common understanding of words and their meaning. This was explicitly recognized by the Court when it stated;

"The dissent suggests that by use of an 'enterprise concept' such as that we have upheld here, Congress could under today's decision declare a whole state an 'enterprise' affecting commerce and take over its budgeting activities. This reflects we think, a misreading of the Act, of Wickard vs. Filburn, supra, and of our decision." 15

To expand the definition of "enterprise" and declare state and local governments to be operated for a "business purpose" goes far beyond the holding of Maryland vs. Wirtz. Such expansion violates a fundamental principle that state and local governments hold a unique and protected place in our Federal system.

Mr. HEALY. Mr. Chairman, in order to determine the impact of the application of the Fair Labor Standards Act to municipal governments, the National League of Cities conducted a survey of all cities over 30,000 population. In the survey, we described to the cities the provisions in both S. 1861 and H.R. 7130. Cities were asked to complete a questionnaire which was designed to gather data on the impact of the Fair Labor Standards Act on municipal government. (223 cities in 41 States responded.) While we did not request comments from the municipalities, a number returned letters with their questionnaires. Analysis of the data they provided and review of their letters indicated municipal governments' widespread opposition to extend the Fair Labor Standards Act to include municipal government.

Generally, the overtime provisions are of greater concern than the minimum wage. The letters on overtime indicate their overriding concern is for firemen, and, to a significant but lesser extent, policemen. Typically, firemen work 56 hours a week, as many as 24 hours a shift. Paying firemen overtime at time-and-a-half would, for example, add \$7.5 million to Detroit's annual budget at current pay scales; it would cost Long Beach, Calif., an extra \$2.5 million, and Hartford, Conn., an additional \$369,000.

Spokane and Boulder pointed out that the time-and-a-half requirement would adversely affect their shift to a 4-day week, which is especially attractive for police and other personnel who man departments that have to operate around the clock.

Los Angeles and Madison, Wis., were among several cities that object to foreclosure of the option of compensating overtime with time off, rather than cash. Harrisburg, Pa., would have to discontinue its practice of encouraging employees to work extra hours at straight time to give them additional earning opportunities. Phoenix is worried about the impact of having to pay time and a half to police and firemen on holidays. Overtime pay is most burdensome in times of civil emergency such as snowstorms, floods, civil disturbances, and so forth.

Overtime pay requirements would also burden municipal budgets in many cities with more pay for bus drivers, who may work only 8 hours a day but whose time is spread over a period as long as 12 hours, as is the case in Lincoln, Nebr.

Glendora, Calif., calculated that the overtime requirements would result in a 10-cent increase in the property tax per \$100 assessed valuation, and the \$2.25 minimum wage would require another 5-cent tax hike—altogether resulting in an 11-percent tax increase—to maintain services at the present level.

The dollar impact of the overtime provisions is largely due to police and fire shifts. Based on useful data from 143 cities, the added cost of overtime, as defined in H.R. 7130, would be \$51.2 million. However, this cost is by no means evenly spread among the cities. Of the cities responding, 60 percent already pay overtime at time-and-a-half. Thus, the analysis indicates that not only would the financial burden be substantial, but it would be concentrated in a few cities.

Generally, the minimum wage is not as great a concern to municipal officials as is the overtime provision. The 141 cities that provided useful data in regards to the minimum wage indicated that the additional cost would be \$4.6 million at \$2 an hour and \$20.8 million at \$2.25

an hour. However, these figures may be somewhat low inasmuch as the questionnaire did not specify, nor did the responding cities indicate, whether the figures included social security and other fringe benefits, which probably would have averaged out to an additional 10 percent.

While the dollar impact is not substantial to cities, the number of employees affected is. Of the total work force in all of the 141 cities that responded to this question, 22.2 percent are below the minimum wage. The types of employees in this class are unskilled, maintenance, and custodial workers—about one-tenth of those below the proposed \$2 minimum wage; refuse collectors—about one-fifth of those below; and part-time and temporary workers—more than one-half. Recreation employees rank next below trash collectors in number of employees in various job categories that would be affected by the minimum wage legislation. These statistics raise the question whether these present employees would benefit from minimum wage legislation, or would they lose their jobs? While this issue has been considered in terms of the minimum wage impact upon private industry, we believe that municipal government is substantially different from private industry and thus the effects of the minimum wage will not be analogous. There is a real possibility that jobs will be eliminated.

Many cities commented in their letters that the minimum wage would have an adverse impact on temporary employees—typically high school students on summer jobs such as recreation, library, and beautification project workers. Concern was expressed by Harrisburg, Pa.; St. Charles, Mo.; Southfield, Mich.; Hartford, Conn.; Boulder, Colo.; and Mountain View, Calif., that job opportunities for these young people would no longer be available, and the services they performed, which especially benefited poor people, would have to be curtailed. Mountain View already has had to close its library 2 days a week for lack of funds.

In practical terms, the National League of Cities is concerned about the economic impact the Fair Labor Standards Act will have on cities. We do not intend to argue the economics of the Fair Labor Standards Act as it has impacted private industry. This subcommittee is obviously an expert in this area although we are not convinced the issue is settled. The point we intend to make is that municipal government is distinctively different from private enterprise and State government. Thus, the economic impact of the application of the Fair Labor Standards Act to municipal government cannot be assumed to be equivalent to the impact it has had on business. We would caution the committee in extending the Fair Labor Standards Act to municipal governments because the results of such an application are unknown.

Municipal governments are unique among entities in America in terms of their legal structure and financing. The American Federation of State, County and Municipal Employees has recognized this situation in its efforts to bargain with municipalities as employers. Recently, in analyzing how the newly imposed wage-price freeze effects municipal employees, AFSCME stated:

Public wage structures are unique in the manner in which they pay, not on the basis of the job, but rather on how many years one has been on the job.

... public employees are severely limited by law and procedure in their bargaining with employers. . . . The problem is further complicated by the dependence of state and local governments on financial assistance from higher levels of government, and the delays that frequently occur in the aid process.

While AFSCME has recognized that the wage side of municipal government is both unusual and unique in comparison to the private sector, we want to point out that the price side is even more unusual.

As stated before, States have been reluctant to give cities adequate home rule powers, particularly taxing powers. The inability of State government to care for its prodigy has put cities in such a financial squeeze that they are unable to cope with the problems they face. In your own State, Mr. Chairman, the case of Newark, N.J., is extreme, but it reflects the direction in which most American cities are moving. Mayor Gibson describes the severity and magnitude of the problems he faces daily:

One out of every three residents of Newark is receiving some form of public assistance.

14 percent of Newark's labor force is unemployed; another 25 percent is either underemployed or underutilized.

20,000 of Newark's 400,000 citizens are addicted to drugs; rehabilitation and treatment centers care for only 7 percent of those addicted.

Newark's crime rate, and our per capita incidence of venereal disease and infant mortality, are among the highest in the nation.

35 percent of our housing stock is substandard.

To cope with these problems, Mayor Gibson has carefully designed his budget. Its ramifications for 1971 are as follows:

The 1971 budget represents a 25 percent increase over our 1970 budget; this increase will simply maintain essential municipal services at 1970 levels.

We must rely upon our local property tax for 65 percent of our revenues. In a city where we already have one of the highest and most confiscatory rates in the country, we were forced to raise the rate of taxation this year by almost 10 percent. This increase means that an owner of a \$20,000 home will pay about \$1,850 in annual property taxes. We have reached a point where our property tax has only hastened the flight of industry, commerce, and the remaining middle class homeowners out of Newark. The excessive rates we are forced to impose have actually been the cause of abandonment, deterioration, and a decline in our tax base. The stark reality finds buildings being abandoned at the clip of one a day.

The simple truth is that the local property tax was never designed to deal with the enormous social and economic problems which now confront urban America. Not only must we use this inelastic source of revenue to keep pace with the inflationary spiral of maintaining such essential services as police protection and garbage removal, but we must also rely upon the property tax to support major new endeavors such as drug education, rehabilitation clinics, compensatory education programs, summer recreational programs, and urban renewal.

Thus, city "price" structure has no comparison to private enterprise. The demands upon municipal resources are enormous, but municipal taxing powers are usually limited by the State and confined to regressive taxes.

Because cities are unique in their ability to set wages and raise taxes, the effect of the Fair Labor Standard Act municipal government would not be the same as it is in private businesses. The impact upon private business, when the Fair Labor Standards Act was imposed, was probably in some combination of the following three directions: First, a few businesses went out of business since they could not absorb the increased labor costs or since imports gained a better advantage in the American market. Second, many businesses undoubtedly changed their mix of production ingredients to be less labor and more capital intensive. Third, some businesses were probably able to pass

on the increased labor costs in price. For those businesses which survived the impact of the Fair Labor Standards Act, some combination of the latter two responses must account for their continued existence.

The economic structure of municipal government precludes it from responding in a similar manner. The services that municipal government provides are labor intensive.

Almost 70 percent of any municipal government budget is composed of personnel costs. The major portion of municipal governments' expenditures from their own revenues are for police, fire, and recreation. These operations are unlikely to change in their labor-capital mix. Cities unable to change their labor-capital mix will try to shift their increased labor costs to taxes. As indicated above, the current fiscal crisis has gained such proportions that for many cities there is no practical or legal manner to raise taxes. In such a predicament, the cities' economic decision to cope with the Fair Labor Standards Act or raise the minimum wage would be left to only one alternative—elimination of jobs and reduction of services.

At this time in history when American citizens demand more and better domestic public services, it is hardly appropriate for Congress to enact a program that would force cities to reduce services. Congress is probably unaware, but several of its previous programs have accentuated the crisis of the cities.

For example, one, the national farm policy disinherited millions of farm families, driving masses of them into already crowded cities. At the same time, the fragmentation of the national welfare system not only allowed a Southern State to pay one-sixth as much for relief as New York, but trapped many of the poor in the cities' most squalid slums.

Two, Federal Housing Administration policies contributed to urban sprawl by subsidizing more than 10 times as many units of housing in the suburbs than in the inner city.

Three, the national highway program further stimulated the suburban exodus, bisecting cities with concrete, subsidizing congestion and pollution, and ignoring the need for urban mass transit.

In this way, national policies not only failed to stem the deterioration of our Nation's cities, but they particularly caused it.

Our point is the financial plight of Newark or any other American city is not of its own making. American cities have been victims of inaction at the State level and inappropriate action at the Federal level. American cities have been powerless to prevent their fiscal plight and remain powerless to rectify it. The city's fiscal structure and the nature of the services it provides precedes it from responding to the Fair Labor Standards Act in a manner similar to private enterprise. The question before this subcommittee is: Will the extension of the Fair Labor Standards Act to municipal government continue to accentuate the fiscal plight of cities and increase unemployment? Results of our survey indicate that cities will suffer a financial impact. From what we know of municipal finances, we expect cities will be forced to lay off workers and reduce services. The magnitude of these consequences is unknown. But the possibility that once again another level of government will worsen city ills is very real.

Impact on the poor: There is another concern we have with the Fair

Labor Standards Act and that is its impact on the poor. We are not convinced that the general application of the Fair Labor Standards Act and the increasing of the minimum wage has assisted the poor. Two students of the problem have stated :

It is simply not true that no evidence of adverse employment effects has been found. On the contrary, the weight of the evidence overwhelmingly demonstrates the results long predicted by economists. Unfortunately, much of it lies in scattered academic journals and is unknown to most public leaders.

The authors go on to say :

Both theory and fact suggest that minimum wage rates produce gains for some groups of workers at the expense of those that are the least favorably situated in terms of marketable skills or location.

Within low-wage industries, higher-wage plants gain at the expense of the lowest-wage plants. Small firms tend to experience serious profit losses and a greater share of plant closures than large firms. Teenagers, non-whites, and women (who suffer greater unemployment rates than workers in general) tend to lose their jobs, to be crowded into less remunerative noncovered industries, and to experience more adverse changes in employment than other workers. Given these findings, the unqualified claim that statutory minimums aid the poor must be defined. The evidence provides more basis for the claim that while they help some workers, they harm those who are the least well off.

Policymakers would be advised to examine critically the contradiction between large public expenditures designed to help small business, depressed areas, and disadvantaged workers on the one hand and minimum wage policy that harms these same groups on the other. They would also be advised to look to means other than statutory minimums for dealing with the problems of low wage rates and poverty.

Municipal governments, unlike private enterprises, have a unique role to play beyond that of just providing services. As the American Enterprise Institute has stated :

Inclusion of governments under the minimum wage law may hamper proposals for governments acting as employers as a last resort, to cope with the recalcitrant problems of unemployment. This would lead to adverse effects for working and training incentives in the rest of the economy wherever wages are not substantially above the statutory minimum.

If our reasoning about the impact of the Fair Labor Standards Act upon municipal government is correct, and municipalities will not be able to serve as an employer of last resort, who will? We conclude that the chance that the poor will be aided under the proposed amendments is unlikely. Probably the poor will only be placed in a more disadvantageous economic position than they are now.

Our survey shows that the imposition of the minimum wage on municipal government would not only cut jobs for the poor—especially at the entry level—but also would require curtailment of the very services most needed in the inner city. These include recreation, day care, health care, education, and law enforcement.

The National League of Cities is also concerned about the proposed amendments and their relationship to the welfare reform bill, H.R. 1. The key feature in H.R. 1 is the opportunities for families program (OFP). Under OFP, welfare recipients who are employable must register with the Department of Labor and accept suitable employment, if available. Municipal government can serve as a source of jobs for employable welfare recipients. But if the Fair Labor Standards Act were extended to municipal government, their ability to provide such jobs could be significantly diminished. It is interesting to note that

H.R. 1 recognizes that some wage floor should be established in OFP and sets it where the minimum wage does not prevail at 75 percent of the highest Federal minimum wage.

In summary, we have pointed out that the municipal government is unique and substantially different from private enterprise. In this respect, we have noted that the inclusion of municipal government as a whole entity in Federal law under the commerce power appears to be unconstitutional. The powers of Congress to regulate local government are limited to those functions which local government performs as would private enterprise. We also concluded that application of the Fair Labor Standards Act to municipal governments, because of the particular financial structure of cities, will worsen our fiscal plight, increase unemployment and further handicap the poor.

In summary, we do not know the full magnitude of the effect the Fair Labor Standards Act would have on municipal government. We have just raised what we consider to be valid but disturbing questions. We respectfully submit that if Congress extends the Fair Labor Standards Act, it will be playing political roulette with the fundamental equipment of American society—municipal government.

Thank you, Mr. Chairman.

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

Now, let us deal for a moment with some apparent paradoxes here. The cities, it is generally considered, have the highest welfare expense and yet, I gather from your statement that they are also paying some of our lowest wages, 10 percent of the workers are below the minimum wage. Did I understand your statement there? Twenty percent are below?

Mr. THOMPSON. Twenty-two.

The CHAIRMAN. So municipal people are receiving very low wages and yet we do know that the welfare costs are most significant in our cities. Isn't this some kind of paradox?

Mr. HEALY. The cost of welfare is usually not a city government budget cost. It is usually a county that overlays the city that has that function, county and State function. The exception would be New York City, and some of the city-county consolidated entities like Baltimore, San Francisco, Denver, et cetera, but most of the cities do not have the welfare function.

The CHAIRMAN. Families needing welfare assistance are those not earning enough in their employment whether private or public. Anyone who is making less than the minimum wage with a family is a subject for welfare.

Here we would have the situation where the government employees are candidates for welfare under the present program. A family of four at \$1.60 an hour, where the breadwinner makes \$1.60 an hour, would have to collect welfare to meet the standards set by the legislation.

Mr. HEALY. As I understand it, H.R. 1, I assume any worker including a municipal worker, who isn't making \$4,000 a year with a family of four would be entitled to participation in that minimum income provision.

The CHAIRMAN. Yes. The figure is actually \$4,140.

Mr. HEALY. Including municipal employees, that is right.

The CHAIRMAN. Now, we could get into some strange ones here, if it should follow that the minimum wage coverage applied to municipal workers, and then it should follow that some would lose their jobs, then they could be rehired under public service employment and get the minimum wage because this Federal program for municipalities does incorporate the minimum wage.

Mr. THOMPSON. Senator, maybe I should clarify the 22 percent figure that are paid under the minimum wage. We found that those people are largely part-time people and a great number of that is summer help, particularly the youths, park, and recreation facilities types, so it is not representative of what you and I consider the American worker, that 22 percent. It is more of a part-time worker, particularly the young people.

Mr. HEALY. Another thing about the present welfare roll, it does not have any, or very many, employable people. Over 80 percent, as I understand it, are mothers with no man in the house, but with children, aid for dependent children, and the unemployable, the old age, the blind, the crippled, et cetera.

There are a relatively small number of people on welfare who can work.

The CHAIRMAN. Is that a pretty reliable statistic?

Mr. HEALY. I can check it for you, and for the record, but it is over 80 percent not employable for those reasons.

Mr. THOMPSON. Most of those 22 percent are not head of household, so they are not the—the household may or may not be under poverty, but we do not know from that 22 percent figure.

The CHAIRMAN. Certainly there is much in this statement that I find to be very accurate from where I live. The municipal governments certainly do not have the opportunities, the resources, put it that way, resource opportunities it should have.

Mr. HEALY. That is right. That is the point. It is not like a private industry. We have different pricing structures.

The CHAIRMAN. You mention Newark here in some detail. The basic resource is the property taxation, the taxation on residential property. You would not believe it, how high the tax will run on a substandard dwelling. It is unbelievable.

Mr. THOMPSON. It is more and more frightening because we are finding that is becoming the case across the country. Unfortunately, Newark in the case is a leader but it is the wrong direction to go.

Mr. HEALY. I would introduce my associates, Mr. Richard Thompson and Larry Snowwhite, with the National League of Cities.

The CHAIRMAN. All with you in the National League of Cities?

Mr. HEALY. Yes, National League of Cities.

The CHAIRMAN. I certainly appreciate this thoughtful presentation, Mr. Healy, with your associates, and we are bound up in a problem that is bigger than this minimum wage.

Thank you very much.

Mr. HEALY. We appreciate the opportunity, thank you.

The CHAIRMAN. Thank you.

At this point I order printed in the record all statements and pertinent material submitted by interested persons unable to be with us today.

(The following was subsequently supplied for the record :)

City of Detroit

EXECUTIVE OFFICE

ROMAN S. GRIBBS
MAYOR

July 16, 1971

Mr. Jerry Wurf
International President
American Federation of State, County
And Municipal Employees, AFL-CIO
1155 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Wurf:

I am responding to your letter of May 19, 1971, in regards to your proposed amendments to the Fair Labor Standards Act. I believe I speak objectively and, with a great deal of satisfaction, in my belief that the City of Detroit is much more generous to its employees than the benefits that would be provided by the proposed Fair Labor Standards Act amendments.

Let me point out to you some of the advantages presently enjoyed by our City employees.

1. All are granted full collective bargaining rights under State Law, including the right to bargain on wages, hours, and working conditions.
2. Our minimum rate for hourly-rated employees in the certified service, with the exception of trainees, is \$3.80 per hour.

On principle and Home Rule, I earnestly support the National League of Cities and the United States Conference of Mayors in their objection to the proposed 1971 amendments to the Fair Labor Standards Act.

Mr. J. Wurf

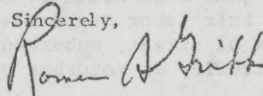
-2-

July 16, 1971

I am basically opposed to any delegation of power that infringes upon the rights of elected officials of government. In Michigan, we have a prime example when the State Legislature enacted a Compulsory Arbitration Act for Police and Firefighters. Under this Act a municipality must comply with the award of an arbitrator who is not elected by the people and who rarely takes into account the economic conditions of the municipality and who has no responsibility for raising the necessary revenue to cover his award.

Let me end on a note of reality. I am looking to the State and to the Federal government to appropriate to the City of Detroit \$26,000,000 needed to close the revenue gap in our 1971-72 budget. We look forward to the support of your organization, and you personally, in this effort.

Sincerely,


Mayor

AWD/rag

September 30, 1971

Honorable Harrison A. Williams, Jr.
Chairman
Subcommittee on Labor
Committee on Labor and Public Welfare
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This statement is filed on behalf of the National Association of Motor Bus Owners (NAMBO) in opposition to S. 1861 insofar as that bill would repeal the exemption in section 13(b)(7) of the Fair Labor Standards Act respecting the overtime of employees of street, suburban or interurban electric railways, or local trolley or motorbus carriers.

NAMBO is the national trade association for the intercity motor bus industry. Collectively, NAMBO's 450 operator members provide over 90 percent of the intercity motor bus transportation in the United States.

S. 1861 would make no change in section 13(b)(1) of the Fair Labor Standards Act which exempts from the overtime provisions of the Act drivers and mechanics whose duties affect safety of operation and with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service. Therefore, the proposed regulation would not affect the overtime exemption presently applicable to the drivers and mechanics of most intercity bus operators. However, a considerable number of NAMBO members are engaged in providing local or suburban bus

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service and would be materially and adversely affected by repeal of section 13(b) (7) of the Fair Labor Standards Act.

Inevitably, repeal of the 13(b) (7) exemption would compel our members who are engaged in providing local transit service to discontinue such service because of the resulting increased wage cost. All members of NAMBO are privately owned. It does not seem to us to be in the public interest to amend section 13(b) (7) when the probable result will be discontinuance of local motor bus service under private ownership and the end of such service except under public ownership.

Local transit companies already are in serious financial trouble. Last year the transit industry in the United States had an operating deficit of \$322 million. Recognizing this serious crisis facing the transit companies, the last Congress amended the Urban Mass Transportation Act of 1964 to provide \$3.1 billion in Federal financial assistance.

NAMBO has read the statement in opposition to S. 1861 presented by the American Transit Association, all of whose members would be adversely affected by repeal of the present overtime exemption in section 13(b) (7) of the Fair Labor Standards Act. We fully endorse that statement because the impact of repeal of the exemption on our members who are engaged in local transit operations is identical with the impact of such repeal on members of the American Transit Association.

I respectfully request that this letter be made a part of the printed record of the hearings before your Subcommittee.

Sincerely yours,

Charles A. Webb

STATEMENT OF THE AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION
TO THE SENATE LABOR SUBCOMMITTEE ON
S.1861 PROPOSING CHANGES IN MINIMUM WAGE LAW
PRESENTED BY
HAROLD T. HALFPENNY

September 27, 1971

My name is Harold T. Halfpenny of the firm of Halfpenny, Hahn & Roche, 111 West Washington Street, Chicago. I am making this statement as legal counsel for the Automotive Service Industry Association.

The Automotive Service Industry Association and its affiliates represents a national trade association of manufacturers, rebuilders, warehouse distributors and wholesalers of automotive parts, tools, equipment, chemicals, paint, refinishing materials, supplies and accessories. With its affiliates, the Automotive Booster Clubs International and the Independent Garage Owners Association, it represents more than 16,000 automotive firms. These products are sold to car dealers, independent garage men, gasoline filling stations and fleet owners for the maintenance and operation of automobiles, trucks, buses and industrial engines.

S.1861 is probably the most drastic change proposed to the Fair Labor Standards Act. We are concerned with two of the proposals: (1) the increased minimum wage; and (2) the eight hour day, with time and one-half after that.

To service this great industry, wholesaling of automotive parts is primarily a service business, and its greatest expense is wages. The ordinary wholesaler in the automotive industry must carry an inventory of almost 30,000 different items. The employees, to handle this business, must be skilled and trained so they can advise the mechanics and the car owners the items and parts that are required for various complicated repair jobs. In addition, many of them must be capable of operating complicated machines that are used in the machine shops in conjunction with a wholesaler's place of business. It is a business that requires intelligence, hard work, long hours and mechanical skill. Yet it is small business.

Our employers are men who understand well the problems of labor. Almost all of them are men who originally worked as mechanics, stock men, or in one of the manufacturer's places of business and who through their own efforts have created their own business and are now employing other people. These men are greatly concerned with the present trend of government regulations, high taxation, and complicated rules as to labor and hours of work.

The members of the Automotive Service Industry Association have places of business in 50 states. This widespread activity is dictated by necessity for ready availability of automotive re-

placement parts at any time and in all parts of the country. The automobile owner whose car has failed wants it repaired now -- whether it is 8:00 A.M. or midnight, and whether the breakdown has occurred in Chicago or in Great Antler, Nebraska.

This means that the wholesaling of automotive parts is a service as well as a selling business, and in fact its greatest expense is wages. The independent wholesaler in particular, in meeting and attempting to succeed in his competition with the dealers of major car manufacturers, must give his repair customers service at all times. This means that both wages and overtime are to him significant factors.

Further there is a growing feeling among economists that, by eliminating marginal job opportunities and increase minimum wage would hurt the people it is supposed to help, particularly blacks and teenagers. An increase may well have an effect of preventing marginal workers from getting a job.

Overtime

The proposal that overtime be paid by the day instead of by work-week is similarly illogical. It overlooks the purposes of the Fair Labor Standards Act.

That Act was adopted in 1938, a time in our economic history very different from that in which we are now involved. The declared purpose of the Act was to insure a minimum standard necessary for the health, efficiency and general well being of workers. The time-and-a-half provision for overtime measured by the work-week was thought sufficient to compensate employees for the burden of a long work-week, and to accomplish the secondary and unexpressed purpose of inducing employers to reduce the hours of work and employ more men (Walling v. Youngerman-Reynolds Hardwood Co., 325 U.S. 419 (1945)).

It is interesting that the Presidential message accompanying the original legislation in Congress emphasized that it would correct the evil of "overwork." (May 24, 1937, 81 Cong. Rec. 4983). The work-week was adopted as a measurement for "overwork."

There is no indication that this measurement is not still sufficient to achieve that objective. Certainly if an employee works overtime on Monday, and compensates by shorter hours later in the week, he is not overworked to the detriment of his health.

The business of the small automotive replacement wholesaler is one in which this is very likely to occur. An employee might have to stay late one evening in order to fill a customer's emergency request, but could be allowed to come in late the following morning. If his hours for the work-week totaled no more than

40 the wholesaler would, under this bill, be required to pay overtime. This would add to the cost of business for the wholesaler without any real justification so far as the help or well being of the employee is concerned.

Nor is there any reason to suppose that the overtime proposal would lessen unemployment. Certainly in our industry at least the nature of the work is such that an untrained employee could not take over for a short period of time. Further, it seems very unlikely in any event that the occasions on which daily, but not weekly, overtime are worked, are so frequent as to cause more people to be hired.

Eliminating an Exemption

In this connection, the Automotive Service Industry Association is particularly concerned with, and urges the adoption of, the section of this Bill which would repeal the exemption of employees employed as salesmen or partsmen by motor vehicle dealers. Our members in the replacement parts business are in direct competition with the automobile dealers, and the exemption of those dealers has made competition even more difficult for the independents.

Quite aside from its effect on competition, this exemption has no justification from a social or economic point of view. As a sales-and-service occupation, the automobile dealer should be in the same position as any other employer similarly engaged,

and his employees are entitled to the same protection given their employees.

The repeal of the exemption in favor of automobile dealers will correct a long-standing injustice. It will also be consistent with the philosophy and objectives of the Fair Labor Standards Act as a whole.

Conclusion

With the sole exception of the exemption mentioned above, we urge that S.1861 not be adopted.

STATEMENT OF
NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE
SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND PUBLIC WELFARE
SENATE OF THE UNITED STATES
ON S. 1861
A BILL TO AMEND THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED
JUNE 28, 1971

The National Association of Manufacturers welcomes this opportunity to present its views on the pending legislation. The policies which guide this Association's statements to Congress are based on the considered deliberations of our Board of Directors and our membership, consisting of manufacturing companies, of all sizes and in all sections of the country. These policies are prepared by a process of careful deliberation by committees composed of individual representatives of member companies.

The bill under consideration, S. 1861, would raise the statutory minimum wage to an amount 25 percent above its present level (\$2.00 over \$1.60 per hour) sixty days after enactment, and 41 percent above its present level (\$2.25 per hour) a year later. It would extend coverage of the minimum wage to 13 million new workers--about one-sixth of the entire U.S. labor force. It would require the payment of an overtime premium for work extending beyond 8 hours in any day, regardless of the total hours worked during the week of which that day is a part.

We question the wisdom of the enactment of this legislation, or of any legislation which would have similar effects. Our opposition is based in part on considerations related to the present state of the U.S. economy and in part on past experience with legislation increasing the minimum wage. It is our belief that enactment of these proposals would be a mistake in national economic policy.

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STATE
OF THE
ECONOMY

In the United States we have, at present, an unusual combination of economic problems, each of which would, in our judgment, be made worse by the proposed amendments to the Fair Labor Standards Act, and as a consequence believe that this is not the time to raise the minimum wage or extend its coverage. If one lists the outstanding characteristics of the present economic situation, each one of them is a counter-indication for the proposals being considered:

1. This is a time of continuing inflation. The most acute and intractable aspect of this inflation is the seemingly inexorable rise in labor costs--which underlie the prices of goods and services. Government intervention in the form of a mandatory increase in the minimum wage would only add to the forces which push labor costs up.

2. This is a time of persistent high unemployment. The most serious unemployment problems exist among the unskilled, the inexperienced, and others who are disadvantaged in various ways. These are precisely the groups which are most likely to be adversely affected by changes in the minimum wage and its coverage. Surely we should not impose a new deterrent, in the form of higher wage costs, on the employers upon whom such persons depend for jobs. To do so would be to impair the job prospects of those who need jobs most.

3. This is a time of increasing competition between American enterprise and their foreign rivals. In many cases U.S. industries and their employees have been seriously injured by foreign competition. The U.S. balance of payments has been hurt by our declining foreign trade surplus and the international position of the dollar has been weakened. Whatever course may be followed in dealing with these problems, the difficulties

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should not be further compounded by a government-imposed increase in wage costs. Why create an additional disadvantage for American producers by imposing a higher minimum wage with broader coverage?

4. This is a time of a severe profit squeeze on American industry which has slowed the recovery of the economy. Actually dollar profits of corporations are at present somewhat below the levels they reached in 1966--whereas since that year the gross national product has increased by 36 percent, and the compensation of employees has increased by 44 percent. Since profits are the necessary incentive for expansion or even the continuation of current operations, and supply indispensable funds for business growth, one need not be a corporate official or stockholder to be concerned about this. Job opportunities for employees in the private sector come from profitable operations of their employers in a free enterprise economy. Thus, we certainly should avoid any further Congressional action which, by raising costs, would further impair the profitability of business operations.

Hopefully, each of the economic problems listed above will be alleviated in the future. But it is perfectly clear that an increase and extension of the statutory minimum wage would add to the problem and not contribute to its solution.

NO JUSTIFICATION EXISTS FOR RAISING THE MINIMUM WAGE	In the face of these rather obvious objections to an increase or extension of the minimum wage, one would have thought that the proponents of such a move would have assumed the burden of proof in presenting their recommendations. One would further have expected that a carefully documented case would have been made for the precise timing and amounts proposed.
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Instead, at this point, the arguments in favor of raising the minimum wage by the proposed amounts seems to rest merely on the unexamined premise

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that people will be better off if they are paid more and that this can be achieved by legislation forbidding employers to pay them less than some specified amount. That proposition has an appealing simplicity. But if this is sufficient ground on which to justify raising the minimum wage, one must immediately ask why the advocates of such a move have been so modest in their demands.

Those who have proposed this legislation have not borne the burden of proof which is properly theirs. In the light of the general economic considerations discussed above, and in the absence of an adequate basis for increasing and extending the minimum wage as proposed, we suggest that such a move would be unwise.

EMPLOYMENT EFFECTS

The assumption is sometimes made, and seems inherent in these proposals and the arguments used to support them, that when the minimum wage is increased and extended all goes on as before except that certain persons receive higher paychecks. But careful analysis will indicate that this is a doubtful assumption. In our complex, dynamic economy, questions of what goods and services will be produced, how they will be produced, and who will be employed in their production, are resolved by the interplay of cost and price factors in the market place. To raise arbitrarily the cost of any element which enters the productive process is to place it at a disadvantage as compared with alternatives.

Statistical studies have been undertaken by the economics profession to measure the effect of increasing the minimum wage on employment opportunities. There is controversy over conclusions, but the controversy relates to the extent of the damage done to the job opportunities of disadvantaged workers, and not to the reality of such damage.

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It is sometimes alleged that government statistical studies of the effect of minimum wage increases on unemployment have produced negative results, in the sense that they indicate that no adverse effects can be proved. This is not quite an accurate reporting of the conclusion which may be drawn from such government studies, even if they are accepted in preference to private studies which reach contrary conclusions.

For example, a 1970 government study of the impact of the minimum wage on youth employment^{1/} states after discussion of a number of statistical tests which had been applied to available data:

"...they do not permit confident conclusions about the effect of minimum wage law upon the employment experience of teenagers."

However, the study goes on to explain:

"From all this, it should not be concluded that minimum wage laws have no effect. Rather, the fact is that time series analysis does not permit an adequate separation of various, nominally independent, factors affecting teenage employment problems."

The study gives one possible explanation for its statistical results:

"There is some basis for the inference that the effect of Federal manpower programs and the Federal minimum wage have tended to offset each other."

The study notes finally:

^{1/} U.S. Department of Labor, Bureau of Labor Statistics "Youth Unemployment and Minimum Wages," Bulletin 1657, 1970. The quotations are from page 45. Emphasis has been supplied.

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"Although hints of adverse effects of minimum wages show up in available data, no firm statement can be made about the magnitude of such effects."

Thus, the general significance of the Labor Department study, as interpreted by its own authors, is that the employment effects of the minimum wage are not amenable to measurement on the basis of the statistical record. That is not a surprising conclusion, in view of the many other economic developments occurring in the period covered by that study which may have obscured the impact of minimum-wage increases. It does not give assurance that no adverse employment effects need be anticipated from a further increase in the minimum wage. Inability to calculate the magnitude of the results of any action is a questionable basis for undertaking it.

Uncertainty over whether the effect of this legislation on the availability of jobs would be a major disaster or a lesser setback is not a very good reason for enacting it.

The hope that the job-destroying impact of this legislation would be offset by other manpower programs of the government is also a poor reason for enacting it. Why should the government undertake a combination of actions which, by hypothesis, nullify each other.

THE
EIGHT-HOUR
WORKDAY

S. 1861 contains a provision which would require payment of overtime rates for any work in excess of eight hours per day. The reasons for this proposal are obscure. Since the law already requires overtime pay for work in excess of 40 hours in a week, the new provision relates not to the length of the working week but to its division

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as among the days of the week. Implicitly, it endorses as right and proper a division of the working week into five eight-hour days, whereas any other arrangement of working time is condemned and penalized.

It is not clear whose interest this requirement is intended to serve or who is calling for such government intervention into working-time arrangements. We know of no information which would lead to the conclusion that either employees or employers generally prefer five eight-hour days per week to some alternative distribution of working time.

A number of firms have experimented with a working week that would consist of fewer days but a longer working day. In many cases this change has been met with enthusiasm on the part of the employees. One does not have to assume that all such experiments will succeed where they are tried, or that such changes in the work schedule will be universally applicable. But there is no discernible reason for government to restrict the movement, either in its experimental or implemental stages--which would be the practical effect of the proposed eight-hour day limitation. Moreover, to the extent that it applies in those cases where the ten-hour day/four-day work week or some other version of shortening the work week and lengthening the hourly work day are in effect either experimentally or otherwise, the effect of the proposal is potentially inflationary.

DIFFERENTIAL
EFFECTS OF AN
INCREASED AND
EXTENDED
MINIMUM WAGE

We have pointed out, in a general way, the damaging economic impact of an increase in and extension of the minimum wage. This will not, of course, affect all segments of the economy to the same degree. Some industries, some geographic areas, and some age-groups of the population may be hurt relatively little.

Others will be quite severely affected. It is worth pointing out the general character of the differential effects which may be expected.

It is well known that certain regions of the country have been in a chronic depressed condition. These are areas in which old ways of making a living have disappeared but population has nevertheless lingered on. It is in the interest of these areas (and of the whole country) that new industries be attracted into them. An increase in the statutory minimum wage would be an obvious deterrent to the establishment of such enterprises in the depressed areas. Other areas which depend on well-established capital-intensive industries might be affected comparatively little by changes in the minimum wage. Thus, the parts of the country which are most in need of economic help would suffer the most severe adverse effects from an increase in the minimum wage.

In addition to geographic differences, there would also be differential effects related to size of enterprise. The sectors of the economy which would be most seriously impacted are those which employ large numbers of persons with low levels of training or skill. These are, predominantly, retail trade and the service industries. These are, of course, the very sectors in which small enterprises are concentrated. Larger enterprises prevail in such fields as manufacturing, utilities and transportation--fields in which an increase in the statutory minimum would have less impact since they employ relatively few people who are at or close to the minimum wage. Thus the increased costs resulting from this legislation would be heavily concentrated on the smaller firms in the nation's business structure, while the larger enterprises would be relatively exempt.

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DIFFERENTIAL
EFFECTS ON THE
LABOR FORCE

Since the minimum wage primarily affects the lower fringe (in terms of earning power) of the labor force, its effect in restricting employment opportunities will clearly be concentrated on certain groups. The unskilled will be affected more than skilled, teenagers more than adult workers, women more than men, and part-time workers more than full-time workers.

It will be instructive to compare the present employment prospects of these various groups, as measured by their unemployment rates in April, 1971 (figures are as reported by the U.S. Bureau of Labor Statistics):

UNEMPLOYMENT
RATE, APRIL 1971

By Age Groups

Teenagers	15.3%
Workers 20 and over	4.8%

By Skill Level (Blue Collar Workers)

Non-farm laborers	10.1%
Operatives	8.8%
Craftsmen and foremen	5.0%

By Sex

Females, 20 and over	5.6%
Males, 20 and over	4.4%

Full-time vs. Part-time

Part-time workers	7.8%
Full-time workers	5.3%

In each comparison, it will be noted, the group most directly affected by an increase in the minimum wage is suffering the higher level of

unemployment. An increase in the minimum wage would further reduce their attractiveness to employers. It would create an additional handicap in the job market for precisely the categories of workers who are already at a disadvantage in seeking jobs.

EFFECTS ON
WELFARE COSTS

An argument used to justify the proposed increase in the minimum wage is that it would reduce the burden on the public of welfare costs. The presumption is that some of the working poor, who receive partial support from public welfare, would become fully self-supporting, or at least less dependent on welfare, as a result of their increased incomes.

This effect would undoubtedly occur to some degree. But it would be counteracted by the decline in employment opportunities resulting from the higher wage cost. Some of the working poor would become nonworking poor, wholly dependent on welfare for their support. The net effect on total welfare costs cannot be calculated with precision, but this is not a persuasive argument for raising the minimum wage.

The case is sometimes put in other terms--from the point of view of the person on welfare. It is alleged that he has little incentive to seek work which would reduce the cost to the public of supporting him, as long as he can receive only \$1.60 per hour for it. If so, this is a fault of the welfare system and its correction must be sought in a reform of that system. In the meanwhile, the fact is that the number of such persons who find employment must be the combined result of two factors: their own incentive to seek employment and the incentive of employers to hire

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them. The latter would be adversely affected by an increase in the minimum wage.

The presumption that large numbers of idle relief-recipients could be enticed into the labor force if the pay were better seems doubtful under present conditions. It assumes that there is a substantial number of unfilled job vacancies which such persons could occupy if only they were willing. There is no evidence that such a surplus of job opportunities over job applicants exists at the unskilled end of the labor-force spectrum. The problem is the reverse--job seekers exceed job opportunities. This discrepancy would surely grow worse with an increase in the minimum wage.

THE INCREASE IN
THE MINIMUM WAGE,
AS AN ECONOMIC
STIMULUS, IS
QUESTIONABLE

Another popular argument is that an increase in the minimum wage, by adding to the available purchasing power and hence the demand for goods, will stimulate the economy to higher levels of activity.

This is a fallacy with a long history behind it (and probably before it). The fact is that no new purchasing power--in the form of increased holdings of currency or bank deposits--is created by any such form of government intervention. The purchasing power of the nation (i.e., its money supply) fluctuates in response to an entirely different set of forces.

What the proper monetary policy for the nation should be is a complex question which need not be discussed here. It is sufficient to note that an increase in the minimum wage (like any increase in costs) simply places a greater strain on the existing stock of purchasing power, by giving it

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more work to do. Its effect, other things remaining equal, is to depress rather than stimulate the level of the economic activity.

The expansion of the economy, and its ability to produce an increased flow of goods and services and provide an increasing number of jobs, depends on the availability of capital. The proposition that economic growth requires high levels of capital formation is hardly disputable.

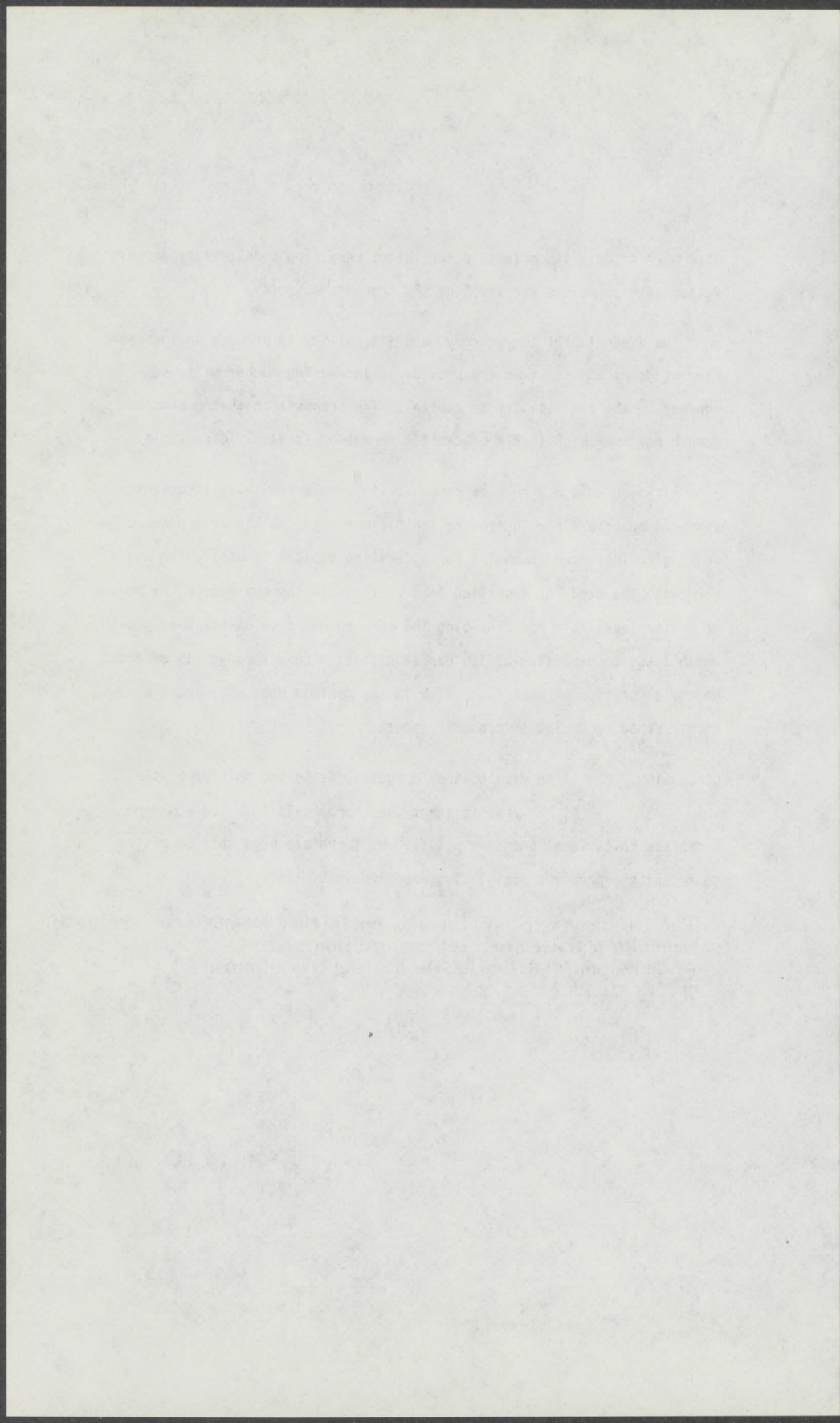
Although this may seem extraneous, it is relevant in an important sense to proposals for increasing the minimum wage. A higher minimum wage would give increased incentive for allocating capital to uses which would eliminate the need for unskilled labor. It would thereby reduce the amount of capital available for financing the more normal type of business growth which leads to expansion of job opportunities. Thus, through its effects on the allocation of capital, a rise in the minimum wage would have a doubly damaging impact on economic growth.

CONCLUSION

In view of the foregoing, it is the opinion of the NAM that to enact these proposals into law would be a mistake in national economic policy. We therefore urge this Committee to reject the proposed legislation embodied in S. 1861.

The CHAIRMAN. Since there is no further business concerning the subcommittee, I declare this hearing adjourned.

(Whereupon, at 3:45 p.m., the hearing was adjourned.)



FAIR LABOR STANDARDS AMENDMENTS OF 1971

THURSDAY, SEPTEMBER 30, 1971

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

The subcommittee met at 2:15 p.m., pursuant to notice, in room 4232, New Senate Office Building, Senator Williams (chairman of the subcommittee) presiding.

Present: Senators Williams and Javits.

Staff members present: Gerald Feder, counsel; Laurence D. Beck, professional staff member; and Eugene Mittelman, minority staff counsel.

The CHAIRMAN. The Senate Subcommittee on Labor will come to order for consideration of the minimum wage bills, S. 1861 and S. 2259.

This afternoon, our leadoff witness will be Jacob Clayman, administrative director, Industrial Union Department, AFL-CIO.

STATEMENT OF JACOB CLAYMAN, ADMINISTRATIVE DIRECTOR, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, ACCOMPANIED BY RICHARD PROSTEN, RESEARCH DIRECTOR, INDUSTRIAL UNION DEPARTMENT

The CHAIRMAN. May we welcome you again before this panel?

Mr. CLAYMAN. Thank you. I have with me Richard Prosten, research director of the industrial union department, and I understand, Mr. Chairman, that you have a very difficult time problem.

Since I am a very cooperative soul, I want to be helpful.

The CHAIRMAN. Well, the last time we were together, you had to listen to me, so it is only fair that I listen to you.

Mr. CLAYMAN. I liked what I heard, but you were very brief, and I want to reciprocate the best I can.

We have a statement here that I simply want to present for the record. Let me be terse in view of your real problems, I am sure.

There have been many hearings over the years, and I won't recite the history. At every hearing pretty much the same actors come forward. If they were different actors, they came from the same bases, pretty much the same arguments on both sides, and I don't claim that our statement adds novelty to the discussion.

It simply makes the old, tried, and we believe tested arguments, and I am not going to repeat them except to say that no matter what we say on either side of the issue, no matter how it is said, there still is one central theme, and it recurs over and over again.

(1735)

That central theme and that central question is "how can our society justify and countenance a situation in which working men, working full time, and we conceive full time to be 40 hours a week, can still earn enough, or so little, as to remain under the poverty line?"

I find, and this may be an oversimplification of it, it may be simplistic, but I find this is the central question, and the answers, whatever they are, the central answers.

All of the rest pretty much add up to the usual kind of arguments on both sides.

I am not going to go into the discussion on page 1, and page 2 of my prepared statement, except to indicate that at our last industrial union department convention in Atlantic City 2 years ago we suggested in our convention resolution not \$2.00, but \$2.50. We think it made sense then. If it made sense at all then, it makes profound sense now, because the cost of living has gone up drastically, and the unemployment levels have gone up equally drastically.

We are, of course, political realists, and if it is the sense of Congress or the mood of Congress that \$2.50 is more than Congress is prepared to manage, then we would obviously support the terms of S. 1861.

We are distressed by the suggestion, and we are not novel in this regard, that there ought to be a different method of handling the young as against the adult work force, that somehow youngsters need to be treated differently in our economy than the rest.

It strikes me as almost axiomatic and again I may be the victim of oversimplification, but I doubt it, it strikes me almost as axiomatic that if we offer young people, and they are substantial in number, less than that which we pay others, we are going to have the profit motivation, even indeed greed, take over, and these young people will automatically replace older women, almost automatically replace blacks, and almost automatically replace, in the work force, those who are generally disadvantaged in our society. We find this suggestion beyond our practical comprehension, and, indeed, beyond our ethical comprehension.

We suggest, finally, and I will read it quickly, an eventual reduction in the standard workweek to 4 days of 8 hours, the requirement that no employee shall suffer any loss of earnings in the implementation of such policy.

Hopefully, in accordance with our resolution, we suggest the rate could be increased at a future date to double time in excess of the daily and weekly standards, because it is our purpose to actively discourage overtime work.

We appreciate the efforts of the sponsors of S. 1861. Essentially what they have promulgated is sound and in the national interest.

Now, that is as brief as I can make it, Mr. Chairman, and that concludes my formal testimony.

The CHAIRMAN. Senator Javits?

Senator JAVITS. No questions.

The CHAIRMAN. Mr. Clayman, we have had testimony that there are industries, or this was put in terms of a specific location of a particular industry, that this youth differential represents the differences between staying open and operating or closing down.

It was the amusement park industry, and specifically it was the

amusement park on Lake Pontchartrain in New Orleans, and Mr. Batt came in here and, well, he is a creditable man as he sits there as a witness, and he said this is an industry that is very hard to keep going anyway, and without the opportunity for the young people back from college and on summer holiday to have some part time work at this differential, he wouldn't open.

Do you have any observations, if there is an area of this kind?

Mr. CLAYMAN. I don't know that specific situation, of course, but I can sense the import of your question. The argument is no different than one that has been made historically. The same argument in one form or another has come up before this and other committees of Congress over and over and over again.

The point of view is suggested that higher wages would offer special hardship to a particular industry, and therefore, let's exempt that industry. We don't accept that thesis. We think it is a basic obligation of every industry to provide some kind of minimal existence for the people who work for them, and we don't budge from that social and that moral obligation and mandate.

I expect there are other cases of that nature, and once you start the process of trimming and cutting and compromising then you know where the road leads.

If you will forgive me for making another observation, which I did not make, and it is not particularly germane to the question you ask. Over the years, I have been especially impressed by the problems of the loggers. You are familiar with the exemption in that area. At one time it was for a crew of 12. More recently the exemption was reduced to a work crew of 8, and that somehow this reduction would resolve the problem in favor of the workers, but it has not.

I just attended a convention of the Wood Workers Union and it was made quite clear to me by those men who work in the woods that now-a-days, with modern equipment, three or four can adequately perform the kind of cutting that now is required in our woods, and that the industry has reduced the size of the work crews to evade the application of the current law. We submit that it is high time that the powerful and wealthy lumber industry be brought within the orbit of the law and the crew size exemption for woodworkers be eliminated.

You see, appropo your question, Senator, the large and affluent lumber industry also claims special hardships and has succeeded in avoiding the effective implementation of the minimum wage principle in their field.

For fear that I may wind up and make a longer testimony than my original estimate, let me say that if you start down the road of carving out little pieces here and there, making exemptions, here and there, it is inevitable that ultimately you will mar the whole scene.

The CHAIRMAN. Well, I certainly appreciate that, and it was presented that the industry I specified, the amusement park, and that is an industry that is suffering a great deal of decline because of all the new competition that it has, and therefore it is unique.

Now, the logging operation will go on. The need will be there and those logs will be cut and milled and logs will be brought in, but it was presented that this amusement industry was unique.

Mr. CLAYMAN. Senator, you know, there are varied opinions on an issue of this sort, and I can appreciate the sentiments of the witness who testified, and he will be utterly shocked about what I am to say.

I have grave questions in my mind about the social usefulness of any industry that can't provide a reasonable decent wage, and pay every worker an above-the-poverty-line wage. If an industry can't do that, then we have to reexamine the whole structure of our economy. I would state as a basic premise that every industry has a social, a moral, an economic obligation to provide a wage that at least gives a worker a chance at life, at least the opportunity of reasonable survival, and starting from that premise, you can guess where I would come out in answering the witness that you heard.

The CHAIRMAN. Thank you very much.

Mr. CLAYMAN. Thank you.

(The prepared statement of Mr. Clayman follows:)

STATEMENT OF JACOB CLAYMAN
on behalf of
THE INDUSTRIAL UNION DEPARTMENT, AFL-CIO
before
THE LABOR SUBCOMMITTEE
of the
U.S. SENATE LABOR AND PUBLIC WELFARE COMMITTEE
on
S.1861, LEGISLATION TO AMEND THE FAIR LABOR STANDARDS ACT

My name is Jacob Clayman. I appear today as Administrative Director of the Industrial Union Department, AFL-CIO.

The IUD is an organization of 59 unions with a combined membership of more than six million working men and women.

We are concerned about a number of items relative to the Fair Labor Standards Act, which we wish to explore with you.

Minimum Wage

In 1968, when the FLSA minimum wage was last increased, the economy had not yet felt the full thrust of the present inflation binge. The \$1.60 minimum, however adequate it may have appeared when it was legislated in 1966, is now hopelessly outdated. The purchasing power of \$1.60 in 1966 has been reduced to less than the \$1.25 per hour which was the existing wage floor when the 1966 revisions were enacted.

Moreover, even if \$1.60 in 1966 purchasing power was still worth \$1.60, it would be woefully inadequate in terms of relieving the adverse economic situation faced by many workers. In 1969, the poverty line for non-farm families of four in the United States was defined as approximately \$3,800. In terms of current prices, that figure is over \$4,100. Even a minimum wage of \$2.00 per hour would fail to produce a poverty line income for those who are paid at the legal minimum.

Can we honestly tolerate a situation in which a worker holding down a full-time, year-round job will not be able to support his family at better than poverty level?

Worse yet, is the reality that the officially-offered poverty definition is hardly a measure of income adequacy. The Bureau of Labor Statistics also publishes estimates of the income necessary for a city worker's family to maintain itself, subsistence fashion, "at the low end of the income distribution." That figure is currently above \$7,100--about \$3.50 per hour in the course of a normal work year.

We cannot expect a family to function smoothly when the bread-winner works year-round and can only expect to bring home half of what is required for the meagerest of existences.

Certainly, then, we should raise our sights above the minimum mentioned in the draft legislation. The most recent Industrial Union Department resolution on the minimum wage was approved by our convention two years ago in Atlantic City. We attach a copy of it for your perusal. It calls for at least \$2.50 an hour, an amount which should be automatically increased in periods of inflation.

This IUD resolution of two years ago still makes profound sense and deserves the support of Congress, but we are told by some that the current mood of Congress precludes such action. If this be the fact, obviously we support the terms of S.1861.

The bitter fact is that many workers must collect welfare payments just to get by--even though they work full-time. Others, to our national shame, can do better on welfare alone than they can when they are employed.

If a person at the head of a family of four worked 40 hours each week, 52 weeks a year, he would earn \$3,328 at the current minimum. There are 20 states, as well as the District of Columbia, that pay higher equivalents in welfare and food stamps--a dozen of them paying the recipient more in cash than the \$3,328 mentioned above.

In the struggle to feed one's family, there is little room to philosophize about the receipt of welfare. What seems like laziness to some critics is really a question of economic survival to others.

The only viable alternative to decisive action on the minimum wage is to apply a much greater share of the budget to welfare--expanding both its benefits and coverage.

Because our country has not acted strongly enough in the past, we now find ourselves beset with problems that are rooted in the inability of many citizens to make ends meet. And things are getting worse. Our cities are filling up with people who leave rural areas because they can't make a decent living. Our working-poor, many of them dedicated to an ethic of hard work, can only become cynical as their exploitation continues.

Every increase in the history of the minimum wage has been accompanied by predictions of a gloomy future for the nation's economic health, should the minimum be increased. While this view has always proven itself false, it is interesting to note that the current Secretary of Labor agrees that such fears are groundless. Reporting to Congress in January of 1971 the Secretary stated that:

"Although the economic indicators just noted increased at a fairly rapid rate in the year in which the federal minimum wage for the newly covered group was raised 15 cents, it is significant that employment in retail trade and services--

the industries where the newly covered group is largely concentrated and hence most likely to manifest some impact from the wage increase--fared better than industries unaffected by the statutory escalation in the minimum wage."

He concluded by stating that:

"In view of overall economic trends, it is doubtful whether changes in the minimum had any substantial impact on wage, price or employment trends. Of much greater significance, however, is the fact that the 15-cent boost did help two million workers recover some of the purchasing power eroded by the steady upward movement of prices which had started even before the enactment of the 1966 Amendments."

Youth Minimum

The current Administration has come up with many concepts that have left us scratching our head. None more so than their suggestion that millions of young men and women should be paid a sub-minimum wage. They suggest that such an approach--we can only call it "ageism"--would create additional jobs.

The sad reality is that these new workers, who are probably as productive as their more aged colleagues, would end up displacing them. That is, why would an employer retain an employee at one rate when he is enticed by law to hire a youth who is legally entitled to less? No prohibition against such a practice could be enforceable.

The Administration suggests that teenagers would be helped by such an exemption, since they currently have a greater unemployment level than adults. If we accept that sort of premise, we can justify a lower minimum for blacks, since they suffer greater unemployment than whites. Obviously, such a racist policy is unthinkable, but why consider the "ageist" one proposed by the Administration?

Surely such a scheme would do little to abolish any existing generation gap. Teenagers would rightfully feel exploited in such a situation, and with good cause would question the wisdom of their elders.

Our feelings on this matter would appear to be buttressed by the Secretary of Labor who reported to Congress in February that:

"A comprehensive study of the relationship between youth unemployment and minimum wages was completed in March 1970 by the Department. This study provides information useful in evaluating the teenage unemployment problem. A significant finding was that it was difficult to prove any direct relationship between minimum wages and employment effects on young workers."

The study to which Secretary Hodgson refers, suggested that the problem of youth unemployment will be less crucial in the 1970's than it was in the previous decade. It states that:

"During the coming decade, the teenage population will increase 12 percent, compared with 40 percent in the 1960's. Assuming no major decline in economic activity, this slower rate of growth, alone, should help ease problems of absorbing teenagers into the employed labor force."

To the extent that teenagers find it hard to get work vis-a-vis teenagers of yesteryear, we feel that non-wage factors may be involved. Historically, teenagers have worked largely on farms and in small shops and stores. The farms have been mechanized and the small neighborhood shop has fallen on hard times.

Moreover, teenagers now compete with their mothers for jobs. The percentage of women over 35 in the labor force has grown steadily. Many of them do occupy jobs that teenagers could fill. But no real national interest could be served by young people and their mothers competing to see which will work for less.

The answer to teenage unemployment lies in creating more jobs and in an expanding economy. If the private sector will not cooperate in such an effort, then the government should expand the availability of public service employment for the nation's youth.

Exemptions

There are many exemptions to the FLSA which, admirably, S.1861 seeks to repeal. The retention of these exemptions is but a convenient excuse for the exploitation of large groups of workers. Family farms, one or two plant canning operations and other vestiges of a bygone era, are all but memories today. The industries they once characterized are no longer deserving of special treatment--if, indeed, they ever were.

We fully support the total repeal of all the exemptions mentioned in the bill. Compromise actions, such as the change in the size of exempt logging crews enacted in 1966, merely perpetuate injustices. At that time, Congress attempted to bring most logging workers under FLSA coverage by decreasing the maximum size of exempt crews from 12 to 8. It was but a short time until employers adjusted their crew sizes to meet the 8-man test.

Enforcement

FLSA inspectors are able to inspect only an estimated 3 percent of covered establishments each year. Even so, some \$100 million in underpayments is discovered each year. Who can accurately estimate the true extent of FLSA underpayments?

Under current law it is to the advantage of unscrupulous employers to avoid payment of the FLSA minimum. If caught and successfully prosecuted by the Secretary of Labor, the employer must only pay what the law required him to pay in the first place. The only participants in this scenario that can lose are the employees. The cheating employer cannot.

We need to increase the penalties for failing to pay the statutory rates.

Hours and Overtime

We urge you to include in your final bill a requirement for pay at one and one-half times the employee's base rate for all hours of work in excess of eight in each day. The establishment of a daily overtime standard would make the FLSA comparable in this regard to regulations governing government contractors.

We also suggest that your bill include language to provide:

A. An eventual reduction in the standard work week to four days of eight hours.

B. The requirement that no employee shall suffer any loss of earnings in the implementation of such a policy, and

C. That all hours in excess of eight per day or 32 per week be compensated for at a minimum one and one-half times the employee's basic rate, once we have a standard 32-hour week. Hopefully, the rate could be increased at a future date to double time for all hours in excess of the daily and weekly standards.

Such proposals, radical as they may appear to some, make particular sense to us during this period of excessive unemployment. Unemployment in excess of 6 percent cannot be tolerated for long and such proposals might bring about a greater sharing of available work.

Thank you for affording us the opportunity to appear before you today and to share our thoughts on S.1861 with you. You are to be congratulated for the excellent work represented in this bill.

As you might have noted earlier, we believe that a higher minimum wage than that expressed in S.1861 would be most desirable and noble, but let me assure you that we are pragmatic men. While we feel that the \$2.50 is immediately necessary and justifiable, we are willing to see it phased in should such an action be required to obtain passage.

Your labors in behalf of America's working men and women are greatly appreciated and we thank you for them.

RESOLUTION ON MINIMUM WAGES AND FLSA

as passed at the

EIGHTH CONSTITUTIONAL CONVENTION

of the

INDUSTRIAL UNION DEPARTMENT, AFL-CIO

September 26, 1969

The one most effective legislative weapon in the war on poverty is the wage-hour law--the Fair Labor Standards Act.

If every worker were assured a wage high enough to support himself and his family just a fraction above the poverty line, there would no longer be "working poor" in America. And very little poverty would remain.

The "working poor" comprise at least 80%, and perhaps as much as 90%, of all poverty-stricken Americans. Their plight is an affront to the whole concept of American society. They are not idle people; they toil at useful jobs, for wages too low to live on. This is inexcusable.

The wage-hour amendments of 1966 came closer than ever before to a recognition of the realities. The \$1.60 wage floor, at the time it was adopted, was enough to support a single worker at a barely better-than-poverty level. This was unprecedented.

The protection of the law was also extended to millions who had previously been excluded, and while application of the new standards was unduly delayed, FLSA came closer to its stated objectives in the 1966 amendments than at any time since its origin in 1938.

But rapid inflation since 1966 has eroded these gains. A single worker can no longer make his way at \$1.60 an hour; for a family head, the figure is preposterous. Three years ago \$2.00 an hour could still serve as a target, but it, too, has been overrun:

NOW THEREFORE BE IT RESOLVED:

The federal minimum wage should be at least \$2.50 an hour, and should be automatically increased in periods of inflation.

Every wage and salary earner should be protected by the Fair Labor Standards Act.

Overtime should be double the hourly rate and the standard workweek should be reduced to 32 hours. Taken together, these improvements would open up new job opportunities for an expanding labor force.

Enforcement of wage-hour regulations should be much more diligent. An adequate force of inspectors would put millions of dollars into the pockets of the "working poor" whose burdens are made heavier by dishonest employers.

COMMITTEE SECRETARY GREENBERG: Mr. Chairman, we move the adoption of the resolution.

PRESIDENT ABEL: You have heard the reading of the resolution entitled Minimum Wages and Fair Labor Standards Act. The motion is to adopt. Are there any questions or comments?

The recommendation of the Committee was unanimously adopted.

The CHAIRMAN. Mr. Louis Levine, State industrial commissioner, Department of Labor, State of New York, Albany, N.Y.

STATEMENT OF LOUIS LEVINE, STATE INDUSTRIAL COMMISSIONER, DEPARTMENT OF LABOR, ALBANY, N.Y., ACCOMPANIED BY GERALD DUNN, EXECUTIVE DEPUTY STATE INDUSTRIAL COMMISSIONER, NEW YORK

Senator JAVITS. I would like to welcome our industrial commissioner and his colleague. I think he is considered now really preeminent in our State in his field. I am delighted to hear him and have him testify before our committee, Mr. Chairman, and I believe the Chair will find his testimony to be very worthy.

The CHAIRMAN. I appreciate that, and I am grateful to you, Commissioner, for being with us today.

Mr. LEVINE. Thank you, Mr. Chairman, and Senator Javits for the very kind remarks. Let me introduce Mr. Gerald Dunn, my deputy.

We appreciate the opportunity to testify before this body on the second minimum wage which we support wholeheartedly.

I will try to be brief and get to the heart of the problem. Simply summed up, New York now has a \$1.85 minimum wage, the second highest in the Nation, behind the State of Alaska.

We feel that in order to have a position in this country, all the States should be equal, we should have a uniform minimum wage of at least \$2, which would put New York State and certainly all of our sister States in a better position.

The time has long passed when we were talking about \$1.60, \$1.75, when the cost of living has risen to dramatic heights. The \$1.60 minimum wage enacted a number of years ago in terms of purchasing power should be \$1.91 today.

We have many problems. Our own Federal farm wage rate is \$1.30 an hour right now. In New York State it is \$1.50 an hour, and we have to go higher than that.

What we are talking about is that New York State and industries in New York State should be made more competitive with our sister States, and the Federal Government route is the only way to do it.

The State recently had—in New York State—a convention of the State AFL-CIO, and that group urged a \$3 minimum wage.

We are being pressed by people in the State, to go higher than \$1.85, and we think it would be poor judgment for the State to take the step without Federal support.

We ought to face a fact right now that we are in a position on welfare where for the last 12 years the total costs have risen \$446 million a year to \$4 billion dollars a year. In order to meet this question of finding jobs and giving people on welfare an opportunity to compete in the job market, we have to give them an incentive and the incentive has to be a reasonable minimum wage that would encourage people to stay in the job market and not go out of it into the welfare rolls.

This is a problem both in New York State and nationally. If we are to have a \$2 minimum wage, which I hope we will, based on an 8-hour day and certainly on a 5-day week, we are talking about a \$4,000 annual income. It is more realistic, it meets the problems of

some of our welfare families and encourages them not to be so heavily dependent upon the public assistance rolls. There are many other questions, I think, that the \$2 minimum wage would address itself to, including the question of increasing the opportunities for people, for industries, to locate in industrial States and to stay where the skilled workers are, and the skilled workers are in the large industrial States that are now suffering erosion of skills and erosion of jobs.

What we are talking about is the fact that the State, New York State, has been the leader and finds now it no longer can be the leader, it no longer can stay ahead. It needs the help of the Federal Government. It needs the help of the Federal Government to even out this inequity which exists.

We need the help of this committee and the Senate and House to move quickly toward this question of the minimum wage of \$2. I think that one of the factors you ought to look at is the question of the poor working families. Most of the poor working families in the metropolitan area are faced with the problem of making ends meet on very limited incomes.

We estimated that in the State we would be affecting 450,000 new people if we were to go to the \$2 minimum wage, with a very small impact on the working force. But 450,000 people is a large number of people when you are talking about the State of New York, and most of them are in the metropolitan area.

This is something that concerns us in New York and it concerns all our sister States. I am hopeful that action will be taken quickly because the longer we wait, the more difficult the situation becomes.

Thank you very much.

The CHAIRMAN. Thank you very much.

Senator JAVITS?

Senator JAVITS. Thank you very much, Mr. Chairman.

I appreciate the opportunity to present New York's case through its most competent State government official, and I would like to ask, if I may, a few questions.

One, you are discussing the matter of welfare in terms of New York's policy of giving welfare payments to families where there is an employed head of family, but the family income is below the poverty level, is that correct?

Mr. LEVINE. That is correct.

The CHAIRMAN. And New York is one of the relatively few States that does that. And you feel it would materially help welfare as a result.

Mr. LEVINE. Senator, it would not only help us. It would be a long way to cutting down the burdensome cost of public assistance in the State. This is supplementary public assistance.

Senator JAVITS. It is only a 7½-percent increase over New York's present minimum wage. Why would it make such a difference?

Mr. LEVINE. Because it would affect the industries unionized. As the minimum wage increases, the union contract takes into account the minimum wage, and it may jump it up as much as 25 cents in the contract.

Many of these people are covered by contracts, garment workers and so forth.

Senator JAVITS. So it affects the total wage structure which will be affected by the base, in a more satisfactory degree than just 7½ percent.

Mr. LEVINE. Right.

Senator JAVITS. Secondly, what about the coverage of the minimum wage? You say it will affect 450,000 New York workers. Do you have any recommendations to us on what to do about coverage?

Mr. LEVINE. What we are saying, actually, and I hope I am addressing myself to your question, is that the coverage should be uniform for every worker in the State.

Senator JAVITS. I understand, but what about excluded categories now?

Mr. LEVINE. I would include all excluded categories. The only question that is going to be raised, and we are addressing ourselves to it now, concerns the farmworkers in the State.

It is a problem we should address ourselves to in light of some of the special problems the farmers and farmworkers have, especially in New York and New Jersey and other States where they are hard hit because of competition and the problem of making ends meet.

We are facing that problem, and have faced that problem by setting up a separate category for farmworkers. This is something that has to be looked at more carefully than it has in the past.

But if we can set up categories similar to what we have in the State of New York, taking in consideration the problems of farmworkers, it might be helpful.

Senator JAVITS. Would you take the New York minimum as a national minimum?

Mr. LEVINE. I would take that as a beginning, sir.

Senator JAVITS. What about the small retail establishment? What would you do there?

Mr. LEVINE. My own personal feeling, sir, is that I would cover the small retail establishment under the same contract as the large ones.

Senator JAVITS. In other words, you would make no exclusions for small numbers of employees.

Now the other thing is that Senator Williams' bill proposes to go to \$2.25 in a year. Do we understand that you do, or do not, testify in favor of that?

Mr. LEVINE. I neither testify for nor against that, sir, because at the moment, we are trying to figure out the impact of the \$2 minimum wage on our own work force. We think that frankly, as of the moment, if the \$2 minimum wage were implemented, it would give us an opportunity to evaluate that impact on the State's work force.

Now we are at \$1.85 and \$1.60 right next door to us. We think if we unify the \$2, we would see the impact and what it would mean on the State's industry. We think it would have little impact on the State's industries. But at least let's try it out for a period of time.

Senator JAVITS. Finally, how do you feel about the youth differential question?

Do you have any views on that?

Mr. LEVINE. We have right now in the State under our minimum wage orders a youth differential which permits young people to be paid \$1.60 an hour, but no more than 10 percent of the work force.

This is within the discretion of the industrial commissioner, and in some instances we have exercised it and in others we have refused to exercise it, depending on how bad the industry is hurt and what kind of case it makes.

I think that some kind of authority ought to be given to the Secretary to look at in terms of special industries and special industry problems. But once again that ought not to be written in, as far as I am concerned, but that should be given to some administrative authority, so that when special industries have problems they can apply to somebody.

Senator JAVITS. Could you help us by setting criteria?

You don't have to do this right off the top of your head, but if you have a body of administrative decisions, we might be very much assisted if you advised us about that.

Mr. LEVINE. I would be very happy, Senator, to send down to you administrative decisions and all of our hearings relative to this specific question—which we have gone exhaustively into over the past couple of years.

Industries such as the entertainment industries, have asked for exclusions. In some cases, we granted it and in other cases we did not.

Senator JAVITS. I think it would be valuable if you send us what you have, but for the record, if you can, I think you ought to give us a fair set of criteria to establish for an administering authority, say in the Federal establishment, and I assume it is the same in our State under the constitution, and we can't simply give him the authority to make variances and we have to give him some criteria on which to make them.

Mr. LEVINE. The industrial commissioner was empowered to call together a wage board made up of labor and industry and public members, at which time these issues were debated and the wage board made recommendations to the industrial commissioner. It seems to me a similar policy can be established on the Federal level in making recommendations to the secretary.

Based upon these recommendations, the industrial commissioner issued guidelines. Now, these guidelines are to be used by all agencies or all organizations applying for these exclusions and we have, however, always made sure that it is never more than 10 percent, two people, or no more than 10 percent of the work force.

It applies, by the way, to senior citizens, also, who are of great concern. Movie theaters in New York are hard pressed, and they have asked for special exclusions for those 65 and over.

We have in some instances given that.

Senator JAVITS. I think that is helpful, and I will study it, and I may very well, with Senator Williams permission, because it is his bill, and I am for his bill, raise these questions which may require modification.

Commissioner, you don't mind if I could ask you a question on another matter. Please feel free not to answer, but I would like to put the question to you.

I am proposing to amend the President's proposal for an investment-tax credit, so-called job development program, which to me, as they have it now, and as it went through the Ways and Means Committee

in the other body, is strictly an investment-tax credit for capital equipment.

I have in mind a provision making it available for really increased employment is what and there is a great deal of interest in that here. That is, increased personnel employment. Could you give us any view on that which could be used with respect to that particular question?

Mr. LEVINE. I personally, and I think most of my colleagues, are for the concept of an investment-tax credit geared toward creating jobs, which I think is what you are driving at.

Senator JAVITS. Exactly.

Mr. LEVINE. If a tax credit has been given to an industry in an area, I think the industry should demonstrate that it would be used to create new jobs immediately, and not just new machinery, and buying equipment, et cetera. I think that is necessary, but the first thing we have to address ourselves to is the unemployment situation in the Nation.

If people who have been laid off because of cutbacks, are to receive benefits from the State and Federal Governments, they should use the money to create jobs.

We are doing that to an extent with the emergency employment act. Many people have been laid off by the cities and counties and States because of financial pressures and revenue loss.

This is another reverse kind of revenue sharing if we want to talk about that. It would help the industry to create jobs immediately in the areas where we need it, and not to go through the route of creating public jobs, but private jobs, and I certainly think this is a worthwhile undertaking.

Senator JAVITS. Thank you very much. I greatly appreciate that.

The CHAIRMAN. Thank you very much.

Mr. LEVINE. Thank you, Mr. Chairman, and Senator Javits.

I appreciate being here.

The CHAIRMAN. We will place your statement in full in the record, at this point, Mr. Levine.

Mr. LEVINE. Thank you, Mr. Chairman.

(The prepared statement of Mr. Levine follows:)

STATEMENT

by

LOUIS L. LEVINE**Industrial Commissioner
of the
State of New York****Supporting the****PROPOSED FEDERAL \$2 HOURLY MINIMUM WAGE**

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A favorable competitive position, the rising cost of living, and the desire to reduce welfare costs are three basic and major reasons why the State of New York favors the proposed Federal minimum wage of \$2 an hour.

When legislation was approved, increasing the New York State rate from \$1.60 to \$1.85 an hour, effective July 1, 1970, New York State recognized the desirability of a \$2 minimum, but could not place itself at too great a competitive disadvantage with comparable states. Therefore, the current minimum wage law provides that when the Federal minimum wage is increased to \$2, the New York State rate automatically will become \$2 an hour.

The first statutory minimum wage rate of \$1 an hour, passed in 1960, has been increased five times over the past decade to its present \$1.85 an hour. New York State also has a minimum wage for farm workers, who are employed by farmers whose annual payrolls are \$1,200 or more. Compared with the Federal farm wage rate of \$1.30 an hour, the New York State rate is \$1.50, increasing to that rate from \$1.40 an hour on February 1, 1971.

Comparing minimum wage rates among the states, I point out that New York State's \$1.85 an hour is second only to the State of Alaska's \$2.10 an hour.

However, I place utmost significance on the fact that here in the District of Columbia, where Congress passed the Federal \$1.60 an hour rate, the minimum wage is \$2.05 an hour -- 45 cents an hour more than the current Federal rate and only five cents below the highest in the nation.

While there are no hard figures available to prove that New York State's minimum has created an air of unbalanced competition, it stands to reason that industry reviews with concern its future planning -- whether it is relocation,

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expanding its plant or "farming" its work out to subsidiaries in states where the minimum wage is lower.

Problems of competition, experienced by New York State, lie primarily in the manufacturing area, with losses in durable and non-durable goods. Special emphasis is on the areas of food, apparel, footwear and light fabricated product industries.

During the past 12 years, total welfare costs in New York State have risen from \$446 million to \$4 billion annually. New York State has set two goals in its determination to reduce these costs:

- (1) to abate the increase in persons going on welfare rolls, and
- (2) to reduce the number of persons already on the welfare rolls.

There is one solution -- certainly a major one -- JOBS. Find jobs for those who are on the welfare rolls so that they can go on the payrolls and tax-rolls, living in dignity; and keep working people on their jobs at a livable wage so that there is no need for them to go on welfare.

More than half of all the poor families are headed by employed persons. With an annual income of \$4,000 (based on the \$2 minimum for an 8-hour day, 5-day week), there would be less need for the worker to apply for public assistance. Workers, as stated before, could live in more dignity and initiatives could be provided for hardcore unemployed persons to obtain and hold jobs.

Again, there are no hard figures to determine how many people would come off the welfare rolls if the Federal minimum wage went to \$2, making New York State an even more competitive state among comparable states. However, it must be conceded that if New York is more competitive, industry will remain in

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the state, and business will not be "farmed out" to other states. Also, the uniform rate, coupled with New York State's expanding transportation plans, is certain to have an influence on industries seeking to re-locate and new businesses considering location.

Reduced welfare costs go a long way toward effecting reduction in taxes.

A Federal minimum wage of \$2 would help meet the rise in the cost of living. Inflation since February 1, 1968 has substantially reduced the purchasing power of the Federal \$1.60 minimum wage made effective at the time for manufacturing and other workers previously covered by the Federal Fair Labor Standards Act. The Federal Bureau of Labor Statistics national consumer price index rose by 16.7 per cent from February 1968 to February 1971. From February 1971 to July 1971, the national consumer price index rose an additional 2.0 per cent. Thus the total increase since February 1968 has been 19.1 per cent. This means that a minimum wage of around \$1.91 is now needed to purchase what \$1.60 did purchase in February 1968. If prices increase another 4.7 per cent, a \$2 minimum wage would be necessary to restore the real value of \$1.60.

If the February 1968 relationship of the \$1.60 minimum wage to the earnings of manufacturing production workers is to be restored, the minimum would have to be raised to \$2.03 an hour--as of February 1972.

The Federal government has not made available any data needed to determine how many workers in the nation would benefit from an increase in the Federal minimum wage from \$1.60 to \$2 an hour or what effects this increase would have.

However, New York State's experience may have some interest and relevance. The New York State Department of Labor estimates that the increase from \$1.60 to

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\$1.85 benefited about 13 per cent or 700,000 persons in the State's covered work force. An earlier substantial increase -- from \$1.25 to \$1.50 an hour in 1967 -- benefited 8 per cent of the workers. It is understood that the U. S. Department of Labor has reached conclusions in its surveys of the effects of increases in the national minimum wage.

Since New York's minimum is already at \$1.85, an increase to \$2 would have a comparatively small impact on direct payroll costs -- about 0.25 per cent on the average -- while benefiting around 8 per cent or 450,000 of the covered work force.

The National Planning Association made a study in 1969 financed partially under a Federal grant. The Association recommended several measures to reduce the cost disparities between New York State and other regions to counteract "tendencies that are unfavorable for industry location in the State." One of these recommendations was that of "encouraging increases in the national minimum wage and extending its coverage to apply to all jobs without exception."

In conclusion, may I state that while I am presenting a case for the State of New York, I acknowledge that a uniform Federal \$2 minimum wage would be of benefit to all of the 50 states, in stimulating the economy, increasing job opportunities and providing a living wage for millions of people in the nation's work force.

There must be concern for the families who must rely upon one wage-earner paid at the present level of the minimum wage. The hard-working heads of such families must, all too often, turn to a second job, if available, and even to public assistance to make ends meet.

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At the same time, it is a vital necessity for New York and other states to remain competitive -- a prime objective is that existing job opportunities be retained and that new jobs be created in the State. The danger to be avoided is keeping New York in such a high-cost island that expansion of its job opportunities is hurt.

Opportunity and security for all depend importantly on the continued healthy growth and expansion of free enterprise in New York State. The State has programs that give special attention to the economic development of cities where problems of plant location and expansion are acute.

The Job Development Authority permits loans to new and re-locating industries and to established businesses planning expansion. The Urban Job Incentive Program encourages business to locate or expand in eligible rural areas.

New York State traditionally has been and still is the leader in providing skilled, qualified workers for industry. The skills of New York State workers are among the highest in the world.

New York State bends every effort to provide a living wage not only for the skilled but for the unskilled, the semi-skilled and the underemployed. It also seeks jobs for the hardcore unemployed and to make them competitive in the job market through training programs.

However, there must be jobs with salaries commensurate with the cost of living throughout this nation. When the Federal minimum wage of \$2 becomes a reality, we will be able to combat the national high unemployment rate.

More capital will be invested in new plants and expansion.

Production will be increased as workers will purchase the goods and services that they have needed but have been unable to purchase.

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All of these things mean more jobs.

I believe this issue should be given immediate attention. To illustrate such priority, I have attached hereto a press release which outlined support for the \$2 minimum wage in my address before the 14th Constitutional Convention of the New York State AFL-CIO in New York City on August 9, 1971.

However, I might add, if you are not aware of it, the State AFL-CIO is not only in favor of a \$2 minimum wage but has resolved to support a \$3 minimum wage.

The AFL-CIO president, Raymond R. Corbett, called the New York State minimum wage of \$1.85 an hour as "far too low" to provide a minimally adequate standard of living. Labor, he said, considers \$3 an hour "an indispensable minimum for bare subsistence." In fact, Mr. Corbett told the delegates that perhaps a \$4 minimum wage might not be out of line.

If we had a higher reasonable minimum wage, we would get more people off the welfare rolls and renew their discipline in work habits. We in New York State are presently pursuing an aggressive employment program for welfare recipients.

Simply stated, it is impossible to support a family on \$1.85 an hour.

The facts above accentuate the urgency and necessity to legislate the Federal \$2 minimum wage with an immediate 1971 effective date, rather than extend its due date into 1972.

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NEW YORK STATE DEPARTMENT OF LABOR

STATE OFFICE BUILDING CAMPUS, ALBANY, NEW YORK 12226

LOUIS L. LEVINE, Industrial Commissioner

H. NED SHREVE, Director of Public Information

Phone: 518 457-5519

FOR RELEASE MONDAY P.M., AUGUST 9, 1971

NEW YORK--A Federal minimum wage of \$2.00 an hour will make New York State more attractive to new and re-locating industry, Industrial Commissioner Louis L. Levine said today.

Commissioner Levine, head of the State Labor Department, told delegates to the annual Constitutional Convention of the New York State AFL-CIO at the New York Hilton here, that the State minimum wage law provides that when the Federal minimum goes to \$2.00, the New York rate automatically will go to \$2.00 an hour.

"And that's the way it's got to be," he said. "To put New York State in a favorable competitive position with other states, the Federal \$2.00 minimum wage should be approved."

New York State's current minimum wage is \$1.85 an hour, second only to Alaska's \$2.10.

With a favorable competitive level, he said, New York State could attract new industry and re-locating industry, and use sound arguments to prevent industry from moving out of the State. He foresaw more jobs resulting in a reduction in the State's welfare

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costs if the Federal \$2.00 minimum becomes law.

Commenting on runaway industries, Commissioner Levine said that there is a tendency to forget or to overlook the obvious when it comes to the costs of manpower. New York State traditionally has been and still is the leader in providing skilled, qualified workers for industry. The skills of New York State workers are among the highest in the world. When employers leave New York State, they leave these skilled workers and to replace them requires an expenditure far in excess of that which they might save because of other "apparently attractive economic features."

Commissioner Levine said the increase in jobs would aid the State's welfare reform law to reduce welfare costs, now approximately \$4 billion a year, by finding jobs for these recipients and restoring their dignity. Such a law is not a punishment, he added.

He also stated that the most recent figures show that nearly 7,000 checks, about 22 per cent of the total, are not being picked up at State Employment Service offices where employable welfare recipients are required to report. Commissioner Levine said that it appears that people formerly receiving checks in the mail should not have been receiving the benefits.

"If true," he concluded, "the law has served a major purpose."

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No. 113
8/6/71

The CHAIRMAN. Dr. Sar Levitan, director of the Center for Manpower Policy Studies, George Washington University, Washington, D.C., and Dr. Finis Welch, professor of economics, City College of New York.

Dr. Levitan, do you lead off here?

STATEMENTS OF DR. SAR LEVITAN, DIRECTOR, CENTER FOR MANPOWER POLICY STUDIES, GEORGE WASHINGTON UNIVERSITY, WASHINGTON, D.C., AND DR. FINIS WELCH, PROFESSOR OF ECONOMICS, THE CITY COLLEGE OF NEW YORK

Dr. LEVITAN. Thank you, Senator.

Mr. Chairman, due to the constraints of the time that you have, I would ask that my brief statement appear in the record and then I will just comment briefly on the issues raised by the previous witness.

The CHAIRMAN. Thank you very much, and your statement will be included in the record, at the end of your testimony.

Dr. LEVITAN. I am very much in sympathy with the issues raised by Mr. Clayman. Regrettably, however, I do not come to the same conclusions as he did.

If the option before us were to take away jobs from more mature workers and give them to the youth, then I would certainly endorse maintaining a single minimum wage. That is not the case, however. My conclusion is based on an extensive study I prepared on the problems of youth employment in urban areas.

The impact of minimum wages on youth employment is complex. I am convinced that the minimum wage, while it should not be eliminated as a factor, cannot be held solely responsible for the youth unemployment in urban areas, and particularly among black youth. With your permission, Mr. Chairman, I will place in the record a summary of a study I prepared with Robert Taggart for the Twentieth Century Fund on the minimum wage and the problems of youth unemployment. The title is "The Recession Is a Depression for Ghetto Youth." It points up the problems of black youth in urban areas. On that basis, I would urge you to consider establishing a dual minimum to create new job possibilities for youth.

It is true that older workers may lose some jobs if you follow this course of action. But I believe that the problems of black youth in urban areas are severe and to raise their minimum to \$2 or \$2.25 at this time would exacerbate their conditions.

While I urge you to consider a youth differential, in other words, to maintain a \$1.60 minimum wage for youth, I would also like again to call your attention to the Economic Opportunity Act which passed the Senate and is now pending before the House. The bill calls for the expansion of the Neighborhood Youth Corps. Despite the shortcomings of the Neighborhood Youth Corps, the present need to establish additional jobs for poor youth is overwhelming and therefore expansion of the NYC for out of school youth is very much in order.

The second observation I would want to make, Mr. Chairman, is in connection with the interdependence between work and relief, or work and public assistance. The suggestion is very frequently made that a guaranteed minimum income—"workfare instead of welfare" or whatever slogan we use—would obviate the need for a minimum wage. I don't think that is the case. We have a choice between supporting people by welfare or by work. I think that we should retain the minimum wage at an adequate social minimum without undue elimination of jobs. Public policy should stress incentives for people to work rather than to rely upon public assistance.

That is the summary of what I wanted to say in the two statements that I have placed in the record.

I appreciate the opportunity.

(The information referred to follows:)

THE RECESSION IS A DEPRESSION FOR GHETTO YOUTH

by

Sar A. Levitan and Robert Taggart III*

"Social Dynamite"

A decade ago, James B. Conant warned that "the existence in the slums of our large cities of thousands of youths . . . who are both out-of-school and out-of-work is an explosive situation. It is social dynamite." Subsequent events bore out his dire predictions as intensifying urban problems erupted into violence and massive disruption. But notable steps were made to alleviate these conditions. Eight years of sustained growth opened up many new jobs for central city youths. Educational gains, increased manpower services, and efforts to end discrimination all helped to improve their employment prospects. By the late 1960s, there seemed to be reason for optimism. Unemployment rates were falling in tight labor markets; income was rising rapidly for those who worked; and there was accelerated penetration into the white-collar and other high-status occupations. Understandably, concern with the problems of ghetto youth began to wane as progress was made, and as other issues seemed more pressing or appealing.

Unfortunately, the employment problems of ghetto youth have reemerged, and with intensified gravity. All of the ground that had been gained, and more, was eroded by the economic decline at the end of the decade. In the first quarter of 1971, one of

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every three 16- to 19-year-old nonwhites in the hundred largest Standard Metropolitan Statistical Areas (SMSA's) who were looking for work could not find jobs. Within the poverty areas of these large cities, the situation was even more critical, where the unemployment rate was 41.2 percent. Ghetto youth have suffered the most severe consequences of slack labor markets. Unemployment for white 16- to 19-year olds in the same metropolitan areas averaged 13.5 percent in 1970, or less than half that of blacks. When summer comes and thousands leave school to look for work, the job shortage will become even more acute. It would not be surprising to find unemployment rates of 40 or 50 percent, or even higher. The situation will be increasingly laden with "social dynamite" unless corrective action is taken immediately.

New Perspectives

Unfortunately, there are no clear-cut prescriptions for public policy. Despite extensive efforts to analyze and solve these problems and despite the wealth of information which has been generated, solutions remain elusive. Measures which seemed successful in tight labor markets proved to have doubtful impact in the face of slackening demand. Nevertheless, certain lessons have been learned, and new perspectives have emerged for analyzing and attacking these problems.

First, the importance of a "full employment economy" has been unequivocally demonstrated. Changes in aggregate unemployment have a multiplied effect on the opportunities for ghetto youth, as well as a major impact on the performance of public efforts. The employment problems of

ghetto youth cannot be analyzed without considering overall economic conditions; and macroeconomic policies cannot be decided without weighing their impact on young blacks.

Another lesson is the apparently tenuous relationship between education and employment for ghetto youth. Notable progress has been made towards equalizing the attainment of nonwhites and whites, under the assumption that this would equalize their chances in the labor market. But the relative educational improvements have far outstripped the relative employment gains. Schooling apparently offers far less payoff for black youths than for whites.

In a similar vein, experience with the broad range of manpower programs which were initiated in the sixties and came to serve a large number of ghetto youths has raised serious doubts about the relationship between job skills and employment prospects. Manpower services have had apparently little payoff for black participants, whose experience demonstrates the potentials and limitations of remedial efforts.

Conventional wisdom about the existence of competitive labor markets has also been discounted. There is more and more evidence that ghetto youths get trapped in a "secondary labor market," where there is a vicious cycle of low pay, poor working conditions, and meager upgrading--all leading to high rates of turnover and low productivity that in turn justify poverty wages and minimal investments in training. Traditional assumptions about supply and demand in competitive labor markets can lead to spurious conclusions, and the problems of ghetto youth must be analyzed in terms of the "secondary"

economic system in which they operate.

Finally, there is increasing recognition that ghetto life outside the job has a major impact on employment patterns. Illicit activities, or simply the attractions of leisure street life, affect the rates of labor force participation of urban youths, especially males; high rates of childbirth in or out of wedlock and subsequent high rates of dependence on welfare have a major impact on females. The rather tentative information which is available on these activities, which are important variables in the employment picture, must be integrated into economic theory if it is to be realistic.

The novelty of these "new" perspectives should not be exaggerated. It is common knowledge that changes in macroeconomic conditions have a multiplied impact on youth. Advocates as well as critics will admit that increased education and training for ghetto youths is costly and does not pay off as much for them as for whites. Labor statistics have carefully documented the concentration of ghetto youth in low-status and low-paying jobs. And there is widespread recognition that crime and illegitimacy are special problems in the ghetto, with important economic implications. These observations are hardly "new." They do, however, single out critical variables and suggest ways to cut through the Gordian knot of interrelated ghetto problems. The uniqueness of these perspectives lies, therefore, in their applicability to public policy. They provide clear and important insights that should serve as guides to action.

The Impact of Macroeconomic Policies

Nonwhite urban youths are only a small segment of the total labor force, and macroeconomic variables are not "responsible" for their particularly

severe employment problems. In the hundred largest SMSA's in 1970, there were 1.2 million nonwhite 16- to 19-year olds and 1.3 million aged 20 to 24, and half of these were looking for or holding jobs. Altogether, they accounted for less than 5 percent of the working age population in our nation's central cities, and an even smaller portion of their labor forces. But because these youths are the last to be hired and the first to be fired, they are dramatically affected by changes in aggregate economic conditions.

Black ghetto youths are among the major beneficiaries of booming economy and the most frequent victims of its decline. Secularly their employment problems have been growing more severe relative to others' in the labor force, but cyclical fluctuations around the secular trend related to the rise and fall of overall unemployment have had an even greater impact on their welfare.

Between 1967 and 1970, the economy rose to a peak and then declined precipitously in terms of aggregate unemployment. In the fourth quarter of 1967, unemployment stood at 3.9 percent; by the fourth quarter of 1968, it had fallen to a low of 3.4 percent; but with the subsequent recession it rose to 5.8 percent in the fourth quarter of 1970. Black youths in the ghetto were at the whiplash's end of these changes. The 0.5 percentage point drop in aggregate unemployment between the fourth quarter of 1967 and the fourth quarter of 1968 was accompanied by a 9 percentage point decline in the (seasonally unadjusted) rate for black teenage males, a 4 percentage point

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drop for black teenage girls, and a smaller but still significant decline for ghetto youths in their early twenties. Conversely, the 2.4 percentage point rise in the aggregate rate between the fourth quarter of 1968 and the fourth quarter of 1970 corresponded to a 15 percentage point increase in the unemployment rates of black teenagers. Urban white youths are also affected by changes in aggregate conditions but they are much better off to begin with, and at least for young females, they were not hurt as severely by the current economic decline. Whatever the changes in relative unemployment rates, the fact remains that ghetto youths are hard hit by the current slump.

This alarming increase in ghetto youth unemployment rates was accompanied by a noticeable decline in their labor force participation. When jobs are scarce, many youths stop looking for work. Though they would take a job if one were available, they are not counted among the unemployed. The clearest manifestation of this "discouraged worker" effect is among black 20- to 24-year-old females in the ghetto, but it is also evident among black teenagers of both sexes.

The health of the economy is not the only factor causing these dramatic changes. Between 1965 and 1968, the number of potential workers who were drawn out of the civilian labor force by military service increased rapidly; in the last year it declined. This undoubtedly accentuated the changes in unemployment as fewer workers were available when jobs were plentiful in 1968, and in 1970 there were more potential workers when jobs were scarce.

Nevertheless, economic fluctuations had an undeniably significant impact. Females and teenagers were less affected than 20- to 24-year-old males by the fluctuations in induction levels, yet they had the most pronounced cyclical employment patterns. Likewise, the wider fluctuation of unemployment rates among black youths than whites cannot be explained by the draft alone because there has been no cyclical pattern in the induction of the two races. The cyclical movements of the economy are therefore the major culprit, with ghetto youth being hurt the worst by the 1970 slump.

Tight labor markets are important for their long-run as well as immediate impact. The strategies aimed at reversing the secular deterioration of black youth employment problems are less effective in a slack economy. Those who participate in training or achieve a better education find little payoff when they have to compete with experienced workers who are out of jobs. Employers are not likely to reexamine or change their hiring practices when they are employing fewer workers and can afford to be selective. Improvements in the labor market mechanisms are of little value when the number of unfilled jobs falls dramatically. In other words, efforts to help black youths over the long run will be dissipated in combating the short-run problems that are due to slack conditions. Thus, fiscal and monetary measures geared to stimulate the economy and to increase the aggregate demand for labor are now the most effective way to help black youths.

Education and Work

In 1960, only two of every five Negroes aged 20 to 29 had completed four years of high school or some college, compared with two of three whites.

By 1970, three of five blacks had at least a high school diploma. This increase in educational attainment was expected to produce commensurate improvement in employment patterns. Education is highly correlated with earnings, employment, and occupational status for whites, and it was assumed that the same would be the case for blacks, where knowledge would increase productivity and the diploma would serve as a credential.

Unfortunately, the substantial gains over the last decade were not reflected in the labor market status of black youth. Nonwhite graduates have only slightly more chance of working than nonwhite dropouts, and, in fact, have slightly less chance than whites who do not complete school. While education is associated with higher earnings for nonwhites, the gains are not as great as they are for whites.

These observations pertain to all nonwhites; those located in central city slums gain even less from increased education than nonwhites elsewhere. A study comparing whites and nonwhites living in urban poverty areas found that education improves occupational status, employment prospects, and wages much more for whites than blacks. Indeed, there is only a tenuous relationship between education and earnings for blacks, and a statistically insignificant correlation with reduced unemployment.

The fact that whites in central city poverty areas earn more at any educational level than blacks and suffer much less unemployment suggests that existing differentials may not be the result of the lack of jobs in the central city or its environs, but rather the lack of equal access. It turns out that

20- to 24-year-old white slum residents are more likely to work in poverty areas than nonwhite residents, and yet they are still earning higher wages and suffer less unemployment. Obviously, the whites are getting the best available jobs.

To a large extent, then, the problem of black youths as they settle down is that their "credentials" are disregarded. A high school diploma does not provide the same access to jobs as it does for whites. Employers justify their double standard by the valid claim that on the average the black youth is not as well educated as the white, even if both come from the ghetto. But blanket exclusions bar youths whose educational achievements match those of whites, and it excludes many more who could do the work, whatever their success in school. There is mounting evidence that employers overestimate the academic skills needed on the job, that those who are overeducated are often dissatisfied with their work, and that many who are excluded, if given a chance, could sometimes be more stable and productive employees. There is some legitimacy for giving less credence to a black's high school diploma if it reflects real differences in achievement, if alternative means are available to test ability, if educational differences are directly related to differences in productivity, and if all workers are hired only on the basis of their productivity. But all of these conditions are violated, and black youths are often unable to obtain work that fully utilizes and develops their abilities.

This conclusion has important implications. If education has little payoff because of discrimination or other labor market deficiencies, and a dollar spent on education will not do as much for the ghetto youth as a dollar spent on

improving labor market operations or some other service, then it should be allocated to these other areas. Evidence, though far from conclusive, seems to indicate that education is not a very productive investment, at least in terms of increasing the employability of ghetto youth.

Training and Job Creation

As long as blacks are failing in or being failed by the educational system, they will not be able to bridge the economic gap separating them from whites. Remedial education and training may compensate somewhat for past handicaps. This, at least, is the idea behind the manpower programs initiated in the 1960s to provide compensatory services to the disadvantaged, which includes a large proportion of black youth. Blacks under 22 constitute a major segment of the manpower program enrollments, with an estimated 460,000 being served in fiscal 1970. Because these programs are concentrated in urban areas, ghetto youth are disproportionately represented. A Labor Department survey found in 1969 that of an estimated 175,000 population of 16- to 24-year olds in six large city slums, 41,000 were enrolled in or had completed manpower programs.

The manpower programs are a mixed bag, offering different blends of vocational training, basic education, subsidized employment, and income maintenance. Almost every program provides each of these elements, but the emphasis and method of delivery differ. For instance, federally-supported institutional training and the Job Corps have stressed training, counseling, and education to increase the productivity and employability of those who

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participate. The Neighborhood Youth Corps (NYC), on the other hand, has until recently stressed work experience in public employment. Under the Job Opportunities in the Business Sector (JOBS) program, the government contracts with employers to cover the extra costs of employing designated disadvantaged workers and many firms agree to hire such workers without remuneration. While these programs have much in common, they represent three basically different approaches: providing training and remedial education to the disadvantaged; providing jobs in the public sector; and subsidizing employment in the private sector.

It is the assumption of the remedial training and education programs that disadvantaged youth will benefit from a "second chance." Improving their reading and arithmetic, orienting them to the demands of the world of work, and providing them with specific skills will increase their productivity as workers, which should lead to lower unemployment, higher wages, and more opportunity for advancement as employers compete for their skills.

The experience of former training program enrollees has demonstrated that some youths can be helped significantly, but that the overall impact of remedial assistance is not great. The Job Corps has concentrated on the most disadvantaged youth, providing intensive and costly rehabilitative services. Corpsmen tend to benefit in terms of increased earnings and employment relative to comparable control groups, but the benefits tend to diminish over time. Considering the high costs involved--about \$7,000 annually per enrollee--and the meager results, the program is hardly an answer to the problems of

more than a small portion of disadvantaged youths. The MDTA program, which offers less intensive training to more capable participants, has had more success. Young black enrollees substantially improved their income and employment. But blacks benefit significantly less than whites from the same training, suggesting problems in the labor market. Under all the programs, however, the one clear lesson which has emerged is that remedial training is of limited value in slack labor markets. Placement becomes difficult when trainees must compete with skilled workers who are unemployed, so that there are few immediate benefits from training.

Subsidies to private employers to hire and train the disadvantaged have also floundered in a slack economy. The largest program of this type is JOBS. In tight labor markets of the latter 1960s, many employers were coaxed into lowering their standards, either voluntarily or with subsidy. An impressive number of workers were hired, almost half of whom were under 22 and who might otherwise have remained unemployed.

Unfortunately, JOBS has been adversely affected by the economic slump of 1970. A larger and larger proportion of hires have been subsidized and stepped-up efforts to sell the program were needed to find interested employers. A substantial proportion of the funds scheduled for fiscal 1970 and 1971 has been reallocated to other programs. The JOBS experience suggests that private sector programs are ineffective in a declining economy. "Corporate consciousness" is a luxury which can only be afforded in boom times, and even federal subsidies lose their attractiveness when qualified workers are available and seeking employment.

The most direct way to help black youths who cannot find jobs is to put them to work in the public sector; this is the primary goal of NYC, the largest manpower program for black ghetto youth. Out-of-school NYC provides work for 16- through 18-year olds from poor families in entry-level positions requiring few skills, such as maintenance and custodial work for men and clerical or health positions for women. Experience has shown that participants have benefited little in terms of increasing their employability, while their work on the job has not been very productive on the whole. Efforts have been made to increase the training and basic education available under the program and to make the jobs more useful, but it is not clear that this will greatly improve the program. For the most part, it must continue to serve as an "aging vat," where disadvantaged youths are kept busy and hopefully out of trouble until they are old enough to find jobs.

The summer NYC program has been much more popular, and President Nixon has recommended that it be expanded during this summer. There is no evidence that it has any more lasting benefits, but apparently more worthwhile jobs can be found during the summer than the winter. Whatever the productivity of summer participants, most cities are satisfied--as long as Uncle Sam picks up most of the tab--with keeping youths occupied and putting some change in their pockets. Summer NYC has accomplished these modest goals.

The lessons of our manpower experience are sobering. First, the benefits from remedial training are more limited for blacks than whites. Second, the impact of the manpower programs on the employability of youthful

participants is not overwhelming in even the best of times. Third, in a slack economy, manpower services outside of public employment suffer significantly. And, fourth, public employment can keep youths off the streets, but it promises little productive work and almost no improvements in the future employability of participants. Certainly manpower services are needed, but they can provide only marginal aid to most participants.

Escaping the Secondary Labor Market

The period between 16 and 24 is one of transition from school and dependence to work and self-support. Blacks go through the same adjustment process as whites, though they face greater obstacles. At ages 16 and 17, most are enrolled in school. Only a minority seek or hold jobs during the school year, and their labor force participation is usually confined to summer employment. In the last two teen years, about half are in school and few of these hold jobs; but the bulk of out-of-school youths, especially males, are in the work force. At ages 20 and 21, only a fourth are enrolled in school and more than three-fourths of the remainder want or have jobs. And by ages 22 and 24, more than two-thirds are employed, as almost all males who are not in school become labor force participants. One important aspect of this maturing process is an increasing commitment to work. Most teenagers are part-time or summer workers who have only minimal attachments to their jobs and are willing to accept low wages because they have few family responsibilities; however, most of those in their early twenties are looking for full-time work which promises opportunities for advancement while providing a decent income for support of a household. The majority of youth

who are "peripheral" workers in their teens become "committed" workers in their early twenties.

The maturing process also involves shifts in the occupational distribution of employment. Teenagers, both black and white, tend to concentrate in the secondary labor market. Nearly nine-tenths of the nonwhite 16- to 19-year olds in the metropolitan poverty neighborhoods are clerks, operatives, or service workers, as are 80 percent of white teenagers throughout these cities. A little over half of all the nation's workers are in similar occupational categories. But only three of five 20- to 24-year-old nonwhite males in the poverty neighborhoods are in these occupations, as the proportion of service workers declines substantially while the proportion of craftsmen and operatives increases. Black women undergo more minor changes in these directions.

Nevertheless, black youths, and especially those in the ghetto, are much less likely than whites to move from the secondary to the primary labor market. For instance, the proportion of employed white males in white-collar occupations increases from one-fourth of 16- to 19-year olds to 43 percent for those aged 20 to 24, with proprietors and managers increasing from 5 to 24 percent of the total. For slum area blacks, there is no significant growth in the proportion of white-collar workers, while proprietors and managers increase only from 3 to 6 percent of the total. Among white and black females, the disparity is even wider, as the proportion who are white-collar workers rises from 64 to 79 percent for whites, while for blacks it falls from 60 to 56 percent between the two age groups. Broad occupational categories cannot tell the whole story, but they suggest that many young blacks, especially women, are trapped in the secondary labor market and may remain there for the rest of their working lives.

One reason is undoubtedly that ghetto blacks are isolated from the better jobs in the suburbs and the more affluent central city neighborhoods. But this is not the only, or even the major, explanation. Contrary to conventional wisdom, the number of jobs per resident in the central city has increased over the last decade in our major cities; and even more significantly, the number of low-paying and presumably low-skill jobs per resident has also increased despite the suburbanization of employment. The problem is apparently that commuters are filling these positions, while the skill mix of the resident labor force is declining.

The depressed condition of black youth is the result of their low place on the totem pole. Since white slum residents have less unemployment, higher wages, and a preferred occupational distribution than blacks, it is obvious that they are getting the best available jobs. If ghetto blacks lose out in competition with ghetto whites, what chance do they have in competing with white youths from more affluent neighborhoods?

Many of the black youth's competitive disadvantages are inherent--resulting from his low-income background and the low quality of his education. But, unequivocally, structural deficiencies in the labor market account for a major share of his difficulties. The white ghetto youth presumably goes to the same schools, and frequently also lives in impoverished homes, but he is able to get the better jobs. His higher wages and lower unemployment are largely the result of his ability to penetrate the more attractive and rewarding occupations. Most white youths move into the primary labor market, while a large number of blacks move on a secondary track that leads nowhere. The

late teens and early twenties are, therefore, a critical juncture. Unless ghetto youths are helped to make the transition between secondary and primary labor markets, they are likely to remain in dead-end jobs.

Employment discrimination is the major reason why black youths are left behind. Despite the progress made in fighting discrimination, it remains pervasive, especially in its effects on youth. Federal powers, which are potentially massive, have not been vigorously employed. Only token efforts have been made, for example, to open apprenticeship opportunities to help minority youth. More significantly, the impetus seems to have lagged in private efforts to end discrimination, and a major reason is the lack of leadership by the government. Increased pressure must be exerted to get employers to reexamine and reform their hiring standards, whether they are purposefully discriminatory or simply unrealistic. Efforts must concentrate on youth blacks who are becoming committed workers, so that they will set out into the world of work on the right foot.

Providing Options to Illegitimacy and Crime

High rates of illegitimacy and crime have a significant relationship to employment patterns. Crime statistics tell a disturbing story. For almost every category of crime, black youth are many times more likely to be arrested than whites. In 1967, the arrest rate for robbery was 27 per 100,000 for white youth aged 10 to 17; for young Negroes, it was 550. While police may be more likely to arrest blacks than whites, preferential treatment does not account for these differentials, or for the fact that they are increasing at an alarming rate. The crime situation is even more serious when it is recognized that

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only about one of five reported crimes such as larceny, burglary, vandalism, and assault--those most often committed by youths--are followed by arrests; and, to begin with, probably less than a half of all crimes are reported.

The interrelationship between crime and work is difficult to spell out because it is impossible to measure the extent of actual crime or its rewards, but the shadow of street life is apparent in the economic activities of ghetto males. At ages 18 and 19, there is a noticeable dip in labor force participation among black out-of-school males, much greater than among whites, presumably because of the attractiveness of alternative activities. A large number of ghetto males in their late teens move in and out of work, both voluntarily and involuntarily. When they are out of money, when hustling is not productive, or when the "heat" is on, they may be willing to take a low-wage job they would spurn the Monday after payday. With coins in their pockets they can afford leisure and can wait around for the occasional opportunities to earn, through work or illicit activities, good money for a short time. Their attitudes toward work, their labor force status, and their street-corner participation depend largely on their financial state.

In addition, however, their activities depend on the availability and attractiveness of employment opportunities. The choice between leisure, illicit activities, and work is "rational" in the sense that increasing wages and employment opportunities will lure teenagers off the street and out of trouble. Many will continue the cycle of work and leisure, but with increasing time spent on the job and decreasing time spent on the pavement. A large number of "discouraged" workers will be drawn into the labor force on a part-time basis. Others who were peripheral workers will find that they can

get the full-time, remunerative job they wanted but could not previously find.

Unless adequate and attractive opportunities are provided for productive activity, other paths will be chosen, and the consequences can be serious for the individual and for society.

For young black women in the ghetto, the major problem is responsibility for children without help from fathers. Almost one-fourth of black girls aged 22 to 24 are unmarried but have children, compared with only 6 percent of whites. Though illegitimacy rates among blacks have declined overall with the advent of more effective birth control, these methods have apparently not reached down to younger girls. The latest available annual illegitimacy rate for unmarried nonwhite 15- to 19-year olds was nine times as high as for white girls.

Whether a woman is married or unmarried, childbearing tends to reduce labor force participation because of the need to take care of small children. But women with illegitimate children are less likely than married women to seek work or to find jobs. Therefore, much of the difference between the employment experience of black and white females is related to their divergent marital and family patterns. The woman who has an illegitimate child will find self-support difficult, if not impossible, and must usually turn to welfare or the secondary labor market. If more and better employment opportunities were available, many would leave relief rolls, and fewer would get on them to begin with.

The Call to Action

The employment problems of ghetto youth are both serious and complex. The outlook for the coming summer is threatening. Half of all teenagers in the ghetto will be outside the labor force, with many dropping out, discouraged over their inability to find work. Probably no more than half of the remainder will be able to find employment, with the rest searching fruitlessly for jobs which are not available. But the threat of a long, hot summer is only one of the most immediate consequences. The current economic slump means that, unless something is done, the present generation of ghetto youths will fail in its early adjustment to the world of work. This could affect them for the rest of their lives.

To end this situation is no simple matter. Public employment during the summer is necessary and worthwhile, but it is not an ultimate answer. The rate of aggregate unemployment must be reduced and low levels maintained, so that private sector jobs will be opened. Stepped up efforts are needed to end the discrimination which obstructs the transition from secondary to primary labor markets. Remedial training and improved education are vital once the structural problems in the labor market are overcome. Anti-crime and birth control measures must be accelerated; but more importantly, jobs must be created so that ghetto youth have alternatives to illicit activities or dependency. Not only must the threat of "social dynamite" be diffused, but more meaningful steps are needed to permanently eliminate the causes of ghetto youth employment problems.

June 16, 1971

The CHAIRMAN. Mr. Mittelman.

Mr. MITTLEMAN. Dr. Levitan, do you think it is possible to design an experiment, rather than create an across-the-board differential which would apply to all youth, as the administration has suggested, do you think it is possible to design an experiment applying to one or two SMSA's? Or, conversely, as Commissioner Levine has testified, would you be able to pick out special industries and create criteria for them to meet in order to test out this hypothesis, whether a differential will (a) in fact create additional jobs for youth, and (b) will not do so at the expense of jobs for adult workers?

Dr. LEVITAN. Mr. Mittelman, since you are a distinguished constitutional lawyer, I will not comment on the legal aspects of the issue you raise.

Given a choice between an industry approach and an area approach, I would take the latter. It would be easier to experiment with a dual wage in a few areas than to segregate selected industries which would pay less than the prevailing minimum rate. But I doubt that the experiment will clearly establish the impact of the dual minimum. Whatever areas you are going to select, 3 or 4 years from now different analysts will be able to "explain" why employment has increased or decreased, and we will never have any conclusive evidence.

I think the problem right now is sufficiently grave and laden with social dynamite, to borrow a phrase from former Harvard President James B. Conant, that we should experiment with a dual minimum on a nationwide basis for a few years. If, at the next review of the minimum wage, this has not reduced youth unemployment, I would then advocate dropping the dual minimum.

I believe that the dual minimum is needed, for we face serious problems in employing youth. The boy and girl, particularly the girl, when she reaches age 16 and is out of school without a job and without income, may suffer the consequences for a lifetime, and not just temporary deprivation. Therefore, the assertion that it is more important to find jobs for adults than youth should be questioned. For the more mature unemployed worker, there may be an alternative, such as public assistance. For example, in the chairman's State and your State, the public assistance levels are sufficiently generous to offer an option to a mother with children which does not exist for youth.

If you do not create a job at age 16 when the young boy or girl drops out of school, then the consequences may be dire indeed. The youth may attempt to secure income illegally and end up with a criminal record or opt for starting a family, with or without the blessings of church and state, to qualify for public assistance. Those are the real alternatives you have to consider.

I therefore believe that selection of a few cities or a few industries is not the answer. We ought to take more drastic steps and experiment more boldly.

I don't question the efficacy of minimum wage legislation, for it has raised the income of many workers and their families. But at the same time, you have to consider the fact that in ghetto areas 30 or 40 percent of all teenagers are unemployed. I think that this calls for immediate action. Raising the minimum wage for these youth would

not help, because the choice is not between a \$1.60 job or a \$2 job. The alternative to a higher minimum is frequently no job at all.

Mr. MITTELMAN. Then you wouldn't be in favor, for example, of a restriction which would require an employer to show that he was not substituting teenagers for adults in his work force?

You are willing to accept that?

Dr. LEVITAN. I am willing to accept that, but the recommendation for a dual minimum wage should not be viewed in isolation. It should be viewed in conjunction with the need of creating jobs under the Emergency Employment Act, and also in connection with the Senate action which I mentioned; namely the extension of the Economic Opportunity Act, authorizing an additional half a billion dollars to create jobs for youth.

The current critical situation calls for immediate action. Although we have not had any riots in the cities in the last 2 or 3 years, that does not mean that the same problems that brought about the riots do not persist.

I don't know what caused the riots, but the same problems remain. They are pressing problems. High youth unemployment, I believe, constitutes a very dangerous situation and I do not think these troubled conditions will go away on their own.

Mr. MITTELMAN. One last point. A number of witnesses testifying previously pointed to the European and Japanese experience with separate youth differentials.

Some have said that their experiences could be translated to America. Others have said no, because of different employment experiences there such as the apprenticeship system in many European countries. They have said that they have had a very good experience in Europe, but that it was not immediately translatable to the American economy. Do you have any comments on that?

Dr. LEVITAN. The question of replicability of experience is always a very difficult one. What I am trying to suggest is that we have to improve the mechanisms for transfer from school to work, or to create better bridges between school and work. Several European countries have developed more effective transitions than we have. One way to start building these bridges is the suggestion that we not raise the minimum wage for youths. There are other things that can be done, of course. For instance, the restrictions on youth employment that lock them out from so-called dangerous jobs also need overhauling. There are other avenues leading from school to work that have been developed in Japan, England, France, and other countries. However, I cannot testify on their applicability in the United States because I am not an expert on that.

Mr. MITTELMAN. Thank you.

(The prepared statement of Dr. Levitan follows:)

Statement Prepared for the Subcommittee on Labor
Senate Committee on Labor and Public Welfare

by

Sar A. Levitan
Center for Manpower Policy Studies
The George Washington University
September 30, 1971

Despite 33 years of experience, there is no convincing evidence that the minimum wage has significantly affected aggregate unemployment, the rate of inflation, or the viability of low wage industries. Congress has been willing to balance demonstrated success in raising the wages of millions of low income workers against the alleged but largely unproven ill-effects of the minimum wage.

There is now no reason to think that a reasonable increase in the minimum wage and an extension in coverage will be more deleterious than increases and extensions in the past. In 1968, the basic minimum wage was 56 percent of average hourly earnings in private nonfarm employment. Because of inflation, the \$1.60 per hour minimum now equals less than 47 percent of the average hourly wage in private nonfarm work. Raising the minimum to \$1.80 would still leave the minimum wage below the relative level of 1968. An increase to \$2.00 would return the minimum wage to the same relative level. The proposal for full extension of coverage is possibly even more significant for it would extend the protection of the federal minimum to an estimated 13 million

workers. The proposed extensions in coverage would probably result in no more serious dislocations than in the 1960s when the Fair Labor Standards Act was extended to 10 million more workers.

The determination of a proper minimum and coverage are difficult issues. Nor can they be considered in isolation. Proposals to guarantee a minimum income lead us to question whether we can improve upon the time-tested minimum wage approach. Are there alternative ways of assuring a decent income for every worker and his dependents? Is it possible to reduce the negative effects of the statutory minimum rate without undermining its function of helping the low income workers? Answers to such questions are no more available than have been definitive appraisals of the past economic impact of the minimum. But these questions must at least be raised.

Providing A Minimum Income

The wage mechanism is not necessarily the best tool for meeting family needs. For example, a guaranteed income for working heads of households would have many advantages over a minimum wage that would provide the same income. An unskilled and often unemployed head of a family needs a higher minimum than does a youth working after school or a middle-aged housewife working part-time.

The guaranteed income could be more selective than the minimum wage, helping those with the most serious needs without raising the standards for all workers and the labor costs of all employers. Reliance on the wage mechanism alone precludes help to hard-working but poor family heads with numerous

dependents who may require \$2.50 or \$3.00 per hour to rise out of poverty; raising everyone's wage to this level would have dire consequences to many intended beneficiaries of the legislation.

A guaranteed income for family heads, however, does not make the minimum wage superfluous. Workers who are not family heads must be protected from exploitation, and their income needs should not be blithely discounted. Possibly equally important is the need to encourage workers to become economically independent and to rise above the poverty threshold without relying upon income supplements. An income guarantee without a wage minimum may also drive down the earnings of workers and rather than aid the working poor, the guarantee can be subverted into a windfall to employers. The minimum wage is, therefore, needed as a floor to express the socially recognized "value" of the labor rather than to meet the income needs of all family heads.

A Minimum Wage For Youth

Although there is no conclusive evidence that teenage unemployment rates have risen as a result of past increases in the minimum, there has clearly been a secular deterioration in their employment experience. If the minimum wage is raised to \$2.00 or more per hour, the employment problems of youth are likely to be exacerbated.

The unemployment rate for 16- to 19-year-olds rose from 2.8 times that of adult workers in 1950 to 3.3 in 1960 and 4.7 in 1970. It is probable that

the rising minimum wage has contributed to this unfortunate trend as low-wage employers have opted for more mature and experienced workers, adjusted working schedules, increased their use of capital investment, eliminated low paying jobs, or gone out of business. Evidence that the minimum has been a major factor is especially persuasive for black teenagers whose incidence of unemployment is more than twice that of whites. In mid-1971, one of every six white teenagers was unemployed; among ghetto black teenagers two of every five were unemployed. Many more who are not counted among the unemployed would take jobs if work were available. But there are simply not enough jobs for youths even at present minimum rates. Though the relative decline of the teenage population will improve their employment situation over the next decade, the problems will remain severe, especially in central cities, unless positive steps are taken. If the minimum is raised, the present rate could be retained for teenagers, or, at least, for 16- and 17-year-olds. Few are household heads who must support families. A very large percentage are unemployed; many would rather work for \$1.60 an hour than fail to find jobs for \$2.00 per hour. A lower minimum for youth could compensate for a decline in employment resulting from extensions of coverage to sectors employing many young workers. At the same time, revision of anachronistic child labor laws might further expand job opportunities for youths.

Guidelines For Policy

There are no hard and fast prescriptions for minimum wage legislation. Given the imprecision of available evidence and the contradictory conclusions

that have been drawn from it, decisions must be based largely on speculative and normative judgments. Social scientists do not have the answers, whatever they may claim. Nevertheless, several conclusions can be drawn which provide general guidelines for legislative action.

There is no guarantee that the dual minimum system would have a dramatically favorable effect on youth unemployment--in fact, its contributions is likely to be modest--but there is much to be said for experimenting with such an approach. Arguments for a dual minimum wage are weaker during a period--like the present--of high unemployment. But minimum wage legislation is not the proper tool to fight unemployment and inflation. It is reasonable to anticipate that unemployment will decline and plans should be designed for specific groups who disproportionately bear the burden of unemployment. Though the impact is admittedly far from certain, a dual minimum wage may help youth.

First, previous minimum wage increases and extensions have raised the earnings of millions of workers with little apparent effect on unemployment, inflation, or employment in the low-wage sectors. Undesirable secular changes may have resulted, but their exact causes have been difficult to pinpoint and the evidence is persuasive that the relative tangible benefits of minimum wage legislation have outnumbered the negative effects, if the goal is to help the working poor. Raising the minimum to between \$1.80 and \$2.00 an hour and further extending the coverage would be no more damaging than earlier changes and would help many working poor. If the past is a guide to the future, such actions are desirable.

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Second, a guaranteed income system which would provide direct subsidies to low-paid working household heads can complement, but not replace, minimum wage legislation.

Finally, if the minimum is raised to \$2.00 per hour or higher or if coverage is extended to all industries, a dual minimum system might check the further critical deterioration of youth employment problems which are now laden with social dynamite. An experiment with a dual minimum could easily be undone. Considering the high and rising levels of youth unemployment, experimentation is more than justified.

September 24, 1971

The CHAIRMAN. Mr. Welch?

Dr. WELCH. Thank you.

Like Dr. Levitan, I will ask my testimony be placed in the record and try to summarize briefly.

The CHAIRMAN. Your prepared statement will be inserted in the record at the end of your testimony.

Dr. WELCH. My main purpose is to familiarize you with some of the academic research concerning the disemployment effects of minimum wage legislation, primarily research that has been completed in the last 4 years since coverage data became available.

Before that time, research was largely inconclusive, many times inconsistent, but we did not have coverage data. We had only the nominal minimum.

I think it is fairly obvious that a minimum wage law for people who otherwise would earn less than the minimum is a mixed blessing. It can increase the salary of some, but the fact that they earn less than the minimum without the legislation suggests that they were not successful in finding a job at a higher rate, and the job simultaneously puts an onus upon them to convince someone that in fact they and their services are worth the new legal minimum.

If no such employer can be found, then they simply lose their jobs. I think the academic research on the effects of minimum wage legislation are overwhelmingly clear.

People do lose their jobs.

The CHAIRMAN. Where is that in your statement? Let's repeat that.

Dr. WELCH. It comes at the end of the summary of the various studies. It says that losers are typically young, black and female.

The studies, one done by Tom Moore at Michigan State, found significant disemployment effects on teenagers and he found roughly three and a half times as many black teenagers were affected.

The CHAIRMAN. When was this, at the time of the last increase in the minimum wage?

Dr. WELCH. No, it is a study for the period 1954 to 1968, and analyzed the average sensitivity—actually, Tom Moore looked at the unemployment rate—and it related the sensitivity of the unemployment rate relative to the average minimum in manufacturing.

The next study was the Labor Department study which has received considerably more attention than the Moore study, and as you are aware, the study is largely inconclusive. Of the four studies using coverage data, it is the only one that does not reach definite conclusions.

In my opinion, the work is seriously defective both in specifications and estimation. Not only is it inconclusive about the effects of minimum wage, but about all other factors determining teenage employment.

I will not comment further at this time, but will be happy to do so following the introductory statement.

The third study by Hashimoto and Mincer was a serious attempt to spell out the implications both for labor force participation which is directly related to the question discussed earlier of interrelationships between welfare programs and minimum wage legislation, and for employment.

They found the largest disemployment effects are for non-white

males under 25 years old, but results for white males less than 25 are also significant. They also point out that since the minimum wage reduces the number of jobs, it may reduce the number of persons who either had a job or are actively seeking one, that is, the number of people in the labor force, and again their evidence supports this implication.

This is one result of the Labor Department Study and oddly enough they take it as a contradiction of standard economic theory, that when the number of jobs declines, the number of people in the labor force somehow should not decline, which I simply don't understand.

Jacob Mincer is closely associated with on-the-job training, and he points out the implication of apprentice programs for not allowing a youth differential, and I think that is something we should consider.

The fourth study is my own in conjunction with Marvin Koster's. We looked at the way employment varied over a business cycle the way it is distributed on demographic groups. We find that though teenagers in the past 15 years have accounted for about 6 percent of employment, they typically account for 22 percent of reductions in employment during cyclic downturns.

We found further that the impact of minimum wage legislation has been to shift the brunt of unemployment from adults to teenagers, from whites to non-whites and to teenagers.

Nonwhite teenagers have borne twice the burden of white teenagers, and females have been more affected than males.

The coverage data has not been completely exhausted. A lot of research remains to be done, and I am now involved in some research. It is too early to make statements, but let me summarize things you see by inspecting the data.

Between 1947 and 1960, coverage was not changed in any industry. Then it differed between industry, and the aggregate rate fluctuated as the composition of employment changed between industries.

In 1947, 55.8 percent of all employees worked in covered firms. By 1960, this had fallen to 51.2 percent. During this period, proportionate coverage fell by 8 percent as employment in low-coverage industry outstripped groups in higher industries.

I don't contend that minimum wage legislation was the most important factor in this group differential, but I think it played a role.

In 1961, we had the first coverage adjustment. In September 1961, since World War II, the effects in 1961 were fairly slight because they affected only the last quarter. But in that year, in the industries most affected, that is, construction, transportation, and retail trade—no, no, no—construction, and retail trade.

The fraction of teenagers total unemployment fell in each case. The full impact of this change was realized in 1962, and in each industry affected by a significant increase in coverage—by the way, 1962 was a year of a bouyant economy. Typically, minimum wage impacts are less then, because the pinch of a wage floor is less stringent.

In 1967, we again had an adjustment in coverage, and in every single case in the year 1967, the teenager share of employment in the areas affected fell.

I have no other comments to make except that you seriously consider the concept of a youth differential, Mr. Chairman. I will be glad to entertain questions.

The CHAIRMAN. The number of jobs presents an elastic figure depending on the minimum wage as you presented it. Is that right, Doctor?

Dr. WELCH. Yes. It is not exactly a zero sum again. As you lower the wage, you can increase the number of jobs. You gave an earlier example of the amusement park, and clearly you have heard references all day to special cases of farm laborers, et cetera. It is very obvious that for many people the question is not to employ people above the minimum wage or below, it is a question, typically, of existence, and I think that is one reason that you have found quite different rates of employment expansion in high- and low-coverage industries between the 1947 and 1962 years.

The CHAIRMAN. If it were true that the wage required could make the differences between jobs and no jobs, we would have a standard to apply, and then to see whether the social values here would dictate a difference of minimum wage, depending on whether there would be a job or no job.

Dr. WELCH. Yes, there is very extensive empirical literature in economics, and one of the facts of life is that we cannot legislate productivity, and in some cases an individual, regardless of the desired level of living for him, or what we do in terms of augmenting his income to affect his level of living, his services have a value out there, and if that value is less than the minimum wage, you simply give him no alternative to not working.

You simply pass a law against his having a job if his productivity is not high enough.

The CHAIRMAN. What standards could be applied here in these situations to make exceptions to the minimum wage?

Dr. WELCH. Maybe an experience differential, or a minority group differential, or an unemployment rate differential. It is easy. You talk about how unemployment ties the youth differential to perhaps unemployment differentials between young and adults.

It is very clear that not only will the number of jobs increase, but also there is substitution, and clearly, bypassing the minimum wage law, you now increase employment of adults.

There is no question about that. The most significant impact of my finding in looking at cyclical sensitivity of employment was that minimum wages have served largely to insulate adults from vagaries of business fluctuations.

Senator JAVITS. Mr. Chairman, it strikes me that we could not differentiate between the grounds of color or race in an affirmative way, but what we could do is this: It strikes me, and I would love both of you to give me a view, that there are three criteria we could set if we are willing to try this out.

One would be the impact of unemployment for teenagers in a given area. Two, the limitations upon the number of such employees, as Commissioner Levine testified, that any employer could have, directly or indirectly.

But let us say in New York it wouldn't be more than 10 percent though the number would be fixed at two, and we could even qualify that by saying two if there are not less than x employees, 8 or 10.

Finally, it strikes me that we might, and that is why I want your comment, consider a criteria that the finding be that this is a job which would not otherwise be available were it not for the concession on the minimum wage.

Then you would have a true concession for labor, which is opposed to this, that they are not going to lose anything. Indeed they gain something, because they lend themselves to a socially desirable activity.

Then if that could be done with cooperation with the trade unions, so that for practical purposes you have an enormous addition to the emigrated apprenticeship business, you might really be accomplishing something.

Dr. LEVITAN. I think it would be very difficult to control and administer the three thoughtful criteria you suggested. Instead you may want to consider another option—to create an additional job. That is why I would enthusiastically support your recent vote for extension of additional jobs for youth. If the \$500 million you authorized for out-of-school youth would be funded, it would result in the creation of an additional 100,000 or 120,000 jobs.

That would make a real dent in the problem. I think this way you would minimize the youths' competition for jobs with adults, and that would—well, I can't talk for the AFL-CIO—but I think they would go along with that approach.

This would obviate the need to look into every business and to check whether they meet the criteria you are suggesting. I think the conditions you suggested would be very difficult to police.

There is no substitute for jobs in order to take care of our social ills and social problems, and as I suggested, job creation through the Emergency Employment Act and the extension of NYC in creating additional jobs is the best immediate way of combating the ills of youth unemployment.

Dr. WELCH. I am a bit pessimistic about the last two possibilities. I think there is a real empirical problem of finding when a job would or would not exist if you did or did not have a youth differential.

As far as getting trade union support, again I am not optimistic. I suppose if we had the alternative of imposing a minimum wage on Japanese laborers, I suspect that we would vote for the highest minimum wage possible always.

Certainly domestically we would if we were considering import competition, and I think roughly you face that kind of situation.

The first possibility, I think, is very, very real. It has the advantage of being simple, that is, you know the number of teenagers that are out of work, and also out of school, and it seems to me that a floating youth differential geared to the proportion of teenagers that did not have jobs solves the problem of a minority-type group differential.

It happens to be positively correlated with race at this time, but whether it does or not, float from geographic place to geographic place, it is simplest and I would favor something like that—

Senator JAVITS. Thank you.

The CHAIRMAN. Thank you, gentlemen.

Dr. LEVITAN. Thank you.

Dr. WELCH. Thank you.

(The prepared statement of Dr. Welch follows:)

Statement of Finis R. Welch, City University of New York and
the National Bureau of Economic Research, Before the Senate
Subcommittee on Labor of the Senate Committee on Labor and
Public Welfare

September 30, 1971

Mr. Chairman and Members of the Subcommittee:

Thank you for the chance to comment on the Fair Labor Standards Amendments, S 2259. I testify in behalf of a youth differential under the assumption that existing minimum wage legislation will be updated by raising the nominal minimum and possibly by extending coverage to sectors not currently included.

First the likely effects of a minimum wage law that contains no youth differential are discussed. I then summarize evidence compiled by some of the more recent research products with which you may not be familiar.

As a point of departure, let me mention the administration's proposal for a youth differential. While the minimum wage is increased for most workers, the proposal is that the current minimum be retained for three groups:

- 1) all persons under 18 years old;
- 2) all full-time students under 20 years; and,
- 3) all 18 and 19 year old workers in the first six months of their first job.

In its simplest form, a legislated minimum wage is at best a mixed blessing for those who would otherwise earn less than the minimum. It indeed has the potential to increase earnings, but it carries the burden that these workers must find an employer who preceives their labor to be at least worth the legal minimum. Possibly no such employer can be found. Whether a minimum wage is legislated or not, a worker has an obvious incentive to find the job which offers the greatest satisfaction. That without legislation he earns less than the minimum is proof, in and of itself, that he is either unable to find a job paying as much as the minimum or that if he could find one at a higher rate, the job selected is preferred when chances for advancement, fringe benefits, and convenience are considered. A legislated minimum therefore restricts his alternatives.

It must be obvious that an effective minimum wage increases the cost of low productivity workers, giving employers an incentive to find other less costly ways of purchasing the services these workers provide, either by substituting in favor of more productive workers, implementing labor saving production techniques, or by curtailing production.

As an example, suppose that a minimum annual wage of \$12,000 is legislated for secretaries. Obviously, some now working for less would get a salary increase, but just as obviously, some would loose their secretarial jobs and either switch to an "uncovered" occupation or not work at all.

In most firms the secretarial positions would decline in number as more of the ordinary secretarial tasks would be preformed by others,

and the kind of persons continuing to work as secretaries would differ. Typically, they would be more skilled and employers would be more certain of their capabilities. Young people hoping to break into the secretarial profession would be peculiarly disadvantaged. Employers would no longer be allowed to pay lower wages to less experienced people and offer an opportunity to gain from experience on-the-job.

The analogy and the implicit case for the youth or experience differential is obvious and this example summarizes most of what economic theory predicts. The most important exception is that a general minimum wage increases the instability of employment for low productivity workers associated with fluctuations in the level of economic activity, a point that is especially relevant today, when our economic resources are not fully utilized. In expansionary periods of rapidly increasing employment and wage levels, the "pinch" of a wage floor is less important than in a slack or recessionary period.

The qualitative direction of the various effects of a minimum wage are fairly obvious and generally agreed upon so I will not belabor them further, except to note that they do imply a trade-off -- some gain but others lose. The real question is not of the direction of effects, but of their magnitude. Who gains and by how much? What are the losses and how large are they?

There is by now a fairly extensive literature containing estimates of the effects of minimum wage legislation. Much of this research is possibly familiar to you. I do not think it inaccurate to summarize this research as a mixed bag. Results are often inconclusive and in many cases inconsistent. More recently, however, results have been more definite and comparable.

The change has not been in improvements in the state of economic and statistical theory, although gains have been made. Instead, the real advance has come through improved data. The most important advance has been in the availability of data indicating fractions of workers covered by minimum wage legislation.

I am aware of only four studies that encompass coverage data.

The first, by Thomas Moore ("The Effect of Minimum Wages on Teenage Unemployment Rates", Journal of Political Economy, August, 1971) found that unemployment rates of teenagers are significantly increased by increases in the nominal minimum and by increases in coverage. The effect on unemployment is about three times as great for nonwhites as for whites and slightly greater for females than for males.

The second study, which has received greater attention, was, performed within the Department of Labor (Youth Unemployment and Minimum Wages, Bulletin 1657, 1970). As you are aware this study is largely inconclusive. Of the four studies using coverage data, it is the only one that does not reach definite conclusions. In my opinion, this work is seriously defective, both in its specification and estimation. Not only is it inconclusive about the effects of minimum wages, but about all other factors determining teenage employment. I will not comment further at this time, but will be happy to do so following this introductory statement.

The third study, by Nori Hashimoto and Jacob Mincer ("Employment and Unemployment Effects of Minimum Wages" unpublished, April, 1970), is a serious attempt to spell out the theoretical implications for labor force participation as well as for employment. They find that the largest

disemployment effects are for nonwhite males less than 25 years old, but results for white males less than 25 are also significant. They also point out that since the minimum wage reduces the number of jobs, it may reduce the number of persons who either have a job or are actively seeking one; an observation supported by statistical evidence for which results are similar to those obtained for the disemployment effects.

Jacob Mincer is most closely associated with the economics of on-the-job training. He points out that for many jobs, one of the significant attributes is the future value of the experience acquired. When a worker is learning on-the-job, his current productivity is often less than it might otherwise be, and he often pays for this learning opportunity with a lower current wage. A minimum wage law places a floor on current wages and therefore limits a worker's opportunities for learning. By not allowing relatively inexperienced workers to accept lower wages, we prevent their eventually earning higher wages.

The fourth study is my own in conjunction with Marvin Kosters ("The Effects of Minimum Wages on the Distribution of Changes in Aggregate Employment", American Economic Review, forthcoming, March, 1972). Unlike other studies, we do not focus upon disemployment effects per se, rather we concentrate upon identifying which classes of workers are most vulnerable to cyclic fluctuations in employment and upon how minimum wages effect this vulnerability. We find that although teenagers in the past 15 years have accounted for only slightly more than 6 percent of total employment, they account for 22 percent of changes in employment due to cyclic fluctuations. We find further that the impact of minimum

wage legislation has been to shift the brunt of employment instability from adults to teenagers, from whites to nonwhites, and from males to females. We estimate that the teenage share of changes in employment has been more than doubled by increases in coverage and level of the minimum wage. Nonwhite teenagers have borne twice the burden of white teenagers, and teenage females have been more affected than males.

Correspondingly, minimum wage increases have tended to stabilize or insulate adult employment from the vagaries of the business cycle. The gain has been largest for white adult males, but has been almost as large for white female adults. The evidence that minimum wages stabilize employment for nonwhite adults is not conclusive.

To summarize the various studies, the most recent evidence is that there are indeed gains associated with minimum wages. Those who gain are workers who in the absence of the legislation would have earned the most. Losers are typically young, black, and female.

The coverage data to which I have referred has not been fully exploited and much research remains to be done. I am now involved in a study that analyzes the effects of uneven coverage across industries on the industrial distribution of teenage employment. The statistical results are not complete so probabilistic statements cannot be made, but let me indicate some of the most obvious features of the data.

Between 1947 and 1960, coverage was not changed. It differed between industries, but within each industry, the rate was constant. The aggregate coverage rate fluctuated only as the industrial composition of employment changed. In 1947, 55.8 percent of all workers were in firms covered by minimum wage legislation. By 1960, this number had

fallen to 51.2 percent. During this period, proportionate coverage fell by 8 percent as employment in the low coverage industries outstripped growth in industries of high coverage.

I do not contend that the presence of minimum wage legislation was the only or even one of the more important factors in these growth differentials. But it may have played a role.

The Amendment to the Act effected September 1961 extended coverage in some industries. An average of that year, 1961, shows a moderate extension of coverage in construction and retail trade, and in each case the fraction of teenagers employed in that industry fell.

The full effect of the 1961 Amendment was felt in 1962. In that year, effective coverage increased sharply in construction, transportation, and retail trade, but the economy was bouyant and the effects appear to have been mitigated. Even so, the fraction of all teenagers employed in each of these industries declined.

There was significant coverage extension again in 1967 with firms in construction, wholesale and retail trade, and in the service industries being most affected. Once again the teenage share of total employment fell in each of these industries.

The evidence that there are significant disemployment effects associated with minimum wage legislation is unambiguous; and the effects are concentrated on the young.

These effects can be mitigated by a youth differential. As far as the Administration proposal is concerned, I think that the experience differential is far too mild. I suggest that all persons who are in school or have less than two years of post-school work experience be exempted from further minimum wage increments. It is not enough to exempt only the first job, for that job may bear no relationship to

the lifetime career. What is important is that the young be given an opportunity to work, and if they choose, to apprentice themselves so that they will have the opportunity to enjoy the fruits of experience. You can legislate a wage floor, but productivity is not increased by fiat.

Mr. Chairman, thank you again for the opportunity to testify. I will be glad to answer questions you or members of the Subcommittee may have.

Senator JAVITS (presiding pro tempore.). The next witness is Mrs. Myra Wolfgang, secretary treasurer, local 705, Hotel, Motel & Restaurant Workers Union, Detroit, Mich.

Mrs. Wolfgang, would you give us your name, address and for whom you appear for the record, and then proceed?

**STATEMENT OF MRS. MYRA WOLFGANG, SECRETARY-TREASURER,
LOCAL 705, HOTEL, MOTEL & RESTAURANT WORKERS UNION,
DETROIT, MICH.**

Mrs. WOLFGANG. My name is Myra Wolfgang. I reside in Detroit, Mich. I am a member of the Michigan Wage Deviation Board.

I am a commissioner on the Michigan Women's Commission and international vice president of the Hotel & Restaurant Employees & Bartenders Union AFL-CIO. I am secretary-treasurer of the Hotel, Motel & Restaurant Employee's Union, local 705 and am testifying on their behalf.

I appear here today in support of S. 1861. I join the AFL-CIO in their demand for top priority to its passage by this session of Congress. The testimony of George Meany and Andrew Biemiller which I subscribe to totally and completely, is a masterpiece of legislative observation.

Its sensitivity to the problem of youth coverage by Fair Labor Standards Act gives lie to the testimony of Labor Secretary Hodgson who did the youth of this Nation a real disservice when he testified before your committee.

May I depart from the text for a moment to answer some of the questions raised by the two previous witnesses? I suggest if they would come out of the ivory towers of academia, they would discover that youth is not always someone who wants to work after school.

Youth is also the young black man who comes from a fatherless home whose mother is a domestic and trying to exist on \$1,200 a year.

Youth may also be the unwed mother, the father of her child having abandoned her, who wishes to support her child in dignity and not go on ADC.

Youth, lamentably, is someone who is unemployed and needs to go to work to keep body and soul together, and having heard the previous speakers say that we should have an experiment with the question of youth unemployment, I suggest that we ought to try to experiment with full employment at a living wage and see how that grabs us.

There is no guarantee, says the professor, that the dual minimum wage system would have a dramatically favorable effect on youth unemployment. In fact, its contribution is likely to be modest, but there is much to be said for experimenting with such an approach, experimenting with an approach that is going to tell youth, that is already becoming fast alienated from our society, that they should not have a living wage.

Senator, you asked the question of Commissioner Levine on whether youth at any point should be excluded from the Minimum Wage Act. I would like to say that to me the only justification for the exclusion of youth is if it is proof even that the youth cannot satisfactorily maintain accepted production standards.

I also am alarmed by the previous witness speaking of the revision of the anachronistic child labor laws.

Now we are living in strange times, where to celebrate the 51st anniversary of women's suffrage, the Governor of Idaho signed into law a bill to permit women to return to the mines. This sort of progress we don't need to solve the problem of youth unemployment.

I would like you to consider this question: If youth unemployment is created by the wages paid, then should we pay black youth a lower wage than white youth because more black youth are unemployed? The law says we can't. I refer to the Civil Rights Act of 1964.

Or should women receive a lower wage because of high unemployment among women? We are prohibited from doing that. The Civil Rights Act stops us from doing that. In some States the fair employment practices law stopped employers from discriminating against people based on age, and I think a very serious constitutional question is raised here when we talk about subminimal wages for young people, a question so important that I don't think we ought to leave it to the courts to decide.

Senator JAVITS. Mrs. Wolfgang, your statement will be incorporated in full in the record at the end of your testimony, and our normal practice is that if you wish to, you may summarize it, or any other way, to economize on your own time and that of the committee.

Mrs. WOLFGANG. I understand, Senator. I am sure the length of this is what prompted your observation to summarize, and I will certainly try to.

The CHAIRMAN (presiding). Thank you.

Mrs. WOLFGANG. I also appear here to give answers to the spokesmen for the National Restaurant Association who are continuing their attempts to escape full coverage under the Fair Labor Standards Act with their usual shouts of calamity and even destitution. Their position on most matters makes Cotton Mather sound like Earl Browder by comparison.

Contrary to a popular American myth, which would have us believe that here in the "Land of Opportunity" anybody willing and able to work can support his or her family decently, 25 million persons currently living in poverty are members of families with a fully employed head of household. This includes one-third of all our children who grow up in poverty.

In such circumstances, the cruel irony of the term "fully employed" becomes apparent. It is time we face the hard implications of the hard fact that right now in America, a man or a woman can work 40 hours a week, 50 weeks a year, and still require public assistance to maintain his family at a sustenance level, and that this man or woman can be receiving the present Federal minimum wage of \$1.60 an hour—the wage which, according to the Declaration of Policy of the Fair Labor Standards Act, should provide him with the "minimum standard of living necessary for health, efficiency and general well being." I should not have to remind you that the worker earning \$1.60 an hour is more fortunate than many workers in the hotel and restaurant industry who are earning much less.

I have prepared for you some statistics which others have submitted. I will not take your time to read them, particularly since Com-

missioner Levine made reference to them, but I do want to say that when fully employed workers are earning amounts below the poverty level, then something is rotten, gentlemen, and not the Denmark, but right here in the "Land of Opportunity."

Certainly a minimum standard of living necessary for health efficiency and general well-being is not being met.

The immediate need of the worker for the \$2 minimum wage and for a \$2.25 minimum wage after a year, as proposed in S. 1861, can hardly be questioned. It should be granted to all employees.

The plight of workers not even covered by the present Fair Labor Standards Act or only partially covered, is needless to say, even grimmer.

Despite the unfortunate fact that the Fair Labor Standards Act has never really guaranteed the decent standards of living it proposes to provide for covered workers, the hotel and restaurant industry has repeatedly escaped even the modest provisions that exist. For many years they were not included at all.

Nevertheless, the hotel and restaurant industry is still asking, just as vociferously as ever, to be given special consideration, to be granted exemptions. Hotel and restaurant owners would have had you believe if you heard their testimony in the 1963 and subsequent hearings, that the initial 1966 coverage of the industry by the Fair labor Standards Act would kill the industry.

Now even their own industry spokesman admit they were dead wrong. Editorializing in Fast Food magazine under the caption Washington Monitor, they wrote the "doomsday prophets who crystal balled the demise of the restaurant industry when it can under the extended coverage of the Fair Labor Standards Act in 1966 have long since been proven dead wrong."

To further supplement that point let me say that in the period between October 1966 and April 1967, the period spanning the effective date of the 1966 amendments to the minimum wage law, restaurant employment increased by 3,900 workers.

To be sure their wages have increased since 1966, but at a pace far, far below and slower than wages in other industries. They remain at the bottom of the economic ladder. According to the Bureau of Labor Statistics, the average hourly wage rates in eating and drinking places was \$1.58 an hour, in retail trades \$2.15 per hour, in all manufacturing, \$3 per hour.

One result of this has been that the taxpayer in effect has been subsidizing the profits of the service industry. Many fully employed hotel and restaurant workers are obliged to depend on one or another form of public assistance to sustain their families.

Thousands of these workers receive wages so low that they are eligible for food stamps under Government programs. They are, to my personal knowledge, women working full time in the industry in Michigan who could acutally improve their standard of living if they quit their jobs and went on ADC in Michigan's largest county.

I personally know hotel maids being paid \$13.95 for an 8-hour day. Incidentally, they are being denied a previously negotiated \$1.05 a day wage increase due on October 1, because of the current wage price freeze.

A survey made among waiters and waitresses working in Detroit has revealed a 15-percent drop in gratuity income in the last year. The guest check size is smaller since many guests forego the appetizer or the dessert or the second cocktail. But more significant, when business is bad, the guest simply tips less.

Overtime premium pay? Not in the hotel and restaurant industry. This further leaves the door open to exploitation of employees and still higher profits for the industry.

The hotel and restaurant industry as the employer of millions of women is notorious for the overtime hours worked, made worse by the fact that the employer does not have to pay premium pay for overtime. These same employers tell you that overtime is a necessity because of the "unknown and unexpected" situations arising in restaurants and hotels. It seems very strange that these situations seem to miraculously disappear under union contracts requiring premium pay for overtime.

The Fair Labor Standards Act must be amended to eliminate the current overtime exceptions not only in the hotel and restaurant industry, but in other industries, as well. This, combined with an immediate pay increase and the abolition of a reduced wage for tipped employees, would not only allow millions of presently employed workers a chance to escape desperate poverty, but would also open up thousands of new jobs.

The National Restaurant Association tells us they cannot afford to pay a minimum wage to inexperienced help. Here we come to the youth bit again—the assumption being that anyone under 21 is inexperienced. Admiral Nunn, writing in *Fast Food* magazine, dealing with the minimum wages, says, "There is a need to indoctrinate our youth into a lifelong habit of useful work. We are recommending, therefore, that the subcommittee approve legislation which will provide for the employment of persons below the age of 21 at subminimal wages, as is now allowed in the case of full-time students." Paying subminimal wages is not the way to encourage a lifelong habit of useful work.

What is more, according to the Bureau of Apprentice Trades, commercial cooking is the only apprenticeship occupation in the industry. Yet the National Restaurant Association is trying to tell you that anyone under the age of 21 should be paid a subminimal wage for a period of 6 months, while training as a dishwasher or bus boy. Really, they are adding mental insult to emotional injury.

As far back as November 1969, Secretary of Commerce Maurice Stans was quoted as saying that the then Secretary of Labor George P. Shultz was studying a subminimum wage of about \$1.20 or \$1.25 per hour. When told that under a subminimum wage some companies might try to replace adults with young workers or to hire no one but youths, Stans was quoted as saying, "There is nothing wrong with that." At the same time Shultz denied that there was any such study taking place.

"The only study we have going on in the Department is a major effort to find out whether or not the high rates of unemployment among teenagers are related to the flat minimum wage," Shultz said. "It is a matter of research. It doesn't carry any necessary policy connection."

Four months later, a study was released by the Commissioner of

Labor Statistics, Geoffrey H. Moore, on the impact of the minimum wage on teenage unemployment. He pointed out that since 1963, the unemployment rate for workers 18 years of age or younger has been consistently four or five times the rate for adults.

Secretary of Labor Hodgson, in his 1971 report to Congress, declared "It was difficult to prove any direct relationship between minimum wages and employment effects on young workers."

Need I remind you that the platform of that other political party also wanted a lower minimum wage for workers over 65. Now that Senator Javits has gone, I will tell you the other party I meant was the Republican Party.

The National Restaurant Association and the American Hotel Association have successfully lobbied away the rights of their employees in many ways, and now the industry once again seeks special privileges. According to Adm. Ira Nunn, Washington counsel of the National Restaurant Association as quoted in *Fast Food* magazine:

The National Restaurant Association does not oppose a minimum wage of two dollars an hour; but the proposals now pending would bring us to that level much too fast (January 1, 1972). Because we are covered as an industry only recently and * * * reached the \$1.60 level only on (February 1, 1971) we have suggested the following plan of progress: That we remain at the \$1.60 plateau for approximately one year—that is, until at least January 1, 1972. On that date, the minimum wage would become for us \$1.70 an hour, followed by \$1.80 an hour on January 1, 1973, \$1.90 an hour on January 1, 1974 and \$2.00 an hour on January 1, 1975.

What reasoning. To now ask that employees wait until January 1975 to receive a subpoverty level minimum wage of \$2 an hour because we were covered, as an industry, only since January 1967, is to ask that the industry be rewarded for their 30-year free ride above and beyond the already received bonanza of exemption from premium pay for overtime, an unreasonable tip credit arrangement, and meal credit arrangements.

That, gentlemen, is colossal chutzpah, the kind of chutzpah that the late well-known columnist Dorothy Thompson defined as a man's pleading clemency from the court for the punishment of his murder of his mother and father on the grounds that he is an orphan.

Let's get back to the Restaurant Association. In a study of this industry, made by the Department of Labor, it was revealed that close to 50 percent of the employed are working in enterprises with sales of \$1 million a year or more, and the majority of them in chain operations. The same survey showed that the larger the enterprise, the greater the net profits.

The average rate of profit in the industry is 2 percent, yet establishments which gross over \$1 million a year average 4.8 percent. Those with assets of between \$5 million and \$10 million a year average 6.6 percent.

To make these figures meaningful, they should be compared to other industries. The 2-percent average profit was the same as that reported by retail, apparel and accessory, gasoline service stations, and building materials industries. Corporate profits of furniture, house furnishings, and hardware and equipment dealers were about 1 percent.

Not only have profits been good, but this industry pays their supervisors, their executives, and themselves quite handsomely. Of 51 basic

industries, according to Herbert K. Whitsky & Associates, hotels ranked 11th in salaried paid executives; but where were the employees?

They were nearly at the bottom of the list; they were in 46th place.

At the present time, establishments which gross less than \$250,000 in sales per year are not covered by the Fair Labor Standards Act.

Hence, 95.4 percent of the restaurant establishments are not covered. The 4.5 percent that are covered account for about 40 percent of gross sales. Yet, with these enormous sales, they ask for special privileges. Is the hotel and restaurant industry a prosperous one? This editorial from Institutions magazine thinks so:

As an industry, we've made it. Organizations that offer food and lodging services to the public no longer have to prove themselves to the business community. We are accepted along with Ford and IBM and Lockheed and Sears, Roebuck as powers to be reckoned with.

We shouldn't mention Lockheed any more.

Wall Street worries about us. Even Fortune magazine took time to make a great discovery, there are some giants in the business community who are big enough to rank in the top 500, but who do not qualify under fortune's definition of an industrial corporation. If the definition were revised, the editors commented, Hilton would rank No. 356 and Holiday Inn would be No. 383.

Yes; we've made it. And the achievement has come about with incredible speed. As we have often said before, ours is one of the few remaining industries where an entrepreneur can live to see the business he founded grow up and join the ranks of the Nation's elite. Even many of the venerable corporations in food service, lodging, have grown from an idea to maturity in less than 15 years. Our percentage of company presidents under 40 is probably higher than in almost any other industry. The fantastic 200 and 300 percent annual growth rates that skyrocketed unknown companies into the top ranks will become less and less common. Once size has been achieved, growth levels off to a still healthy, but more normal 10 or 14 percent.

It is important that the 20.2-percent gain in sales chalked up by our top 400 organizations compares favorably with the 13-percent gain of Fortune's top 500 top industrials. The fact is that the 400 top food service organizations enjoyed a 78.7-percent increase between 1965 and 1969.

Institutions magazine for many years reviewed the structure and growth of the 400 largest enterprises in the hotel and restaurant industry. In July 1969, the food service volume was nearly 200 percent bigger than in 1965, when this first measure of power structure of the food service/lodging field was initiated. Behind these numbers lies the first transition period of the industry; its emergence as a major power in today's society.

And interestingly enough, it is the same period of time under which we were covered by the Fair Labor Standards Act.

Some giant American corporations are now entering the hotel and restaurant industry. Among them Campbell Soups and Pillsbury Flour (Burger King).

With the advent of the 747's with their 300 to 450 passenger loads, American Airlines have spent \$100 million in kitchen equipment alone to meet increased demands.

It is also germane to remember that Holiday Inns started their climb to the top at a time when all hotel commentators were predicting disaster because of overbuilding.

In 1969, the volume of Holiday Inns was \$786 million; an increase of over 31 percent since 1968. Automatic Retailers of America (food vendors) increased their business 24.3 percent from 1968 to 1969.

An industry so vast and profitable has no justification whatsoever for seeking any legislation that will permit subminimal wages.

Young people are being employed in this industry in rapidly increasing numbers, particularly in fast food and chain operations. In many cases, they are both overworked and underpaid. The afterschool job that seemed to the ambitious teenager like a good chance to earn spending money or to supplement the family income, has all too often turned into an obligatory all-night affair with wages kept at minimum levels and with no premium compensation for overtime. The result for many young working students is exhaustion and failing grades.

A recent study in Detroit made by local 705 revealed many teenagers employed at the Burger Chef, for example; the minimum rate is the maximum hiring-in rate. They are receiving \$1.60 an hour. These youngsters receive only 75 cents' worth of food, off the menu, after 5 hours of work and must consume it in 15 minutes. This is their only break. The same conditions exist at Roy Rogers franchises, and most franchises.

Due to inadequate protection, young people are the easy victims of unscrupulous employers in what may well prove to be a sort of limited renaissance of the sweatshop. In a nonunion shop, young workers have virtually no guarantee of even minimally decent pay and conditions.

In conclusion, we support S. 1861 with some modifications.

I strongly urge the immediate adoption of:

1. A uniform minimum wage for all workers, including those recently or newly covered by the act, of at least \$2 an hour now, with substantial increases in the next 2 years.
2. A single standard of coverage applying to all workers regardless of age, sex, color, creed, place of residence, or dollar volume business of the employer.
3. Premium pay for overtime based on daily, as well as weekly, overtime, and applying to all workers.
4. The elimination of the deductions allowed for gratuities (gratuities should be considered what they are—a reward offered by a guest for services rendered and not a wage).
5. The extension of the equal pay provisions of the Fair Labor Standards Act to now include executives, administratives, and professional personnel; and
6. Strengthened enforcement powers.

The adoption of these provisions would wipe out the major concessions won by the National Restaurant Association over the past 6 years.

Concessions that never should have been made in the first place. Now I would like to comment on the professor who said we ought to take this experiment and if it doesn't work we can change it.

Well, we experimented with exclusion of the restaurant industry in 1936, and it took us 31 years, almost, to change it.

We were not brought under the law until 1966, and that is a long time to play around with legislation. After you once write something up, it is very difficult to change.

The current wage-price freeze tragically illustrates the fact that the administration is again asking low-wage workers to bear the brunt of inflation. There is nothing inflationary in trying to elevate people out

of the ranks of poverty. Low wages do not create jobs nor heal an ailing company, or an ailing economy. They actually reduce the number of jobs by cutting into the purchasing power of the people who must spend all of the money they make in order to survive.

The needs of many Americans living in poverty demand immediate action to raise the minimum wage, without any allowable deductions, exemptions, exceptions or special consideration for any industry, including the hotel and restaurant industry. Winning the war against poverty must be the first consideration.

Thank you. I would be happy to answer any questions.

The CHAIRMAN. I wish we had more time, Mrs. Wolfgang, to discuss this further. It is certainly a statement of force, and clarity and based on some hard statistics, and we appreciate it.

I notice that you are a member of the Michigan Wage Deviation Board. Does that mean there are differences in the Michigan rates?

Mrs. WOLFGANG. Yes, for the handicapped and for people who are unable to meet normal production standards, and for workers under an authorized apprenticeship program. There is a deviation for tips, not to exceed 15 percent.

There is a meal allowance, but the meal has to include an entre, salad, dessert—it is spelled out.

The board is part of the Department of Labor.

The CHAIRMAN. Does this work out, from your standpoint, very well?

Mrs. WOLFGANG. Senator, as you know, when you have legislation, you always try to improve it. Our State Minimum Wage Act has been strengthened several times. Although I hate to admit it, we got the strengthening 4 years ago by having a sleep-in in the Senate, and it was horribly uncomfortable, but we did get the Senate to move in order to get us out of the building.

I am not recommending that course of action in these august chambers.

One of the things we are working on is to change the definition of an employee. Our act defines an employee as anyone between the ages of 18 and 65.

Even though a study was made and referred to recently by someone at Michigan State University, young people under 18 are not covered by the State law in Michigan, so certainly that is not the reason for the increase in unemployment.

We have tremendous unemployment in Michigan, among the young, old, middle aged, and men and women and every group. In Detroit, we have an 11-percent unemployment rate.

The CHAIRMAN. This deviation has less to recommend it during a period of high unemployment, I would think, than at other times.

Mrs. WOLFGANG. Senator, I don't believe the low wages paid the workers has anything to do with unemployment. If they make more money, they spend more money. I know if a waitress or hotel maid, gets paid extra, it means shoes, or stockings, or a dress for her child.

Or maybe even a movie occasionally. But if they don't get a high wage, you can't participate in it. You asked a question before about the amusement industry, and I have been working for minimum wage legislation for years.

We always find industries that come in and say, "I believe in minimum wages, but you have to exclude the ushers."

Others say, "I believe in minimum wages, but you should exclude the young, or those over 65."

I submit, sir, it is only those who truly don't believe in minimum wages that seek exceptions, because if you accept the concept that a higher wage means more purchasing power and more purchasing power means more employment, you can't be for exceptions.

The CHAIRMAN. You touched on most of the matters I was asking about. I was out for awhile. You did mention 4 days, 10 hours?

Mrs. WOLFGANG. No; I didn't mention that. I view that with alarm, because the first thing that will happen is that someone will come up with the idea of amending Federal legislation to allow 10 hours of work a day without overtime.

We have women running around saying they don't want protective legislation. Senator, I want women protected, children protected, the youth protected. I want more protection and protective legislation, and the 10 and 40 smacks to me of doing away with the 8-hour day first.

I would like to point out, if I may, the wage-price freeze was alleged to create employment, particularly in the auto industry, where the immediate media is constantly hammering, "Buy an automobile now and save the \$200 when Congress repeals the excise tax."

Of course, the industry is not doing anything to be so rewarded. They used to mail the tax to the Government, now they are going to mail it to the person who buys the car.

There has been an increase in car sales, but not in employment. The women in the Dodge plant in Michigan, were put on a 10-hour day, 7-day week in the upholstery department.

It created overtime for women, but it resulted in less jobs.

I suggest to the professor, if he does away with a law that says children can work all sorts of hours, it wouldn't create jobs. It hasn't done it on the level of legislation with respect to women, and it won't do it with children, either.

The CHAIRMAN. One other thing. A statement you made earlier when I was out, and I came in as you were making it. You mentioned that one of the Western States, I gather it was under the heading of equality of women, that women were permitted back into the mines?

Mrs. WOLFGANG. Yes, Idaho. The Governor signed that bill into law to celebrate the 51st year of the women's franchise. That kind of equality I don't need. I want men to work in the mines shorter hours and under better conditions so they can be better husbands and fathers.

The CHAIRMAN. In this country, I did not think women had ever worked in the mines.

Mrs. WOLFGANG. If they did, they shouldn't have. But you have a group of women saying that is equality of rights, saying that if men work in mines, women should, and that if men are drafted, women should be.

I don't subscribe to that. They say if we have the good, we must have some of the bad. I say "Let's eliminate the bad."

The CHAIRMAN. Thank you very much.

(The prepared statement of Mrs. Wolfgang follows:)

STATEMENT OF MYRA K. WOLFGANG BEFORE THE LABOR SUBCOMMITTEE
OF THE SENATE LABOR & PUBLIC WELFARE COMMITTEE ON S.1861
TO AMEND THE FAIR LABOR STANDARDS ACT

September 30, 1971

My name is Myra K. Wolfgang, I reside in Detroit, Michigan. I am a member of the Michigan Wage Deviation Board (created by the Michigan Minimum Wage Act), I am a Commissioner on the Michigan Woman's Commission and International Vice President of the Hotel and Restaurant Employees and Bartenders Union AFL-CIO. I am Secretary-Treasurer of the Hotel, Motel and Restaurant Employees' Union, Local 705 and am testifying on their behalf.

I appear here today in support of S1861. I join the AFL-CIO in their demand for top priority to its passage by this session of Congress. The testimony of George Meany and Andrew Biemiller, to which I subscribe totally and completely, is a masterpiece of legislative observation. It's sensitivity to the problem of youth coverage by Fair Labor Standards Act gives lie to the testimony of Labor Secretary Hodgson, who did the youth of this Nation a real disservice when he testified before your Committee.

I also appear here today to give answers to the spokesmen for the National Restaurant Association who are continuing their attempts to escape full coverage under the Fair Labor Standards Act with their usual shouts of calamity and destitution. Their position on most matters makes Cotton Mather sound like Earl Browder by comparison.

In preparing my testimony for today, I read the Declaration of Policy contained in Section 2 of the Act. I was struck with Congress' finding of "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers" in 1938, that still exists today, 31 years later.

It was equally interesting to note that effects of those 1938 conditions are still prevalent in 1971 and still cause "unfair methods of competition" leading "to labor disputes" and interfering "with the orderly and fair marketing of goods in commerce". It was nice to observe that Congress announced its intention "to correct and as rapidly as practicable to eliminate the conditions - - without substantially curtailing employment or earning power" in 1938. It is nicer to observe that they have done so in the interim, and are considering doing so again.

Contrary to a popular American myth, which would have us believe that here in the "Land of Opportunity" anybody willing and able to work can support his or her family decently, 25 million persons currently living in poverty are members of families with a fully employed head of household. This includes one third of all our children who grow up in poverty.

In such circumstances, the cruel irony of the term "fully employed" becomes apparent. It's time we faced the hard implications of the hard fact that right now in America, a man or a woman can work 40 hours a week, 50 weeks a year, and still require public assistance to maintain his family at a sustenance level, and that this man or woman can be receiving the present federal minimum wage of \$1.60 an hour - - the wage which, according to the Declaration of Policy of the Fair Labor Standards Act, should provide him with the "minimum standard of living necessary for health, efficiency and general well-being". I should not have to remind you that the worker earning \$1.60 an hour is more fortunate than many workers in the hotel and restaurant industry who are earning much less.

Let's take a brief look at some statistics: The government established \$3,968.00 as the poverty-line income for a non-farm family of four in 1970. Update these figures on the basis of the 4.4 percent increase in the cost-of-living from July 1970 to July 1971, and we reach a 1971 poverty-line of \$4,143.00. If this income is from wages, add \$365.00 to pay social security and federal income

taxes, and the poverty-line is \$4,508.00.

"Full employment" at \$1.60 per hour means a yearly income of \$3,200.00 - - an income of \$1,308.00 below the government's established poverty-line.

"Full employment" at \$2.00 an hour means \$4,000.00 a year - - an income \$508.00 below the poverty level.

At \$2.25 an hour, the "fully employed" worker could maintain a four-person family at the poverty-line level. That lucky worker would earn just about \$4,508.00 a year.

We can put the kind of existence provided by this poverty-line income into perspective when we consider the government's figure for a "lower" budget for an urban four-person family. This was \$6,960.00 in 1970. Updated to 1971, the figure is \$7,266.00. The poverty-line figure is only a little more than half of this "lower" budget figure, and the "lower budget" figure is supposed to represent the sum needed for a "modest but adequate" existence. The poverty-line figure represents, in effect, the very minimum needed to sustain life.

When "fully employed" workers are earning amounts well below this, something is rotten, gentlemen, and not in Denmark - - but right here in the "Land of Opportunity". Certainly a "minimum standard of living necessary for health efficiency and general well-being" is not being met.

The immediate need of the worker for the \$2.00 minimum wage and for a \$2.25 minimum wage after a year, as proposed in S. 1361, can hardly be questioned. It should be granted to all employees.

The plight of workers not even covered by the present Fair Labor Standards Act, or only partially covered, is, needless to say, even grimmer.

Despite the unfortunate fact that the Fair Labor Standards Act has never really

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guaranteed the decent standards of living it proposes to provide for covered workers, the hotel and restaurant industry has repeatedly escaped even the modest provisions that exist. For many years, they were not included at all.

The industry was finally dragged into coverage, albeit kicking, screaming and wailing in 1966, and then only partially with inadequate protection. What this means in terms of human suffering, the suffering that is the inevitable consequence of poverty, cannot be calculated. What it means to hotel and restaurant owners in terms of bigger and growingly disproportionate profits cannot be calculated either.

Nevertheless, the hotel and restaurant industry is still asking, just as vociferously as ever, to be given special consideration, to be granted exemptions. Hotel and restaurant owners would have had you believe if you heard their testimony in the 1963 and subsequent hearings, that the initial 1966 coverage of the industry by the Fair Labor Standards Act, would "kill" the industry. Even their own industry spokesmen admit they were "dead wrong". Editorializing in Fast Food Magazine under the caption WASHINGTON MONITOR, they wrote "the doomsday prophets who crystal-balled the demise of the restaurant industry when it came under the extended coverage of the Fair Labor Standards Act in 1966 have long since been proven dead wrong". They even brag about the reverse effects of this legislation when they cite, "while foodservice perennially topped the list of failed businesses during the early 1960's, its rate of failure has declined appreciably each year since coverage under the Act".

To further supplement that point, let me say that in the period between October 1966 and April 1967, the period spanning the effective date of the 1966 amendments to the minimum wage law, restaurant employment increased by 3,900 workers. Pretty strange in an industry claiming to be on the verge of disaster!

But despite the increase in employment, the gap between wages in fully covered industries and wages in partially covered industries, like the hotel and restaurant industry, has grown wider. In comparison to workers in industries where protection is virtually complete, hotel and restaurant employees are worse off than ever.

To be sure, their wages have increased since 1966, but at a pace far, far slower than wages in other industries. They remain at the bottom of the economic ladder. According to the Bureau of Labor Statistics, the "average hourly wage rates in eating and drinking places was \$1.50 per hour, in retail trades, \$2.15 per hour, in all manufacturing, \$3.00 per hour".

The same survey showed the Nation's 143,000 dishwasher's average rate to be only \$1.23 per hour. This abominably low income was made possible because 95.4% of the restaurants and 73% of restaurant employees are not covered by the Federal Fair Labor Standards Act due to the present \$250,000.00 restaurant income minimum requirement for coverage. This does little to correct "an unfair method of competition in commerce".

One result of this has been that the taxpayer, in effect, has been subsidizing the profits of the service industry. Many "fully" employed hotel and restaurant workers are obliged to depend on one or another form of public assistance to sustain their families. Thousands of these workers receive wages so low that they are eligible for food stamps under government programs. There are, to my personal knowledge, women working fulltime in the industry in Michigan who could actually improve their standard of living if they quit their jobs and went on ADC. In Wayne County, for example, a woman with three children could receive \$305.00 a month on ADC plus complete medical coverage for herself and her family and limited dental care, as well as food stamps. Working for \$1.60 an hour, the same woman would earn \$275.00 a month and have to buy her own health insurance. She'd also have to pay someone else to care for her children while she worked. Going on ADC would allow these women to spend more time with their children. We owe these women, who against incredible odds, continue to struggle to support their families, not only our deep admiration and respect, but also much more importantly, the guarantee of a decent living wage.

I personally know hotel maids being paid \$13.95 for an 8-hour day. Incidentally, they are being denied a previously negotiated \$1.05 a day wage increase due on October 1st, because of the current wage-price freeze. What an injustice!!

The tipping provision of the present act, contributes further to the creation of a large depressed class of the working poor, by allowing employees' tips to count toward the applicable minimum wage. If an employee receives more than \$20.00 a month in tips, his employer may reduce his minimum wage by up to 50%.

I oppose, in principle, the concept that a worker should be obliged to depend for his livelihood upon the benevolence and generosity of the public. Such a system has obvious built-in inequities. There is little reason for us to suppose that the amount of gratuities received by an employee will automatically and miraculously correspond to that employee's competence and efficiency. The amount of tips received for identical work will vary widely depending on many factors - the area of the country, the season, the whim of the customers and - let's face it - often the physical attractiveness of the worker, which leads me to observe that under the Fair Labor Standards Act, the "wages of sin are not always death", but the cause of subminimal rates.

A survey made among waiters and waitresses working in Detroit has revealed a 15% drop in gratuity income in the last year. The guest check size is smaller since many guests forego the appetizer or the dessert or the second cocktail. But more significant, when business is bad, the guest simply tips less.

Under the Federal Act, an employee who makes \$20.00 a month in tips is designated as a tipped employee, permitting her employer to reduce her wage from \$1.60 an hour to 80¢ an hour, leaving her with \$32.00 for a 40-hour week. The extra \$5.00 a week in tips brings her earnings up to \$37.00 a week or 93¢ an hour. A far cry from providing for "a minimum standard of living necessary for health efficiency and general well-being". The intent of the Act is defeated by such a maneuver.

What is worse, the Act gives the employer the sole right to determine the amount by which he reduces the applicable minimum wage of a tipped employee and can reduce it up to 50%.

What recourse does an employee have? Well, the burden of proof is on her. If she is dissatisfied with working for 93¢ an hour, she can attempt to show "to the satisfaction of the Secretary" that her employer is reducing her wage by more than the amount she is receiving in tips.

Consider, Gentlemen, how many workers earning 93¢ an hour are going to have either the time, the energy or the know-how to present their case to the Secretary. Consider how many are going to be able to retain an attorney to present their case for them. Consider how many even know of this right. What protection! Protected, but not even earning a bare subsistence income while subsidizing the hotel and restaurant industry.

Overtime premium pay? Not in the hotel and restaurant industry. This further leaves the door open to exploitation of employees and still higher profits for the industry.

No one should be compelled to work excessive overtime. No one should work any overtime, excessive or reasonable, without premium pay. The effects upon workers of overtime work is serious, but for the working woman, who must go home to a second job as a wife, mother and housekeeper, such overtime is disastrous. We have all seen the grim evidence of what happens to young children who receive inadequate care and supervision. No mother chooses such a fate for her children. Many mothers have no other choice. They must work to keep themselves and their families alive. If they work at grossly substandard wages and for excessive hours, both they and their children pay a terrible price. The physical and emotional health of the woman is bound to deteriorate, as is that of her family. Can a woman who struggles in excess of 40, 50 and 60 hours a week to earn enough to support her family, but who still brings home a poverty income, provide good care for her children? I doubt it.

The hotel and restaurant industry as the employer of millions of women is notorious for the overtime hours worked, made worse by the fact that the employer does not have to pay premium pay for overtime. These same employers tell you that overtime is a necessity because of the "unknown and unexpected" situations arising in restaurants and hotels. It seems very strange that these situations seem to miraculously disappear under Union contracts requiring premium pay for overtime.

The Fair Labor Standards Act must be amended to eliminate the current overtime exceptions not only in the hotel and restaurant industry, but in other industries, as well. This, combined with an immediate pay increase and the abolition of a reduced wage for tipped employees, would not only allow millions of presently employed workers a chance to escape desperate poverty, but would also open up thousands of new jobs.

A 40-hour week for restaurants employees would produce approximately 60,000 new fulltime jobs. 20,000 new jobs would open up in hotels and motels if overtime provisions became applicable to them, and a 40-hour week were established. With our country threatened by burgeoning unemployment, this gives us something to think about.

The National Restaurant Association tells us they cannot afford to pay a minimum wage to "inexperienced help", the assumption being that anyone under 21 is inexperienced. Admiral Nunn, writing in Fast Food Magazine, dealing with the minimum wages, says, "There is a need to indoctrinate our youth into a lifelong habit of useful work. We are recommending, therefore, that the Subcommittee approve legislation which will provide for the employment of persons below the age of 21 at sub-minimal wages, as is now allowed in the case of fulltime students". Paying sub-minimal wages is not the way to encourage "a lifelong habit of useful work".

Is a period of training necessary for the majority of hotel and restaurant occupations? The answer is "NO". According to the Bureau of Apprentice Trades, commercial

cooking is the only apprenticable occupation in the industry. Yet, the National Restaurant Association is trying to tell you that anyone under the age of 21 should be paid a subminimal wage for a period of six months, while training as a dishwasher or bus boy, really, they are adding mental insult to emotional injury.

The lead editorial of the August 1971 Fast Food Magazine discusses youth unemployment and says:

"Unemployment is up but restaurants can't find help. Faced with evidence like this we must accept the blame. We are experts at selling food, but we can't sell ourselves. We can't convince young people to work for us. ** We can't even keep restaurant school graduates in the industry. Approximately 40% of the Cornell University Restaurant School graduates leave the foodservice industry for other businesses.

Restaurant schools and junior colleges cry for financial and moral support and usually must turn from industry sources to government sources for funds. Large restaurant chains who take millions of dollars from the foodservice industry annually are not substantial contributors to foodservice schools.

Restaurant executives who have made successful careers in foodservice do little to recruit young people into the industry. Training directors - - who know the immediate skill and attitude requirements for food service jobs - - seldom give curriculum advice to restaurant schools.

Throughout the country there are effective foodservice educational programs developed on a local basis. But these isolated programs will never solve our problem. Although the word wage is over-worked, it can't be ignored. Our image obviously needs improving. And no one can do that but ourselves".

Next to low wages, the most serious status-reducing consideration in the hotel and restaurant industry is the fact that employers have tried to create the impression that their employees are winoes, alcoholics, cripples, mental defectives or too old or too young to earn a living in any other industry. This they do to justify paying low wages. Employer testimony at minimum wage hearings perpetuates this myth. I recall hearing Ira H. Nunn, Washington Counsel for the National Restaurant Association, testifying before the House Committee hearings on amendments to the Fair Labor Standards Act, say, "our industry has not only the highest number, but also the highest percentage of unskilled workers of any major industry in the country". He boasted of the fact that "wages in the restaurant industry are generally lower than wages paid by other industries".

** emphasis added

Poor working conditions and low wages are not image "enhancers". You are not going to attract young people into an industry that has a low-wage policy and an industry that the employer says is peopled by the marginal worker, the aged, the handicapped and the misfit.

Yet, Secretary of Labor Hodgson is now recommending a double standard providing a lower floor for teenagers. Although his testimony is the first official endorsement of such exemptions, we know that for more than 12 to 15 years, business lobbyists have been trying to get a lower floor for young workers. Justice and equity force us to oppose it.

As far back as November 1969, Secretary of Commerce Maurice Stans was quoted as saying that the then Secretary of Labor George P. Shultz was studying a subminimum wage of "about \$1.20 or \$1.25 per hour". When told that under a subminimum wage some companies might try to replace adults with young workers or to hire no one but youths, Stans was quoted as saying "There's nothing wrong with that". At the same time, Shultz denied that there was any such study taking place.

"The only study we have going on in the Department is a major effort to find out whether or not the high rates of unemployment among teenagers are related to the flat minimum wage", Shultz said. "It is a matter of research. It doesn't carry any necessary policy connection".

Four months later, a study was released by the Commissioner of Labor Statistics, Geoffrey H. Moore, on the impact of the minimum wage on teenage unemployment. He pointed out that since 1963, the unemployment rate for workers 18 or younger has been consistently four or five times the rate for adults.

Secretary of Labor Hodgson, in his 1971 report to Congress, declared, "It was difficult to prove any direct relationship between minimum wages and employment effects on young workers". His now recommending a subminimal wage is not in the interest of youth. And that, Gentlemen, is an understatement.

The Secretary is also expressing concern for the "red tape" involved in obtaining certificates for employment of younger workers at subminimum rates and suggests that a statutory differential between the minimum wage for young and adult workers would eliminate this "red tape". I would suggest that repealing exemptions for the young would also eliminate "red tape" and go far towards the maintenance of the "minimum standard of living necessary for health, efficiency and general well-being of workers". This is the Secretary to whom a waitress has to turn for equity when the employer deducts unreceived gratuities for her minimum wages!!

This is the Secretary who is supposedly for equality of rights between the sexes by supporting the Equal Rights Amendment to the Constitution, which doesn't even apply to the private sector but who is opposed to extending the coverage of the equal pay provisions of the Fair Labor Standards Act to those who are not now covered!

The National Restaurant Association and the American Hotel Association have successfully lobbied away the rights of their employees in many ways, and now the industry once again seeks special privileges. According to Admiral Ira Nunn, Washington Counsel of the National Restaurant Association, as quoted in Fast Food Magazine --

"The National Restaurant Association does not oppose a minimum wage of two dollars an hour; but the proposals now pending would bring us to that level much too fast (January 1, 1972). Because we were covered, as an industry only recently, and..... reached the \$1.60 level only on (February 1, 1971) we have suggested the following plan of progress: That we remain at the \$1.60 plateau for approximately one year -- that is, until at least January 1, 1972. On that date, the minimum wage would become for us \$1.70 an hour, followed by \$1.80 an hour on January 1, 1973, \$1.90 an hour on January 1, 1974 and \$2.00 an hour on January 1, 1975".

What reasoning! To now ask that employees wait until January 1975 to receive a sub-poverty level minimum wage of \$2.00 an hour "because we were covered, as an industry, only since January 1967" is to ask that the industry be rewarded for their 30-year free ride above and beyond the already received bonanza of exemption from premium pay for overtime, an unreasonable tip-credit arrangement, and meal credit arrangements. That, Gentlemen, is colossal chutzpah, the kind of chutzpah that the late well-known columnist Dorothy Thompson defined as a man's pleading clemency from the

court for the punishment of his murder of his mother and father on the grounds that he is an orphan.

Let us take a look at this "orphan" restaurant industry. It is the third largest industry in the retail field. Its size staggers the imagination. There are nearly four hundred thousand hotels, motels and restaurants in this nation, employing nearly three million workers. Sales are over twenty-five billion dollars a year. This reflects a 50% gain since 1958. This increase must be attributed to the nation's appetite. It can't be anything the industry did! In one year, food purchased by the industry cost in the neighborhood of five hundred million dollars.

As big as the industry is, it is growing even bigger and accompanying this growth are dislocations caused by automation, by the ever-changing living and traveling habits of the American people. The decline of the hotel and the rise of the motel, the growing disappearance of the independent operator, the growth of the franchise operation, the vending machine, the pre-packaged meal have been greeted with cries of disaster. Everywhere, the inefficient, the visionless, the timid, the underfinanced, wail about the industry being a sick industry - - a marginal industry - - a mom and pop industry; and do nothing but wail!!!

In a study of this industry, made by the Department of Labor, it was revealed that close to 50% of the employed are working in enterprises with sales of one million dollars a year or more, and the majority of them in chain operations. The same survey showed that the larger the enterprise, the greater the net profits. The average rate of profit in the industry is 2%, yet establishments which gross over one million dollars a year average 4.8%. Those with assets of between five million and ten million dollars a year average 6.6%.

To make these figures meaningful, they should be compared to other industries. The 2% average profit was the same as that reported by retail, apparel and accessory, gasoline service stations, and building material industries. Corporate profits of furniture, house furnishings and hardware and equipment dealers were about 1%.

Not only have profits been good, but this industry pays their supervisors, their executives and themselves quite handsomely! Of 51 basic industries, according to Herbert K. Whitsky & Associates, hotels ranked 11th in salaried paid executives; but where were the employees? They were nearly at the bottom of the list - they were in 46th place.

Yet, employer associations have consistently opposed minimum wage legislation and have opposed paying the employer's share of social security on tip earnings, as well. Another subsidy for the industry. This on top of further subsidy by taxpayers, since many fulltime workers are receiving direct relief, ADC and food stamps.

The subsidy called "tipping" permits the employer to pay subminimal wages under the Fair Labor Standards Act. To force some employees to hustle tips and curry favor to maintain a minimum standard of living is an indignity that disgraces those who impose it. But, it sure is a labor-cost saving for the employer! The felony is compounded by the employers not adding gratuities to earnings for social security tax purposes (the employer only pays taxes on the base wages). The government must pick up the share of taxes which should have been paid by the employer. Thus the tipped employee suffers a deprivation while gainfully employed and another when retired.

At the present time, establishments which gross less than \$250,000 in sales per year are not covered by the Fair Labor Standards Act. Hence 95.4% of the restaurant establishments are not covered. The 4.6% that are covered account for about 40% of gross sales. Yet, with these enormous sales, they ask for special privilege!! Is the hotel and restaurant industry a prosperous one? This editorial from Institutions Magazine thinks so -

"As an industry, we've made it. Organizations that offer food and lodging services to the public no longer have to prove themselves to the business community. We are accepted along with Ford and IBM and Lockheed and Sears-Roebuck as powers to be reckoned with.

Wall Street worries about us. Even Fortune Magazine took time to make a great discovery; there are some giants in the business community who are big enough to rank in the top 500, but who do not qualify under Fortune's definition of an industrial corporation. If the definition were revised,

the editors commented, Hilton would rank No. 356 and Holiday Inn would be No. 383.

Yes, we've made it. And the achievement has come about with incredible speed. As we have often said before, ours is one of the few remaining industries where an entrepreneur can live to see the business he founded grow up and join the ranks of the nation's elite. Even many of the venerable corporations in food service/lodging have grown from an idea to maturity in less than 15 years. Our percentage of company presidents under 40 is probably higher than in almost any other industry. The fantastic 200 and 300% annual growth rates that sky-rocketed unknown companies into the top ranks will become less and less common. Once size has been achieved, growth levels off to a still healthy, but more normal 10 or 15%.

It is important that the 20.2% gain in sales chalked up by our top 400 organizations compares favorably with the 13% gain of Fortune's 500 top industrials. The fact is that the 400 top food service organizations enjoyed a 78.7% increase between 1965 and 1969.

Institutions Magazine for many years reviewed the structure and growth of the 400 largest enterprises in the hotel and restaurant industry. In July 1969, the food-service volume was nearly 200% bigger than in 1965, when this first measure of power structure of the food service/lodging field was initiated. Behind these numbers lies the first transition period of the industry: its emergence as a major power in today's society. Institutions Magazine continues to say - -

"If the industry had been the orphan of the business world five years earlier, in '68-'69 it was the darling. The Litton's and the ITT's were pioneers in mergers several years ago. In 1969, they were followed by a parade of conglomerates and not-so-conglomerates, all wanting a piece of the action. ITT bought in for the second time - Canteen (having previously purchased Sheraton). Merger and acquisition news was peppered with mysterious names like American Licensing Corporation (Dog 'n Suds), Perini Corporation (Luigi's Spaghetti Shack), Russeks, Inc. (Foxy John's Smokehouse), Levin-Townsend Computer Corporation (Cobbs, Dairy Isles and some Las Vegas properties), to name a few".

Some giant American corporations are now entering the hotel and restaurant industry. Among them Campbell Soups and Pillsbury Flour (Burger King).

With the advent of the 747's with their 300-450 passenger loads, American Airlines have spent \$100 million in kitchen equipment alone to meet increased demands.

E. B. Weiss, writing in "Advertising Age" says "more food will, in time, be consumed away from home than in the home". In short, the hotel and restaurant industry is headed in only one direction. Up!!

It is also germane to remember that Holiday Inns started their climb to the top at a time when all hotel commentators were predicting disaster because of overbuilding. In 1969, the volume of Holiday Inns was \$786 million dollars, an increase of over 31% since 1968. Automatic Retailers of America (food vendors) increased their business 24.3% from 1968 to 1969.

An industry so vast and profitable has no justification whatsoever for seeking any legislation that will permit subminimal wages.

Young people are being employed in this industry in rapidly increasing numbers, particularly in fast food and chain operations. In many cases, they are both overworked and underpaid. The after-school job, that seemed to the ambitious teenager like a good chance to earn spending money or to supplement the family income, has all too often turned into an obligatory all-night affair, with wages kept at minimum levels and with no premium compensation for overtime. The result for many young working students is exhaustion and failing grades.

A recent study in Detroit made by Local 705 revealed many teenagers employed at the Burger Chef's, for example - The minimum rate is the maximum hiring in rate. These youngsters receive only 75¢ worth of food, off the menu, after five hours of work and must consume it in 15 minutes. This is their only break. The same condition exists at Roy Rogers franchises.

Due to inadequate protections, young people are the easy victims of unscrupulous employers in what may well prove to be a sort of limited renaissance of the sweatshop. In a non-union shop, young workers have virtually no guarantee of even minimally decent pay and conditions.

Employers are able to keep wages just about as low as they choose -- and most restaurant managers aren't known for unnecessary generosity. Overtime pay for these unprotected young people is a rarity.

Our Union is deeply concerned about the plight of young workers in our industry. We strongly urge the Fair Labor Standards Act cover all persons without exception as contained in S1861.

In conclusion, we support S1861 with some modifications. I strongly urge the immediate adoption of:

- (1) a uniform minimum wage for all workers, including those recently or newly covered by the Act, of at least \$2.00 an hour now with substantial increases in the next two years;
- (2) a single standard of coverage applying to all workers regardless of age, sex, color, creed, place of residence, or dollar volume business of the employer;
- (3) premium pay for overtime based on daily, as well as weekly overtime and applying to all workers;
- (4) the elimination of the deductions allowed for gratuities (gratuities should be considered what they are - - a reward offered by a guest for services rendered and not a wage).
- (5) the extension of the Equal Pay Provisions of the Fair Labor Standards Act to include executives, administratives and professional personnel; and
- (6) strengthened enforcement powers.

The adoption of these provisions would wipe out the major concessions won by the National Restaurant Association over the past 6 years. Concessions that never should have been made in the first place.

The current wage-price freeze tragically illustrates the fact that the Administration is again asking low-wage workers to bear the brunt of inflation. There is nothing inflationary in trying to elevate people out of the ranks of poverty. Low wages do not create jobs nor heal an ailing economy. They actually reduce the number of jobs by cutting into the purchasing power of the people who must spend all of the money they make in order to survive.

The needs of many Americans living in poverty demand immediate action to raise the minimum wage - - without any allowable deductions, exemptions, exceptions or special consideration for any industry, including the hotel and restaurant industry. Winning the war against poverty must be the first consideration. Thank you.

nja/opeiu

The CHAIRMAN. We have Mr. David Grundfest, president, Sterling Stores, Little Rock, Ark., representing Arkansas Retailers Association, along with Mr. Charles Hopkins, executive vice president, West Virginia Retailers Association.

Gentlemen?

STATEMENT OF DAVE GRUNDFEST, PRESIDENT, STERLING STORES, LITTLE ROCK, ARK., REPRESENTING THE ARKANSAS RETAILERS ASSOCIATION, ACCOMPANIED BY CHARLES HOPKINS, EXECUTIVE VICE PRESIDENT, WEST VIRGINIA RETAILERS

The CHAIRMAN. You are going to have to be very good to equal your predecessor at this table.

Mr. GRUNDFEST. I find myself compelled to say that the last time I appeared before this committee, I followed the Honorable Arthur Goldberg, and I thought that was a terrific assignment, but that was duck soup.

It was 12 years ago.

I am here on behalf of the Arkansas Retail Council, the Regional Chain Store Council of America and General Merchandising Chains operating stores doing less than \$250,000 annually. I am here because I am concerned about small business.

I am concerned about young America, I am concerned about Small Town, U.S.A., and Main Street, U.S.A.

If you will pardon the personal reference, you happen to be listening to a man who has had a very full life. I have celebrated my 70th birthday, I was born and raised in a little country town in Mississippi of about 300 people.

I opened my first store in Arkansas in 1920.

Many people have said to me down through the years, "Dave, did you ever think that some day you would be president of an organization or a company operating 120 stores," and I said "No, never."

But when I was a young man, there was a compulsion that drove me and that basically being that I love to eat, and that was the only way I knew to make a living.

I am disturbed about young America. I hear all these things that have been said. But I come in contact with young America. We employ some 1,800 people, and come the summertime, parents, people I know, and people who know my managers say, "Why can't you give my boy a job?" And we try awfully hard, Senator, but of course nobody can employ all of the people, and particularly young people from high school looking for employment.

I say to you that it is my humble opinion that it is doing a young man, a high school boy 17 or 18 years old, an injustice to give him a job for 40 hours a week earning \$64. I don't know anything about your background, but the chances are if you had the kind of a background that so many of us have had, you would be delighted as a boy in high school if you had a job paying you \$18 or \$20 a week.

Taking into consideration the inflation that has come to pass, today I say \$40 a week for a high school kid is a handsome wage. Under the present wage and hour, we have to pay them \$64, except of course where we have stores that do less than a quarter of a million dollars.

where we enjoy the exclusion, and the benefits that come because of the exclusion.

A lot of things have happened in America, Senator, in more recent years. With the advent of the automobile, paved roads, airplanes, we witnessed the loss of passenger trains in America, we have seen so many changes, and the thing that is disturbing me now is that we are witnessing the drying up of Small Towns, U.S.A.

People are moving to metropolitan areas, and one of the things that disturbs me most is the fabulous shopping centers a half million square feet or a million square feet, and they make a contribution to a city like Detroit or Chicago or New York or Washington, but they also have a death toll, they create a situation in a small town like Fordyce, Ark., Hamburg, Ark., where the buying public is drawn away from these small towns and go straight to these fabulous shopping centers.

Main street in these small towns and the main street merchants in these small towns cannot exist unless they have this quarter of a million dollar exclusion.

You say to me and you may say to yourself, "Well, what is so important about those stores, those people, Main Street, U.S.A., continuing to exist?"

I say to you, sir, and I hope that you will be mindful of this, that it is Main Street, U.S.A., it is the Small Merchant, U.S.A., that supports the Boy Scouts, the Girl Scouts, the YMCA, the libraries, the hospital, all those basic philosophies of living that you and I were taught as kids were so important that has made America the great Nation it is.

When you take that away, you are doing something to America that I think is very dangerous.

Let me if I might, deal a bit in personalities.

In my town, Little Rock, Ark., they just built a shopping center about 2 years ago, that has about, oh, somewhere between half a million and a million square feet of selling space, and it has everybody, a Sears, Roebuck, and a J. C. Penney, and you name it, it is there.

The good Baptist people of my town decided they wanted to build a \$20 million medical center, and they had to have \$2 million out of Little Rock, and they came to me and asked if my firm would contribute \$25,000.

I told them we would be glad to. This is no attempt, Senator, for personal aggrandizement. I mention this to you so that you will understand what the problem is. All of the big chains I am telling you about, all of them collectively in my town, Montgomery Ward, J. C. Penney, Safeway, Kroger, collectively did not contribute \$25,000.

In an effort to make money, they don't take into consideration the responsibility to the local organizations that I mentioned, the YMCA and the YWCA and the hospitals and all those worthwhile things.

When you throttle Main Street, U.S.A., you are eliminating small merchants who are the contributing factor and main support of the things that have been so vital and important to the well-being of the people of this Nation.

The CHAIRMAN. Mr. Grundfest, I certainly subscribe to your philosophy of the importance to our society of Main Street and all that it represents, and you have described it so well.

But I think you are putting an awfully heavy burden on the minimum wage here as the reason for the retreat from Main Street. I can tell you on main streets in towns that I know so well in New Jersey, one of the reasons that our stores there on Main Street are in serious trouble to the point of closing is that people just don't want to struggle with parking on Main Street.

They go out 2 miles to the shopping center, pull in and there is this great big parking lot right in front of the stores, and it represents all of the variety of merchandise that Main Street does. This has not anything to do with the minimum wage that the employees receive working in the store.

Nothing at all.

Mr. GRUNDFEST. May I have the right to differ with you?

The CHAIRMAN. Sure you can, but I know I am right from what I see and what I know of my hometown, Plainfield, N.J., and it hasn't anything to do with the wages.

As a matter of fact, a lot of them are momma and papa stores, and it doesn't apply at all.

Mr. GRUNDFEST. Let me say to you, sir, that I operate 120 stores.

The CHAIRMAN. You are a big businessman. I am talking about the small merchant.

Mr. GRUNDFEST. Let me finish, if you don't mind. I operate in small towns. I want to tell you a story. Sikeston, Mo., has 11,000. I opened my first store in Sikeston, Mo., in 1927. Someone came along and built a big shopping center in Sikeston, Mo., and my landlord, a very fine old family, came and said, "What are we going to do?"

I said, "I tell you what I recommend." J. C. Penney was my next door neighbor and they went into the shopping center. I said, "If you have the guts to put the J. C. Penney store together with mine, I have the courage to spend the \$50,000 to refurbish, because I think downtown Sikeston, Mo., will not die."

He came back and said, "Let's do it" and we did. I say to you, sir, our volume has gone up consistently.

The CHAIRMAN. Hallelujah.

Mr. GRUNDFEST. We have had the same experience in a dozen places.

The CHAIRMAN. But you are not quite typical. You say you have 120 stores?

Mr. GRUNDFEST. Yes.

The CHAIRMAN. That represents a strong base of capital. I am talking about the small retailer on Main Street, U.S.A. He does not have this great base of capital that you have.

Mr. GRUNDFEST. I have 50 stores, doing less than a quarter of a million dollars a year.

The CHAIRMAN. If you have enough of them, you are in pretty good shape.

Mr. GRUNDFEST. But if we did not have the exemption by the quarter of a million dollars, exclusion, we could not operate those stores profitably.

The CHAIRMAN. You have 120 stores?

Mr. GRUNDFEST. My company has. Let's put it that way.

The CHAIRMAN. Does this \$250,000 cutoff go to each store, or to your giant combine?

Mr. GRUNDFEST. No, each store enjoys a quarter of a million dollars exemption.

The CHAIRMAN. Yet your company has all of these stores? You are a chain. Is that the way it works?

Mr. GRUNDFEST. If it doesn't I have been violating the law since it first came into being.

May I inform you?

Do you mind?

The CHAIRMAN. J. C. Penney, does this apply?

Mr. GRUNDFEST. If they have a store that does not do a quarter of a million dollars, they are not under the act.

The CHAIRMAN. Safeway, and A. & P.

Mr. GRUNDFEST. If they have stores that don't do a quarter of a million dollars. Woolworth has stores that don't do a quarter of a million dollars.

The CHAIRMAN. It is not the corporate entity, it is an individual location?

Mr. GRUNDFEST. Pardon?

The CHAIRMAN. It is not a corporate entity of J. C. Penney, it is the individual location?

Mr. GRUNDFEST. That is right, and that is the purpose of my being here now, to try and preserve this quarter of a million dollar exemption.

The CHAIRMAN. I see. I feel an amendment stirring in me.

Mr. GRUNDFEST. Feel what?

The CHAIRMAN. I say I feel an amendment stirring in me.

Mr. GRUNDFEST. Can I take another minute or two?

The CHAIRMAN. You have got me awakened. I was suffering from a cold before, and not really with it, but I am with it now.

Mr. GRUNDFEST. I told you about my background. My daddy had a little store. He never at any time during his life did \$50,000 worth of business. I know smalltown America, and I know the problems of all kinds of people.

This isn't for the records, but you are looking at a man who helped send over 300 young kids to college. I told you I have had my 70th birthday.

I want to get kids in a position to work, not having to push pep pills to get spending money.

Working 40 hours a week and making a dollar an hour, well, making \$40 a week is a hell of a lot better than making nothing.

I am not arguing with you about your base rate of \$2 or whatever it is. I am talking about the quarter of a million dollars exemption, smalltown America, smalltown U.S.A., those of us who operate in the small towns who don't do a quarter of a million dollars must have this quarter of a million dollar exemption to exist.

If there is any part of my presentation that you would like to question, I will be glad to reappear before this committee with facts and figures to document my presentation.

(The prepared statement of Mr. Grundfest follows:)

STATEMENT OF DAVE GRUNDFEST,
FORMER PRESIDENT AND CURRENT CHAIRMAN OF THE EXECUTIVE COMMITTEE
OF
STERLING STORES COMPANY, INC.
LITTLE ROCK, ARKANSAS

This is the second time I have been privileged to appear before this distinguished Committee. The first time, as now, I was disturbed and concerned about the Minimum Wage Law that was to be enacted.

My concern then was for and on behalf of small businesses. My concern now, while no less interested in small businesses, has broadened... broadened to encompass young America, small-town America, and main street, USA.

When the Minimum Wage Bill was proposed and presented to the Congress, if my memory serves me right, Senator John F. Kennedy was the author, and with the help and through the auspices of my own two distinguished senators, Senator Fulbright and Senator McClelland, I was able to point out to Senator Kennedy what I thought was a grave injustice about to be perpetrated upon small retail businesses. I felt it mandatory to exclude any retail establishment doing less than \$250,000 in annual sales from the Minimum Wage. This provision which was later enacted, allowed small businesses in small communities to remain profitable and even to exist. My purpose now in being here is to ask that the Committee again grant this \$250,000 exclusion from whatever rate may be proposed.

Permit me, if you will, to deal a bit in personalities; mainly my own. I have been privileged to enjoy my 70th birthday...I was privileged to be born and raised in a small community in Mississippi, "Cary". I have been privileged to witness the change in the evolution that came with the automobile...with cross-country trucking...with the elimination of the passenger train...the evolution that came with air travel, both passenger and freight,

and with the evolution that we are daily experiencing with reference to the philosophy of many people on behalf of our great nation. What I have reference to in this instance is, of course, loyalty, patriotism, devotion to duty, giving back an honest day's work for an honest day's pay.

I mentioned earlier that my main concern, other than the life blood of small business, has to do with young America...small-town USA, and main street, USA. My mentioning my own background as a youth was in no way an attempt for heroics. I just wanted you to know that if ever that was a man who has been privileged to enjoy a full life encompassing many, many areas, your guest here, at this time, is that man.

I opened and ran the first store that is now an organization known as the Sterling Stores Company, Inc. with one hundred-twenty units throughout seven states, and I opened this first store at the age of twenty-one. When being asked did I ever envision at that time that my own little company would become a chain of one hundred-twenty units, I told them no... but I am ever mindful of the fact that I experienced a compulsion that drove me, and drove me, and drove me, and that compulsion being, that I like to eat, and the only way I knew to make a living was to run a store. My business background was in my dad's little country store in Cary, Mississippi, that he established about the turn of the century, and I don't think that at any time during his lifetime he enjoyed an annual sales in excess of \$50,000.

You and I know, as does every conscientious American, that one of our great problems in America today is finding jobs for young America, and this Minimum Wage would present a problem where young America is concerned. I think it is safe to say that the problem is more severe and more acute

than ever before in the history of America, simply because, very few, if any, high school kid...17, 18, or 19 years old is worth \$64.00 a week. Consequently, as an employer, it ill-behooves us to hire these young people at that wage level. Tragic as it is, I feel that we do the young America a dis-service if we pay them \$64.00 for a 40 hour week. I say this because it creates in the minds of these young people a tendency to lessen the value of a dollar. I shall ask you to be mindful of the fact that when you were in high school, if your background was such that you needed a job, you would have been very happy to get a job for \$15 to \$18 per week. I feel today that if these kids would get a job at \$1 an hour, or \$40 a week, it would not only be more than perhaps they are worth, but certainly a more wholesome attitude would develop with reference to the relationship to dollars paid for value received.

I think the record will reveal that in small-town USA, whether it be Rolling Fork, Mississippi, Leland, Mississippi, Lawrenceburg, Tennessee, or Baxter Springs, Kansas, the tendency for the people has been to move from these communities to the more suburban metropolitan areas. It is not my purpose or intention to tell you that what I am pleading for would have any tendency to slow them. This unfortunate happening in America is taking place today because of Shopping Centers. People, the folks, are being lured away from small town main street, and big town main street as a matter of fact, into these fabulous complexes, these shopping centers with one-half million square feet and more. In the smaller communities there are shopping centers being built with 75,000 to 100,000 square feet that are draining the business from main street, USA. Unless the merchants of main street, USA, the merchants who are doing less than \$250,000 a year, are permitted to continue the privilege that is theirs now under the exemption of the present

Wage & Hour Bill, these merchants will be forced out of business. The small merchant in the small town has pared his payroll in his store over the years. All his costs, as everyone's cost, have increased. He has decreased the number of hours worked in his store to an absolute minimum. Should he have to start paying even the current Minimum Wage of \$1.60 per hour, his operation could no longer be profitable...if it were no longer profitable, he could no longer continue to exist, and could he no longer continue to exist, he could no longer serve the people of his community.

These small merchants are being forced out of business today, yesterday, day before yesterday, and it will continue to happen tomorrow. I submit that when more and more of these small town merchants bite the dust, and when we kill main street, USA, we have killed the things, the places and the people who support the basic philosophies of America, the things that made America the great nation that it is. I ask you to be mindful of the fact that in every town in America, particularly the small town, it is downtown USA that supports your YMCA, Boy Scouts, libraries, and your local churches. These, my friends, are the American institutions, the major chains, whether it be Sears, J. C. Penney, Montgomery Ward, Kroger, Safeway, A & P, by and large, philosophies of making money does not take into consideration their responsibility and obligation to the communities on the local level. I ask you if you question this statement, to ask some of your constituents from your home town to make a survey.

Again, if you will pardon a personal reference, let me tell you that in my town, Little Rock, Arkansas, the good Baptist folks decided to build a \$20,000,000 medical center. We, the people of Little Rock, had to raise \$2,000,000. My little company was asked to contribute \$25,000 which we gratefully did. We have a mall shopping center that has almost every chain

store in America of any consequence, big or small, and I know I am on safe ground when I tell you that all of them put together, all the J. C. Penney's, Sear's, and Montgomery Ward's collectively, didn't contribute this much money to help bring into being this fine and much needed medical center.

Please don't read in anything that I am attempting personal aggrandizement. I merely state the facts as I see them, calling to your attention not only the problems that exist, but the problems that are created through unfair, unwise legislation. Unless we continue to give the little merchant, small-town USA, downtown USA, the privilege they now enjoy under the \$250,000 exemption, they will no longer continue to exist.

If by chance those among you question my motive of sincerity, I earnestly invite you to check my record through either of our distinguished Senators from Arkansas, or my own Congressman, the Honorable Wilbur Mills, Chairman of the Wage & Means Committee.

The CHAIRMAN. I have to keep my eye on the clock because we have a very important vote coming up in the Senate, so if we could turn to Mr. Charles Hopkins, executive vice president of the West Virginia Retailers Association.

Mr. HOPKINS. Mr. Chairman, today I am going to speak directly to the facts in Senate bill 1861 which would eliminate the exemption of \$250,000 or less.

I am speaking to this because of the concern that I feel that previously retail speakers have not emphasized the establishment test to the degree that it should be.

The West Virginia Retailers Association vigorously opposes the elimination of the establishment test. Such drastic action would have a calamitous effect on the economic well-being of small retail stores and would curtail consumer services, reduce employment both full and part time, and impede socioeconomic improvement in West Virginia.

There are 15,492 retail outlets in the Mountain State employing approximately 49,000 individuals. Of this total, 12,394 stores do an annual gross volume less than \$250,000.

A sampling of communities showing the total number of retail stores and the number with a gross volume under \$250,000 is attached to this statement for your reference.

(The information referred to follows:)

COMMUNITY SAMPLE SHOWING TOTAL RETAIL STORES
AND NUMBER WITH LESS THAN \$250,000 VOLUME

<u>NAME OF COMMUNITY</u>	<u>TOTAL RETAIL STORES</u>	<u>STORES WITH UNDER \$250,000 VOLUME</u>
Belle	28	25
Bluefield	147	120
Bradshaw	10	7
Buckhannon	114	107
Cabin Creek	30	28
Charlestown	84	75
Chesapeake	20	18
Clendenin	28	24
Danville-Madison	100	89
Delbarton	20	15
Dunbar	74	69
Follansbee	51	46
Gassaway-Sutton	74	69
Grafton	109	104
Hinton	95	85
Holden	12	10
Keystone	38	34
Logan	58	47
Mannington	40	37
Marmet	28	24
Man	45	38
Martinsburg	223	210
Matewan	27	22
Milton	20	17
Montgomery	35	28
Nitro	78	70
Oak Hill	97	88
Oceana	24	20
Omar	18	15
Ravenswood	49	42
Ripley	61	50
St. Albans	171	164
Shinnston	46	40
Sophia	20	16
South Charleston	127	115
Spencer	78	73
Van	15	13
War	30	26
Welch	107	97
Whitesville	27	20
White Sulphur Springs	67	65
Williamson	122	116

Mr. HOPKINS. West Virginia can best be described as a State of small communities served by small retail stores. It possesses few urban areas. Only 3 cities in the State have a population of more than 50,000 persons; 12 have a population between 10,000 and 50,000; 56 have a population of between 2,000 and 10,000; 160 have fewer than 2,000 inhabitants, and 1,867 unincorporated communities have fewer than 1,000 inhabitants.

West Virginia is also, a State in which there is a marked contrast within its borders in per capita income.

The per capita income for the State, as a whole is low, only \$3,021. Despite the fact that per capita income in the three urban areas greatly exceeds this amount, the vast majority of small community merchants constantly feel the lack of available customer buying power.

Thus the small store in the small town finds it impossible in actual practice to utilize increased prices in meeting additional selling costs.

The small merchant is locked in a financial reality where he must absorb more and more of the costs of business because of inability to pass it on to the customer.

In West Virginia, 12,394 small stores of the State are staggering already from:

1. Out-State population migration.
2. Movement of citizens to larger urban areas.
3. An aging population.
4. Reduced customer traffic.
5. Higher inventory costs.
6. Increased taxation.
7. Additional mandated fringe benefit expenses.

It would be devastating to the small Mountain State retailer to have the added burden of increased minimum wages.

The small retailer's ability to continue to operate in today's market is dependent upon developing a proper relationship between sales productivity and wages.

He is already fighting for survival in his struggle to bring selling cost into better balance. Throughout the Mountain State, stores with less than \$250,000 annual volume have a sales productivity ranging between \$8.50 and \$10.00 per employee hour.

I would like to note that this includes the total work force within the store. Here is another way to compute this figure, and that is to deal only with salesclerks and them alone. I have chosen the total employee line.

These same stores, in order to maintain a proper standard of service, are required to spend 12 percent to 15 percent of the hourly sales productivity for wages.

This compares unfavorably with an 8 percent to a 9 percent expenditures for stores in the above \$250,000 volume. When these ranges are applied in the determination of wages, it becomes apparent that the small store in the small town cannot exceed an hourly wage of \$1.50 per hour without being placed in immediate financial jeopardy.

This conclusion follows an economic principle accepted throughout the world that once the percentage of hourly productivity used to pay personnel exceeds 10 percent to 12 percent, the store is in trouble.

Yet S. 1861, by eliminating the establishment test, would require up

to a 20-percent increase in the hourly wage paid by these small businesses—an increase which has no basis in retail economic principles.

With the excessively high selling costs of 15 percent of productivity as compared to below 9 percent for large store operations, here, the small retailer in West Virginia cannot absorb a 20-percent increase in hourly wages at a time when his market has reached its traffic peak and no additional population resources are available upon which to build increased sales. Mr. Chairman, I submit this is asking the impossible.

An increase in the minimum wage would force added costs in the legislated-fringe benefits required of the small retailer; also, a 20-percent increase in the hourly wage, for example, would require a minimum additional per employee cost in Social Security matching payments of \$32.45, Unemployment Compensation taxes, \$8.74 and Workmen's Compensation Taxes, \$2.18.

These may not seem really large sums but when combined with wage growth which disrupts the wage productivity fundamental they add notably to the insurmountable burden on the back of a small store.

It is imperative to emphasize also, that the elimination of the exemption will create a mountain of forms, filings, recordkeeping, and legal interpretations not now necessary to the small retailer and beyond his financial and personnel ability to fulfill.

The elimination of the establishment test in our State will leave the small merchant in the Mountain State no choice except to:

1. Move his business to areas of greater traffic leaving the smalltown customer with access to fewer and now in some cases, no hometown stores.

2. Attempt to consolidate with other local businesses to secure necessary operating capital, an impossible action in small communities.

3. Reduce inventory which would, in turn, restrict consumer choices available to the store.

4. Reduce full-time and part-time employees.

5. Eliminate services or install charges for those services previously given without customer cost.

6. Omit all nonmandated fringe benefits.

These are the small retailer's options in the face of proposed Federal minimum wage increases. A study made by WVRA of West Virginia stores in the below \$250,000 classification revealed that if the establishment test is eliminated:

Ninety-two percent of the small merchants believe it will be necessary to relocate their businesses in areas of larger traffic. And if this is impossible:

1. Eighty percent will reduce full-time employment.

2. Seventy-two percent will reduce part-time employment.

3. Thirty-two percent will shorten opening hours.

4. Thirty-one percent will reduce or eliminate nonmandated fringe benefits.

5. Seventy-one percent will reduce services.

6. Forty-four percent will change from clerical to self-service operations.

A sad picture, a harsh picture, but a real picture for the small com-

munity merchant and even a sadder and harsher outlook for the customer so dependent upon the store's services, and for the secondary wage earners whose jobs will be eroded.

Mr. Chairman, I am aware as you are, that today our Nation brings to a close the celebration of Constitution month. In the genius of the checks-and-balances structure created by that immortal document, the elected Members of Congress have a solemn duty, an awesome duty, indeed, to protect the people from unwise actions by big government.

Through my voice, thousands of small West Virginia merchants petition this committee for that protection—a protection which can be provided by retaining the \$250,000 establishment test in any proposal the committee reports to the Senate for consideration and action.

Thank you.

The CHAIRMAN. Thank you, Mr. Hopkins. First, let me say that Senator Randolph is senior member on this committee, and wanted to be here, but he is chairman of another committee, and they are working on Public Works Committee business this afternoon.

He wanted to be here to introduce you and chat with you at this meeting.

I didn't get your home location in West Virginia, by the way.

Mr. HOPKINS. I am in Charleston, W. Va., the West Virginia Retail Association. It is known in our area as "the voice of retailing in West Virginia."

I represent 78 stores, Mr. Chairamn, from the entire State. We have every type of retail store, and we also have restaurants and service stations within our membership.

We have 19 out of 21 multiunit companies doing business in West Virginia, too.

The CHAIRMAN. The bell signals me to go to the Senate to vote, and so we will adjourn.

Thank you very much, Mr. Hopkins and Mr. Grundfest.

(The prepared statement of Mr. Hopkins follows:)

906 nelson bldg., charleston



STATEMENT TO

THE UNITED STATES SENATE LABOR COMMITTEE

RECOMMENDING THE RETENTION OF THE \$250,000 GROSS VOLUME
ESTABLISHMENT TEST AS IT RELATES TO FEDERAL MINIMUM WAGES

PRESENTED ON BEHALF OF

THE WEST VIRGINIA RETAILERS ASSOCIATION

BY

CHARLES HOPKINS, EXECUTIVE VICE PRESIDENT, W.V.R.A.

SEPTEMBER 30, 1971

I am Charles Hopkins, Executive Vice President of the West Virginia Retailers Association.

The Association's membership is made up of large and small retail businesses, such as furniture stores, men's and boy's wear shops, dry goods stores, sporting goods shops, specialty shops, large department stores, variety stores, discount stores, and chain stores, . restaurants and service stations.

Although 19 of the 21 multi-unit companies doing business in West Virginia belong to WVRA, 95% of its membership is classified as small independent.

Today, I speak to the fact that Senate Bill 1861 would eliminate the establishment test under which retail stores with an annual gross sales volume of \$250,000 or less are exempt from federal minimum wage requirements.

The West Virginia Retailers Association vigorously opposes the elimination of the establishment test. Such drastic action would have a calamitous effect on the economic well-being of small retail stores and would curtail consumer services, reduce employment both full and part-time, and impede socio-economic improvement in West Virginia.

There are 15,492 retail outlets in the Mountain State employing approximately 49,000 individuals. Of this total, 12,394 stores do an annual gross volume less than \$250,000. A sampling of communities showing the total number of retail stores and the number with a gross volume under \$250,000 is attached to this statement for your reference.

West Virginia can best be described as a state of small communities served by small retail stores. It possesses few urban areas. Only three (3) cities in the state have a population of more than 50,000 persons; 12 have a population between 10,000 and 50,000; 56 have a population of between 2,000 and 10,000; 160 have fewer than 2,000 inhabitants, and 1,867 unincorporated communities have fewer than 1,000 inhabitants.

West Virginia is, also, a state in which there is a marked contrast

within its borders in per capita income. The per capita income for the state, as a whole, is low, only \$3,021. Despite the fact that per capita income in the 3 urban areas greatly exceeds this amount, the vast majority of small community merchants constantly feel the lack of available customer buying power. Thus, the small store in the small town finds it impossible in actual practice to utilize increased prices in meeting additional selling costs. The small merchant is locked in a financial reality where he must absorb more and more of the costs of business because of inability to pass it on to the customer.

The 12,394 small stores of the state are staggering already from --

1. Out-state population migration;
2. Movement of citizens to larger urban areas;
3. An aging population;
4. Reduced customer traffic;
5. Higher inventory costs;
6. Increased taxation; and
7. Additional mandated fringe benefit expenses.

It would be devastating, indeed, to the small Mountain State retailer to have the added burden of increased minimum wages.

The small retailer's ability to continue to operate in today's market is dependent upon developing a proper relationship between sales productivity and wages. He is already fighting for survival in his struggle to bring selling costs into better balance. Throughout the Mountain State, stores with less than \$250,000 annual volume have a sales productivity ranging between \$8.50 and \$10.00 per employee hour. These same stores, in order to maintain a proper standard of service, are required to spend 12% to 15% of the hourly sales productivity for wages. This compares unfavorably with an 8% to 9% expenditure for stores in the above \$250,000 volume. When these ranges are applied in the determination of wages, it becomes apparent that the small store cannot exceed an hourly wage of \$1.50 per hour without being placed in immediate financial jeopardy. This conclusion follows an economic principle of the marketplace that once the percentage of hourly productivity used to pay personnel exceeds 10% to 12%, the store is in trouble.

Yet, S.1861, by eliminating the establishment test, would require up to a 20% increase in the hourly wage paid by these small businesses -- an increase which has no basis in retail economic principle.

With the excessively high selling costs of 15% of productivity as compared to below 9% for large store operations, the small retailer in West Virginia cannot absorb a 20% increase in hourly wages at a time when his market has reached its traffic peak and no additional population resources are available upon which to build increased sales. Gentlemen, I submit this is asking the impossible.

An increase in the minimum wage would force added costs in the legislated fringe benefits required of the small retailer; also, ^A 20% increase in the hourly wage, for example, would require a minimum annual additional per employee cost in Social Security matching payments of \$32.45, Unemployment Compensation taxes, \$8.74, and Workmen's Compensation taxes, \$2.18. These may not seem large sums but when combined with wage growth which disrupts the wage-productivity fundamental they add notably to the insurmountable burden on the back of the small store.

It is imperative to emphasize, also, that the elimination of the exemption will create a mountain of forms, filings, record keeping, and legal interpretations not now necessary to the small retailer and beyond his financial and personnel ability to fulfill.

The elimination of the establishment test will leave the small merchant in the Mountain State no choice except to --

1. *Move his business to areas of greater traffic leaving the small town customer with access to fewer and, in some cases, no hometown stores.*
2. *Attempt to consolidate with other local businesses to secure necessary operating capital -- an impossible action in small communities.*
3. *Reduce inventory which would, in turn, restrict consumer choices*

available in the store.

4. Reduce full-time and part-time employees.
5. Eliminate services or install charges for those services previously given without customer cost; and
6. Omit all non-mandated fringe benefits.

These are the small retailers' options in the face of proposed federal minimum wage increases. A study made by W.V.R.A. of West Virginia stores in the below \$250,000 classification revealed that if the establishment test is eliminated --

Ninety-two (92) percent of the small merchants believe it will be necessary to relocate their businesses in areas of larger traffic. And, if this is impossible --

1. Eighty (80) percent will reduce full-time employment;
2. Seventy-two (72) percent will reduce part-time employment;
3. Thirty-two (32) percent will shorten opening hours;
4. Thirty-one (31) percent will reduce or eliminate non-mandated fringe benefits;
5. Seventy-one (71) percent will reduce services; and
6. Forty-four (44) percent will change from clerical to self-service operations.

A sad picture, a harsh picture, but a real picture for the small community merchant and an even sadder and harsher outlook for the customer so dependent upon the store's services, and for the secondary wage earners whose jobs will be eroded.

Gentlemen, I am aware, as are you, that today our nation brings to a close the celebration of Constitution Month. In the genius of the checks and balances structure created by that immortal document, the elected members of

Congress have a solemn duty, indeed, an awesome duty, to protect the people from unwise actions by big government.

Through my voice, thousands of small West Virginia merchants petition this Committee for that protection -- a protection which can be provided by retaining the \$250,000 establishment test in any proposal the Committee reports to the Senate for consideration and action.

Thank you.

- ATTACHMENT -

COMMUNITY SAMPLE SHOWING TOTAL RETAIL STORES
AND NUMBER WITH LESS THAN \$250,000 VOLUME

<u>NAME OF COMMUNITY</u>	<u>TOTAL RETAIL STORES</u>	<u>STORES WITH UNDER \$250,000 VOLUME</u>
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Charlestown	84	75
Chesapeake	20	18
Clendenin	28	24
Danville-Madison	100	89
Delbarton	20	15
Dunbar	74	69
Follansbee	51	46
Gassaway-Sutton	74	69
Grafton	109	104
Hinton	95	85
Holden	12	10
Keystone	38	34
Logan	58	47
Mannington	40	37
Marmet	28	24
Man	45	38
Martinsburg	223	210
Matewan	27	22
Milton	20	17
Montgomery	35	28
Nitro	78	70
Oak Hill	97	88
Oceana	24	20
Omar	18	15
Ravenswood	49	42
Ripley	61	50
St. Albans	171	164
Shinnston	46	40
Sophia	20	16
South Charleston	127	115
Spencer	78	73
Van	15	13
War	30	26
Welch	107	97
Whitesville	27	20
White Sulphur Springs	67	65
Williamson	122	116

The CHAIRMAN. At this point I order printed as an appendix to the record all statements from interested persons and organizations unable to be present at these hearings.

(The following material was subsequently supplied for the record :)

APPENDIX

THE UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR RELATIONS
WASHINGTON, D. C.

INVESTIGATION OF THE WORKING CONDITIONS
IN THE STEEL INDUSTRY
IN THE UNITED STATES
BY
JAMES H. HANCOCK, JR.
AND
JOHN L. LEWIS

REPORT
TO THE UNITED STATES DEPARTMENT OF LABOR
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FARMERS & MANUFACTURERS BEET SUGAR ASSOCIATION

EXECUTIVE OFFICES
SECOND NATIONAL BANK BUILDING
SAGINAW, MICHIGAN 48607



Statement of Farmers & Manufacturers Beet Sugar Association

To Senate Sub-Committee on Labor

Committee on Labor and Public Welfare

Hearings on S. 1861

Amendments to Fair Labor Standards Act

This statement is submitted by the Farmers & Manufacturers Beet Sugar Association, Second National Bank Building, Saginaw, Michigan, on behalf of its processing members who comprise the eastern segment of the beet sugar industry, namely:

Buckeye Sugars, Inc., Ottawa, Ohio
Michigan Sugar Co., Saginaw, Mich.
Monitor Sugar Co., Bay City, Mich.
Northern Ohio Sugar Co., Fremont, Ohio

We express our most serious concern over the proposed repeal of the overtime exemptions contained in the Fair Labor Standards Act under sections 13(b)(15) and Section 7(c) and 7(d).

There have been no changes in the conditions which have justified these exemptions for our industry throughout the history of this legislation. Despite this, the members of our industry are moving as rapidly as is economically feasible toward the objectives of S. 1861. However, we must necessarily balance this forward movement between the effect of increased costs on the return to the farmer for his crop, the need of the worker for a better working standard, the effects of cost increases on the viability of the companies and the ultimate effect of cost increases on the inflationary spiral. Both the need for exemptions and the movement toward new objectives has been recognized clearly in the course of collective bargaining contracts between our members and their employees.

The statements below by two of our member companies represent fairly, and are concurred with, by our entire processor membership.

Statement of Michigan Sugar Company
on Amendments to Fair Labor Standards Act

Sugar beets in our area must be harvested within a period from approximately September 25 thru November 5. This harvest period cannot be lengthened materially because the crop has not matured prior to the end of September and the entire crop must be harvested before a heavy freeze which can, and has, come as early as the first week in November.

Since the processing of the crop extends for several months beyond harvesting, the sugar beets must be stored in piles. Because sugar beets are a perishable vegetable and are subject to spoilage and losses of sugar while stored in these piles, we must process these beets as rapidly as possible in order to minimize losses. Consequently our plants operate on a 7 day week, 24 hours per day until the crop has been completely processed.

During the period of beet receiving our yard employees work a variety of daily and weekly hours depending on weather conditions which govern the harvesting on the farms. It is to cover this uncertain schedule of harvesting that exemption of these employees has been a provision of the Fair Labor Standards Act since its inception. Since the period covered is relatively short (approx. 6 weeks) and the majority of the employees in this work are hired only for this short period of time, and since the daily schedule of hours is primarily dependent on the ability to harvest, we strongly urge that this exemption be retained under Section 7(c) and 7(d).

Michigan Sugar Company historically operated its plants on a 56 hour week with overtime paid over 56 hours. In union contract negotiations recently completed we offered our employees the opportunity of changing the work week to an average 42 hour week with overtime over 40 hours. The union flatly rejected this proposal and we settled on a 48 hour week with overtime over 48 hours and with no further compensating adjustment for the shorter hours. They would refuse to drop to a 40 hour schedule without a compensating adjustment in wages.

Such an adjustment would mean an increase in hourly wages of approximately 12.5%. The new 3 year contract with the union includes a wage increase of 21.2%, subject to wage-price guidelines to be issued, over the 3 year period. This increase if allowed, coupled with the 12½% increase to compensate for shorter hours or a total of 33.7% would certainly, in our opinion, be completely contrary to the present efforts to control the inflationary spiral. In addition to the inflationary wage aspect, the cost of production would increase by a like percentage and in order to maintain a reasonable profita-

bility, would ultimately need to be passed on to the consumer in the price for sugar, thereby compounding the inflationary effect.

We strongly urge that the exemptions now contained in the Fair Labor Standards Act under Sections 13(B) (15) and under Sections 7(c) and 7(d) be retained in the new legislation.

Statement of Monitor Sugar Company
on Amendments to Fair Labor Standards Act

The sugar beets in our area must be harvested within a relatively short period of time, from approximately September 25, through November 5, because the crop has not matured before the end of September and they must be out of the ground before the first heavy freeze which can come as early as the first week in November.

We obviously cannot process all the beets during this short harvest period and so it is necessary to store the excess on the ground in piles.

Due to the perishable nature of the beets it is then imperative that we process the stored beets as quickly as possible; so our processing plant operates seven days a week, twenty-four hours a day, once we start.

This breaks down into three shifts a day of fifty-six hours a week. The men and women are agreeable to these hours because the processing season only runs for about sixteen or seventeen weeks. Wage rates have been negotiated on this basis with the American Federation of Grain Millers.

Because of the nature of the operation we have had an exemption from the overtime provisions of the Fair Labor Standards Act since its inception. This exemption (Section 13(b) (15)) applies only to our processing period.

Approximately 75% to 80% of our employees during the processing period are seasonal employees. In a community the size of Bay City, finding three hundred or so people who can satisfactorily do the work and who are willing to work on a seasonal basis is very difficult. If we had to pay overtime over forty hours a week we would obviously try to reduce the number of hours worked from the present fifty-six hours a week, and finding additional people to work on that basis would be most difficult. Also, even if we could accomplish it, our costs would be greater which eventually would be passed on the consumer in the price of sugar.

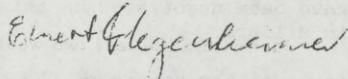
If we did not reduce the number of hours worked but had to pay time and one-half over forty hours, it would mean a 14.3% increase in costs and a corresponding 14.3% increase in wages to workers which is definitely inflationary and contrary to the Wage Freeze and would no doubt exceed allowable increases under Phase II.

If we try to reduce the hours of work the workers would insist on an increase in rate to compensate for the shorter hours and to give fifty-six hours pay for forty hours work would mean a 40% increase in rates which is again super-inflationary.

While we have had a complete exemption from the hours provisions of the Fair Labor Standards Act under Section 13(b)(15), which we think should be retained and not eliminated as proposed by S-1861, there are also seasonal exemptions under Section 7(c) and (d) which S-1861 proposes to eliminate. For the reasons outlined above, we strongly urge that all three sections, 13(b)(15), 7(c) and (d), be left in the law.

We strongly urge the retention of the seasonal exemptions contained in Sections 13(b)(15) and in Section 7(c) and Section 7(d).

Respectfully submitted,
Farmers & Manufacturers
Beet Sugar Association



Ernest Flegenheimer
President

STATEMENT BY DR. ERNEST L. WILKINSON
PRESIDENT-EMERITUS OF BRIGHAM YOUNG UNIVERSITY
FOR THE SUB-COMMITTEE ON LABOR,
SENATE LABOR AND PUBLIC WELFARE COMMITTEE,
ON THE PROPOSED FAIR LABOR STANDARDS
AMENDMENT OF 1971

Mr. Chairman and Members of the Subcommittee:

My name is Ernest L. Wilkinson and I am President-Emeritus
of Brigham Young University, in Provo, Utah.

It was originally intended that I testify in the early part of June,
as President of the University, but after that time I resigned as President,
after having served in that capacity for twenty years. I have now been design-
ated, however, by the new President, to represent the University on this
occasion.

Just within the last two weeks, however, I have been ordered to
have open heart surgery, and I am therefore submitting this statement in
lieu of my appearance, in the hope that you will be generous and charitable
enough to read it.

My statement will be confined to the question of part-time
employment of college students.

Brigham Young University is a private institution, located at Provo, Utah. It has a regular day-time enrollment of 25,000 full-time students. For about fifteen years it has been the largest church-related institution of higher learning in the country, and for the last five or six years it has been the largest private university in the United States, whether religious-related or not. Its students come from all fifty states and sixty-five foreign countries.

Although it has assisted the Government with research projects, it has a policy of not accepting federal aid, even in its research, except upon giving a quid pro quo for every dollar received. We have turned down offers from the Government to supply us with millions of dollars for buildings, for we have preferred to operate on our own, and do not believe that the Federal Government, with its enormous debt, should supersede the states in the education of university students.

While the school is operated by the Church of Jesus Christ of Latter-day Saints, commonly known as Mormon, it is open to students of all faiths, and at our last count we had students from ten non-Christian faiths and over forty Christian denominations.

I should state at the outset that despite the size of our school, we have had no riots, or even so-called disturbances. Our students have come to learn, and not to riot. Further, because of their reputation for industry and hard work, their salaries on graduation are comparable with and generally somewhat higher than the salaries of students from other institutions. We are not having a dearth of employment of our graduating students this year, such as is occurring in many institutions.

What I have to say in this memorandum will be of more importance to private institutions of higher learning, although it will relate to public institutions as well. That is because if there is an increase in minimum wages, public institutions can pass that increase on to the taxpayers, whereas private institutions cannot, and it must be borne by higher tuition or by the students themselves.

Contributions of Private Universities and Colleges:

Before I speak of the proposed increase in minimum wage, may I point out the significant role played by private colleges and universities in our past and present national life. The contribution of these institutions of

higher learning has been and still is tremendous. Time does not permit me to fully brief this, so I will have to content myself with a very few examples:

1. "In the decade 1955-56 through 1964-65, private institutions conferred approximately 45 percent of all doctorates awarded . . . "
2. " . . . In a recent American Council on Education evaluation of the quality of graduate faculties, three of the five 'leading universities' in engineering were private, as were four of the six in humanities, six of the nine in the social sciences, five of the nine in the biological sciences, and seven of the the nine in the physical sciences."
3. " . . . their faculty members have won 29 of the last 41 Nobel prizes awarded to Americans for scientific research."
4. "At the undergraduate level, students from private institutions have won approximately half of all Rhodes Scholarships awarded." ¹
5. Taking as an example only the University of which I am President, and which 25 years ago was a relatively small institution, having only approx-

¹ William G. Bowen, "Some Reasons for the Public Interest in the Private Universities," The Education Digest, December 1968.

imately 1,100 students, we have produced 50 college presidents, including presidents of three largest universities in Utah, and of such other universities as the University of Oregon, University of Minnesota, San Jose State College, and Chancellor of the University of California at Los Angeles.

6. If any proof were needed as to the contributions of private colleges and universities, may I say that a study of both undergraduate and graduate schools chosen for attendance by members of the Subcommittee on Labor, shows that private institutions were selected by ten of the twelve members of the committee, as shown by the following list:

Private Universities:

Senator Harrison A. Williams, Jr., Chairman
 Senator Jennings Randolph
 Senator Claiborne Pell
 Senator Gaylord Nelson
 Senator Thomas F. Eagleton
 Senator Adlai E. Stevenson, III
 Senator Jacob K. Javits
 Senator Richard S. Schweiker
 Senator Bob Packwood
 Senator Robert Taft, Jr.

Public Universities:

Senator Harold E. Hughes
 Senator Winston L. Prouty

Contributions of Private Colleges and Universities
to the Nation, Measured by the Role They Have Played
in our Dual System of Higher Education

It has been universally recognized that the private institutions have contributed and still contribute to our dual system of higher education in ways not always possible in public institutions.

As stated in the introductory article to the current edition of "Who's Who in America":

Private liberal arts colleges have been the basis and the backbone of higher education in America. It is these institutions that have pioneered and made possible the vast and effective structure of tax-supported education. Private junior colleges showed the way to our burgeoning system of public junior colleges; private preparatory schools have pioneered much that is now incorporated in our comprehensive system of public secondary education. In the case of all three groups, from an enrollment standpoint, the offspring dwarfs the parent . . . ²

² Marquis, Who's Who, Who's Who in America, Volume 35 (1968-1969), p. 23.

The Danforth Foundation Report of 1966, recognized by all educators as an authoritative study, lists these distinctive assets of private institutions:

1. freedom to experiment and serve special purposes, academic and social;
2. responsiveness to able leadership;
3. a good record of preparation for graduate and professional study;
4. concern for progress of individual students;
5. close student-faculty relationships;
6. the espousal of human values.³

These concerns over the progress of individual students and the close student-faculty relationship are in my opinion the main reasons why we have so relatively little unrest and rioting and open rebellion in small private institutions, as compared with what is going on in state institutions and in some of the larger private institutions which have become almost entirely secularly oriented.

I should add to the list of distinctive assets listed by the Danforth Foundation Report the moral, spiritual and patriotic training given in many of

³ The Danforth Foundation Report of 1966.

these private institutions. This to my mind is the most important contribution they made, for if we lose our moral and spiritual moorings in this country, we will cease to be a great nation.⁴

Importance of Present Proposal on Students of Private and, To A Lesser Extent, on Students of Public Institutions:

About the most important facet of the operation of Brigham Young University is the opportunity for students to obtain part-time work on the campus. A high percent of the student body must have some kind of employment, because Provo is a relatively small community and jobs for students off the campus are few and do not meet the need.

As a result of this situation, several years ago our University

⁴ As stated by the perceptive Frenchman, Alexis de Tocqueville, who visited our country in the 1830's:

I sought for the greatness and genius of America in her commodious harbors and her ample rivers, and it was not there; in her fertile fields and boundless prairies, and it was not there; in her rich mines and her vast world of commerce; and it was not there. Not until I went to the churches of America and heard her pulpits aflame with righteousness did I understand the secrets of her genius and power. America is great because she is good, and if America ever ceases to be good, America will cease to be great.

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adopted a rule to employ as many students as possible on a part-time basis, for all secretarial, custodial, housing supervising, farm help (for we have nearly 2,000 acres of farm,) and all other work needed for the University. As a matter of policy, we decided to cut down on full-time employees as much as practical in order to give students an opportunity to work, and thereby obtain an education. The result, for the last five years, has been that the cumulative number of jobs filled by students has been as follows:

1966-67	8,677
1967-68	9,185
1968-69	9,053
1969-70	9,425
1970-71	9,876

The cost of providing part-time employment for our students

during the past school year (1970-71) at the present minimum wage of \$1.60 an hour, was \$6,166,000. If the minimum rate were to be increased to \$2.00 an hour, it would increase the cost to BYU by approximately \$1,310,000. Since we are operating on a very stringent budget, the consequence of such an increase would probably be either:

a. The hiring of a much larger percentage of full-time employees who are

necessarily more efficient, and a very substantial reduction in the number of part-time students. In order to adjust our student wage rates to a \$2.00 per hour minimum rate, the following raises would be required:

- 65% of the students would need to be increased 40¢ per hour.
- 14% of the students would need to be increased 35¢ per hour.
- 12% of the students would need to be increased 30¢ per hour.
- 9% of the students would need to be increased 25¢ per hour.

The average increase, therefore, would be 37¢ per hour. During the

1970-71 year, there were 3,541,000 hours worked by student employees.

Students will undoubtedly work at least the same number of hours and

probably somewhat more during the 1971-72 year. If you multiply this

number of hours worked by the average increase which would be required

(37¢) you arrive at the figure of \$1,310,000 which represents the increased

cost to the University which would be caused by an increase in the minimum

wage to \$2.00 per hour.

If the University should be unable to secure additional funds to provide the increases which the law would impose, it would then have to meet the increase by retrenchment. This would mean a loss to students of approximately 800 jobs in a single pay period and would mean, in the course of an

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entire year, a reduction in the number of students employed by approximately 1,500, a large percentage of whom would be required to quit school.

- b. An increase in the cost of tuition, housing, food services, bookstore charges, etc. In this respect a student at our institution, by being frugal, can pay all expenses for \$1,600 per year. Tuition is only \$600 per year, (only \$500 until the price freeze is lifted.) Yale University has announced an estimated cost of \$4,200 per year. If we had to increase this total cost a couple of hundred dollars per year, all benefits to those who worked part-time would be lost and many who do not obtain jobs would not be able to go to school at all.

Most of our students come from homes of modest means, and we have diligently attempted to keep the expenses of a college education at a point which would permit a maximum number of young people to better prepare themselves to contribute to the economy of the country. Reducing the number who can be employed or increasing the costs would be a disservice to thousands of students, many of whom would be discouraged and quit school--instead of working and learning to be more self-sufficient at a later period in life. For them, a higher minimum wage could mean no wage at all, and possibly no

further educational opportunities.

I am sure that Brigham Young University does not stand alone on this important matter, and that many other institutions and their students would be similarly affected by an increase in the minimum wage rate for part-time students. Two years ago I was President of the American Association of Presidents of Independent Colleges and Universities, and I know that many of these colleges and universities (many of whom only have from 500 to 1,000 students) could not survive if they had to pay \$2.00 an hour for part-time help. Indeed, many have closed their doors at \$1.60 per hour.

In a talk delivered at the annual meeting of the Association of American Colleges, held in Cincinnati, Ohio, on January 12, 1971, Chancellor Howard R. Bowen, of Claremont University Center, Claremont, California, stated the case for private higher education. He said, in part, that the need for numerous and strong private colleges and universities is compelling, although not widely understood. In his words: "The alternative would be higher education as a monolithic public enterprise. Such a system of higher

education would be managed by absentee state boards and central state bureaucracies, they would be heavily influenced by Washington, they would be readily susceptible to politics, and they would often be marred by impersonality and uniformity. The role of the private sector is to provide diversity and leadership and in so doing to serve the public sector of higher education as well as the society at large . . . Through the diversity offered by private institutions, the higher educational system can serve the needs of more people and offer more choices to students and their parents than would be possible, or at least likely, in a public system of higher education . . . In practice, the entire academic community has looked to the top private institutions -- large and small -- for leadership, and their example has been a major factor in the freedom and advancement of the public sector."

The importance of preserving the nation's private, non-profit institutions was recognized in the annual report of the Carnegie Corporation in February of 1971 in a statement to the effect that any real solution to the financial problems of said institutions must begin with a clear appreciation

by the nation's top political leaders of what the collective presence and vitality of private institutions mean to the nation. In said report, the president of Carnegie Corporation, Alan Pifer, said: "These leaders, rather than simply mirroring public ignorance and apathy, must educate the public, and, where necessary, convert it, to a sense of active concern over the future of our traditional system of shared public and private effort and responsibility; and, in this task, our political leaders must be supported and reinforced by other leadership elements in the nation. Nothing less than this kind of impetus from the top will provide the basis for the great variety of measures which will be needed to preserve and revitalize the position of our private institutions."

It is already evident that rising costs are driving away middle-income students and turning their campuses into places for the poor (supported by scholarships) and the rich, thus slowly squeezing out the middle class.

The proposal for an increase in the minimum wage takes on a special meaning for private institutions at this time because of the precarious financial condition of most of them.

I am certain that the members of the Subcommittee are aware of the financial plight in which American colleges and universities now find themselves. Some two years ago, at the close of a survey of the nation's private colleges and universities, The Association of American Colleges reported that the average private institution in every region of the country is "firmly in the red." Some of the private institutions have commenced austerity programs to balance their budgets, while others have been the subject of federal legislative action to increase funds in their behalf. This alternative has, however, recently been struck down by the United States Supreme Court.

In April of 1971, announcement was made of the results of a study of the independent colleges and universities in Pennsylvania. It showed the difficult financial condition of said institutions and stated that:

Clearly the independent sector will not be able to maintain anything like its present share of new enrollment in the Commonwealth. As a consequence, either much of the new enrollment demand will not be accommodated, or,

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as is much more likely, the public sector of higher education will have to absorb the increase.

According to a study released by the Carnegie Commission on Higher Education in December of 1970, this serious crisis facing higher education can be overcome only by a massive national effort. Perhaps such an effort could come through asking the taxpayers to contribute substantially more funds to support public schools--but I submit that it could be better aided by permitting private colleges and universities to pay a reasonable wage to students who need part-time employment and thus assist a maximum number of them to have jobs while going to school. As far as my university is concerned, we do not want to obtain Federal Aid.

There are some who would argue that juvenile delinquency is aggravated by low wages paid to teenagers. Others have said that the payment of lower wages to young people would displace older workers and create a low-labor pool. None of these fears could be raised against permitting colleges and universities to pay lower, but reasonable, wages than required for others,

because the work in itself would help to avoid juvenile delinquency and the campus part-time jobs would not be available to non-students and, therefore, could constitute no displacement of older workers and no creation of a low-labor pool.

Students who are employed while attending school are generally not as efficient as they would be on a full-time basis. Therefore, a lower rate for them would be justified.

One of the arguments in favor of the higher minimum wage is that it will help to eliminate poverty. But if a student is unable to obtain a college education because he cannot get part-time employment while attending school because the higher wage rate has required a reduction in the number of student employees, his ability to rise above the poverty level may be destroyed. In addition, he will have been prevented from providing better educational opportunities for his own children.

What good will come to a student to know that he must receive \$2.00 an hour instead of \$1.60 if the requirement of the law that his university must pay him the higher amount means that he must pay a higher tuition, or is

the thing that keeps him from being employed at all and, therefore, prevents him from completing his education.

If America is to realize the maximum value from its manpower, we must maximize the opportunities for its youth to get a college education. Furthermore, our young people should be given every opportunity to complete their schooling, to earn their own way and not rely on the government to pay the cost. Many of them need to work on a part-time basis to do so. When they have achieved academically, they become a potent weapon against poverty.

It is apparent that today the nation's private educational institutions would be unable to give part-time employment to a maximum number of students if the minimum wage were to be increased for students employed by the colleges and universities they attend. Therefore, I respectfully ask that if the Fair Labor Standards Act of 1938, is to be amended, it exempt from its minimum wage requirements, students who are employed by the universities and colleges they attend. This could be accomplished by inserting a new paragraph after Section 213(a)(14) of the Act, as follows:

"(15) any student regularly enrolled at an institution of higher learning, and who is working for that institution on a part-time basis to enable him to obtain means necessary to graduate."

Another alternative that might have better appeal to the Committee, and that might have more equity in it, would read as follows:

"This provision for an increased minimum wage shall not apply to students working part-time in private institutions of higher learning, whose tuition is no more than \$1,000 per year."

The benefit of this amendment would be that students who attend institutions who charge less than this amount would still be able to work at the present rate of \$1.60 an hour and obtain their education. In my institution, for instance, where the present rate is only \$600 per year, we have had only one complaint from a student who thinks that our rate of pay should be higher. In institutions whose tuition is \$1,500 or higher, it is understandable that

part-time students would have to have a pay of \$2.00 an hour in order to be able to meet their financial needs.

Ernest L. Wilkinson

President-Emeritus
Brigham Young University
September 21, 1971



AAPICU

American Association of Presidents of Independent Colleges & Universities

September 27, 1971

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ACTING EXECUTIVE DIRECTOR

Mr. John T. McCarty
Assistant to the President
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TESTIMONY OF JOHN T. McCARTY,
ACTING EXECUTIVE DIRECTOR OF
AMERICAN ASSOCIATION OF PRESI-
DENTS OF INDEPENDENT COLLEGES
& UNIVERSITIES, BEFORE THE SUB-
COMMITTEE ON LABOR, SENATE
LABOR AND PUBLIC WELFARE COM-
MITTEE, ON THE PROPOSED FAIR
LABOR STANDARDS AMENDMENT
OF 1971

Mr. Chairman and the Members of the Sub-Committee:

My name is John T. McCarty and I live at 1837 National Avenue in Rockford, Illinois. I serve as Assistant to the President of Rockford College in Rockford, Illinois, and as Acting Executive Director of the American Association of Presidents of Independent Colleges & Universities.

Approximately 125 presidents of private colleges are members of our Association. Obviously the proposed increases in the minimum wage would affect each college differently. For example, President Emeritus Ernest Wilkinson of Brigham Young University has told you that the increase would cost his college \$1,310,000 annually. The Rockford College cost would be increased by \$15,000 annually. However, the difference in costs is not as important as the fundamental principle involved, namely the right of each college locally to pay its students for part-time work at a rate consistent with their income, their availability of



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students and local wage rate structures.

I urge the members of this committee to re-examine the economic effects which would result if you increase these minimum wage rates. I understand your political, social and perhaps moral inclinations which have helped you and your associates in the past to want to increase wages in order to help workers increase their purchasing power. However, the facts tell us that this has not happened. Furthermore, as noted in the attached testimony of Professor Yale Brozen of the University of Chicago, the history of increasing minimum wages reveals that the young and the old of our society have been denied jobs because their output would not justify the mandatory minimum wage.

I suggest that increasing the minimum wage at this time would not only harm business but would cause thousands of employees to lose their jobs. Further, the important contributions made by business to education in this country would be seriously curtailed.

Business and education have been partners for many years. It has been a satisfying and rewarding partnership for education because business pays more than 50% of all local taxes levied for educational purposes. In the past business has looked to education to furnish it with graduates who have been schooled in attitudes and habits in addition to training in the basic subjects of arithmetic, English, etc. Business would then enroll their new employees in various training programs to be taught the needed skills.



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As a former businessman working now in education, I want to review this common partnership between business and education in hopes of enlisting your support for eliminating a serious roadblock to the American Way of Life. I define this roadblock as political gullibility bred by economic ignorance. I suggest that we must stop seeking political solutions to economic, social, military and moral problems.

Here are four other economic misconceptions--or fallacies--which should be exposed: (1) Increasing the minimum wage rates will insure marginal workers receiving a higher percentage of income. (2) A little inflation is a good thing. It creates employment and raises wages. (3) Government can cure recessions, guarantee full employment, and raise money by taxing corporations, or the "rich." (4) Increased wage rates automatically mean increased buying power, and all the benefits of increased productivity should go to the unions.

Private businesses, private colleges, like all private institutions, can exist only as long as the public allows them to exist. This is why the fundamental objective of business also constitutes its basic obligation to employees and community neighbors. Specifically, this obligation is to produce profitably the goods and services which customers want to buy. Only by so doing can the business grow and help the community to grow by providing steady jobs, payrolls and civic contributions.



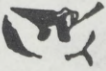
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I suggest the job ahead for Senators is to understand and help others to understand that business is not buildings, or machinery, or inventory or money. Rather, business is people! Business is people dealing only with each other...with the willingness of each, on a something-for-something basis, to give an equal value in return for what he wants. Business thus concerns itself with things only through people...and then only as the result of people indicating they need or want those particular things. A business is simply a gathering of people who have volunteered to do things for each other.

The ability to operate a business profitably more and more depends upon local, state and federal government decisions which in turn demands an informed, able and articulate public. Yet the main problem confronting all Americans today is Mis-Led Public Opinion leading to political gullibility which results in political solutions to economic, social, moral and military problems. We must reverse this trend by encouraging all business and professional men and women to participate in politics in order to get economic solutions to economic problems. Women are desperately needed to eliminate public ignorance of government spending because women do most of the purchasing today.

I believe a vacuum exists in our education which we must fill. Here are 12 principles which must be taught if students are to be better prepared for business:



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1. Why Man Works, and How Man Works
2. The Basic Formula for Making a Living ($MMW = NR + HE \times T$)
Man's Material Welfare = National Resources + Human Energy x Tools
3. Production - The Source of All Purchasing Power
4. The Role of Human Energy - Muscular and Mental - and Its Rewards:
Wages, Salaries, Benefits, etc.
5. The Role of Tools - Where They Come From
6. The Role of Profits: (1) as a Reward for the Use of Tools (2) as
an Essential Cost of Production (3) as the Source of All Public
and Private Charity
7. Why the Customer, Not Management, is the Employer
8. The Role of Government in a Free Competitive Economic System
9. Why Business Does Not Pay Taxes, But Rather Collects Taxes
10. What System Produces the Greatest Good for the Greatest Number
11. The Role of Discipline, Self-Control, Individual Incentives, and
Personal Responsibility
12. The Basic, Unchanging Economic Laws.

Further, I think we have to learn, and help others to learn,
that there are two kinds of work and two kinds of pay. The first
is accomplished by the minds and muscles of people and the pay
for this is in the form of wages or salaries and benefits. The second
kind of work, which represents 90% of today's work, is done by
machinery. The pay for this type of work is profits. It is the pay
for the use of money invested by share owners to provide machinery



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and facilities for employees. But, more important, I find that share owners expect and prefer not to receive the full current reward for their investment and risk. They expect and demand that a goodly portion of the profit be reinvested in the business, so that the enterprise may expand and increase their equity, provide even greater job opportunities, with the added benefits for the economy.

Finally, like you Senators, I want to do everything possible to strengthen the American private enterprise system of risks and rewards so that any citizen who want to work will be able to maintain the dignity that comes from being able to work in any job commensurate with his abilities. If you insist on arbitrarily increasing the minimum wage that must be paid regardless of skills and need, then you will be sentencing to a life of welfare and relief a large number of young and old people who will not be hired because you have denied them of the opportunity to work at rates to be determined locally by agreements with the employee and the employer.

For the record, I am including as part of my testimony the article entitled "Making More Jobs For Young Americans" in the September 21, 1971 issue of Nation's Business and an editorial from the Chicago Tribune on the minimum wage in the State of Illinois.

Also attached as a pertinent part of this testimony is a statement by Professor Yale Brozen of the University of Chicago.

Thank you.

Making More Jobs for Young Americans

We could do it, many say, with a separate minimum wage for teen-agers

The Dean & Barry Co. paint store in Urbana, Ohio, doesn't hire part-time teen-age help any more.

But it used to.

So did all the other 39 Dean & Barry retail stores. Now only the larger ones do.

"Most of our paint stores are in small, county-seat towns," says Robert S. McKay II, president.

"In the summer, almost all used to hire high-school boys. They stocked shelves, swept up and did other chores.

"We used to pay them \$1 to \$1.25 an hour.

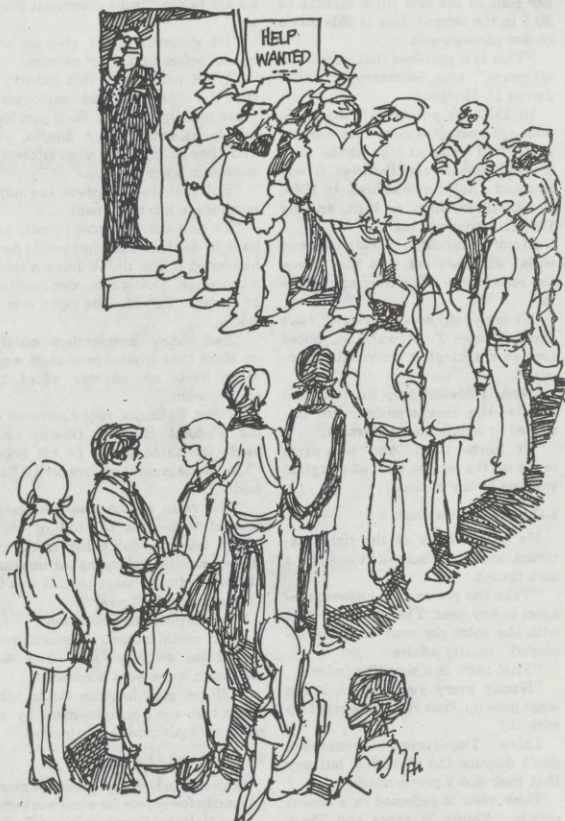
"Usually, they worked full time in summer. The rest of the year, they worked a few hours after school and on Saturday. Maybe 10 to 15 hours a week. They were just extra, supplemental help.

"Then the minimum wage law made us pay them \$1.60 an hour. So we stopped hiring most of them. That took away about 15 to 20 jobs.

"But the smaller stores just couldn't take the tab."

In Chicago, the same law has helped dry up job opportunities for other young people.

Carson, Pirie, Scott & Co., a giant Chicago department store, used to hire several hundred of them to fill summer jobs.



When employers shop in the labor market, teen-agers tend to be the last job-hunters considered—unless the price is right.

"We hired girls for our College Boards, for example," says C. V. Martin, board chairman. "They were sort of assistant clerks, models and fashion coordinators. We hired boys for jobs like stock boy or to work at our soda fountain.

"But we didn't have nearly as many this summer as we did before.

"One factor is the economy. But another is the minimum wage. It's just too high for these marginal, non-adult jobs."

He adds: "It's a tragedy, on two counts.

"Not only do young people lose the chance to earn some money. They

also miss an opportunity to learn what it is to work in a department store—and perhaps decide they'd like to become merchants.

"It was kind of a vocational training."

Old story for the young

The unadjusted jobless rate for teen-agers has climbed to 19.7 per cent.

In inner city poverty areas, it has skyrocketed, from 23.2 per cent in the first quarter of 1971 to 28.5 in the second.

For those areas' black teen-agers, the rate was even worse—from 34.2

per cent in the first three months to 39.1 in the second. Nor is this just a recent phenomenon.

"This is a problem that goes back 40 years," says Secretary of Labor James D. Hodgson.

In 1930, he points out, the U. S. teen-age unemployment rate was one and a half times as high as the total unemployment rate. By 1948, it was two and a half times as high. In 1963, it was three times as high, and by 1969 four times as high.

Many economists, statisticians and social scientists are sure they know the reason why: The minimum wage law.

"It may help some workers," says Prof. Charles T. Stewart Jr., noted George Washington University economist.

"But it doesn't help the marginal people—the inexperienced, the unskilled or handicapped workers.

"It hurts them. And teen-agers make up the largest pool of marginal workers in the nation."

Like a sore thumb

He adds: "Look at the right statistics, and that fact sticks out like a sore thumb.

"Take the per cent of jobless teen-agers in any year. Then compare that with the total per cent of all unemployed—mostly adults.

"That ratio is a sensitive index.

"Nearly every year the minimum wage goes up, that ratio goes right up with it."

Labor Department economists don't dispute the statistics, but say that they don't prove much.

Their view is reflected in a recent article, "Young Workers and Their Earnings," which appeared in the Department's *Monthly Labor Review*. Author Vera C. Perrella, a Labor Department economist, says:

"According to one theory, minimum wages have unemployment and disemployment effects for the youngest workers because their productivity is low and employers are less willing to hire them than older, more productive workers, even when older workers have to be paid appreciably higher wages.

"The data neither support nor contradict this argument."

"But the Labor Department stud-

ies are faulty," says economist Stewart.

"Its statistics don't give an adequate 'before and after' picture.

"What happens in this country is that the economy—and employment—are usually growing. So if you look merely at employment figures, you find they're growing, even after the minimum wage goes up.

"But that doesn't prove the minimum wage has no impact.

"To find out if it does or not, you have to do this. Ask what would have happened if you didn't have a minimum wage. That's a harder question to answer. But it's the right one to ask.

"And many independent studies do show that federal minimum wage rates have an adverse effect on employment."

Arthur F. Burns, now chairman of the Federal Reserve Board, once made the same point. In his book, "The Management of Prosperity," he said:

"The ratio of the unemployment rate of teen-agers to that of male adults was invariably higher during the six months following an increase of the minimum wage than it was in the preceding half year."

Then he posed this question.

What would happen if the economy stayed on an even keel—and the minimum wage were boosted?

A 25 per cent increase would hike white teen-age unemployment by as much as 8 per cent, he estimated.

The end of the line

Why does a law that promises more pay mean fewer jobs for some workers?

The National Commission on Technology, Automation and Economic Progress explains it this way:

"We have found it useful to view the labor market as a gigantic 'shape-up', with members of the labor force queued up in order of their relative attractiveness to employers.

"If the labor market operates efficiently, employers will start at the head of the line, selecting as many as they need of employees most attractive to them. Their choice may be based on objective standards relating to ability or on dubious standards of race, sex, or age; wage differentials may also be important; and formal

education may be used as a rough screening device.

"The total number employed and unemployed depends primarily on the general state of economic activity.

"The employed tend to be those near the beginning and the unemployed those near the end of the line."

But that's true, it notes, only if those at the head of the line—and those at the end—all cost the same.

If the price is right, tail-enders stand as good a chance of landing the job as the front-runners.

"The choice between low-skill and high-skill manpower," it says, "is made on the basis of relative costs."

Lack of jobs for young, inexperienced workers hits black and white alike.

But it hits black young people hardest.

"Minority teen-agers, mostly black, suffer more than anyone," says Yale Brozen, professor of business economics, University of Chicago.

"In 1950, 1956, 1961, the minimum wage was raised by Congress. There were a series of increases between 1967 and 1971.

"Every time, black teen-age unemployment rose too.

"This year, it has reached a shocking level.

"It's not racial discrimination that's causing this. Otherwise, we'd have to argue that every time the minimum wage goes up, antiblack feeling intensifies, too."

Prof. Paul A. Samuelson of Massachusetts Institute of Technology is equally critical of the law's effect.

"What good does it do to a black youth to know that an employer must pay him \$1.60 an hour—or \$2.00," he asks, "if the fact that he must be paid that amount is what keeps him from getting a job?"

Another boost?

Congress is now considering raising that minimum to at least \$2 an hour—for youngsters as well as adults—as soon as Jan. 1, 1972.

That would simply compound the felony, critics say.

Black unemployment may be one of the most explosive consequences of pricing "those near the end of the line" out of the labor market.

Earlier this year, a task force of

Making More Jobs for Young Americans *continued*

The Twentieth Century Fund took a look at this "urgent problem," which, it says, "is daily growing more acute."

In a report called "Youth Unemployment: Crisis in the Cities," it took this grim look at the future:

"More young black people will enter the job market in the decade ahead, and they will represent a higher proportion of all new entrants than they did in the past. Teen-agers among blacks and other minority groups will increase from about 2.1 million in 1970 to 2.6 million in 1980—a gain of 24 per cent. . . .

"Only at the gravest peril to our society can the American people continue to ignore the growing frustration, despair and hostility that characterize more and more young black people. After a childhood and adolescence stunted by deprivation, rejection and neglect, these young people want the opportunity to support themselves and live useful lives."

Jobs are the cure, it says, although a lower minimum wage for young workers is not one of the remedies it touts.

Sar A. Levitan, one of the task force members who produced the report, feels differently. Mr. Levitan, head of the Center for Manpower Policy Studies, says:

"I tried to persuade the task force to come out for a dual minimum wage—a lower minimum for young people, a higher one for adults.

"Our focus was on black youth.

"In lots of cases, the minimum doesn't help them. Sometimes they're beat out of jobs covered by the law—or pushed out into uncovered employment.

"I think it has a similar—if less severe—effect on white youths, too."

Would teen-agers work for \$1.60 an hour or less?

As a matter of fact, many of them do now. Or did at the time of the latest Labor Department survey in October, 1969.

More than half—51 per cent—of all working 16- and 17-year-olds made less than \$1.60. Seventy-six per cent made less than \$1.75. The median pay for all of them was \$1.58.

Older teen-agers made more. Of employed 18- and 19-year-olds only 21 per cent made less than \$1.60. But 41 per cent made less than \$1.75. Their

median pay was \$1.87. Teen-agers without work evidently eyed jobs like these enviously. Of those 16 and 17 years old, nearly 6 out of 10—58 per cent—said they'd be glad to take one that paid less than \$1.60 an hour.

Nearly 9 out of 10—85 per cent—were willing to work for less than \$1.75.

Experts say the Labor Department's own statistics show that a boost to \$2 an hour, as some bills in Congress propose, is unnecessary and probably harmful.

"I'm sure a dual minimum wage, pegged at \$1.60, for teen-agers is not a cure-all for youth unemployment," says Mr. Levitan.

"But I think it's a worthwhile experiment."

Hodgson's choice

Labor Secretary Hodgson takes a similar slant. He has urged Congress to keep a \$1.60-an-hour rate for workers under 18 and for full-time students under 20.

In his huge, panelled office on the third floor of the Labor Department building in downtown Washington, he discusses the issue.

"The man who is new on the job," he says, "is worth less than the man who is experienced.

"The worker who is skilled is worth more than the unskilled. And the mature adult who has disciplined himself to work is worth more to an employer than the youngster who

hasn't. That's the way the world of work works.

"We want to give an employer an incentive to give these younger people their first job. And the way to do it is have a wage differential that makes hiring them attractive.

"The Labor Department has figures which show that when there's a pay differential of about 20 per cent, it will stimulate the hiring of youth."

"A youth differential," he says flatly, "will have the effect of encouraging employment opportunities for young people."

Many other countries have the kind of "youth differential" which Secretary Hodgson describes.

That's true, for example, in Western Europe and Japan.

There, youngsters have had far better luck at landing jobs than American teen-agers.

The latest period for which complete published figures are available is 1960-64. The table below, from the Bureau of Labor Statistics, shows youth unemployment rates, at that time.

Is this cause and effect?

"The evidence from abroad," the Labor Department concedes, "indicates that low wages for youth are an inducement to employers to seek young workers eagerly. The relatively low youth unemployment rates abroad are partially a reflection of that fact."

Any questions?

END

Unemployment rates and the youth-adult unemployment ratio for selected countries

Countries	Unemployment rate, all ages		Youth unemployment rate		Youth-adult unemployment ratio	
	1960-64	1967-68	1960-64	1967-68	1960-64	1967-68
Germany (1961-67).....	0.3	1.1	0.3	1.1	1.0	1.0
Netherlands (1960).....	0.9		1.4		1.8	
United Kingdom (1961-67).....	1.3	2.0	0.9	2.2	0.6	1.1
Sweden (1964-67).....	1.7	2.6	3.9	6.1	2.6	2.9
France (1960).....	2.1		6.6		4.4	
Belgium (1960).....	2.5		4.0		1.7	
Italy (1961-67).....	3.4	3.5	9.3	11.4	4.9	5.7
Japan (1962).....	0.9		1.4		1.6	
United States (1960-64).....	5.5	3.6	14.7	12.7	3.3	5.5

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Page Editor

Tuesday, July 20, 1971

LABOR WINS AGAIN

It appears likely that Gov. Ogilvie will sign legislation establishing Illinois' first state minimum wage law. Too bad, but in today's political climate, it is apparently inevitable.

The governor, and a great many other rational people, have long considered a minimum wage self-defeating. Aimed at protecting elderly, teen-age, and semi-skilled employes from economic hardship, the laws passed by other states and by the federal government have often proved disastrous for them. Operating at a marginal profit, employers in small concerns will fire such workers because they cannot afford the financial burden the wage law demands.

Ogilvie made much of this point in earlier comments on the minimum wage bill, but may now have to recant. With the present legislature described by Sen. John A. Graham (R., Barrington) as "an arm of the AFL-CIO," a veto of the wage bill would only result in passage of another one, and quite possibly a veto would be overturned.

It would in any event alienate the labor vote, and Ogilvie has enough political problems as it is.

Of course, the bill could have been worse. As originally proposed by Democrats in the House, the bill called for an immediate minimum wage of \$1.60 an hour effecting nearly every worker in the state.

Senate Republicans, however, led by Sen. William C. Harris (R., Pontiac), managed to alter this considerably, amending it to begin with only a \$1.40 minimum wage, which would not be increased to \$1.60 until Jan. 1, 1973. The G. O. P. was also able to exempt businesses with five or fewer employes from the bill and effect other changes making the measure palatable to Illinois business and industry spokesmen.

Rep. Thomas Hanahan (D., McHenry), sponsor of the legislation and a union business agent, was furious at the Republican alterations but accepted them to get his law on the books. He told a TRIBUNE political reporter that he now plans a succession of measures to strengthen the law, starting when the legislature reconvenes Oct. 5.

We hope Sen. Graham and others will keep a careful eye on such efforts.

Hanahan also plans to revive this fall his notorious House Bill 1, which permits police, firemen and all other public employes to strike, and requires union membership by all if called for in a collective bargaining election.

As shown by the recent actions of the greedy Chicago Teachers Union and public employes in other cities, this bill portends disaster and should be defeated. We are pleased to hear reports that Mayor Daley may have similar feelings.

Odd as it may seem, the unions did not win everything this legislative session. A bill calling for an eight hour maximum work day, a 48 hour maximum work week, voluntary-only overtime, and other terrible things was soundly defeated.

Unfortunately, the dead measure also included a provision for equal pay for equal work for women, but Sen. Esther Saperstein (D., Chicago), the sponsor, should have known better than to have tried tying good and evil together in the same package.

STATEMENT BY PROFESSOR YALE BROZEN
ON BEHALF OF
THE AMERICAN ASSOCIATION OF PRESIDENTS OF INDEPENDENT
COLLEGES AND UNIVERSITIES

My name is Yale Brozen. I am Professor of Economics at the University of Chicago. I also serve as Director of the Program in Applied Economics which is held each summer at the University of Chicago for professors of economics.

The American Association of Presidents of Independent Colleges and Universities has asked me to comment on what would be the consequences of the enactment of the proposed legislation on minimum wage rates currently being considered by this committee if no exemption for students is provided from the provisions of this legislation. In summary, application of the provisions of the proposed legislation to the employment of students would deny many students the opportunity for gainful employment, impair their educational opportunities, raise the costs of operations of many public and private colleges--especially those outside of major metropolitan centers--and force more college closings than have already occurred because of the consequent deterioration of their financial health.

First, I should point out that an increase in the minimum wage rate for students will reduce their incomes. It has sometimes been argued that a rise in the minimum wage lifts people out of poverty. Actually, it forces a great many into poverty by causing unemployment. We have already seen job losses caused on some college campuses where student assisted union organizing campaigns have forced wage rates to \$2.00 an hour and higher for student employees in dormitory and food service operations. The result has been to force these colleges to discontinue

many of their on-premise food preparation operations. Instead of peeling and french cutting their own potatoes, they have turned to the use of frozen, french cut potatoes prepared by machines in central processing plants. Similar actions have been taken with a variety of other foods ranging from off-premise prepared vegetables to portion controlled servings of meat.

In addition to substituting off-premise prepared foods for the use of student labor in preparing food on-premise where wage rates have already been forced up to the \$2.00 an hour level, services have been discontinued which were once provided. On those campuses where wage rates have moved to this level, bus boys are no longer hired to bus dishes. Students are now required to bus their own dishes in student cafeterias. College snack shops no longer operate sixteen hours a day. They have either discontinued operation or cut their hours to eight a day or less and close on Saturdays and Sundays, with a consequent loss of jobs for the students they formerly employed.

Incidentally, I should cite one instance where the discontinuance of a college snack shop operation caused such inconvenience to students that they petitioned the college administration for permission to reopen the shop as a student run operation. That shop now operates under student management with student volunteers whose wage is zero.

If a minimum wage is enacted which forces an increase in wage rates on campuses where wage rates are not yet at the proposed level, similar economies will be forced on these colleges with a consequent loss of jobs for students. Services in dormitories will be reduced with students called upon to make their own beds and clean their own rooms with once a week service instead of once a day service. Student cafeterias will reduce

-3-

hours of operation. Where lunch is provided from 11:00 A.M. to 2:00 P.M., hours will be shortened to 11:30 A.M. to 1:00 P.M. Similar reduction in food service will have to be made at other meals.

You will also find standards reduced for the maintenance of college grounds and college buildings. Instead of lawns being mowed once a week, they will be mowed every two weeks. Instead of waste baskets being emptied every day, they will be emptied every other day.

Every category of college operation will feel the effects of an increased minimum wage for students. Library operations and hours will have to be curtailed. Student assistance for professorial research will be reduced. Secretarial services now manned by students will be reduced in scope. Windows will be washed less frequently. Fewer ushers will be hired to assist patrons in finding their seats at college football and basketball games. Hours of operation of college swimming pools and gymnasias will have to be curtailed to economize on the use of more expensive student life guards and supervisors.

Even with such economies, a rise in costs will occur which will force an increase in student fees and tuition at both publicly and privately operated colleges. Public schools as well as private schools have found it necessary to raise fees as costs have gone up. The result of increasing educational expenses is a restriction on educational opportunities both because of the rise in costs and because of a decline in the opportunities for earning from employment the funds required to meet some portion of the cost of attending college.

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Some colleges have already closed because of the inability of their student bodies to earn the higher expenses that have been caused by rising costs. An enactment of an increased minimum wage applicable to student employment will further raise these expenses and further reduce employment opportunities for students.

One of the arguments made for a rise in the minimum wage is almost totally inapplicable to students. It has been argued that the present minimum wage does not provide enough income even with full time work to cross the poverty line of \$3,968. However, two points should be recognized concerning this poverty line. It is a definition of the poverty line for a family of four in urban circumstances. Most students do not support families of four and a great many are attending colleges in small towns, not in high cost metropolitan areas. The present minimum wage provides an income well in excess of the poverty line for a single person, which most students are, even in urban areas.

I should also add that most colleges in major metropolitan areas already pay in excess of the minimum wage without any legal compulsion. They are forced to do so by the competition of the numerous employers in these areas. It is these colleges in major metropolitan areas who have already led the way in reducing the use of labor because they have already suffered the high cost that would be imposed on colleges outside major metropolitan areas by any bill in such form. The practices they have instituted for economizing on the use of student help will spread to other colleges if you force an increase in wage rates in these other colleges. In the case of these other colleges, there will be little or no alternative employment available for students who are unable to get college jobs since the college is frequently the major employer in their area.

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For the sake of maintaining educational opportunity--for the sake of providing youngsters with the opportunity to obtain the training which will enable them to earn far more than the minimum wage in their adult years, employment of students should be exempted from the application of the increased minimum wage proposed.

American Association of Presidents of
Independent Colleges & Universities

1971 Membership

<u>College</u>	<u>Location</u>	<u>President</u>
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Arkansas College	Batesville, Ark.	Dr. R. William Wygle
Augustana College	Sioux Falls, S.D.	Dr. Charles L. Balcer
Averett College	Danville, Va.	Dr. Conwell A. Anderson
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Beloit College	Beloit, Wis.	Dr. Miller Upton
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Brigham Young University	Provo, Utah	Dr. Dallin Oaks
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Dominican College	Racine, Wis.	Dr. Thomas C. Stevens
Dropsie University	Philadelphia, Pa.	Dr. Abraham I. Katsh
Duke University	Durham, N.C.	Dr. Terry Sanford
East Texas Baptist College	Marshall, Tex.	Dr. Howard C. Bennett
Eastern Baptist College	St. Davids, Pa.	Dr. J. Lester Harnish
Edgewood College	Madison, Wis.	Sister Mary Cecilia Carey
Erskine College	Due West S.C.	Dr. Joseph Wightman
Fisk University	Nashville, Tenn.	Dr. James R. Lawson
Fort Lauderdale University	Ft. Lauderdale, Fla.	Dr. Stanley J. Drake
Gardner-Webb College	Boiling Springs, N.C.	Dr. Ernest E. Poston

<u>College</u>	<u>Location</u>	<u>President</u>
Grace Bible College	Wyoming, Mich.	John T. Dean
Green Mountain College	Poultney, Vt.	Dr. Raymond A. Withey
Hahnemann Medical College	Philadelphia, Pa.	Charles S. Cameron, M. D.
Hebrew College	Brookline, Mass.	Dr. Eli Grad
High Point College	High Point, N. C.	Dr. Wendell M. Patton
Hillsdale College	Hillsdale, Mich.	Dr. George C. Roche III
Hiram Scott College	Scottsbluff, Neb.	Dr. Walter E. Weese
Huron College	Huron, S. D.	Dr. Richard H. Timmins
Husson College	Bangor, Me.	Dr. Barkev Kibarian
Ill. College of Optometry	Chicago, Ill.	Dr. Eugene W. Strawn
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Jones College	Jacksonville, Fla.	Jack H. Jones
Judson College	Elgin, Ill.	Dr. Harm A. Weber
Kendall School of Design	Grand Rapids, Mich.	Lawrence O. Mailloux
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Manhattan College	Bronx, N. Y.	Br. Gregory Nugent FSC
Dr. Martin Luther College	New Ulm, Minn.	Conrad I. Frey
Marygrove College	Detroit, Mich.	Dr. Arthur W. Brown
Mater Dei College	Ogdensburg, N. Y.	Mother M. Immaculata SSJ
Meredith College	Raleigh, N. C.	Dr. E. Bruce Heilman
Milligan College	Milligan College, Tenn.	Dr. Jess W. Johnson
Mount Mary College	Milwaukee, Wis.	Sister Mary Nora Barber
Mount St. Mary's College	Emmitsburg, Md.	Dr. John R. Dillon
Nasson College	Springvale, Me.	John S. Bailey
Northrop Inst. of Technology	Inglewood, Ca.	Dr. Homer H. Grant
Olivet Nazarene College	Kankakee, Ill.	Harold W. Reed
Pa. College of Optometry	Philadelphia, Pa.	Dr. Lawrence Fitch
Phila. College of Textiles and Science	Philadelphia, Pa.	Dr. Bertrand W. Hayward
Principia College	Elsah, Ill.	Dr. David K. Andrews
Puget Sound College	Seattle, Wash.	Dr. James E. Ladd
Quincy College	Quincy, Ill.	Rev. Titus H. Ludes OFM
Robert Morris College	Coraopolis, Pa.	Charles L. Sewall
Rockford College	Rockford, Ill.	Dr. John A. Howard
Roosevelt University	Chicago, Ill.	Dr. Rolf A. Weil
Russell College	Burlingame, Ca.	Raymond N. Doyle
Sacred Heart College	Wichita, Kans.	Rev. Roman S. Galiardi
St. Bonaventure Univ.	St. Bonaventure, N. Y.	Rev. Reginald A. Redlon
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St. John's University	Jamaica, N. Y.	Rev. Joseph T. Cahill
St. Joseph College of Fla.	Jensen Beach, Fla.	Sister Mary Martha Shor

<u>College</u>	<u>Location</u>	<u>President</u>
St. Mary's College	Notre Dame, Ind.	Sister Alma Peter, CSC
St. Norbert College	West De Pere, Wis.	Dr. Robert E. Christin
St. Peter's College	Jersey City, N.J.	Victor R. Yanitelli
St. Vincent College	Latrobe, Pa.	Rev. Fintan R. Shoniker
Salve Regina College	Newport, R.I.	Sister Mary Christopher O'Rourke, RSM
Samford University	Birmingham, Ala.	Dr. Leslie S. Wright
School of the Art Inst. of Chgo	Chicago, Ill.	Dr. Donald J. Irving
School of the Ozarks	Point Lookout, Mo.	Dr. M. Graham Clark
Sherwood Music School	Chicago, Ill.	Walter A. Erley
Siena Heights College	Adrian, Mich.	Dr. Hugh L. Thompson
Southeastern University	Washington, D.C.	Dr. John P. Maurer
Southern College of Optometry	Memphis, Tenn.	Dr. Spurgeon B. Eure
Southwestern University	Georgetown, Tex.	Durwood F. Fleming
Spertus College of Judaica	Chicago, Ill.	Dr. David Weinstein
Spring Arbor College	Spring Arbor, Mich.	Dr. Ellwood A. Voller
Spring Garden College	Chestnut Hill, Pa.	Robert H. Thompson
Taylor University	Upland, Ind.	Dr. Milo A. Rediger
Texas Wesleyan College	Fort Worth, Tex.	Dr. William M. Pearce
Thiel College	Greenville, Pa.	Dr. Chauncey G. Bly
Thomas Jefferson Univ.	Philadelphia, Pa.	Dr. Peter A. Herbut
Tiffin University	Tiffin, Ohio	Richard C. Pfeiffer
Tri-State College	Angola, Ind.	Dr. Richard M. Bateman
University of Baltimore, Inc.	Baltimore, Md.	H. Mebane Turner
Wellesley College	Wellesley, Mass.	Miss Ruth M. Adams
Willamette University	Salem, Ore.	Dr. Roger J. Fritz
Woodbury College	Los Angeles, Ca.	Mrs. Dora E. Kirby
Wilkes College	Wilkes-Barre, Pa.	Dr. Francis J. Michelini
113 - York College of Pa.	York, Pa.	Dr. Ray A. Miller

Additional Members: 1971

Blackburn College
 Central Methodist College
 Goshen College
 Seminary of St. Pius X
 Upper Iowa College
 119 - William Jewell College

Carlinville, Ill.
 Fayette, Mo.
 Goshen, Ind.
 Erlanger, Ky.
 Fayette, Ia.
 Liberty, Mo.

Dr. Glenn L. McConagha
 Dr. Harold P. Hamilton
 Dr. J. Lawrence Burkholder
 Rev. Wm. C. Brown
 Dr. Aldrich K. Paul
 Dr. Thomas S. Field

ANY FUTURE FOR PRIVATE COLLEGES?

Interview With John A. Howard, Head of Association
Of Presidents of Independent Colleges and Universities

Money troubles, other ills plague the private colleges. Remedies are detailed by the president of Rockford College, who came to the conference room of "U. S. News & World Report" for this exclusive interview.

Q Dr. Howard, are many private colleges about to fold up, financially?

A I have the impression that a great many of them are in deep financial difficulty. It varies from imminent collapse to worry about whether they will survive, long range.

Q Are they running out of money, or—

A I think the financial situation of the private colleges is not the basic difficulty. In my opinion, that is just the consequence of a much deeper difficulty, which is that, in many cases, both public and private colleges have lost sight of the basic mission in education. And to the extent that this is true—or perceived to be true by the general public—the public is reluctant to give the colleges additional funds through gifts or aid from State legislatures and Congress.

Q Isn't everybody in favor of higher education?

A We have had an uncritical faith in the educational process in this country. We have had the idea that everything would be fine if we could shove all the young people through an educational machine that is characterized by high salaries and small classes, a proper racial mix, plenty of books in the library and plenty of equipment in the laboratory. This is naive. These mechanics of education are important; as we improve the mechanics, we can improve the efficiency of the educational vehicle. But if we haven't identified the destination, it makes no difference how fast the vehicle is traveling.

If you will examine the history of education, I think you will discover that all nations which have evolved a system of education have recognized that it must do two things: It must transmit knowledge and skills to the young, and it must provide an experience out of which will come people who can live affirmatively and creatively within the society which provided the education.

Q Is the public's "uncritical faith in education," as you put it, starting to weaken?

A Yes, it is changing rapidly, because we are seeing the consequences of failure, principally on the part of higher education, to concern itself with the development of responsible citizenry—the second half of the traditional formula.

Q In what way has higher education failed?

A In the first place, I think there has been a devastating failure of leadership.

We have had a transition over the last few decades from leaders who were chosen because they were educational philosophers to leaders who are principally professional man-



—US&WR Photo

Dr. Howard: "To the extent a private college sets forth its purposes with great clarity and delivers on them, that college has a strong chance not only of survival but of strength."

agers. The managers see their role as keeping the institution moving—no matter what the direction.

In times gone by, the presidents of colleges and universities were, in fact, leaders of their institutions who held aloft the purposes of the institutions. On important issues, they would use persuasion and, if necessary, their veto power.

Q Can you give us a specific example?

A Yes. As one illustration: It seems to me that when it became perfectly clear that the SDS [Students for a Democratic Society] was willing to use violent tactics to achieve its objectives—when it was confirmed that they had a workshop to train members in the manufacture and use of Molotov cocktails—at that point the educational leadership should have said to the SDS: "There is no place for you on the campus. Violence and intellectual processes are mutually exclusive."

Q If private colleges lack both leadership and public support, why shouldn't they be allowed to die off?

A Well, the prestige factor of private colleges has diminished as the public institutions have grown more numerous and enlisted their full share of distinguished scholars. If the private college is not doing something different from the public institution, or not doing things better than the public institution, then it really loses its justification and, naturally, its support. It seems to me that the private colleges really have—in many cases—perhaps forfeited their birthright.

Q How important are private institutions of higher learning in terms of students enrolled?

A The private colleges now enroll about 25 per cent of all students in this country, according to a 1970 survey.

ANY FUTURE FOR PRIVATE COLLEGES?

Q So if a substantial number of these private schools go out of business it will have quite an impact on education—

A Yes, and I think the impact will reach far beyond the numbers of students who would have to go elsewhere for college, or miss out entirely.

Q What kind of impact?

A In earlier times, when colleges and universities generally were masters of their own fate and delivered an education which had a particular character that varied from campus to campus, the graduates of those institutions would come together on the staff of "U.S. News & World Report," or in Congress, or as directors of IBM, for example. They would have different prejudices, different values, different concerns, different bits of knowledge, and there would be a big interaction—a nice, yeasty sort of thing. This interaction may have been one of the most important factors in the creativeness of American society in the last century or two.

Contrast this with France, where, it is my understanding, if you take a beginning economics course in any of the universities, you will answer exactly the same exam questions at the same hour of the same day as every other beginning economics student in the nation. Now, if you take the graduates of those universities and put them together, it will be a very different situation from what you get in a society where the college-trained people come out of slightly different or vastly different educational experiences.

Thus the demise of private colleges would diminish the variety and the yeastiness of our society.

Q For private colleges in the U. S. now, is it a question of survival of the fittest?

A I think this is true, yes. And I think those colleges which are perceived to be providing an education of great merit are not only surviving, but prospering.

Q Without federal aid?

A Yes.

Q What is the secret of their success?

A It is twofold: On the one hand, it is responsible management—not trying to be all things to all people, and determining upon a range of services they know they can provide. In the second place—and this is probably the more important of the two factors—it is the provision of educational services that are forward-looking, sound, and affirmatively related to the society.

I would cite among the small private colleges that fit that description Principia in Illinois, Hillsdale in Michigan, Hanover in Indiana, Grove City in Pennsylvania, and my own college, Rockford, in Rockford, Ill. I don't mean that's the total group, but I think these are representative of colleges which have used no federal funds, which are all operating in the black. But, much more than that, they have built new buildings, sustained or increased their enrollment, have been attractive to faculty as well as students, and certainly have attracted the funds necessary to carry on.

Q What is the general quality of the education they offer?

A Of course, one has to ask what is good education and what isn't.

I think this group of colleges holds its own pretty well in faculty salaries. I suppose the average College Board scores of students attending these colleges is a cut or two below that of students going to, say, Grinnell or Carleton, but certainly their students are not intellectual cripples by any means.

I suggest there are some erroneous assumptions about what adds up to a good education. One is that whatever a professor chooses to do is worthy because it is a professor who chooses to do it. Another is that whatever the individual departments of a college choose to do in their curricula will somehow add up to a cohesive and worthy educational program. A third is that whatever courses a student chooses and whatever he decides to do out of class will somehow add up to a worthy educational experience. I think all three of those, logically and by recent experience, turn out to be inappropriate assumptions.

Q In that body of assumptions, do you include the one that scholarly research in itself benefits students because it gives professors a broader knowledge, even if it means that students get less time with the professor?

A Yes. Although the research function is clearly necessary as a very important part of the totality of higher education, still it has been dominant in some institutions, and their undergraduates have suffered as a result. It seems to me that the liberal-arts college needs to place the educational service to its students above all other considerations. There is a place for research, but certainly it should not be coequal with the concern for the range of experiences provided to the student.

Q You spoke a short time ago about affirmative education. What do you mean by that?

A It seems to me that in order to provide worthy education to young people in a complex society, a college must

Reaffirmed: Rockford's principles. Says Dr. Howard, pictured with students: "A large proportion of youth believes man fulfills himself by being freed from all limitations. I believe this is upside down. At our college, we have taken the position that it is impossible for there to be an ordered society without accepted limits."



U. S. News & World Report

make some value judgments—set some specific objectives for students. And higher education has been reluctant to do this.

There has been the assumption that because the college student is old enough to have babies and get killed in Vietnam he is, therefore, old enough to make all the judgments about his conduct in his out-of-class experience for himself. I don't think this is correct. It isn't a question of how old the student is. It is that people with experience and training and a more comprehensive view of mankind need to make some judgments—for the benefit of the student.

Q Can you be a little more specific?

A Let me offer some illustrations:

First, it seems to me that an alert educational institution would examine such phenomena as the fact that much of contemporary culture—the novels, the poetry, the plays, films, the essays—is devoted to man in despair, man in difficulty, man degraded. This was not always so. In times gone by, a very large part of the works which one read in elementary and secondary school and in college dramatized man surmounting difficulty, man slaying dragons. And the people coming out of this kind of educational experience, I think, had a much stronger belief that man can conquer his difficulties than the typical student of today.

It seems to me that alert educators would recognize this aspect of today's society, and try to take measures to counteract it.

Another illustration:

The present orthodoxy among educators is that one proper aspect of academic freedom is that the institution of higher education should maintain a neutral position on public issues. Now, of course, there has been an argument about the politicization of education. And some would have colleges take a position on public issues. But, basically, academic freedom has been perceived to require that the college take no position.

I would suggest that good education would require controlled neutrality, so that if only one side of a major issue is being presented on campus, the institution would then see to it that responsible and well-informed spokesmen for the other point of view were brought into the deliberations to offer some balance.

Q Do you believe that private colleges—your school, for instance—can offer a better education than public colleges?

A For some people.

Q What kinds of people?

A It's those students who agree with our basic assumptions, one of which is this: By accepting restraints and obli-

gations, you will be able to lead a more purposeful and rewarding life.

I think a large proportion of the college-bound youth have somehow come to believe that man fulfills himself by being freed from all obligations and limitations. I happen to believe that this is exactly upside down, that man fulfills himself as he recognizes that limitations are necessary for humans to live together.

At our college, for instance, we have taken the position that it is impossible for there to be an ordered society without accepted limits. Carrying this into the operation of the institution, we have a basic policy that we will abide by public law. And when a student applies to the college, he receives a personal letter from me, saying:

"We think you've applied to a good college which offers a very challenging education. But you should understand that there are a number of things which set us apart from many institutions. We do abide by public law. That means we do not tolerate the use of illegal drugs on campus. We also have a set policy that we will treat our guests as guests, that there will be no picketing or effort of any kind to embarrass, harass, silence our speakers, or give a hard time to job recruiters."

And then we say: "If you will find this too restrictive a collegiate situation, then we believe you will serve yourself and us better by choosing to go somewhere else."

"A VERY CONGENIAL ATMOSPHERE"—

Q Do students ever decide not to come?

A Oh, yes. And some, I'm sure, decide to come because they perceive this as a beautiful, square college which they will enjoy shaking up. This poses a challenge to them and to us.

Now, the parents and the student may see this as a kind of education that will suit them. I can assure you that a number of faculty members perceive this to be a very congenial atmosphere in which to carry on their scholarly and teaching endeavors.

Q Does your college feel any responsibility for the conduct of its students off campus?

A To the extent that it's a question of trying to police their conduct off campus, no.

Q Do you see private colleges structured mainly for an elite group of students?

A Elite in what sense? Certainly not in terms of their

Rebuilt: Rockford's campus. Beyond loans and scholarships for students, "we have neither received nor sought any government monies, either in our educational program or in our construction program. And," adds Dr. Howard, "we are almost at the end of building a whole new campus. We have relocated the college."



ANY FUTURE FOR PRIVATE COLLEGES?

economic background. Fifty per cent of our students have financial aid, and we're proud of that.

The private sector of higher education still offers the opportunity for many different kinds of judgments about what a good college education will be, and for delivering on those different judgments. We have a number of recently created institutions that have, from the beginning, set forth as their objective the provision of the freest possible circumstances for the student, in contrast to what we have at Rockford. I think it is wholesome for different colleges to serve different ends.

It seems to me that, to the extent a private college sets forth its purposes with great clarity, and justifies those purposes, and delivers on them, that college has a strong chance not only of survival but of strength.

Q On survival: Are you able to charge your students enough to defray operating costs?

A The tuition and fees which the students pay at Rockford cover just about 60 per cent of the total operating costs of the college.

Q Would you say that is a fair percentage of costs to be borne by the student?

A I don't know what a "fair" percentage is. I think the private college must charge all the tuition the traffic can bear, and the best figure is the highest figure which will permit the institution to deliver on its objectives.

Q Do you think private colleges have mismanaged their financial affairs?

A You would have to examine each college. To the extent that they are in significant financial difficulty, one supposes they have made some misjudgments somewhere. But whether that's in budgeting, or in anticipating revenues, or in public relations, or in an educational program which may be out of date—or ahead of its times—I think this will vary enormously from institution to institution.

Q What kinds of men are needed to run colleges nowadays?

A If an educational institution is indeed that—if its purpose is to educate students—then it seems to me that the chief officer must be an educational philosopher first and foremost.

FEDERAL INFLUENCE: "A TRAGEDY"—

Q Who handles the financial books, then?

A The chief financial officer should handle the books.

In my judgment, the potential to hold to ideal educational leadership has been greatly diminished by the development of vast programs of federal grants. I would suppose that most major universities, in choosing their presidents, would have to conduct their presidential search among those people well acquainted with Washington, and that it may now be unthinkable to choose a president from outside the group of people who have all the right contacts in Washington. From where I sit, if that's true, it's a tragedy.

Q Why?

A Because it diminishes both the training of potential presidents in educational philosophy and experience, and tends to focus the selection process upon people who are involved in grant solicitation and grant policy-making.

Q Has your college received any federal aid?

A We have processed National Defense Education Act loans, since they are essentially directed to the students rather than to the college. We also, in the same vein, have processed Illinois State scholarships for our students.

Beyond that, we have neither received nor sought any government monies for the college, either in our educational program or in our construction program. And we are almost at the end of building a whole new campus. We have relocated the college. We have now completed 26 buildings without using any federal loans or grants. In the 11 years in which we've been developing our new campus, we have raised about 26 million dollars.

Q Who has put up that money?

A People in our own city have been exceedingly generous to us. Beyond that, we have enlisted generous help from individuals, foundations and corporations outside our city.

Q Do you favor any kind of federal aid to colleges?

A I think there is available a very effective means of transmitting funds from Government to higher education. It is one which a number of college presidents, including myself, have recommended for many years, and which is now before Congress. Under this legislation, the individual taxpayer would receive a tax credit of \$100 for a gift of that amount to a college of his choice. A corporation would receive a tax credit up to \$5,000 for gifts. Colleges could spend this revenue for whatever their needs are at the moment.

It seems to me this is far preferable to the technique which Congress has chosen: using direct grants for specific purposes.

We do not propose that the whole complex of grants be suddenly dismantled. Grants are so woven into the fabric of higher education that you would have a terrible collapse. We do suggest that tax credits be established at the federal level. This technique already has been established in Indiana and Michigan, applying to State income taxes. If it proves workable at the federal level, in time perhaps many of the programs of federal grants could be phased out in favor of comparable amounts of money realized through federal tax credits.

DOUBTING AN EDUCATION'S VALUE—

Q Dr. Howard, do you find many parents and students beginning to ask if a college education is worth what it costs in time and money?

A I have seen this reported by surveys and in the press. I don't have extensive first-hand experience, because in most cases the people I find myself in contact with know something about Rockford College and are talking to me precisely because they know what we stand for.

Certainly, I've talked with many parents who have been deeply concerned about the alienation or the cynicism or the hostility of their young people that seem to develop or be augmented while they're in college—and be in evidence when they graduate from college.

Somehow, in the minds of many young people, dissent, protest and confrontation have come to be looked upon as glory words, and good things in themselves. This, of course, is nonsense. Fuzzy thinking like this and hostility toward the society on the part of new college graduates are among the reasons why many people are wondering about the validity of college education.

Q Do you think a lot of young people are going to college just because other young people are?

A Undoubtedly a number are. There is no question but that a large number of people have gone to college in order to avoid becoming eligible for the draft. That generally has been unwholesome for education.

Actually, a college can only truly prosper as it serves students who are there with serious educational purpose and as it is able to deliver lively and responsible and worthy educational service to those serious students. [END]

1900

WILLIAM POLLOCK
General president

SOL STETIN
General Sec'y-Treas.

TEXTILE WORKERS UNION OF AMERICA



99 University Place, New York, N. Y. 10003

(212) 673-1400

Office of the
General Secretary-Treasurer

July 16, 1971

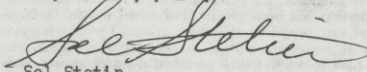
The Honorable Harrison A. Williams
U. S. Senate
Washington, D.C.

Sir:

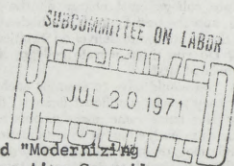
Enclosed is a copy of a resolution entitled "Modernizing the Fair Labor Standards Act" adopted by the Executive Council of the Textile Workers Union of America, on June 8, 1971, which will be of interest to you as a member of the Labor and Public Welfare Committee.

We urge your support of the objectives outlined in this resolution.

Respectfully yours,


Sol Stetin
General Secretary-Treasurer

SS/mf
Encl.



1901

RESOLUTION

Modernizing the Fair Labor Standards Act

The present minimum wage of \$1.60 an hour was barely acceptable even when it was enacted in 1966. In this year of 1971, after five years of steadily increasing living costs, it is completely inadequate. Moreover, millions of the nation's lowest-paid workers are still not protected by the Act.

An immediate increase in the federal minimum wage to at least \$2 an hour, leading to an eventual floor of \$2.50 in the near future, is a must, not only on the basis of the economic facts of life, but as a major step to help wipe out poverty. While this would bring the floor under wages not much above the \$3,700 poverty level for a non-farm family of four, it would represent a marked improvement over the \$3,200 such a worker earns under the present \$1.60 minimum wage.

In addition, the protection of the Fair Labor Standards Act should be extended to all workers, including those in smaller retail establishments, state and local government jobs, local transit systems, on the farms and in domestic household service.

THEREFORE, BE IT RESOLVED by the Executive Council of the Textile Workers Union of America, AFL-CIO, CLC, that we urge prompt Congressional action to:

1. Raise the federal floor under wages to at least \$2 an hour immediately, with an eventual minimum of \$2.50 an hour to go into effect in the near future.
2. Extend the Fair Labor Standards Act's coverage to the 17 million non-supervisory wage and salary earners who are still excluded from the law's protection.

###

TRANSPORTATION ASSOCIATION



OF AMERICA

1101 17TH STREET, N.W. • WASHINGTON, D. C. 20036 • Telephone: 296-2470

HAROLD F. HAMMOND
President

October 6, 1971

Honorable Harrison A. Williams
Chairman
Senate Committee on Labor and Public Welfare
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing you on behalf of the Transportation Association of America and respectfully request that this letter be included as a part of the record of the hearings before your Labor Subcommittee on S.1861. In expressing TAA's position, I confine my comments solely to those provisions of the pending bill which would repeal Section 13(b)(3) of the Fair Labor Standards Act of 1938 exempting employees of airlines, oil pipe lines and railroads from the hours and overtime provisions of Section 7 of the Act.

The Transportation Association of America, a national policy-making organization representing a cross section of users, investors and carriers of all forms, adopted the following position in 1960:

"There should be no changes in the present exemption provisions of the Fair Labor Standards Act applicable in the transportation of persons or property."

In the intervening years since the adoption of that policy, there have been a number of bills introduced in Congress which would repeal the historic exemptions from overtime provisions of the Fair Labor Standards Act insofar as transportation is concerned, and TAA, by testimony and other communications, has repeatedly expressed its opposition to such repeal. We are aware of no change in conditions or demonstrated public need that suggests to us our position be altered. On the contrary, depriving the airlines, railroads and oil pipe lines of the exemption would, in our opinion, create problems to the detriment of the public.

We concur fully with the views expressed before your Subcommittee by representatives of the airline, railroad and oil pipe line industry. I, therefore, will not burden you with a repetition of the detailed and convincing reasons those representatives cited in support of retaining the exemption provided by Section 13(b)(3) but will merely summarize what we feel are cogent arguments against repeal:

Supported in the national interest by users, investors, and all forms of transportation

1903

Honorable Harrison A. Williams

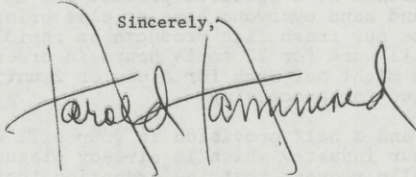
- 2 -

October 6, 1971

- 1) Repeal would not generate additional jobs or provide measurable benefits to the transportation employees involved. The evidence presented to the Subcommittee clearly shows that the current salary levels for transportation workers more than satisfy whatever compensation the maximum hour and overtime provisions would provide. Transportation workers are among the highest paid in the nation. A survey of current business by the United States Department of Commerce discloses that average annual wage or salary in 1970 for all private business was approximately \$7,500 while that for transportation workers was nearly \$10,000.
- 2) The transportation industry operates 24 hours a day, 7 days a week. Flexibility in the conduct of their operations is essential. Rigid 8-hour day provisions would unnecessarily obstruct attainment of that flexibility and disrupt collective bargaining agreements which not only amply protect transport employees on hours and overtime but also are adapted to operations unique to the transport industry.
- 3) Since repeal of Section 13(b)(3) would serve no real purpose, subjecting the transportation industry to such regulation by the Department of Labor would constitute nothing more than "regulation for regulation's sake", an approach strongly opposed by TAA for the past 35 years.

We, therefore, respectfully urge, Mr. Chairman, that the exemption from hours and overtime, as now provided for in the Fair Labor Standards Act, be retained.

Sincerely,

A handwritten signature in dark ink, appearing to read "Harold Amundson". The signature is written in a cursive, somewhat stylized script. There are some ink smudges and the signature is written over a light background.

HFH/pf

1904



SOUTHEASTERN FISHERIES ASSOCIATION, INC.

ALABAMA • FLORIDA • GEORGIA • NORTH CAROLINA • SOUTH CAROLINA

EXECUTIVE OFFICES: 224 CENTER BLDG. - (AC 904) 224-0612 - 330 SO. ADAMS ST. - TALLAHASSEE, FLORIDA 32301
ROBERT P. JONES - RESIDENCE PHONE: 877-3722 MRS. RICHARD M. LEE - RES. PHONE: 224-8255

June 18, 1971

Senator Harrison A. Williams, Jr.
New Senate Office Building 4230
Washington, D. C.

Dear Senator Williams:

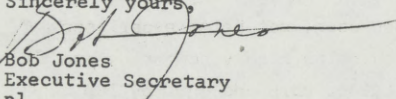
All of the members I represent here in the Southeastern United States are concerned about the provision in Senate Bill 1861 that would make it mandatory to pay the employees in fish processing houses time and a half for overtime. Most of my members pay more than the current \$1.60 per hour and many pay as high as \$2.25. There is not much objection to the increased hourly rates proposed because we all know that the cost of living continues to rise with all the programs the Government has going on and because of the conflict in Vietnam.

As you know, during the fishing season, we have no control as to how many pounds of fresh fish will be landed and readied for processing. Many processors process fish for individual fishermen who may bring in 30 to 40 thousand pounds in one day. And many times during the mullet season, fish will be brought in late in the evening and the employees work late into the night. This makes it impossible to process them in an 8 hour day. Our operation is not like a manufacturer who can control the production of a specific product and at the end of 8 hours, blow the whistle and send everyone home or else bring in another crew. We have to process our fresh fish products as rapidly as possible and many times a crew will work for 12 to 14 hours in order to get the job done. The same crew might not work for a day or 2 until more fish are brought in and readied for processing.

The time and a half provision in your bill would work a tremendous hardship on our industry which is already plagued with many problems and we respectfully request that the exemption that has been afforded fish processors be continued.

If it would be of assistance, I would be glad to try and arrange for some of my members to come to Washington to talk with you or your staff in detail on the practical aspects of the industry.

Sincerely yours,


Bob Jones
Executive Secretary
nl

cc: SFA Officers, Florida Congressional Delegation, Lee Weddig



Chesapeake Bay Seafood Industries Association

INCORPORATED

"A non-profit association of all those engaged in the commercial seafood industry in the State of Maryland."

P. O. BOX 1034

301 822-1440

EASTON, MARYLAND 21601

TESTIMONY

OF

WILLIAM R. PRIER, EXECUTIVE DIRECTOR

SENATE BILL 1861, JULY 22, 1971

In October of 1968 the seafood industry of the Chesapeake Bay was in such a desperate situation for labor to process its different species of seafood, an effort was made to create an on the job training program, so as to recruit new people to the industry.

This move was necessary because of the minimum wage rate being raised to \$1.60 per hour resulting in the discharge of many older and semi handicapped people who for years had earned to their capacity with pride and honor in their work.

These people did not want to be removed from the labor force and turn to welfare programs for their existence, they had worked long and hard, rearing families and in general being an asset to their community, but the law left them no choice, forced out of work and onto welfare.

In these cases not only do these people suffer but the entire industry suffers from lack of workers, which reduces the amount of product the watermen can catch, the amount the processors can produce, and the amount of good fresh Chesapeake Bay Seafood the consumer can buy and enjoy. The communities suffer from reduced income by this reduction in production which means less dollar flow into every merchants store or business, the chain reaction is tremendous.

Now people no longer even apply to the industry for work because they know they will be turned down, not being experience pickers or shuckers, and the industry being highly competitive can not afford to pay the difference in what they earn and what by law the government says they have to be paid.

There are youngsters who used to make their back to school money by picking crabs, shucking clams, in the summer months who find it difficult to maintain an average, equal to minimum wage, thus they are now loafing all summer trying to keep out of trouble

Page 2, Testimony of William R. Prier, Senate Bill 1861

through boredom.

The seafood industry today needs a shot in the arm, not a stab in the back which this Bill would do because undoubtedly the industry would again have to reshuffle its work force, leaving only a few skilled aging people to process the fruits of nature.

The industry today is faced with producing a high quality food much in demand at a price that makes it out of reason for the average consumer, who is clamoring for lower food prices, to raise the wage rate, take away its current overtime exemptions would only add to the problem and possible totally collapse the already shaky industry.

One possible ray of hope is machinery that will do the shucking of shellfish and the picking of crabs, which will operate with a bare minimum of people, allowing the majority of the present labor force to join the unemployed and welfare recipients even though unwilling to do so.

There is little wonder that our country is laboring under such a terrific tax load which threatens every citizens welfare. It seems our system is designed to have people draw money for not working rather than have them earn their way and improve their outlook and responsibility to themselves and our country as a whole.

Our little industry is not looking for a hand out, it isn't asking for a subsidy such as many other industries enjoy, it only wants a chance to work hard creating a product that must be made available, if you and I and our off springs are to survive, that product being life sustaining, good wholesome food.

We beg of you, do not make it impossible for us to give you, instead of having you give us.

STATEMENT TO THE SUBCOMMITTEE ON LABOR,
SENATE LABOR AND WELFARE COMMITTEE ON
S. 1861, THE 1971 AMENDMENTS TO THE
FAIR LABOR STANDARDS ACT OF 1938
AS AMENDED, TITLE 29 USC 201 etc.

made on behalf of

THE NATIONAL INSTITUTE OF DRYCLEANING

and

THE AMERICAN INSTITUTE OF LAUNDERING

The National Institute of Drycleaning and the American Institute of Laundering are national trade organizations with combined memberships in excess of twelve thousand (12,000) sole proprietorships, partnerships and small corporations employing over three hundred thousand (300,000) persons in the textile maintenance industry.

After years of exemption, the industry in 1966 voluntarily declined to seek a continued exemption and in consultations with Senate and House Committee Members, agreed to total coverage under the Fair Labor Standards Act pursuant to the amendments proposed at that time.¹ The industry's position was statesmanlike in that it willingly forfeited a favored position under the law and declined to pursue any exemption advantage over the other business concerns subject to the Act.

¹Title 29 U.S.C. 203 (s) (2), Public Law 89-601 § 102(c), 1966

The Congress of that time recognizing the arduous financial adjustments on small business, adopted a graduated formula for wage coverage and overtime provisions to provide an orderly change for newly covered industries such as laundry and dry cleaning.²

As of this year the smallest members of the industry have absorbed annual salary increases since February 1, 1967. This year the neighborhood dry cleaner and the small launderer is subject to the same minimum wage and overtime law as large industrial corporations.

Complying with the law has been a bittersweet experience; however, the industry has complied.

The officers and directors proffer qualified opposition to S. 1861 and constructively recommend an equitable alternative for the Senate's consideration. The industry representatives urge a change in the procedure for increasing the wage; specifically, legislative increases should be discontinued in favor of an automatic or escalator concept measured on an annual basis against increases in the Federal Cost of Living or Consumer Price Index.

The following amendment is submitted for the Committee's consideration:

Sec. 6 (a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

²Title 29 U.S.C. 206(b), Public Law 89-601 § 303, 1966

(1) Not less than \$1.60 an hour during the calendar year 1971, thereafter, not less than an hourly rate calculated at the base rate of \$1.60 an hour plus a percentage increase equal to the increase in the United States Department of Labor Consumer Price Index for the previous calendar year. The automatic increase shall be computed on the wage base year, 1971, with annual recomputations on the base year rate of \$1.60 an hour. In any year during which the Federal Consumer Price Index is less than four percent, there shall be no increase in the minimum wage required under this Section except as otherwise provided herein.

Increases by legislative mandate such as that proposed in S. 1861 are antiquated for the following reasons:

- a.] They are reactive and untimely in that the beneficiaries of the Act already have endured the hard economic adjustments the increase was meant to avoid.
- b.] Legislative increases are usually at rates that are unnecessarily difficult for small businessmen to absorb due to restricted markets, limited managerial flexibility and consumer reaction.
- c.] Labor intensified industries are disadvantaged in that the wage increase creates a greater financial burden on service industry management than it does on a business or industry with proportionately less costs for labor.
- d.] Marginal employees such as the trainable retarded, employees with low productivity quotients, teenagers and the employable elderly become the expendable entities in business decisions forced in part by an ever increasing minimum wage. An increase of twenty-five cents per hour on a two thousand hour work year means additional annual

salary costs of \$500.00 per employee. There are many small businessmen who cannot increase their share of the local market in any measure which would result in approximately an additional \$10.00 per week per employee.

Further, the wage increase is but a part of the costs of employment when one considered Social Security, Workmen's Compensation, Unemployment Compensation, Health Insurance and other benefits which are with some exceptions the total responsibility of the employer.

The combination of costs frequently requires termination of employees. The developing economic considerations appear to be in conflict with the basic interest of the FLSA.

- e.] Increasing the minimum wage on a national basis creates economic pressures on a disproportionate basis between business concerns in small or less urban areas and their peers in higher cost of living areas. This economic "bottom pressure" subtly forces all wage rates to rise which results in the case of some geographic areas in financial demands on business which are inequitable.

Should a new formula be adopted such as that herein proposed, employees protected by the Act would receive timely increases while the employers could plan business changes, absorb costs and arrange price modifications on an orderly basis.

In addition to the aforecited problem, the industry has endured a disadvantage, specifically, laundry and dry cleaning plants are not considered retail or service establishments. This

determination is entirely acceptable in relation to the total exemption provisions in the Act. However, these are inequitable and unnecessary distinctions in the application of the partial exemptions for executive and administrative employees.

For example, an executive in a retail or service establishment is allowed to perform up to 40% of his work in an unrelated or non-exempt activity. The same executive in a laundry or dry cleaning facility is allowed only a 20% forgiveness.

The nature of executive employment in a small business such as laundry and dry cleaning requires the expenditure of time in non-exempt work to a much greater degree than that of an executive in larger concerns.

The industry seeks equality in this situation and the following amendments would, if adopted, rectify this inequity while they would not endanger the employees' entitlements under the General Act:

- a.] Sec. 7 (i) No employer shall be deemed to have violated subsection (2) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under Section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

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For purposes of this section, all laundry, dry cleaning, linen supply and related establishments shall be considered as retail or service establishments.

- b.] Sec. 13 (a) (2) any employee employed by any retail or service establishment (except an employee engaged in laundering, cleaning, or repairing clothing or fabrics in any establishment whose primary purpose is not laundering, dry cleaning or linen supply or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) or such establishment has an annual dollar volume of sales which is less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry. For purposes of this exemption all establishments engaged in laundering, dry cleaning, rental or the repair of clothing and fabrics including home launderers, commercial launderers, industrial launderers, dry cleaners, linen suppliers and diaper service companies shall be considered as retail or service establishments regardless of the percentage of such establishment's annual dollar volume of sales made within the state the establishment is located and regardless of the annual dollar volume of sales made by such establishment; or

These amendments are submitted to urge the correction of an inequitable situation which has evolved over years of legislative changes and administrative interpretations.

Finally, the proposed change in the overtime regulations would work an unusual and unfair hardship on our industry. Many of our members have business operations which include a central facility and several service or pick-up stores which are located close to the market. Employees in these stores work a

variety of hours which depends entirely on the needs of the customers. A nine or ten hour day is not uncommon because customers frequent the pick-up stores prior and following their own employment hours. Our employees are busiest early in the morning and late in the evening; however, during the midday they serve in almost a non-working capacity. If they work more than forty (40) hours they are, of course, compensated within the terms of the law.

We believe that a daily overtime rate is difficult to administer and unnecessarily burdensome.

SUMMARY:

The industry does not oppose the Federal Minimum Wage Law or the proposed amendments on the basis of economic or political philosophy. The industry does recognize the inherent hardships on both the employee and the employer due to untimely and unnecessarily costly legislative increases.

There must be an equitable and orderly means of increasing the minimum. The proposed amendments recommended by the laundry and dry cleaning industry could be a practical and equitable solution

Respectfully submitted,

Albert Hofheimer, President
AMERICAN INSTITUTE OF LAUNDERING
and

Frank Filling, President
NATIONAL INSTITUTE OF DRYCLEANING

1914

NAM

National Association of
Manufacturers

June 28, 1971

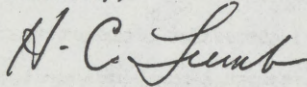
The Honorable Harrison A. Williams, Jr.
Chairman of the Subcommittee on Labor
Committee on Labor and Public Welfare
United States Senate
Washington, D. C. 20510

Dear Senator Williams:

I am authorized on behalf of the National Association of Manufacturers to transmit the enclosed statement dealing with proposed legislation on S. 1861, "Fair Labor Standards Amendments of 1971."

Consideration of these comments in the deliberations of your Committee will be appreciated.

Sincerely,



H. C. Lumb
Chairman
Industrial Relations Committee

1915

STATEMENT OF
NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE
SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND PUBLIC WELFARE
SENATE OF THE UNITED STATES
ON S. 1861
A BILL TO AMEND THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED
JUNE 28, 1971

The National Association of Manufacturers welcomes this opportunity to present its views on the pending legislation. The policies which guide this Association's statements to Congress are based on the considered deliberations of our Board of Directors and our membership, consisting of manufacturing companies, of all sizes and in all sections of the country. These policies are prepared by a process of careful deliberation by committees composed of individual representatives of member companies.

The bill under consideration, S. 1861, would raise the statutory minimum wage to an amount 25 percent above its present level (\$2.00 over \$1.60 per hour) sixty days after enactment, and 41 percent above its present level (\$2.25 per hour) a year later. It would extend coverage of the minimum wage to 13 million new workers--about one-sixth of the entire U.S. labor force. It would require the payment of an overtime premium for work extending beyond 8 hours in any day, regardless of the total hours worked during the week of which that day is a part.

We question the wisdom of the enactment of this legislation, or of any legislation which would have similar effects. Our opposition is based in part on considerations related to the present state of the U.S. economy and in part on past experience with legislation increasing the minimum wage. It is our belief that enactment of these proposals would be a mistake in national economic policy.

STATE
OF THE
ECONOMY

In the United States we have, at present, an unusual combination of economic problems, each of which would, in our judgment, be made worse by the proposed amendments to the Fair Labor Standards Act, and as a consequence believe that this is not the time to raise the minimum wage or extend its coverage. If one lists the outstanding characteristics of the present economic situation, each one of them is a counter-indication for the proposals being considered:

1. This is a time of continuing inflation. The most acute and intractable aspect of this inflation is the seemingly inexorable rise in labor costs--which underlie the prices of goods and services. Government intervention in the form of a mandatory increase in the minimum wage would only add to the forces which push labor costs up.
2. This is a time of persistent high unemployment. The most serious unemployment problems exist among the unskilled, the inexperienced, and others who are disadvantaged in various ways. These are precisely the groups which are most likely to be adversely affected by changes in the minimum wage and its coverage. Surely we should not impose a new deterrent, in the form of higher wage costs, on the employers upon whom such persons depend for jobs. To do so would be to impair the job prospects of those who need jobs most.
3. This is a time of increasing competition between American enterprise and their foreign rivals. In many cases U.S. industries and their employees have been seriously injured by foreign competition. The U.S. balance of payments has been hurt by our declining foreign trade surplus and the international position of the dollar has been weakened. Whatever course may be followed in dealing with these problems, the difficulties

should not be further compounded by a government-imposed increase in wage costs. Why create an additional disadvantage for American producers by imposing a higher minimum wage with broader coverage?

4. This is a time of a severe profit squeeze on American industry which has slowed the recovery of the economy. Actually dollar profits of corporations are at present somewhat below the levels they reached in 1966--whereas since that year the gross national product has increased by 36 percent, and the compensation of employees has increased by 44 percent. Since profits are the necessary incentive for expansion or even the continuation of current operations, and supply indispensable funds for business growth, one need not be a corporate official or stockholder to be concerned about this. Job opportunities for employees in the private sector come from profitable operations of their employers in a free enterprise economy. Thus, we certainly should avoid any further Congressional action which, by raising costs, would further impair the profitability of business operations.

Hopefully, each of the economic problems listed above will be alleviated in the future. But it is perfectly clear that an increase and extension of the statutory minimum wage would add to the problem and not contribute to its solution.

NO JUSTIFICATION EXISTS FOR RAISING THE MINIMUM WAGE In the face of these rather obvious objections to an increase or extension of the minimum wage, one would have thought that the proponents of such a move would have assumed the burden of proof in presenting their recommendations. One would further have expected that a carefully documented case would have been made for the precise timing and amounts proposed.

Instead, at this point, the arguments in favor of raising the minimum wage by the proposed amounts seems to rest merely on the unexamined premise

that people will be better off if they are paid more and that this can be achieved by legislation forbidding employers to pay them less than some specified amount. That proposition has an appealing simplicity. But if this is sufficient ground on which to justify raising the minimum wage, one must immediately ask why the advocates of such a move have been so modest in their demands.

Those who have proposed this legislation have not borne the burden of proof which is properly theirs. In the light of the general economic considerations discussed above, and in the absence of an adequate basis for increasing and extending the minimum wage as proposed, we suggest that such a move would be unwise.

EMPLOYMENT EFFECTS

The assumption is sometimes made, and seems inherent in these proposals and the arguments used to support them, that when the minimum wage is increased and extended all goes on as before except that certain persons receive higher paychecks. But careful analysis will indicate that this is a doubtful assumption. In our complex, dynamic economy, questions of what goods and services will be produced, how they will be produced, and who will be employed in their production, are resolved by the interplay of cost and price factors in the market place. To raise arbitrarily the cost of any element which enters the productive process is to place it at a disadvantage as compared with alternatives.

Statistical studies have been undertaken by the economics profession to measure the effect of increasing the minimum wage on employment opportunities. There is controversy over conclusions, but the controversy relates to the extent of the damage done to the job opportunities of disadvantaged workers, and not to the reality of such damage.

It is sometimes alleged that government statistical studies of the effect of minimum wage increases on unemployment have produced negative results, in the sense that they indicate that no adverse effects can be proved. This is not quite an accurate reporting of the conclusion which may be drawn from such government studies, even if they are accepted in preference to private studies which reach contrary conclusions.

For example, a 1970 government study of the impact of the minimum wage on youth employment ^{1/} states after discussion of a number of statistical tests which had been applied to available data:

"...they do not permit confident conclusions about the effect of minimum wage law upon the employment experience of teenagers."

However, the study goes on to explain:

"From all this, it should not be concluded that minimum wage laws have no effect. Rather, the fact is that time series analysis does not permit an adequate separation of various, nominally independent, factors affecting teenage employment problems."

The study gives one possible explanation for its statistical results:

"There is some basis for the inference that the effect of Federal manpower programs and the Federal minimum wage have tended to offset each other."

The study notes finally:

^{1/} U.S. Department of Labor, Bureau of Labor Statistics "Youth Unemployment and Minimum Wages," Bulletin 1657, 1970. The quotations are from page 45. Emphasis has been supplied.

"Although hints of adverse effects of minimum wages show up in available data, no firm statement can be made about the magnitude of such effects."

Thus, the general significance of the Labor Department study, as interpreted by its own authors, is that the employment effects of the minimum wage are not amenable to measurement on the basis of the statistical record. That is not a surprising conclusion, in view of the many other economic developments occurring in the period covered by that study which may have obscured the impact of minimum-wage increases. It does not give assurance that no adverse employment effects need be anticipated from a further increase in the minimum wage. Inability to calculate the magnitude of the results of any action is a questionable basis for undertaking it.

Uncertainty over whether the effect of this legislation on the availability of jobs would be a major disaster or a lesser setback is not a very good reason for enacting it.

The hope that the job-destroying impact of this legislation would be offset by other manpower programs of the government is also a poor reason for enacting it. Why should the government undertake a combination of actions which, by hypothesis, nullify each other.

THE
EIGHT-HOUR
WORKDAY

S. 1861 contains a provision which would require payment of overtime rates for any work in excess of eight hours per day. The reasons for this proposal are obscure. Since the law already requires overtime pay for work in excess of 40 hours in a week, the new provision relates not to the length of the working week but to its division

as among the days of the week. Implicitly, it endorses as right and proper a division of the working week into five eight-hour days, whereas any other arrangement of working time is condemned and penalized.

It is not clear whose interest this requirement is intended to serve or who is calling for such government intervention into working-time arrangements. We know of no information which would lead to the conclusion that either employees or employers generally prefer five eight-hour days per week to some alternative distribution of working time.

A number of firms have experimented with a working week that would consist of fewer days but a longer working day. In many cases this change has been met with enthusiasm on the part of the employees. One does not have to assume that all such experiments will succeed where they are tried, or that such changes in the work schedule will be universally applicable. But there is no discernible reason for government to restrict the movement, either in its experimental or implemental stages--which would be the practical effect of the proposed eight-hour day limitation. Moreover, to the extent that it applies in those cases where the ten-hour day/four-day work week or some other version of shortening the work week and lengthening the hourly work day are in effect either experimentally or otherwise, the effect of the proposal is potentially inflationary.

DIFFERENTIAL
EFFECTS OF AN
INCREASED AND
EXTENDED
MINIMUM WAGE

We have pointed out, in a general way, the damaging economic impact of an increase in and extension of the minimum wage. This will not, of course, affect all segments of the economy to the same degree. Some industries, some geographic areas, and some age-groups of the population may be hurt relatively little.

Others will be quite severely affected. It is worth pointing out the general character of the differential effects which may be expected.

It is well known that certain regions of the country have been in a chronic depressed condition. These are areas in which old ways of making a living have disappeared but population has nevertheless lingered on. It is in the interest of these areas (and of the whole country) that new industries be attracted into them. An increase in the statutory minimum wage would be an obvious deterrent to the establishment of such enterprises in the depressed areas. Other areas which depend on well-established capital-intensive industries might be affected comparatively little by changes in the minimum wage. Thus, the parts of the country which are most in need of economic help would suffer the most severe adverse effects from an increase in the minimum wage.

In addition to geographic differences, there would also be differential effects related to size of enterprise. The sectors of the economy which would be most seriously impacted are those which employ large numbers of persons with low levels of training or skill. These are, predominantly, retail trade and the service industries. These are, of course, the very sectors in which small enterprises are concentrated. Larger enterprises prevail in such fields as manufacturing, utilities and transportation-- fields in which an increase in the statutory minimum would have less impact since they employ relatively few people who are at or close to the minimum wage. Thus the increased costs resulting from this legislation would be heavily concentrated on the smaller firms in the nation's business structure, while the larger enterprises would be relatively exempt.

DIFFERENTIAL
EFFECTS ON THE
LABOR FORCE

Since the minimum wage primarily affects the lower fringe (in terms of earning power) of the labor force, its effect in restricting employment opportunities will clearly be concentrated on certain groups. The unskilled will be affected more than skilled, teenagers more than adult workers, women more than men, and part-time workers more than full-time workers.

It will be instructive to compare the present employment prospects of these various groups, as measured by their unemployment rates in April, 1971 (figures are as reported by the U.S. Bureau of Labor Statistics):

UNEMPLOYMENT
RATE, APRIL 1971

By Age Groups

Teenagers	15.3%
Workers 20 and over	4.8%

By Skill Level (Blue Collar Workers)

Non-farm laborers	10.1%
Operatives	8.8%
Craftsmen and foremen	5.0%

By Sex

Females, 20 and over	5.6%
Males, 20 and over	4.4%

Full-time vs. Part-time

Part-time workers	7.8%
Full-time workers	5.3%

In each comparison, it will be noted, the group most directly affected by an increase in the minimum wage is suffering the higher level of

unemployment. An increase in the minimum wage would further reduce their attractiveness to employers. It would create an additional handicap in the job market for precisely the categories of workers who are already at a disadvantage in seeking jobs.

EFFECTS ON
WELFARE COSTS

An argument used to justify the proposed increase in the minimum wage is that it would reduce the burden on the public of welfare costs. The presumption is that some of the working poor, who receive partial support from public welfare, would become fully self-supporting, or at least less dependent on welfare, as a result of their increased incomes.

This effect would undoubtedly occur to some degree. But it would be counteracted by the decline in employment opportunities resulting from the higher wage cost. Some of the working poor would become nonworking poor, wholly dependent on welfare for their support. The net effect on total welfare costs cannot be calculated with precision, but this is not a persuasive argument for raising the minimum wage.

The case is sometimes put in other terms--from the point of view of the person on welfare. It is alleged that he has little incentive to seek work which would reduce the cost to the public of supporting him, as long as he can receive only \$1.60 per hour for it. If so, this is a fault of the welfare system and its correction must be sought in a reform of that system. In the meanwhile, the fact is that the number of such persons who find employment must be the combined result of two factors: their own incentive to seek employment and the incentive of employers to hire

them. The latter would be adversely affected by an increase in the minimum wage.

The presumption that large numbers of idle relief-recipients could be enticed into the labor force if the pay were better seems doubtful under present conditions. It assumes that there is a substantial number of unfilled job vacancies which such persons could occupy if only they were willing. There is no evidence that such a surplus of job opportunities over job applicants exists at the unskilled end of the labor-force spectrum. The problem is the reverse--job seekers exceed job opportunities. This discrepancy would surely grow worse with an increase in the minimum wage.

THE INCREASE IN THE MINIMUM WAGE, AS AN ECONOMIC STIMULUS, IS QUESTIONABLE	Another popular argument is that an increase in the minimum wage, by adding to the available purchasing power and hence the demand for goods, will stimulate the economy to higher levels of activity.
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This is a fallacy with a long history behind it (and probably before it). The fact is that no new purchasing power--in the form of increased holdings of currency or bank deposits--is created by any such form of government intervention. The purchasing power of the nation (i.e., its money supply) fluctuates in response to an entirely different set of forces.

What the proper monetary policy for the nation should be is a complex question which need not be discussed here. It is sufficient to note that an increase in the minimum wage (like any increase in costs) simply places a greater strain on the existing stock of purchasing power, by giving it

more work to do. Its effect, other things remaining equal, is to depress rather than stimulate the level of the economic activity.

The expansion of the economy, and its ability to produce an increased flow of goods and services and provide an increasing number of jobs, depends on the availability of capital. The proposition that economic growth requires high levels of capital formation is hardly disputable.

Although this may seem extraneous, it is relevant in an important sense to proposals for increasing the minimum wage. A higher minimum wage would give increased incentive for allocating capital to uses which would eliminate the need for unskilled labor. It would thereby reduce the amount of capital available for financing the more normal type of business growth which leads to expansion of job opportunities. Thus, through its effects on the allocation of capital, a rise in the minimum wage would have a doubly damaging impact on economic growth.

CONCLUSION

In view of the foregoing, it is the opinion of the NAM that to enact these proposals into law would be a mistake in national economic policy. We therefore urge this Committee to reject the proposed legislation embodied in S. 1861.

1927

Statement on
Wage-Hour Legislation
S. 1861
Submitted to the
Subcommittee on Labor
Senate Committee on Labor and Public Welfare
July 2, 1971

The National Home Furnishings Association (formerly National Retail Furniture Association) has maintained a continuing interest in the Fair Labor Standards Act, ever since the first steps were taken by Congress to include home furnishings retailers under the coverage of the Wage-Hour law.

NHFA is a national trade association representing the owners of over 9,000 stores in all 50 states that account for more than 85% of the nation's retail sales of home furnishings. The stores range in size from small family operated businesses with annual volume of less than \$250,000 to stores with annual sales of several millions of dollars.

S. 1861, the "Fair Labor Standards Amendments of 1971," would have far reaching effects on the home furnishings retailers who are members of NHFA. It would force home furnishings retailers to make drastic changes in their employment practices and to make major revisions in the compensation methods currently used in retail stores.

Basically, the bill now being considered by your committee, S. 1861, would:

- Increase the minimum wage from \$1.60 to \$2.25 per hour,
- Broaden coverage to include for the first time small stores with annual volume of less than \$250,000,
- Require overtime pay for all hours past 8 each day, in addition to overtime pay after 40 hours each week,
- Reduce from 40% to 20% the amount of time highly paid white collar employees of retail stores can engage in routine work and still qualify for exemption from overtime pay as "executive" or "administrative" employees.

Retain Exemption for Small Stores With Sales Less Than \$250,000

NHFA supports exemption from Wage-Hour coverage for smaller stores with annual volume of less than \$250,000. The complexities of complying with the Wage-Hour law are too great an administrative burden for the small retailer. As a working-owner of his business, the small home furnishings retailer spends most of the working day in direct contact with his customers, suppliers and his few employees. He does not regularly employ the services of an experienced lawyer or accountant. What records he keeps are often maintained by his wife, or by a part-time bookkeeper. The widespread possibilities of inadvertent violation of the complicated provisions of the law would expose the small retailer to continuing technical violation of the law.

There would be little to be gained from forcing small home furnishings retailers under Wage-Hour law coverage. Most home furnishings retailers who employ persons other than family members regularly pay more than the minimum wage to secure the services of competent employees who have the ability to handle the wide variety of work necessary to effectively serve the store's customers. Because the basic objectives of the Wage-Hour law are substantially met by the competitive pressures of the labor marketplace, NHFA supports the continuation of the exemption from Wage-Hour coverage for small stores with annual volume of less than \$250,000. Therefore, NHFA urges the Committee to retain the provisions of S. 1861 that exempt small retailers and to reject the broadening of coverage to include stores with less than \$250,000 in annual sales.

Fixing Wages at \$2.25 Per Hour

S. 1861 would increase the minimum wage from \$1.60 to \$2.25 per hour by requiring an immediate increase to \$2 per hour and an increase to \$2.25 per hour a year later for the larger stores. For smaller stores with annual volume of less than \$1 million and for stores under \$250,000 which have not previously been covered, the minimum wage rate would immediately go to \$1.70 per hour, then jump to \$2.00 a year later, and climb to \$2.25 the following year.

These big increases in the minimum wage cause additional problems. Members of this Committee should not have to be reminded of the ripple effect of federally-dictated minimum wage increases which force employers to also give proportionate pay increases to nearly all employees. If the store's most inexperienced and least skilled employee is given a 40% increase in pay, simple justice requires that all of the store's employees get similar pay increases. The proposed pay increases are not small. An increase of 65¢ per hour means an individual pay boost of no less than \$1350 per year. When multiplied by the number of employees in a store, this can mean tens of thousands of dollars in added payroll costs. With no corresponding increase in employee productivity, these increases must be passed on to the store's customers in the form of higher prices. The Committee should not overlook the economic reality of the fact that although Congress may be able to increase the minimum wage it cannot make an employee's contribution to the employer worth that increased minimum wage rate. As the cost of labor increases, employers become more and more selective about which persons they hire.

Increases in the magnitude of those contemplated by S. 1861 should also be viewed in light of the fact that for many employers the minimum wage was increased from \$1.45 to \$1.60 as recently as February 1, 1971 -- less than 6 months ago. That February 1

increase was the final step in a series of annual increases that brought the minimum wage level from \$1 per hour in 1967 up to \$1.60 in 1971 for the overwhelming majority of members of the National Home Furnishings Association with stores whose annual sales volume is between \$250,000 and \$1 million. These earlier minimum wage increases, by themselves, have amounted to more than 60% -- far more than the 23% cost of living increase shown over the past 5 years by the Consumer Price Index.

NHFA opposes any immediate increase in the minimum wage. Rapid acceleration of the minimum wage in annual steps of 40¢, 30¢, or even 25¢ per hour is much too fast. The resulting increase in the rate of inflation that would be triggered by such a change would be intolerable -- particularly for those whom the minimum wage is allegedly designed to benefit. If, however, the Committee decides that the minimum wage will be increased, careful consideration should be given to a "stretch out" of the increase in smaller steps over a longer period of years. In our presentation to the House General Labor Subcommittee earlier this year, we suggested, for example, that the current \$1.60 minimum wage be retained for this year and that the proposed increase be spread out in 4 steps -- to \$1.70 in 1972, \$1.80 in 1973, \$1.90 in 1974, and \$2 in 1975.

Therefore, if, after prudent consideration, this Committee

determines that an increase must be made in minimum wage rates, NHFA would support increases "stretched out" in modest annual increments over a period of years.

Daily Overtime, Plus Weekly Overtime

In addition to increasing the minimum wage rate, S. 1861 also would increase the inflationary impact on the economy by requiring overtime pay after 8 hours of work each day, as well as after 40 hours of work each week. The concept of an 8 hour day runs counter to the developing trend for more usable leisure time for employes through a 4-day work week of 40 hours. Even more basic to the retail home furnishings industry is the manner in which an 8-hour day would restrict the store owner's flexibility in meeting the needs of his customers.

Although some industries can be started and stopped on an assembly line basis, our industry is dependent upon serving customers who cannot be mechanized to make their buying decisions in an even flow throughout the day or throughout a week. To permit home furnishings customers to shop at their convenience, our members often must keep their stores open many evenings during the week, and in some communities even on Sundays.

Minimum wage law requirements of recent years forced home furnishings retailers to adjust employe working hours to meet the 40-hour week requirements. Often, this has resulted in

staggered work hours as employee schedules were adjusted to man the store during the 72 to 80 or more hours per week that many stores are open. The law's basic purpose of "dividing up the work" is very adequately met by the 40-hour work week restrictions. Therefore, additional restrictions that would put an 8-hour limit on the work day should not be put into the Wage-Hour law.

Retain 40% Non-Exempt Work Test

An almost unbelievable feature of S. 1861 is one that would crush the provision of the Wage-Hour law that permits certain highly paid white collar employees of home furnishings stores to qualify for exemption from overtime pay as "executive" or "administrative" employees. The exemption has been in effect ever since retail stores have been covered by the law.

To qualify for exemption, the employee must meet work and duty tests designed to limit the exemption only to persons who perform bona fide management functions. In addition, the employee must be paid a fixed salary (not an hourly rate or commissions) of no less than \$125 per week. One of the work and duty tests requires that an employee of a retail or service establishment devote no more than 40% of his time to non-exempt work. Non-exempt work includes doing the same kind of work as the employees he supervises, such as selling.

The White collar exemptions were specifically developed by Congress to establish a method for exempting from overtime pay certain employees who assist in the management of the business. In home furnishings stores, these white collar employees not only assist the store owner in many phases of store management, but are regularly considered representatives of "management" both by the employer and by other employees. In cases where store employees are represented by a union, these white collar employees are considered "management" and are not eligible for union membership. Often, they do work similar to that of the owner himself. Forcing these employees to meet a non-exempt work test reduced from 40% to only 20% would severely limit the store owner's flexibility in making effective use of employees in serving customer needs. In addition, it would force store owners to discontinue the traditional salary method of compensating these key employees, because by the nature of their work they often work varying hours from week to week but do not qualify for exemption as commission salespersons. Because of the minimum weekly salary requirement of \$125, these employees are paid well above the minimum wage. At \$125 per week, an employee working as many as 65 hours a week would still earn more than the required minimum wage, including time and one half for all hours past 40.

Removal of the 40% test would treat white collar employes in two different ways. It would not apply to all white collar employes but only to those paid between \$125 and \$200 per week. A bona fide white collar employe paid a weekly salary of \$200 or more is required only to meet the short form (or "upset") "primary duty" test and either the "supervisory" or the "discretion" test to qualify as an exempt white collar employe, and thus does not have to meet the non-exempt work test.

Therefore, because removal of the 40% test would severely limit the flexibility of a store owner to make effective use of his management employes, and because it would result in uneven application of the white collar exemptions, NHFA supports the continuation of the 40% non-exempt work test and recommends that the Committee oppose changes in the Wage-Hour law that would reduce the test to 20%.

Other Provisions

NHFA is pleased to see that S. 1861 retains the exemption from overtime pay for commission salespersons. The exemption is widely used in the home furnishings industry particularly for salespersons who earn far more than the minimum wage -- no less than $1\frac{1}{2}$ times the statutory minimum wage for all hours worked, not just for the overtime hours. Also, as a part of an effort to help reduce teen-age unemployment, we would welcome the

extension to all teen-agers of the special minimum rates currently available to full-time students.

Summary of NHFA Position

For the reasons outlined above, the National Home Furnishings Association:

- supports continuation of the exemption from Wage-Hour coverage for smaller stores with annual volume of less than \$250,000,

- opposes any minimum wage increase at this time and supports a "stretch-out" of any minimum wage increase in 10¢ annual steps over a period of years,

- opposes an 8-hour day that would prevent long weekends or 4-day weeks for employees,

- supports retention of the 40% non-exempt work test and opposes provisions of S. 1861 that would reduce the test to 20%, and

- welcomes extension to all teen-agers of the minimum wage rates currently available for full-time students.

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THE AUTOMOTIVE WAREHOUSE DISTRIBUTORS ASSOCIATION, INC.

MARTIN FROMM, Executive Vice President

EXECUTIVE OFFICES:

633 E. 63rd Street, Kansas City, Missouri 64110

TELEPHONE (816) 444-3500

MAILING ADDRESS:

Country Club Station, Kansas City, Missouri 64113

July 14, 1971

From the Office of the President

S. G. PURYEAR
525, Inc.
621 West 8th Street
Little Rock, Arkansas 72203

Honorable Harrison A. Williams, Jr., Chairman
Senate Committee on Labor and Public Welfare
Senate Office Building
Washington, D. C.

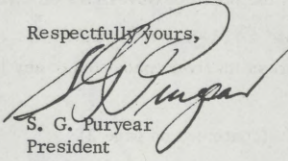
Dear Senator Williams:

The Automotive Warehouse Distributors Association is a nationwide trade association representing business concerns engaged in the sale of automotive replacement and repair parts, tools, equipment and accessories. Our members constitute some 300 warehouse distributor outlets, and we also have 200 affiliate manufacturer members. Our warehouse distributor members sell to more than 25,000 automotive parts wholesalers throughout the country.

At the mid-year meeting of our Board of Governors which has just been completed, a considerable amount of time and attention was devoted to the bills now pending before your committee having for their purpose an increase in the federal minimum wage. This matter proved to be of grave concern to all present, and the Board adopted by unanimous action a resolution expressing our firm opposition to any such legislation. A copy of that resolution is enclosed herewith.

The reasons for this position taken by our Board are fully stated in the resolution and I believe that you will find those reasons to be cogent and convincing. We shall appreciate your careful consideration of this resolution.

Respectfully yours,


S. G. Puryear
President
SGP:ks
Enc.

UNRECORDED

RESOLUTION OPPOSING INCREASE IN STATUTORY
MINIMUM WAGES

WHEREAS, the Congress has before it various proposals to increase the minimum wage required by the Fair Labor Standards Act, commonly known as the Wage and Hour Law; and

WHEREAS, such proposals would be damaging to the national economy generally, because such legislation would reduce the number of unskilled jobs; would increase the number of unemployed youth, those in minority groups, and over-age workers; would raise the cost of relief; would tilt upward wage levels for skilled labor to maintain established differentials; and would sow the seed for an escalation of inflation, with fearful ultimate consequences; and

WHEREAS, the members of the Automotive Warehouse Distributors Association (AWDA) serve and are dependent upon wholesalers of automotive replacement parts who would be particularly hurt by such an increase in minimum wages, in that said wholesalers must bear the cost of considerable overtime hours in order to maintain and disseminate the supply of automotive replacement parts which must be readily available on a round-the-clock basis, seven days a week, and, further, that the wholesale supplying of such parts requires a proportionally high labor population, an unusual percentage of whom are unskilled, for which reason automotive parts wholesaling is particularly sensitive to the minimum wage requirements; and

WHEREAS, automotive replacement parts wholesalers are unwilling to seek relief from any of the foregoing by raising their selling prices since this would contribute to the inflationary spiral and would result in higher automotive repair costs which are, and would continue to be, borne by the American motorist; and

WHEREAS, the economic health of the entire automotive replacement parts industry and in turn the safety of motor vehicles and the welfare of the motoring public are all threatened by the prospect of such new minimum wage legislation;

NOW THEREFORE, by unanimous vote of the Board of Governors of AWDA, be it

RESOLVED, that AWDA does hereby express its firm opposition to any increase at this time in the federal minimum wage;

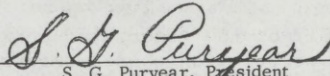
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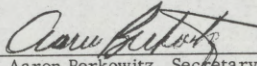
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FURTHER RESOLVED, that AWDA urges the Congress of the United States to reject each bill having such increase as its object; and

FURTHER RESOLVED, that AWDA calls upon its members, the automotive parts manufacturers, and the automotive parts wholesalers to join in this petition to the Congress.

This resolution passed by the AWDA Board of Governors on the 22nd day of June, 1971, in Colorado Springs, Colorado.


S. G. Puryear, President


Aaron Berkowitz, Secretary

1940

associated builders and contractors, inc.

CAFRTZ BUILDING, ROOM 321 1625 EYE STREET, N.W. WASHINGTON, D.C. 20006 202-223-2376

June 14, 1971

The Honorable Harrison A. Williams, Jr.
352 Old Senate Office Building
Washington, D. C. 20515

Dear Senator Williams:

On behalf of the Associated Builders and Contractors, Inc., a non-profit association whose members are in the contract construction industry or have professional dealings with the construction industry, I am writing in regard to legislation that would increase the present minimum wage. The Association has approximately 4000 member firms in 34 states.

Members of the ABC are deeply concerned about our nation's economic plight and particularly the serious conditions that have befallen their own industry. It is widely evident within the construction industry that today's wages have far exceeded gains in productivity. This fact has been noted by several economists around the country and also pointed out by the President's Council of Economic Advisors, who cited the industry as a major trouble spot. Because these conditions persist, the Association is wary of legislation that would raise the current minimum wage.

We fully realize that proponents of a higher minimum wage believe an increase will aid our sagging economy. But within our industry this will not be true. All of our members pay well above the projected \$2.00 minimum. In fact this is probably true universally within the industry. The basic trouble, however, is once the rate is increased, then labor organizations -- as they have done in the past -- propose new wage demands in order to maintain the same pay scale differential as before. This of course results in higher wages and higher costs of construction, which eventually (and unfortunately) are passed on to the consumer.

Merit Shop Builds Best

OFFICERS: Joseph S. LaMonaca, President • John P. Trimmer, Executive Vice President • Michael G. Callas, 1st Vice President • Jess Howard, 2nd Vice President • Hal Hazelrigg, Secretary • Leonard Osterink, Assistant Secretary • R. Peter Mathews, Treasurer • Philip Abrams, Assistant Treasurer

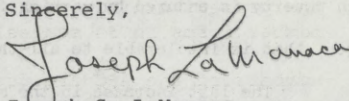
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-2-

We are opposed to an increase in the minimum wage at this time. If, however, Congress sees the need for an increase, then we believe it should take place in two steps, and in addition grant sufficient time for the economy to adjust without inflationary repercussions. The first step should raise the minimum to \$1.80/hr. in 1972, and the second to \$2.00/hr. in 1974. Furthermore, some stipulations should be made to protect the elderly and teenage work forces, as any increase will certainly enhance their employment problem.

We are hopeful, Senator Williams, that you will see merit in our observations and use your good offices to improve our troubled economy.

Sincerely,



Joseph S. LaMonaca
President

JSL/jhn

1942

STATEMENT BY W. A. BOYLE, PRESIDENT, UNITED MINE WORKERS OF AMERICA,
BEFORE THE UNITED STATES SENATE LABOR AND PUBLIC WELFARE COMMITTEE
ON S.1861, AMENDING THE FAIR LABOR STANDARDS ACT

On behalf of the United Mine Workers of America we appreciate the opportunity to present testimony on S.1861. We strongly believe that the minimum wage in the United States should be raised to at least two dollars an hour immediately. We further believe that coverage under the minimum wage should be extended to all workers in commerce, and where such workers are not covered by federal law. All possible efforts should be made to insure that they will be covered by appropriate state legislation.

Poverty in a country characterized by plenty is reprehensible. When such poverty is endured by working families because of extremely low minimum wages, that is intolerable to all thinking Americans.

The last increase in the minimum wage occurred in 1966 when the federal minimum wage was raised to its present level of one dollar and sixty cents per hour. Since then, however, the ravages of inflation have been felt more by the workers at the lower end of the income spectrum. Inflation has reduced the real purchasing power of the one dollar and sixty cents minimum to a level less than it was in 1966. This means that the real goods and services which can be purchased by those working for the minimum wage are lower than they were five years ago. Obviously, this situation must be corrected.

An increase to two dollars an hour represents only the recovery of what has been lost because of inflation. It does not take into account the need for a constantly improving standard of living in line with the increasing living standards of other more fortunate Americans. We, therefore, support legislation which would provide for a substantial increase in the minimum wage, one year hence, and we would welcome further substantial increases a year after that. Moreover,

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we would urgently suggest to the Congress that some method of tying the minimum wage to the cost of living index be devised so that there will not be a time lag between the loss of real purchasing power due to inflation and congressional action to raise the federal minimum wage levels.

Apart from the actual level of the minimum wage, coverage should be extended to all workers. Currently, we are told that more than thirteen million workers are denied minimum wage benefits. Many of these workers are among the hardest working and poorest paid employees of the country. They toil on farms, in restaurants and even for state and local governments. These people deserve the attention of the Congress. They, too, should be guaranteed a minimum wage floor in order to raise their living standards and provide a decent livelihood for themselves and for their families.

One of the principal arguments against the minimum wage that has been raised is its effect on inflation. This argument is fallacious on its face.

To suggest that uplifting the nation's poorest paid workers from the abyss of poverty contributes to the inflationary spiral is sheer fantasy. America's working poor are the victims, not the cause of inflation. They deserve better treatment from those who determine economic policy. They deserve protection against the erosion of their purchasing power because of inflation. They deserve to have their income levels increased not only in line with the inflationary spiral but also in line with the income levels of more fortunate Americans.

Over the years America has encouraged the unemployed to seek job opportunities, and through such opportunities to elevate themselves, their families and their communities. Yet, while we do this we find that thirteen million American workers are not protected by an income floor. It is tragic that these men and women--who work day in and day out attempting to sustain themselves and their families through honest toil--are denied the protection of the minimum wage.

1944

We are hopeful that both the Administration and the Congress will not require America's working poor to carry the burden of inflation. Both the executive and the legislative branch should recognize that we must afford protection to those who are least able to cope with constantly rising price levels.

Finally, it has been suggested that there should be a two step minimum wage, one for adult workers and one for teenagers. This we reject. Our traditional union policy has always been that the pay is determined by the job and not by age, race, color or creed. We do not believe that teenagers in this country should be considered as a reservoir of low-paid labor to be exploited. The needs of the young working poor demand that their minimum wage levels be the same as those of their older countrymen.

Over the years the minimum wage has served to provide a modest protection for American workers at the low end of the income scale. It has served its purpose well and has protected American workers from wage exploitation. It has also contributed much to the American economy because it has raised the living standards of thousands of American workers and permitted them to buy additional goods and services which, in turn, provided employment and earnings to others. Minimum wage protection is a vital part of our nation's commitment to the dignity of the human being. We would suggest that the minimum wage level be increased to two dollars immediately and that efforts be made to cover all Americans under its provisions.

1945

American Hospital Association

ONE FARRAGUT SQUARE SOUTH • WASHINGTON, D. C. 20006

Washington Service Bureau

TELEPHONE: AREA CODE 202 393-6066

CABLE ADDRESS: AMERHOSP

October 4, 1971

Honorable Harrison A. Williams, Jr., Chairman
Committee on Labor and Public Welfare
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman

The American Hospital Association is greatly concerned about the serious impact that enactment of legislation now before your committee to increase the minimum wage and to eliminate both the standard 40 hour work week and the 80 hour two week pay period option for computation of overtime would have on the cost of hospital care.

When Congress enacted the Fair Labor Standards Amendments of 1966 (Public Law 89-601) which extended the minimum wage for the first time to employees of hospitals, provision was made for application of the minimum wage to newly covered employees in 15¢ per hour increments over a five year period, starting with a \$1.00 minimum for the first year. The final increase to the present \$1.60 per hour minimum for hospital employees was just implemented on February 1 of this year. The phasing in provisions were of great help to hospitals in adjusting their budgets, their rates and their contractual arrangements with third party payers of hospital care to accommodate the increased costs that necessarily flow from any increase in the salaries and wages paid to hospital employees.

The hospitals of the nation have been striving constantly to pay their employees wages that are comparable to those received by employees in similar occupations in their communities. This has been difficult because of the labor intensive nature of hospitals. It is important to recognize that hospitals are very different from industry in general where labor costs are approximately 1/3 of all expenses. In 1965 before the provisions of the Fair Labor Standards Act were made applicable to hospitals, the employee to patient ratio for short-term

Mr. Chairman/2

general and special hospitals was 2.46 employees for each patient and the average patient day cost was \$44.48, of which more than 60 percent was attributable to salaries and wages. Today, primarily because of both the increased complexity and the broader scope of care and services being provided in hospitals, the ratio has increased from 2.46 employees per patient to 2.92 employees per patient. The average cost per patient day has gone up from \$44.48 to \$81.01 and salaries and wages still constitute some 60 percent of these costs.

As the quality of hospital care continues to improve and the benefits of modern medicine are made available to an ever growing number of patients, it seems the inevitable result is an increase in the number of employees required to run a hospital and higher labor costs for hospitals. Automation, which has had such a wide impact in many industries, has rather limited application to hospitals. This is so because of the personal nature of hospital care and services. In fact, probably the single most important criterion upon which hospital care is judged is the degree to which individual personal service is provided to patients.

On the other hand many advances in technology such as heart-lung machines and monitoring devices for intensive care patients make it necessary for hospitals to hire additional personnel with highly specialized technical qualifications who command higher wages.

Another factor contributing to the high labor costs of hospitals is the fact that full staff coverage must be maintained by hospitals 24 hours a day, 365 days a year. A machine or a production operation in a factory can be shut down if necessary during employee vacation periods, on holidays or because of widespread illness or for any other reason. Hospitals can't do this. Further, a large number of hospitals have had to schedule overtime work due to shortages in various health occupations and must call on their employees to work overtime on an emergency basis when workers assigned to essential jobs are absent. The round-the-clock seven-day-a-week operation of hospitals also routinely requires that certain employees be "on call" for work in case of emergencies. All hours on

Mr. Chairman/3

"restricted on call" and all hours worked if called to the hospital from "unrestricted on call" are added to the hours worked in computing overtime compensation due an employee. Thus it is understandable that the overtime labor costs of hospitals are very high.

As we pointed out, hospitals differ from other industries with respect to the percentage of their total operating expenses that are attributable to salaries and wages. In some major teaching hospitals and large medical centers labor costs exceed 70 percent of total expenses. This is in sharp contrast to typical industrial firms where labor costs are generally only 25 to 30 percent of expenses. In effect this difference means that any increase in the minimum wage has a double impact on hospitals and that a 20¢ per hour wage increase in industry really is equivalent to a 40¢ or 50¢ per hour wage increase for hospitals.

We believe you and your committee should be aware of the serious impact that increasing the minimum wage to \$2.00 or \$2.25 per hour would have on the cost of hospital care. It is obvious that self pay patients would be hard hit and that third party payment organizations such as Blue Cross plans and private insurance companies would be confronted with the necessity of increasing their premiums in order to maintain the existing benefit levels. Likewise, Federal and State governments would be confronted with higher costs for the Medicare and Medicaid programs. In its first five years, the cost over-run of the Medicare program has almost equalled the original cost estimate for the program for a period of 25 years. When the wage of workers at the bottom are raised then the wages of workers higher up the ladder must likewise be raised to maintain wage differentials according to their higher levels of skill and responsibility. Certainly, if the minimum wage is increased and all hospital employees receive proportional wage and salary increases, the result would have serious financial implications for the Social Security Trust Fund as well as for all other governmental or private purchasers of hospital care.

Mr. Chairman/4

The cost of providing hospital care to one patient for one day in 1970 was \$81.01. The inflationary spiral of the nation's economy played a large part in the rise of hospital costs. Everything hospitals bought cost more and wages and salaries continued an upward trend that started in 1961. The total payroll expenses reported by community hospitals for 1970 was \$11.4 billion, an increase of 16.4 percent over the \$9.8 billion figure for 1969. According to projections made by the Association's research staff, increasing the minimum wage to \$2.00 per hour and maintaining relative salary differentials for all employees would increase the average daily per patient cost to \$92.83, or an increase of \$11.82 a day to every patient. The average length of stay in community hospitals in 1970 was 8.2 days and a \$2.00 minimum wage would increase the cost of such an average period of illness nearly \$100. On an annual basis it would involve an additional hospital payroll expense of \$2.8 billion.

Our research division reports that establishing the minimum wage at \$2.25 and maintaining salary differentials would increase the average daily patient cost in hospitals to \$102.22. This would add \$21.21 to every patient's bill every day and would add \$173.90 to the cost of such an average spell of illness involving hospitalization. The \$2.25 minimum wage would increase the annual payroll expenses of hospitals to over \$16 billion.

According to recent data Medicare and Medicaid patients comprise approximately 1/3 of the patient load of general and special community hospitals for which the above cost figures were computed. The cost of these federally sponsored programs would be increased almost \$1 billion under a \$2.00 minimum wage and approximately \$1.7 billion under a \$2.25 minimum wage. Certainly, this would impinge heavily on both Federal and State government budgets at a time when multiple efforts are being made to cut back the cost of these vast and expensive programs.

We believe the above statistics will be helpful to your committee in assessing increases in the cost of hospital care that would arise from raising the minimum wage to \$2.00 or \$2.25 per hour. Removing the standard 40 hour week and 80 hour option for overtime pay computations would likewise add significantly to the cost of hospital care.

1949

Mr. Chairman/5

We have noted that S.1861 which would establish a \$2.25 minimum wage calls for phasing in the increase over a period of 26 months. The \$2.00 minimum wage which would be established under the provisions of S.2259 would be implemented in steps starting January 1, 1972 and reaching \$2.00 on January 1, 1974. It is our earnest hope that because of the special circumstances we have outlined in our letter your committee will provide at least a four or five year phase in period for hospitals in the event legislation is enacted at this time to increase the minimum wage. This would be in line with the precedent contained in the 1966 Fair Labor Standards Amendments and would greatly assist hospitals and the public in making the necessary adjustments in their budgets to meet the additional cost of hospital care that would inevitably result from such an increase. Also, we would urge your committee not to delete the existing provisions of the Fair Labor Standards Act pertaining to the standard 40 hour week and the 80 hour option in connection with overtime pay.

Copies of this letter are being sent to all members of the Senate Labor and Public Welfare Committee and we request it be included in the Labor Subcommittee's hearings on S.1869 and S.2259.

Sincerely

Kenneth Williamson
Deputy Director
American Hospital Association

ceg

1950

American Nursing Home Association

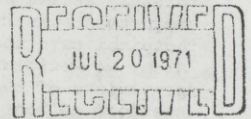
Suite 607/1025 Connecticut Avenue, N.W./Washington, D.C., 20036/Phone: (202) 833-2050

Executive Vice President
C. Robert Harberson

July 15, 1971

Honorable Harrison A. Williams, Chairman
Committee on Labor and Public Welfare
United States Senate
New Senate Office Building
Room G-237
Washington, D. C. 20510

SUBCOMMITTEE ON LABOR



Dear Mr. Chairman:

On behalf of the members of the American Nursing Home Association, we would like to comment on S. 1861, your bill to increase the Federal minimum wage and to broaden coverage under the Fair Labor Standards Act.

The American Nursing Home Association is a federation of state associations. It represents more than 7,000 long-term care health facilities which have a bed capacity in excess of 400,000. Our members include non-proprietary as well as proprietary facilities, and, as you are undoubtedly aware, a substantial percentage of our membership participates in the Medicare and Medicaid programs and the VA community nursing home program for veterans.

S. 1861, currently pending before the Subcommittee on Labor, would eliminate the present overtime exemption provided to nursing homes. Mr. Chairman, our member-facilities cannot absorb the increased labor costs that will result from this planned action. Our staffing patterns are sufficiently unique as to make the existing 48-hour work week virtually indispensable. As a former Chairman of the Senate Committee on Aging, I am sure you are aware that the reimbursement formula for providers under the Medicare and Medicaid programs afford little, if any, margin for such operating expenses. It was in recognition of this fact, I believe, that nursing homes were initially granted the exemption. Nothing has occurred since we were first made subject to the provisions of the Fair Labor Standards Act to alter or diminish our need in this respect and we strongly urge that the exemption be retained and in its present form.

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Honorable Harrison A. Williams
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This last point is important because there is legislation presently pending in the House which would substitute the hospital industry's 14-day, 80-hour exemption for today's 48-hour nursing home exemption. If memory serves me correctly, it was suggested during the debate on the 1966 amendments that the hospital exemption, granted as an accomodation for their scheduling purposes, would be equally suited, if not preferable, for the nursing home industry's purposes. This was not true then and it certainly is not true now.

Our membership is also greatly concerned about the rate increases proposed by S. 1861. Pursuant thereto, nursing home employees would be paid \$1.70 an hour immediately following passage, \$2.00 an hour one year later, and \$2.25 an hour two years after enactment. The bases for our anxiety is the fact that the reimbursement formulae under Medicare and Medicaid do not provide for such automatic cost increases and the further fact that since 1966, when amendments were adopted to achieve a 15-cents an hour increase each year, most states have failed to adjust their welfare rates to cover the increases in labor costs. As a matter of fact, in several instances, states moved in the opposite direction and lowered their rates in order to achieve an economic objective.

Additionally, while the Congress considers proposals which would increase wages for certain nursing home employees, the industry is simultaneously confronted with another measure, H. R. 1, which would impose an artificial limit or "freeze" on nursing home rate increases. H. R. 1, as passed by the House, contains a provision, Section 225, which would limit skilled nursing home and intermediate care rate increases to 5 percent over the previous year's per diem rates. While the Secretary of HEW "may by regulation increase the percentage specified . . . to the extent necessary to take account of increases in the Federal minimum wage or which otherwise result directly from provisions of Federal law enacted after the date of the enactment of the Social Security Amendments of 1971", the language is merely permissive. It does not require the Secretary to increase the specified percentages.

Moreover, we would like to note that during the House debate on H. R. 1, it was observed by Representative Anderson of Illinois that Section 225 would cost his State money "because those costs are rising more than 5 percent a year, at the rate of something like 13 to 15 percent a year." We are confident not only that his estimate is accurate as regards his State but that it fairly reflects the increase in costs for most of the States in view of the continuing inflationary conditions which grip the nation.

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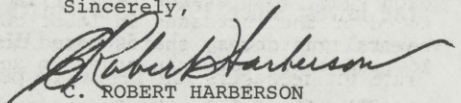
Honorable Harrison A. Williams
Page Three
July 15, 1971

One further irony needs to be pointed out. Skilled nursing homes across the country are being threatened with an Administration supported proposal to reduce Federal matching funds by some \$238 million. This would bring the total cutback in Federal matching funds in the nursing home sector alone to approximately \$440 million. These reductions are unduly severe and to be further burdened at this time with additional labor costs that cannot be absorbed would be totally unconscionable.

I think you will agree, Mr. Chairman, that the nursing home industry is confronted with an unusual and exceedingly trying combination of challenges. We, therefore, respectfully urge that you and your colleagues accord these factors the serious consideration which we feel they merit during your deliberations.

We would also appreciate it if you would include this letter in the official record of your hearings on S. 1861.

Sincerely,


C. ROBERT HARBERSON
Executive Vice President

CRH/lk

cc: Senate Labor and Public Welfare Committee
Gerald Feder, Subcommittee Counsel
Eugene Mittelman, Minority General Counsel
Peter C. Bennedict, Minority Counsel

(Submitted on behalf of the Chamber of Commerce of the United States)

YOUTH UNEMPLOYMENT AND MINIMUM WAGES: AN OVERVIEW

THOMAS W. GAVETT

Bureau of Labor Statistics, U.S. Department of Labor

BACKGROUND

Youth Unemployment.

In 1969 the unemployment rate for 16 to 19 year olds was 12.2 percent, compared to 5.7 percent for the 20-24 year olds and only 2.2 percent for those 25 years of age and older. (See table 1).¹ Within the teenage group,² the unemployment rate for Negroes³ was 24.0 percent, compared to 10.7 percent for whites, and rose to a staggering 27.7 percent for Negro females.

As high as youth unemployment rates were in 1969, these were the lowest since 1957. Only in the immediate post-World War II years and during the Korean War years did the unemployment rate for teenagers fall below 10 percent.

The flow of teenagers into and out of the labor force as they "test jobs" in an effort to find out about the world of work, and the still intermittent attachment to the labor force of the many teenagers who are enrolled in school inevitably contributes to high unemployment rates. Further, spells of unemployment are typically short for teenagers. In the late 1960s, about 55 percent of the teenagers were unemployed less than 5 weeks, compared with 40 to 45 percent for those over age 24.

In the late 1940s and in the 1950s the teenage unemployment rate ran about 2.5 to 3.5 times the rate for adults over age 24. Beginning in 1963, however, the teenage unemployment rate rose sharply relative to that for adults, averaging about 5.5 to 1 in the last two years of the decade.

Other Developments.

A number of changes in the past 20 years may have contributed to the high rates of youth unemployment. There have been some

¹ This article draws heavily on materials presented in BLS Bulletin 1657, *Youth Unemployment and Minimum Wages* (Washington: GPO, 1970).

² Unless otherwise noted, the terms "teenagers" and "youth" refer to the 16-19 year old group.

³ Data for Negroes include other races.

dramatic changes in the teenage population since World War II. Higher birth rates in the 1940s were reflected in a 22-percent increase in the population of teenagers in the late 1950s, compared to 3 percent in the first half of the decade, and another 27 percent in the first half of the 1960s. Only in recent years have the high birth rates of the 1940s ceased to dramatically affect the teenage population growth; in the last half of the 1960s, teenage population grew but 12 percent.

Despite the rapid growth in teenage population and civilian labor force the economy has absorbed an imposing number of teenagers. Employment of teenagers increased about 44 percent, compared to an overall growth in employment of 30 percent. The rapid growth in demand for teenagers was not adequate, however, to absorb the available supply.

There was a striking change in the number of teenagers employed in agriculture—an absolute decline from 734,000 in 1948 to 394,000 in 1968. This major shift in the industrial composition of employment meant that a much smaller proportion of teenagers were able to use the easy entrance to employment on the family farm. Increasingly, teenagers had to compete for jobs in an urban labor market, trying to find jobs especially in retail trade (34 percent of all employed teenagers outside agriculture in 1968), services (22 percent), and manufacturing (18 percent).

Another imposing change has been the increase in the proportion of teenagers enrolled in school. In 1947 about 46 percent of the teenagers were enrolled; by 1968 the percentage was 71. Increased school enrollment has contributed to a decline in the labor force participation rate of teenagers, but at the same time over half the teenagers active in the labor force are enrolled in school. Potentially, the fact of school enrollment compounds problems of job placement. A "suitable" job is now more apt to be a part-time job, outside school hours, and close to home or school.

Another factor given special note is the military draft, in continuous existence since June 1948. In the post-war period, military personnel under age 20 have equalled from 10 to 25 percent of the male population 18 to 19 years of age. The uncertainty about whether or not they will be drafted has contributed to the reluctance of employers to hire 18 and 19 year old males.

FEDERAL MINIMUM WAGE

Historical Developments.

The passage of the Fair Labor Standards Act (FLSA) in 1938 established a minimum wage of 25 cents scheduled, in the original Act, to rise to 40 cents in 1945. Congress raised the minimum to 75 cents in 1950, to \$1 in 1956, to \$1.25 in 1963, and to \$1.60 in 1968.

Although the absolute level of the Federal minimum quadrupled from 40 cents to \$1.60, increases in money wages have roughly paralleled increases in the legal minimum. At the time of congressional action, the minimum has averaged slightly more than 50 percent of average hourly earnings in the private nonfarm economy. (See table 1.) It should be noted that Congress acted more frequently in the 1960s than before. Hence, the minimum wage to average hourly earnings ratio did not reach the low levels of 1949 (31 percent) or 1955 (43 percent).

The most important development in Federal minimum wage legislation was the expansion in coverage of the law. After passage in 1938 there was no significant change in the proportion of non-supervisory workers covered by the law until 1961. The 1961 amendments increased the proportion of workers covered from about 60 percent to 67 percent, and the 1966 amendments increased the proportion to over 80 percent. The important sectors brought under coverage of the law were retail trade and services, two sectors especially important to teenage employment.

An approximation of the effects of expansion in coverage can be made by computing the minimum wages as a percentage of average hourly earnings in each major industry division and weight by the proportion of employment covered and industry teenage employment. (See table 2, column 5.) The data imply an almost doubling of minimum wage impact on teenagers from 1956 to 1968.

Relationship to Youth Unemployment.

Conventional analysis suggests that a wage set above equilibrium will reduce the level of employment or at least retard the rate of growth in employment in a competitive industry. The leap from conventional analysis to the belief that minimum wages have affected teenage unemployment requires the assumptions that the minimum wage causes unemployment to increase in the economy, that it

TABLE 1
Proportion of Earnings and of Nonsupervisory Workers
Covered by the Federal Minimum Wage, 1947-1969^a

Year	Basic minimum wage as a percent of ^a	Total compensation per man-hour private nonfarm	Minimum wages as a percent of average hourly earnings weighted by industry total employment and proportion covered ^a private nonfarm	Minimum wages as a percent of average hourly earnings weighted by industry teenage employment and proportion of employment covered ^a private nonfarm	Percent of non- supervisory workers in private nonfarm economy covered by FLSA
1947	35.4	31.3	20.3	(5)	62.5
1948	32.7	28.7	19.1	(5)	62.9
1949	31.4	27.9	18.0	(5)	61.9
1950 ^a	56.2	49.6	32.3	(5)	62.3
1951	51.7	45.5	30.1	(5)	62.5
1952	49.3	43.1	28.4	(5)	62.4
1953	46.6	40.8	26.9	(5)	62.7
1954	45.5	39.5	25.8	18.2	61.5
1955	43.4	38.1	24.8	17.6	61.3
1956 ^a	53.2	46.0	30.7	21.0	60.9
1957	52.9	43.4	29.8	20.2	60.8
1958	51.3	41.9	28.3	18.4	59.7
1959	49.5	40.1	27.3	18.1	59.7
1960	47.8	38.5	26.2	17.8	59.2
1961 ^a	49.1	40.9	28.3	21.0	62.1
1962	51.8	43.1	32.8	27.7	67.8
1963 ^a	51.9	42.9	32.5	27.1	67.4
1964	53.0	43.3	33.4	27.7	67.0
1965	51.0	41.8	32.5	27.1	67.1
1966	48.8	39.5	31.5	26.7	67.0
1967 ^a	53.8	41.5	39.2	36.9	80.4
1968 ^a	55.6	44.0	42.6	40.1	81.6
1969	52.6	41.8	41.2	(5)	81.4

^a In years when the minimum wage changed, the rate used in the calculations was weighted by the number of months it was in effect. For example in 1968, \$1.40 was in effect 1 month and \$1.60 for 11 months, a weighted average rate of \$1.58.

^a The basic minimum refers to the single rate provided under law prior to 1961 and, since 1961, to the rate applicable to previously covered workers.

^a Calculated, as follows:

$$\sum_i \left[\frac{E_i}{E_t} \left[\left(\frac{MP_i}{AHE_i} \cdot CB_i \right) + \left(\frac{MN_i}{AHE_i} \cdot CN_i \right) \right] \right]$$

where:

E = payroll employment.

AHE = average hourly earnings.

MP = basic minimum wage.

MN = minimum wage for newly covered workers.

CB = proportion of nonsupervisory employees covered by the basic minimum.

CN = proportion of nonsupervisory employees covered by the rate applicable to newly covered workers.

i = major industry division (wholesale and retail trade treated as separate divisions).

t = total private nonfarm economy.

^a Calculations are the same as in footnote 3 except that employment data refer to the 14-19 age group only. Employment data are not strictly comparable to that for all workers since it comes from household rather than payroll records and because government employment not classified as public administration is included in the other divisions; private households were excluded.

^a Not available.

^a Denotes years when basic minimum wage was changed. There were also changes for newly covered workers in 1964, 1965, and 1969.

especially causes inferior workers to be disemployed, and that teenagers are inferior to other workers. Intuitively, these assumptions are not bizarre.

Studies published in 1966 by Burns and by Friedman and Brozen strongly argued a causal relationship between minimum wages and teenage unemployment did exist.⁴ The controversy stimulated a considerable number of studies, though providing far from a unanimous conclusion.

From the viewpoint of economic policy, any relationship between minimum wages and youth unemployment is very important. If in fact it exists, a significant social problem could be remedied or ameliorated through legislative action. At the direction of the Secretary of Labor, the Bureau of Labor Statistics, in conjunction with other parts of the Department of Labor and with university personnel, undertook a study of the problem.⁵

THE DEPARTMENT OF LABOR STUDY

Econometric Analyses.

The econometric studies undertaken to analyze experience in the United States used several approaches. The major thrust involved an examination of quarterly data for 1954 through 1968 for different age-sex-color groups within the teenage population. The dependent variables used were the unemployment *ratio* (unemployment divided by the civilian noninstitutional population) and the employment *ratio*.

The analysis controlled for the ratio of teenage males in the Armed Forces to population (except in the regressions for females), the ratio of teenage agricultural employment to population, the adult unemployment rate, the ratio of teenage to adult population, the school enrollment rate, and the minimum wage variable outlined in column 5 of table 2. Dummy variables were also used for the years 1965 to 1968 to measure the effects of Federal manpower programs and changes in the labor force questionnaire introduced in 1967.

In only 7 of the 16 equations did the regression indicate the expected inverse relationship between teenage employment and the

⁴ Arthur F. Burns, *The Management of Prosperity* (New York: Columbia U. P., 1966). Yale Brozen and Milton Friedman, *The Minimum Wage Rate* (Washington: The Free Society Association, 1966).

⁵ More detail can be found in BLS Bulletin 1657.

minimum wage or the expected direct relationship between teenage unemployment and the minimum wage. Further, only in the two regressions involving white males and that for white females 16 to 17 years old and the employment ratio was the regression coefficient both "right" and also have a T-ratio of two or more.

Further studies using annual data for 1948 through 1968 for all teenagers, but a more limited set of independent variables, came to similar conclusions. While there is a significant relationship between minimum wages and youth unemployment where other variables are excluded, a look at the whole set of variables casts doubt upon the importance of minimum wages as an explanatory variable.

Additional work on multiple equation models and lagged equation models might be useful, though all may be confronted with the intractable problems of multicollinearity in the independent variable set.

The Longitudinal Study.

The results of the time series analysis made it especially fortuitous that a "before and after" analysis could be made of the experience of an identical group of young males. The National Longitudinal Studies directed by Herbert Parnes at The Ohio State University⁶ made possible tracing a sample of about 5,000 males 14 to 24 years of age from October-November 1966 to October-November 1967. Between those dates, the 1966 amendments went into effect, providing for broader coverage of FLSA, a minimum wage of \$1.40 for workers previously covered by the law, and a minimum of \$1 for newly covered workers.

The group was divided among those earning \$1.40 or more in 1966—and who could not have been directly affected by the FLSA changes—those earning \$1 to \$1.39, and those earning less than \$1. If minimum wages had an adverse effect, we would expect that the low-wage teenagers would have greater increases (or smaller decreases) in unemployment or in the amount of time spent out of the labor force than high-wage teenagers.

Among teenagers included in the sample, actual experience did not always correspond to expectations. The average number of

⁶ This study was carried out under contract with the Manpower Administration, U.S. Department of Labor.

weeks teenagers were unemployed declined *more* among the low-wage groups than high wage. Similarly, of those teenagers employed in the 1966 survey week, 5.3 percent of those who were earning less than \$1 were unemployed a year later compared to 6.5 percent of those who were earning \$1 to \$1.39 and 6.4 percent of those who were earning \$1.40 or more. On the other hand, the average number of weeks spent out of the labor force fell less (as theory would suggest) among the low wage than among the high-wage teenagers, and, similarly, a greater proportion of the low wage than of high-wage teenagers who were employed in 1966 were out of the labor force a year later.

Examination of data for various subgroups, such as those with limited education or no formal occupational training or employed in trade or services or different color-age groups, produced a similar mixed bag of results. While there was evidence to suggest that Negro males 15-17 years of age enrolled in school with limited labor market information and young students regardless of color employed as service workers had experienced adverse effects, there was no general pattern of adverse effects in the available data.

The Employers' View.

A survey was conducted by the Bureau of Labor Statistics in ten metropolitan areas. Employers reported the minimum age or educational requirement for beginning jobs (if any), whether the requirements had been increased since 1966 and why, and the factors affecting their decision to hire teenagers. The survey indicated that most establishments had no minimum age or educational requirements for beginning jobs. Further, few employers had raised age or education qualifications between 1966 and 1969—in no instance as many as 8 percent. Among the small minority who had raised hiring requirements, increased cost of training and hiring was the most commonly cited reason. Minimum wage changes were the second most common reason.

Among the factors affecting employers' decisions to hire teenagers, the most frequently cited by employers were hazardous work order restrictions (for those under 18), the military draft (for those 18 and 19), and undependability and lack of training. In nine of the ten metropolitan areas a majority of the employers did not consider the minimum wage important in affecting their decisions. In the

average area, 16 percent of the employers thought the minimum wage very important in the case of teenagers under age 18, and 12 percent in the case of teenagers ages 18 and 19. Similarly, 63 percent thought the minimum wage not important in the case of younger teenagers and 69 percent in the case of those ages 18 and 19. Employers in smaller metropolitan areas were more inclined to regard the minimum wage as being important.

As a companion approach to evaluating employers' views, the U.S. Training and Employment Service conducted a survey of experience in local public employment offices in 23 areas. Among Employment Service Offices responding to the survey, the reasons rated as most important among difficulties in placing teenagers were (1) in the case of 16 and 17 year olds, legal restrictions on working conditions, employers believe teenagers unreliable, and employer hiring specifications with respect to age exclude teenagers; and (2) in the case of 18 and 19 year olds, the military draft, high labor turnover among teenagers, employer belief that teenagers are unreliable, and unwillingness of teenagers to accept wages offered.

The level of the minimum wage was not rated as an important reason for Employment Service difficulty in placing teenagers. However, 43 percent of the offices believed a lower minimum would spur the employment of 16 and 17 year olds, and 25 percent of the offices thought it would stimulate the employment of 18 and 19 year olds.

Some additional insight into the attitudes of employers towards teenagers was gained through a special survey of the full-time student and the learner certification programs under FLSA. Under these programs, employers certified by the Wage and Hour Division have the legal authority to hire youth at 85 percent of the minimum wage. Among these employers, however, few fully utilized their authority. In fact, 55 percent of the employers used less than half their authorized man-hours under the full-time student program and 79 percent under the learner program.

Aside from being already fully staffed or citing technical problems with the certification programs, the reasons most commonly cited by employers for not hiring youth at the subminimum rates were (1) in the case of the full-time student program, students were unwilling to work at subminimum rates or students were unsatisfactory workers and (2) in the learner program, experienced

workers were available or learners were not willing to work at special rates.

Wage Expectations

Judging by employer response and local Employment Service Office experience, plus many informal comments, it is "common knowledge" that teenagers have "unrealistic" wage expectations. This issue is of special concern to us since it raises two questions: (1) are teenage wage expectations so high that they contribute to youth unemployment rates and (2) are the expectations affected by the legal minimum wage?

Relevant materials are available from the National Longitudinal Survey (NLS), mentioned above, the Urban Employment Surveys (UES), and special questions and tabulations available from the October 1969 Current Population Survey (CPS). According to the 1967 National Longitudinal Survey, the mean wage expected by unemployed teenage males in a given age-color grouping was less than their employed cohorts actually earned. However, the proportion of unemployed teenage males willing to work for less than \$1.40 (then the basic minimum wage) was less than the proportion actually receiving less than the minimum.

The UES reports covered poverty areas of six large cities. As in the case of the NLS, the UES indicated that the median wage expected by unemployed teenage boys and girls was less than that received by the employed. Also similar to the NLS, the UES surveys indicate smaller proportions of unemployed than employed teenagers willing to work for less than the Federal minimum wage (especially true of males in Chicago and New York poverty areas).

A sampler of the results provided by the October 1969 CPS is given in table 2.⁷ At the time of the survey, the minimum wage was \$1.60, for persons covered by FLSA prior to 1966 and \$1.30 for persons recently brought under coverage of the law. A few relationships hold true consistently. First, in every comparison, the proportion of unemployed teenagers expecting more than the legal minimum of \$1.30 or \$1.60 is less than the proportion of employed teenagers getting that amount. Second,

⁷A more comprehensive report on Teenagers and Earnings by Vera Perrella is forthcoming. This study was financed by the Manpower Administration of the U.S. Department of Labor.

the expectations of teenagers not currently in the labor market were somewhat less "realistic" than the unemployed, but still not bad compared to the employed. Third, there was a disproportionate number of unemployed teenagers who expected to receive slightly above the basic minimum (\$1.60 to \$1.74 group) compared to employed teenagers; this was even more true among the teenagers out-of-the-labor-force.

The available evidence does not strongly support the argument that the wage expectations of unemployed teenagers are unrealistic. Two points should, however, be noted. First, it could be argued that unemployed teenagers are inferior and their wage expectations *should* be significantly less than those who are employed. No definitive answer can be given to this, though it should be remembered that unemployed teenagers are a fluid rather than permanent pool of individuals. Second, the concentration of unemployed and

TABLE 2
Hourly Rate of Pay for Those Employed and Rate of Pay
Required to Induce Youth to Accept Employment or
Enter the Labor Force, October 1969
(Percent Distribution)

Group and labor force status	Less than \$1.30	\$1.30- 1.59	\$1.60 and more	\$2.00 and more	\$1.60 1.74
All persons, 16-19 years old					
Employed	16.8	16.5	66.7	29.4	22.0
Unemployed	19.5	24.2	56.3	12.2	29.4
Not in labor force	19.6	24.2	56.3	12.8	33.4
In school, 16-19 years old					
Employed	22.8	22.9	54.3	16.1	24.7
Unemployed	22.9	29.0	48.1	6.1	31.3
Not in labor force	20.2	25.9	53.9	11.3	32.6
Negroes, 16-19 years old					
Employed	17.1	16.9	66.0	27.8	24.1
Unemployed	13.8	28.3	57.9	11.9	27.0
Not in labor force	19.3	20.4	60.3	13.4	34.3
All persons, 16-17 years old					
Employed	28.3	22.9	48.8	12.4	25.1
Unemployed	27.4	30.1	42.5	3.0	27.4
Not in labor force	25.2	27.1	47.8	6.7	33.3
All persons, 18-19 years old					
Employed	9.0	12.1	78.8	40.8	19.8
Unemployed	11.6	18.5	69.8	20.9	31.3
Not in labor force	9.7	18.9	71.4	23.5	33.7

Source: Bureau of Labor Statistics

not-in-labor-force teenagers expecting wages at or slightly above the basic minimum *suggests* the possibility that the legal minimum may have affected expectations.

CONCLUSIONS

Youth unemployment remains a very real problem in the United States. Available studies do not provide adequate evidence that the Federal minimum wage has played an instrumental role in creating the problem in the past. It is, of course, impossible to establish a negative conclusion. Certainly there are hints of adverse effects in the evidence, and certainly the *possibility* that there have been significant adverse effects upon the unemployment of teenagers remains.

Additional research can and should be done. Certainly I no more than others in the research business would want to sound the death bell. I would, however, argue that enough has now been done that simple models which play with only the adult unemployment rate and the minimum wage as independent variables should be relegated to the graveyard. Certainly we are now at the point where we should require substantive new empirical evidence and much higher levels of analytic sophistication.

In retrospect, I would judge that the project sponsored by the Department of Labor was focused on the somewhat narrow, but more manageable problem, of the relationship between youth unemployment and minimum wages. The broader questions remain. What are the causes of high youth unemployment rates? What can be done about it? Future minimum wage policy may be relevant in answering the last question.

(Submitted on behalf of the Chamber of Commerce of the United States)

TEENAGE UNEMPLOYMENT EFFECTS OF FEDERAL MINIMUM WAGES

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The purpose of this paper is to examine the impact of federal minimum wages on various categories of teenage workers. Orthodox economic theory implies that the unemployment effect of a minimum wage will depend on the elasticities of supply and demand, the extent to which the minimum wage is above the market clearing wage, and the ability of displaced workers to find employment elsewhere. On all counts teenage labor, particularly non-white teenagers, are more likely to be affected by minimum wage laws than other labor-force groups.

We have used multiple regression techniques to measure the unemployment effects of changes in the real minimum wage. Two models were used:

$$(1) \log U_i = a_1 + \delta_1 \log U_c + \beta_1 \log X_c + \epsilon_1$$

$$(2) \log U_i = a_2 + \delta_2 \log U_c + \beta_2 \log X_w + \epsilon_2$$

where U_i is the unemployment rate in the i th teenage labor force group; U_c is the civilian unemployment rate, included to take account of fluctuations in aggregate demand; X_c is the real minimum wage (the nominal minimum wage deflated by the Consumer Price Index); and X_w is the minimum wage deflated by the Wholesale Price Index. The coefficients β_1 and β_2 can be interpreted as the elasticities of unemployment with respect to changes in the real minimum wage for models 1 and 2 respectively.

The two models were estimated for each of seven classifications (listed in Table 1) using monthly BLS data on unemployment and prices. An inspection of the Durbin-Watson statistics revealed serious auto-correlation in the residuals. One adjustment using partial first differences¹ raises all of the Durbin-Watson statistics to acceptable levels.

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¹ Henri Theil and A. L. Nagar, "Testing the Independence of Regression Disturbances," *Journal of the American Statistical Association*, (December, 1961).

TABLE 1
Variables and Symbols

Variables	Symbols
Unemployment Rates	
All civilian workers	U_c
All teens, age 14-19	U_1
All white teens, age 14-19	U_2
All non-white teens, age 14-19	U_3
White male teens, age 14-19	U_4
White female teens, age 14-19	U_5
Non-white male teens, age 14-19	U_6
Non-white female teens, age 14-19	U_7

THE EXTENT OF UNEMPLOYMENT EFFECTS

For the period January, 1954—December, 1965, Table 2 lists the unemployment elasticities estimated for the two models. The most striking feature of these elasticities is their sign; they are all positive. This implies that increases in teenage unemployment in every category are associated with increases in the federal real minimum wage. As judged by conventional statistical tests (standard errors of regression coefficients, t -values, R^2 , and Durbin-Watson statistics) the results are quite powerful.² Model 1 yields a slightly higher measure of the unemployment elasticity for non-white teenagers than Model 2. Model 2, however, yields slightly higher estimates of the unemployment elasticity for white teenagers than Model 1.

Intuitively for each model the size of the elasticities for all categories of teenage unemployment are consistent with each other. For example, in both models the unemployment elasticity for Non-White Teens is greater than that for All Teens while that for White Teens is less. This implies that changes in the federal minimum wage affect Non-White Teens more than White Teens which is what we would expect. In fact the impact on Non-White Teens is more than twice that on White Teens. Also the unemployment elasticity for White Teens is between that for Male White Teens

² Due to space limitations, test statistics, complete regression results (adjusted and unadjusted), and derivation of reduced forms were excluded. These are contained in a working paper, which is available from the authors on request.

and Female White Teens, which is to be expected. For both models the unemployment elasticities for Female White Teens are greater than the unemployment elasticities for Male White Teens. For Model 2 the unemployment elasticity for Non-White Teens is between the unemployment elasticities for Male Non-White Teens and Female Non-White Teens, which is to be expected. The unemployment elasticities for Female Non-White Teens are higher than for Male Non-White Teens using both models.

To gain an appreciation for the extent of the unemployment effect of changes in the real federal minimum wage we calculated the mean unemployment elasticity for each classification of teenage labor using the elasticities for the 2 models listed in Table 2. The means are also listed in Table 2. Using these means, it is interesting to compare the unemployment elasticities for the different classifications of teenage labor. In all cases the unemployment elasticity for male teenagers is lower than for females of the same race and the unemployment elasticity for Whites is lower than for Non-Whites of the same sex. This is consistent with plausible expectations as to the differential impact of minimum wages.

With respect now to the expected quantitative impact of a change in the minimum wage, consider the unemployment elasticity for All Teens, which is .409. This number means that for an increase in the Federal real minimum wage of 10% we would expect an increase in the unemployment rate for All Teens of 4.09% of the prevailing rate. In December, 1965, the unemployment rate for All Teens was 12.9, so if the minimum wage were raised 10% in this month we would expect the unemployment rate to increase initially by .53, due to this increase in the minimum wage. The new unemployment rate would then be 13.43 which is listed in Table 2. This calculation assumes that there is no change in the price level. Increases in the price level tend to erode the unemployment effect of changes in the minimum wage.

Based on the mean unemployment elasticities in Table 2, we have estimated the unemployment effects of increases in the federal real minimum wage as of December, 1965, for each Teenage Labor Force Classification. We have considered changes in the minimum wage of 1%, 10% and 100%. Since our elasticities apply only at the margin, the unemployment rates estimated on the basis of a 100% increase in the minimum wage are highly tentative. They

Table 2
Unemployment Elasticity Coefficients with Respect to Changes in Real Minimum Wages, January, 1954—December, 1965

Teenage Labor Force Classification	Unemployment Elasticity Coefficients			Predicted Unemployment Rates Under Hypothetical Increase in Minimum Wage as of December, 1965			
	Model 1	Model 2	Mean	0%	1%	10%	100%
1. All Teens	.3607	.4574	.409	12.9	12.95	13.43	18.2
2. White Teens	.3012	.3789	.340	11.1	11.14	11.48	14.9
3. Non-White Teens	1.0253	1.0003	1.013	27.6	27.88	30.40	55.6
4. Male White Teens	.2629	.2801	.272	10.9	10.93	11.20	13.9
5. Female White Teens	.5240	.6054	.565	11.6	11.67	12.26	18.2
6. Male Non-White Teens	1.0505	.9682	1.009	23.1	23.33	25.43	46.4
7. Female Non-White Teens	1.1729	1.1066	1.140	34.5	34.89	38.43	73.8

are included only for the purpose of giving a general impression of the magnitudes involved.

Table 2 indicates that a 10% increase in the federal real minimum wage as of December, 1965, would raise the unemployment rate of All Teens from 12.90 to 13.43 or by .53. The unemployment rate of All Non-White Teens would increase by 2.80 while the unemployment rate for All White Teens would increase by only .38. Females would be affected more than males. The unemployment rate for Female White Teens would increase by .66 while the unemployment rate for Male White Teens would increase by .30. The unemployment rate for Female Non-White Teens would increase by 3.93 while the unemployment rate for Non-White Males would increase by 2.33. Table 2 shows similarly the unemployment effects we would expect from increasing the federal minimum wage by 1% or 100%.

The Lag Structure of Unemployment Effects

In this section we investigate the unemployment elasticities under different assumptions concerning the lag of the effect. Separate estimates for models 1 and 2 are derived with real minimum wages lagged 0 months, 8 months, 16 months and 24 months. The unemployment elasticities for each classification of teenage labor, for each assumption on lags and for Models 1 and 2 are listed in Table 3. In Table 3, both models yield changes in the elasticities in the same direction as the lag increases, except for the change in lag from 0 to 8 months for Female White Teens; in this case for model 1 the unemployment elasticity increases while for model 2 it decreases slightly.

The unemployment elasticities for All Teens, White Teens, Male White Teens, and Male Non-White Teens increase as the lag is extended from 0 months to 8 months. The unemployment elasticity for Female Non-White Teens falls as the lag increases from 0 months to 8 months. The unemployment elasticities for All Teens, White Teens, Male White Teens, Female White Teens, and Female Non-White Teens increase as the lag is extended from 8 months to 16 months. The unemployment elasticities for Non-White Teens and Male Non-White Teens decrease as the lag is extended from 8 months to 16 months. The unemployment elasticities for Non-White Teens and Male Non-White Teens decrease as the

TABLE 3
Unemployment Elasticity Coefficients with Respect to Changes in Real Minimum Wages, January, 1954—December, 1965

Teenage Labor Force Classification	Model 1 lag				Model 2 lag			
	0 mos.	8 mos.	16 mos.	24 mos.	0 mos.	8 mos.	16 mos.	24 mos.
1. All Teens	.3607	.4613	.4683	.4436	.4574	.5040	.5284	.5265
2. White Teens	.3012	.3707	.5072	.5150	.3789	.4685	.5203	.4786
3. Non-White Teens	1.0253	.9040	.5882	.7909	1.0003	.9186	.6913	.7853
4. Male White Teens	.2629	.3977	.4576	.3814	.2801	.3690	.4135	.3718
5. Female White Teens	.5240	.5428	.5860	.3395	.6054	.6037	.6566	.5280
6. Male Non-White Teens	1.0505	1.2640	.8741	.8128	.9682	1.1230	.8191	.7438
7. Female Non-White Teens	1.1729	.6738	.9156	1.1376	1.1066	.7793	1.0487	1.1296

lag is extended from 8 months to 16 months. The unemployment elasticities for All Teens, White Teens, Male White Teens and Female White Teens decrease as the lag is extended from 16 months to 24 months. The unemployment elasticity for Male Non-White Teens decreases as the lag is extended from 16 to 24 months. On the other hand the unemployment elasticities for Non-White Teens and Female Non-White Teens increases as the lag is extended from 16 to 24 months.

To determine more clearly the trends in the unemployment elasticities, as the length of the lag is increased the mean unemployment elasticities for each lag assumption are computed from Models 1 and 2, expressed in terms of a percentage of the 0 month lag value and plotted in Figure 1.

From Figure 1, we can see that the unemployment elasticities for All Teens, White Teens, Male White Teens, Female White Teens, and Male Non-White Teens have maximums. For All Teens, White Teens, Male White Teens and Female White Teens the peak comes after a 16 month lag. The decline in the unemployment elasticities after a 16 month lag is then gradual. It is however most abrupt for Female White Teens; less abrupt for Male White Teens and very gradual for All Teens. The unemployment elasticity for Male Non-White Teens reaches a maximum after an 8 month lag and then declines abruptly at first, then gradually.

The unemployment elasticity for Non-White Teens declines as the lag is lengthened to 16 months after which it rises again. The unemployment elasticity for Female Non-White Teens decreases rapidly as the lag is increased to 8 months. With further increases in the lag, the unemployment elasticity for Female Non-White Teens rises steadily. The remarkable feature of Figure 1 is that even after 2 years the unemployment effect of a change in the federal minimum wage is quite substantial for all classes and in some cases is greater than the immediate effect.

In terms of the immediate effect (as measured by the unemployment elasticity with a 0 month lag), after 2 years the unemployment effect of a change in the federal real minimum wage is 119% for All Teens, 163% for White Teens, 78% for Non-White Teens, 139% for Male White Teens, 77% for Female White Teens, 77% for Male Non-White Teens, 98% for Female Non-White Teens.

The general tendency for the elasticities of All Teens, White Teens, Male White Teens, and Female White Teens to rise as the lag is increased from 0 to 16 months indicates the delayed response pattern of employers in adjusting their factor proportions to a change in relative factor prices—specifically the quantity of teenage

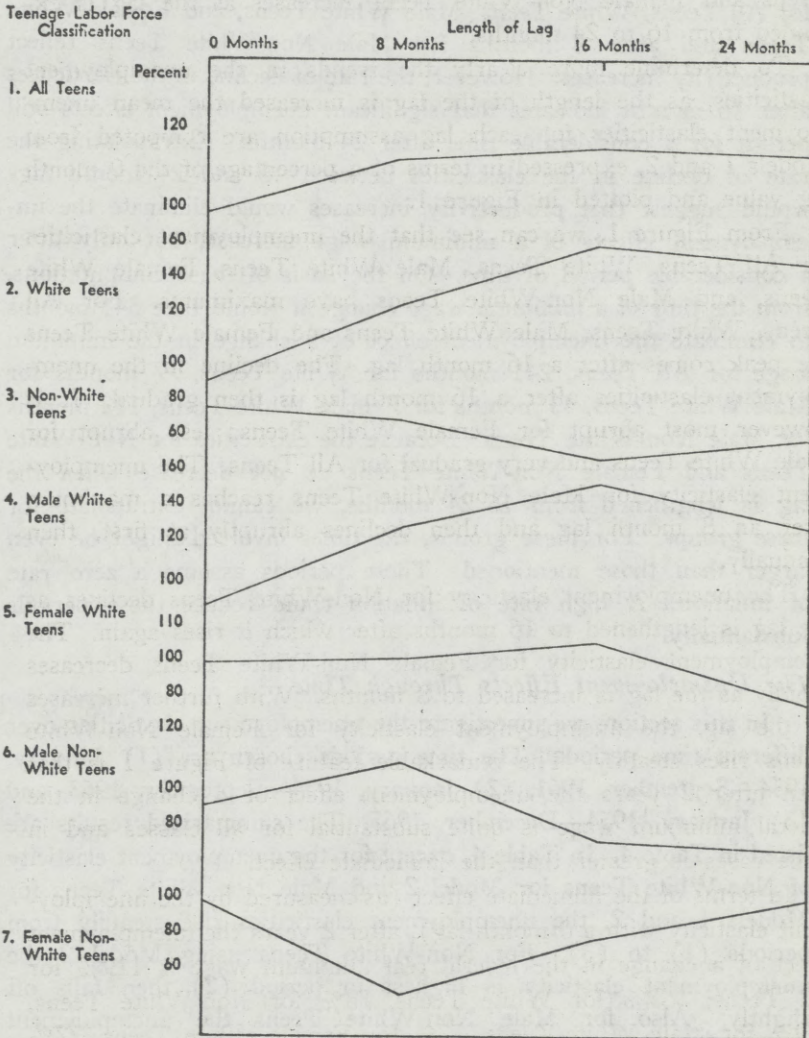


Figure 1. Lagged Mean Unemployment Elasticity Coefficients as a Percent of Unlagged Mean Unemployment Elasticity Coefficients.

labor hired. Most of the adjustment for these groups takes place within 16 months. The employees of Male Non-Whites appear to adjust more rapidly. Most of this adjustment takes place within 8 months.

Since we have taken account of price changes by using real minimum wages, the decreases in the elasticities after 16 months for All Teens, White Teens, Male White Teens, and Female White Teens and after 8 months for Male Non-White Teens reflect productivity increases. However, the rate of decline in the elasticities after 16 months indicates that significant unemployment effects still persist for a considerable time after 24 months. Extrapolating the rate of decline in the elasticities between 16 and 24 month lags would suggest that productivity increases would eliminate the unemployment effects of a minimum wage increase, but only after a considerable period of time. On the basis of these computations, from the time of a minimum wage change it would take 341 months to eliminate the unemployment effect of a change in the minimum wage for All Teens, 241 months for White Teens, 77 months for Male White Teens, 43 months for Female White Teens, 112 months for Male Non-White Teens. Because the elasticities for Non-White Teens and Female Non-White Teens do not decrease when the lag is lengthened from 16–24 months, we cannot extrapolate for these groups. For these groups, the times involved might be even larger than those mentioned. These periods assume a zero rate of inflation. A high rate of inflation could reduce these periods substantially.

The Unemployment Effects Through Time

In this section, we investigate the unemployment elasticities over different time periods. The time periods chosen are (1) January, 1954–September, 1961, (2) January, 1954–September, 1963, and (3) January, 1954–December, 1965. The summarized results are listed in Table 4. In Table 4, except for the unemployment elasticity of Non-White Teens for Model 2 and Male Non-White Teens for Models 1 and 2, the unemployment elasticities rise steadily from periods (1) to (3). For Non-White Teens using Model 2 the unemployment elasticity is highest in period (2) then falls off slightly. Also for Male Non-White Teens the unemployment elasticity as estimated by Models 1 and 2 is highest in period (2) then falls off slightly.

In the interest of simplifying our results, we have calculated the means of the elasticities for the Models classified by period and the type of teenage labor, expressed them as percentages of their period (1) values and plotted them in Figure 2. From Figure 2 we can see that except for the unemployment elasticity of Male Non-White Teens the unemployment elasticities rise steadily from periods (1) to (3).

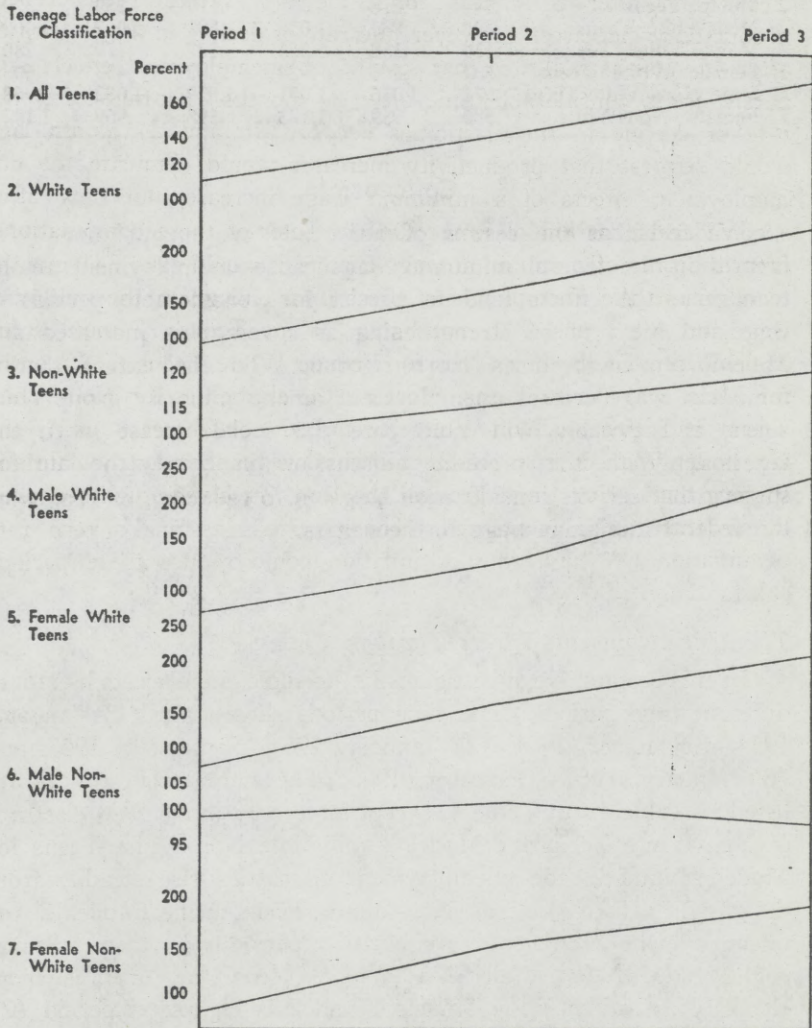


Figure 2. Mean Unemployment Elasticity Coefficients Expressed as Percentages of Period (1) Levels.

TABLE 4
Unemployment Elasticity Coefficients with Respect to Changes
in Real Minimum Wages

Teenage Labor Force Classification	Model 1			Model 2		
	(1)	(2)	(3)	(1)	(2)	(3)
	Jan '54- Sept '61	Jan '54- Sept '63	Jan '54- Dec '65	Jan '54- Sept '61	Jan '54- Sept '63	Jan '54- Dec '65
1. All Teens	.222	.305	.361	.272	.358	.457
2. White Teens	.141	.218	.301	.179	.259	.379
3. Non-White Teens	.805	.983	1.025	.891	1.007	1.000
4. Male White Teens	.110	.158	.263	.127	.179	.280
5. Female White Teens	.231	.400	.524	.302	.457	.605
6. Male Non-White Teens	.971	1.056	1.051	1.079	1.032	.968
7. Female Non-White	.586	.959	1.173	.598	.969	1.107

CONCLUSION

We feel that the results of our study are unambiguous. Increases in the federal minimum wage cause unemployment among teenagers; the effects tend to persist for considerable periods of time and seem to be strengthening as coverage is increased and as enforcement becomes more rigorous. To the extent that a minimum wage creates unemployment among minority group teenagers, it inevitably will exacerbate the social unrest in Urban Ghettos. With the preceding discussion in mind, the authors suggest that serious consideration be given to reducing, or removing, the federal minimum wage for teenagers.

(Submitted on behalf of the Chamber of Commerce of the United States, from "Journal of Political Economy," vol. 79, No. 4, July/August 1971)

The Effect of Minimum Wages on Teenage Unemployment Rates

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The model developed has the unemployment rates of four classifications of teenagers and the unemployment rate of males twenty to twenty-five as a function of overall labor market conditions, the minimum wage as a proportion of average hourly earnings for nonfarm workers, and the coverage of the minimum wage. The model hypothesizes that changes in the minimum wage relative to average hourly earnings have an increasing effect as employers gain more time to adjust; consequently a distributed lag is used to measure the impact of the minimum wage. As might be expected, the minimum wage most adversely affected nonwhite teenagers; females sixteen to nineteen were more adversely affected than males.

An increase in the minimum wage in a competitive labor market will result in some lessening of employment. Even in a monopsonistic market, increases in minimum wages may lead to reductions in employment. Few economists believe that monopsony is widespread, but even were it widespread a uniform national minimum wage would likely lead in some markets to a reduction in employment.

Assuming the labor market is relatively competitive, a rise in the minimum wage will result in a fall in employment for those with the least skills or smallest productivity. It may also lead to the substituting of skilled labor for the unskilled. Economists are generally in agreement about these effects of the minimum wage. The disagreement revolves around the magnitude of the unemployment effect of minimum wages. If a rise in the minimum wage leads to negligible declines in employment, then the cost in terms of unemployment may be much less than the gains from the better-paid labor force. Alternatively, if the unemployment impact is substantial, or, to put it another way, if the demand for labor is elastic, rises in the minimum wage will lead to reduced total wages.

The few previous studies of the effect of the minimum wage have been rather inconclusive. The United States Department of Labor has sur-

veyed low-wage industries in an attempt to measure the impact of changes in the minimum wage (1968a, 1968b, 1968c). They concluded the impact was small or negligible. David Kaun found that "in industries where the minimum wage had the greatest impact, the subsequent adjustment in terms of the factor proportion would also be great" (1965, p. 482). Yale Brozen showed that when minimum wages have been increased, the number of household workers (who are exempt from the minimum wage) has risen contrary to longrun trends (1962).

This study examines the impact of the minimum wage on disadvantaged classes of workers. Theory would suggest that when the minimum wage is raised, the impact would be felt most strongly by the unskilled, the inexperienced, and those facing discrimination. Thus teenagers, especially nonwhite teenagers, would be expected to suffer most from a rising minimum wage.

Clearly, not only the level of the minimum wage but its coverage would also affect employment opportunities of teenagers. In addition, overall labor market conditions would help determine unemployment rates of teenagers.

As is well known, unemployment rates of teenagers relative to those of adults have risen in the postwar period. It is sometimes argued that this has resulted from a rise in the relative supply of teenagers in the labor force. Therefore, the model developed tests this hypothesis.

Now a rise in the minimum wage should lead to a substitution of capital and skilled labor for the unskilled. However, over time as wage rates rise elsewhere in the economy, the barrier to employment at a given minimum wage will decline. Thus a \$0.75 minimum in 1954 might bar some from securing work in covered industries but would bar relatively far fewer in 1969. Employers will compare the minimum wage for an unskilled worker with the wage he must pay for a more skilled and productive worker. The higher the minimum relative to the wages of more skilled workers, the less unskilled he will wish to employ.

A rise in the minimum wage relative to other wages should have an increasing impact over time. It takes time to substitute capital for labor. Employers prefer to reduce their work force by attrition rather than firing workers. The possibility of substituting more skilled workers has to be explored and the skilled workers found and hired. Therefore, a rise in the minimum wage could be expected to have an increasing impact for awhile, but eventually the general upward movement in other wages would begin to offset the change in the statutory rate.

The model developed, then, has the unemployment rates of four classifications of teenagers and the unemployment rate of males twenty to twenty-five as a function of overall labor market conditions, the minimum wages as a proportion of average hourly earnings for nonfarm workers, and the coverage of the minimum wage. The teenage groups tested

were nonwhites, whites, males, and females; all sixteen to nineteen years old.

Unemployment rates for these subgroups were taken from various volumes of *Employment and Earnings*; put out by the Bureau of Labor Statistics. Monthly figures on average hourly earnings for production and nonsupervisory workers have been published only for 1964 to date in the BLS *Handbook of Labor Statistics*. Since monthly changes tend to be regular and smooth, for years prior to 1964 monthly estimates were made by interpolation. The coverage variable was computed using some non-published BLS bench mark data and then adjusting the total employment in those sectors primarily covered by these basic bench marks. Thus, for the years 1954-60 the monthly sum of total employment in mining, contract construction, manufacturing, and wholesale trade was adjusted by the proportion that total bore to the bench mark data for 1955 and 1956. For later periods similar adjustments were made as coverage was extended.¹ All data were seasonally adjusted.

The actual equation fitted was:

$$U_t = a + b_1 U_{25} + b_2 \left[0.75 + \sum_{k=1}^t (1 - B^{t-k}) \Delta M_k \right] / AHE_t \\ + b_3 (LF_{nwt} / LF_t) + b_4 C + b_5 T + u,$$

where U_t is the unemployment rate of one of the subgroups of teenagers or the twenty- to twenty-four-year-old males in the t th month; U_{25} is the unemployment rate of males twenty-five and over; \$0.75 is the minimum wage in January 1954, the first month; ΔM_k is the change in the minimum wage in the k th month (most months $\Delta M_k = 0$); AHE_t is the average hourly earnings of production or nonsupervisory workers on private nonagricultural payrolls; LF_{nwt} is the nonwhite teenage labor force; LF_t the total labor force; C is the percentage of the employed labor force covered by the minimum wage; T is time; and u is the error term. The parameter B was iterated from .10 to .99 to secure the best fit. The results given in tables 1 and 2 are for a B of .95 which maximized the R^2 . Using a B of .95 results in 43.1 percent of the effect of changes in the minimum wage being felt after twelve months, 69 percent at the end of two years, and 83 percent after three years. The Cochrane-Orcutt method of adjusting for serial correlation was used.

Experimentation with these variables and with a trend variable indicates that minimum wages as a proportion of hourly compensation is significant in explaining unemployment rates of nonwhite teenagers even when time is added. However, the coefficient is smaller and less significant due to the multicollinearity between time and minimum wages. The best regression results are those based on the unemployment rate of males

¹ I will furnish, upon request, the coverage variable and the underlying data.

TABLE 1

RELATIONSHIP OF UNEMPLOYMENT TO RELATIVE LEVEL OF
MINIMUM WAGES JANUARY 1954-JULY 1968

Dependent Variable: Unemployment Rate of	Unemploy- ment Rate: Males 25 and Older	Nonwhites 16-19 in Total Labor Force (%)	Minimum Wage as Proportion of Hourly Earnings	Constant	R ²
Nonwhites 16-19..	1.23** (2.67)	11.824* (2.474)	188.35** (6.62)	-78.76	.691
Whites 16-19.....	1.03** (6.133)	...	65.00** (5.22)	-21.66	.789
Males 16-19.....	1.52** (11.877)	...	68.60** (7.73)	-23.65	.761
Females 16-19.....	0.46* (1.68)	...	86.68** (4.17)	-28.66	.703
Males 20-24.....	1.853** (18.522)	...	0.223 (0.031)	1.25	.922

NOTE.—Cochrane-Orcutt method of adjusting for serial correlation was used. $N = 175$ monthly observations; t -values in parentheses.

* Significantly different from zero at the .1 level.

** Significantly different from zero at the .01 level.

twenty-five years and older, the percentage of workers covered by the minimum wage, and the minimum wage as a proportion of hourly compensation. Tables 1 and 2 present the regression results which are based on 175 monthly observations running from January 1954 through July 1968.

These data and regression results may understate the impact of the minimum wage. Higher unemployment may lead to workers or potential workers withdrawing from the labor force. There is some evidence that this has happened in the teenage market. Since 1961, when minimum wages were increased significantly, the participation rate for nonwhite teenagers has dropped markedly. While the rate for white teenagers declined slightly after 1961, it recovered by 1966 to the previous level.

The previous secretary of labor, Willard Wirtz, in January of 1969 recommended raising the minimum wage to \$1.80 in January 1970 and \$2.00 a year later. He also proposed making coverage universal by 1975. Table 3 indicates the effect of his proposal to raise the minimum (but not to extend the coverage) on nonwhite teenagers based on table 2, line 2 coefficients. If coverage were to be made universal, this would add 9.7 percentage points to nonwhite teenage unemployment rates.

As a test of the model, the average unemployment of nonwhite teenagers for the months of May, June, and July 1969 were estimated. (The data used to estimate the coefficients went through July 1968.) The average predicted by the model was 27.7 percent. The actual unemployment rates were 27.8, 28.6, and 22.3 percent for each of the months, or

TABLE 2
RELATIONSHIP OF UNEMPLOYMENT TO RELATIVE LEVEL AND COVERAGE OF MINIMUM WAGES

Dependent Variable: Unemployment Rate of	Unemployment Rate: Males 25 and Older	Nonwhites 16-19 in Total Labor Force (%)	Employed Workers Covered by Minimum Wage (%)	Minimum Wage as Proportion of Hourly of Earnings	Constant	R ²	D-W
Nonwhites 16-19...	1.6203** (3.0588)	8.7058* (1.6538)	0.1759 (1.435)	176.289** (6.000)	-80.49	.693	2.096
Nonwhites 16-19...	1.428** (2.576)	...	0.2549* (2.161)	175.927** (5.493)	-76.287	.691	2.130
Whites 16-19.....	1.2628** (6.249)	...	0.077* (1.800)	58.461** (4.781)	-23.11	.791	2.353
Males 16-19.....	1.779** (10.675)	...	0.080** (2.256)	61.649** (6.935)	-25.24	.769	2.174
Females 16-19.....	0.915** (2.968)	...	0.171** (2.616)	73.988** (3.840)	-32.699	.712	2.292
Males 20-24.....	1.586** (10.839)	...	-0.063** (-2.022)	5.346 (0.600)	2.860	.923	2.382

NOTE.—N = 175; t-values in parentheses.

* Significantly different from zero at the .1 level.

** Significantly different from zero at the .01 level.

TABLE 3
PREDICTED UNEMPLOYMENT RATES OF NONWHITE TEENAGERS

January		Expected on Basis of Past Legislation	Expected with Wirtz's Proposal	Increase
1970	U_{NW}	31.7	31.7	0
1971	U_{NW}	27.9	32.5	4.6
1972	U_{NW}	24.2	35.5	11.3
1973	U_{NW}	20.7	34.2	14.5
1974	U_{NW}	15.8	31.4	15.6

NOTE.—This table is calculated assuming adult male unemployment is 4%, coverage remains at 62% of employed workers, and average hourly compensation continues to rise at the rate of 6% per year.

an average of 26.2 percent. If no minimum had ever been established, this model clearly could not be used to predict the effect. The relationship must be nonlinear for large changes in the legal wage.

It is also interesting to note that by the time teenagers reach the twenty- to twenty-four-year-old bracket, the minimum wage ceases to have any effect. By that age, most teenagers have either received some experience or have experienced more formal training and would no longer be at the bottom of the labor pool. If data were available, it would be interesting to extend this model for other disadvantaged groups, such as adult nonwhites with less than an eighth-grade education.

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1981

STATEMENT OF THE LABOR RELATIONS COMMITTEE
OF THE COUNCIL OF STATE CHAMBERS OF COMMERCE
TO
THE SUBCOMMITTEE ON LABOR
SENATE LABOR AND PUBLIC WELFARE COMMITTEE

October 1, 1971

We are concerned that the white collar exemption may be removed from the Equal Pay section of the Minimum Wage amendments that your Subcommittee is currently considering. Under the circumstances prevailing today in the enforcement of Equal Pay we think such action would be wrong.

We find it necessary and appropriate to call to your attention the extent to which the expressed will of Congress is being ignored in the enforcement of Equal Pay under section 6(d) of the Fair Labor Standards Act. Our statement is largely devoted to an exposition of that situation.

Furthermore, we urge that no further extension of coverage of the Equal Pay Amendments be granted until there has been an agreement between this Subcommittee, the Wage-Hour Division and the Solicitor of the U. S. Department of Labor on what the Equal Pay Amendment, section 6(d) was intended to mean.

You will recall that the Senate accepted the House-passed version of the Equal Pay law without change - and virtually without debate. Accordingly the House record of what was intended should be helpful in your considerations.

For the record, excerpts from the House debate preceding passage of the Equal Pay law as carried in The Congressional Record of the House of May 23, 1963 are submitted along with the Wage-Hour Interpretative Bulletin (IB),

Part 800, which explains how the Law is being enforced. The disparity between the philosophy of the two documents is appalling.

The Interpretative Bulletin under Section 800.121 states the following concerning retail clerks and the concept of selling:

In other situations including those which exist in the case of jobs identified by the general title "retail clerks", the facts may show that equal skill, effort, and responsibility are required in the jobs of male and female employees, notwithstanding they are engaged in selling different kinds of merchandise.

The Bulletin in Section 800.123 states further:

Likewise, the fact that jobs are performed in different departments or locations within the establishment would not necessarily be sufficient to demonstrate that unequal work is involved where the equal pay standard otherwise applies. This is particularly true in the case of retail establishments, and unless a showing can be made by the employer that the sale of one article requires such a higher degree of skill or effort than the sale of another article as to render the equal pay standard inapplicable, it will be assumed that the salesmen and saleswomen concerned are performing equal work.

These statements are obviously intended to establish the theory that selling is selling under Equal Pay with no room for distinguishing traditionally different types of selling. The Congressional Record plainly demonstrates that it was not the intent of Congress to establish this type of theory in applying Equal Pay to retail selling.

The Congressional Record for May 23, 1963 at Page 9196 reveals through Representative Frelinghuysen's remarks the following:

What we seek is to insure where men and women are doing the same job under the same working conditions that they will receive the same pay.

Mr. Frelinghuysen continues:

The same reasoning can be applied to a department store which employs sales personnel who range from part-time, high school help, selling candy or trinkets, to highly trained and experienced personnel, selling such bread-and-butter items as appliances, furniture, suits, and other articles of

clothing. It is not intended that salesmen or store clerks, for example, holding widely varying jobs, although in the same general category, should be compared or equated. If they are to be entitled to equal pay, they must be engaged in the same type of selling or clerk job, with the same type of experience and responsibility requirements. Mechanical and surface similarities are not to be confused with, or viewed as, basic job evaluation characteristics.

Again referring to Section 800.123 which goes on to state:

Although the equal pay provisions apply on an establishment basis and the jobs to be compared are those in the particular establishment, all relevant evidence, that may demonstrate whether the skill, effort and responsibility required in the jobs, at the particular establishment are equal should be considered whether this relates to the performance of like jobs in other establishments.

This implies an expansion of a basic premise of FLSA and that is the application of the establishment test beyond the four walls of the establishment in question.

To continue the recitation of the appalling disparity between the IB and Congressional intent, one can look at Section 800.122 (a) wherein guides for testing the equality of jobs are discussed and find the following statement:

In applying the tests, it should be kept in mind that "equal" does not mean "identical". (Congressional Record, Senate, May 28, 1963, P. 9219).

However, the bill's author, Mr. Goodell, states at p. 9197, Congressional Record, House:

I think it is important that we have clear legislative history at this point. Last year when the House changed the word "comparable" to "equal" the clear intention was to narrow the whole concept. We went from "comparable" to "equal" meaning that the jobs involved should be virtually identical, that is, they would be very much alike or closely related to each other.

It obviously appears that the test intended is one of "virtually identical jobs". The IB misconstrues this test in Section 800.125, defining equal skill by indicating the following:

Where the amount or degree of skill required to perform one job is substantially greater than that required to perform another job, the equal pay standard cannot apply even though the jobs may be equal in all other aspects.

This implies application of Equal Pay in instances of less than substantially greater skill in one job as opposed to another instead of application of Equal Pay to "virtually identical jobs."

Let us in our comparison briefly review another area: the burden of proof. We previously commented about Section 800.123 in another context. In re-reviewing that Section there is stated an assumption of equality between salesmen and saleswomen which implies the burden of proof has shifted by the aforesaid assumption to the employer to disprove the assumed discrimination. This is directly contrary to stated legislative intent.

Mr. Goodell stated at Page 9208 of the Record:

The employer will not have to come in with his own proof. The burden will lie completely on the Department of Labor to establish a prima facie case that there is discrimination.

Mr. Frelinghuysen's comment that, "The time honored concept that an individual is presumed innocent until proven guilty will in no way be changed or altered by this act," (Congressional Record, House p. 9196) has apparently been lost in the drafting of the Bulletin.

Lastly, we feel obligated to comment on Section 800.141 (a) and (b) under the subtitle Exceptions to Equal Pay Standard. It is in this section and the thinking reflected therein that one can plainly see the inverted reasoning of the Bulletin. The section is too lengthy to recite here. Briefly, it states that an employer is obligated to prove the facts establishing an exception under the statute. The Bulletin pays lip service to the stated legislative intent on this very narrow issue and assumes that the better view of legislative history is that the employer must prove the exceptions as an affirmative defense.

Mr. Goodell at Page 9208 of the Record succinctly states the legislative intent:

Having established the prima facie case in the Federal Court, the burden itself will shift to the employer to prove or disprove the allegations of the Secretary of Labor. This is the proceeding we have in mind. The employer does not have to prove the exceptions as an affirmative defense. The burden remains on the Secretary of Labor to prove that the exceptions do not apply. We do not have in mind the Secretary of Labor's going into an establishment and saying, "Look, you are paying the women here \$1.75 and the men \$2.10. Come on in here, Mr. Employer, and you prove that you are not discriminating on the basis of sex." That would be just the opposite of what we are doing. (Emphasis supplied)

The Labor Department must prove this, and I think the chairman of the subcommittee has amply verified this point in our exchanges thus far.

We have only used a few examples in our comparisons and if one closely examines the Bulletin in light of the legislative intent expressed in the Record one will discover many more examples of this disparity.

As a result of this disparity of interpretations, there are far too many cases where, as a result of an official wage-hour investigation, there are alleged deficiency payments due amounting to millions of dollars. So far only a relatively small number of these cases have been scheduled for court action. But the situation is chaotic. Employees are being harassed. Revolutionary new concepts of "equal" are not being used to correct flagrant cases of unfair discrimination but to disrupt the entire concept of wage relations. Until there is reasonable enforcement of the present Equal Pay Amendment and until there are workable, practical and fair interpretative guides advanced, there should be no thought given to eliminating the white collar exemption from Sec. 6 (d).

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WHAT WAS INTENDED BY CONGRESS

The following quotations are taken from the Congressional Record of May 23, 1963, which records the debate before final passage of the Equal Pay Law by the House of Representatives. The bill was authored by the House Education and Labor Committee.

Chairman Powell of the House Committee on Education and Labor opened the debate on the Equal Pay Bill on May 23, 1963 by describing the legislation.

Sixth. The concept of equal pay for jobs demanding equal skill has been expanded to require also equal effort, responsibility, and similar working conditions. These factors are the core of all job classification systems. They form a legitimate basis for differentials in pay. (P. 9195)

Seventh. A specific exception has been added for a system which measures earnings by quantity or quality of production.

Eighth. A general exception has been added for differentials based on factors other than sex. (P. 9196)

Eleventh. The Secretary of Labor is not given broad regulatory and rule-making authority. (P. 9196)

Thus it is apparent that a number of important changes have been made by our committee. As a result, we can expect that the administration of the equal pay concept, while fair and effective, will not be excessive nor excessively wide ranging. What we seek is to insure, where men and women are doing the same job under the same working conditions that they will receive the same pay. It is not intended that either the Labor Department or individual employees will be equipped with hunting licenses. (P. 9196)

The same reasoning can be applied to a department store which employs sales personnel who range from part-time, high school help, selling candy or trinkets, to highly trained and experienced personnel, selling such bread-and-butter items as appliances, furniture, suits, and other articles of clothing: It is not intended that salesmen or store clerks, for example, holding widely varying jobs, although in the same general category, should be compared or equated. If they are to be entitled to equal pay, they must be engaged in the same type of selling or clerk job, with the same type of experience and responsibility requirements. Mechanical and surface similarities are not to be confused with, or viewed as, basic job evaluation characteristics. (P. 9196)

Finally, the jobs in dispute must be the same in work content, effort, skill and responsibility requirements, and in working conditions. As indicated earlier, it is not intended to compare unrelated jobs, or jobs that have been historically and normally considered by the industry to be different. Violations usually will be apparent, and will almost always occur in the same work area and where the same tasks are performed. A bona fide job classification system will normally furnish the answer to a claim of discrimination. But in any event, the Labor Department or the employee, where an employee brings suit, will have the burden of proving to the court's satisfaction that a violation has occurred. The time-honored concept that an individual is presumed innocent until proven guilty will in no way be changed or altered by this act. (P. 9196)

Congressman Frank Thompson, Chairman of the Subcommittee which reported the Equal Pay Bill, followed Chairman Powell. He said:

The language recognizes that there are many factors used to measure the relationship between jobs and which establish a valid basis for a difference in pay. We do not want to disturb these. These factors will be found in a majority of the job classification systems. Thus, it is anticipated that a bona fide classification program that does not discriminate on the basis of sex will serve as a valid defense to a charge of discrimination. Thus, among other things, shift differentials, restrictions on or differences based on time of day worked, hours of work, lifting or moving heavy objects, differences based on experience, training, or ability would also be exempted under this act. (P. 9196)

"Equal" or "Comparable"

Mr. GRIFFIN: The first such amendment, it will be recalled was offered by the gentlelady from New York [Mrs. St. GEORGE] who called for use of the term "equal work," rather than "comparable work." It will be recalled that the House adopted her amendment last year.

This bill today speaks in terms of equal work. We go further in this legislation and provide some definition as to what equal work is—what is meant by equal work. The bill refers to jobs, the performance of which require equal skill, equal

effort, equal responsibility, and which are performed under similar working conditions. (P. 9197)

Explained in detail by the author of the bill, Mr. Goodell:

I think it is important that we have clear legislative history at this point. Last year when the House changed the word "comparable" to "equal" the clear intention was to narrow the whole concept. We went from "comparable" to "equal" meaning that the jobs involved should be virtually identical, that is, they would be very much alike or closely related to each other. (P. 9197)

We are talking about jobs that involve the same quantity, the same size, the same number, where they do the same type of thing, with an identity to them. (P. 9198)

Mr. THOMPSON: I do agree with what the gentleman said thus far. The gentleman said the Department of Labor could not, where these differences exist, make such determinations. There are two protections. First of all, the Department is not given that broad discretion and is deliberately restricted in the act to the definition set forth in the act.

Mr. GRIFFIN. I am very glad to have that important contribution. (p. 9198)

Effort

Mr. GOODELL: I would like to pursue the point about differences in efforts of employees. This is perhaps the broadest category we are talking about in comparing jobs.

It should be understood to be a very broad concept. This could involve a great many factors in terms of personal evaluation of continuous performance on the job, if an employee has demonstrated over a period of time that his performance exhibits more effort in the opinion of the supervisor, then a differentiation in pay will be justified. It also may include such factors as willingness exhibited by the employee and by his actions to expend extra effort and to expend a little extra energy. It should be understood that it is not necessarily that the job requires extra effort, but it may be that an employee expends extra effort so that the performance of the employee on the job justifies a special consideration in terms of his pay.

If I may conclude on just that point: It is our intention, I believe, on both sides of the aisle to provide here with the use of the terms "effort," "skill," "responsibility" and "working conditions" a maximum area for the interplay of intangible factors that justify a measurement which does not have to be given a point-by-point evaluation. In this concept, we want the private enterprise system, employer and employees and a union, if there is a union, and the employers and employees if there is not a union, to have a maximum degree of discretion in working out the evaluation of the employee's work and how much he should be paid for it. (p. 9198)

Regulations

Mr. GOODELL: We do not expect the Labor Department people to go into an establishment and attempt to rate jobs that are not equal. We do not want to hear the Department say, "Well, they amount to the same thing," and evaluate them so they come up to the same skill or point. We expect this to apply only to jobs that are substantially identical or equal. I think that the language in the bill last year which has been adopted this year, and has been further expanded by reference to equal skill, effort, and working conditions, is intended to make this point very clear. (p. 9197)

Mr. TAFT: I think we should understand that the power under the Fair Labor Standards Act is not a general rulemaking or regulation power. It relates only to the issuance of bulletins as has been done under the Portal-to-Portal Act.

I would also point out another factor in that regard. Section 9 of the Portal-to-Portal Act, providing a defense for an employer who relies on a bulletin or an interpretation issued by the Administrator, would apply under this act as well. (p. 9201)

Mr. THOMPSON: I agree with the gentleman, and I would state again that with respect to the powers of the Secretary, the powers which he has now under the Fair Labor Standards Act and the Portal-to-Portal Act would be his under this act since it is an amendment to the Fair Labor Standards Act. Whatever powers he now has, he will have—and only those powers with respect to the administration of this act. (p. 9201)

Mrs. DWYER: It would recognize and sustain every legitimate situation in which an employer pays his employees at different wage levels even though they perform the same kind of work—differentials based on merit systems, longevity, and the quality and quantity of work. (P. 9200)

Subpoena Power

Mr. TAFT: I would call to the attention of the members of the committee that in a couple of cases we have researched it has specifically been held that the Wage and Hour Administrator does not have the authority to go on a fishing expedition to make blanket demands of material. (P. 9200)

Mr. GOODELL: I should like to say that I join the gentleman in making clear that the intent of all of us is that these limitations upon the subpoena power obtain. Our legislative intent here is that these limitations on the power of subpoena and investigation, as cited in the court cases by the gentleman from Ohio, shall apply in the enforcement of this amendment. I believe the chairman of the subcommittee will agree on this point. (P. 9201)

Seniority System

Mr. FOUNTAIN: I think it ought to be made crystal clear just what we are doing through this legislation because it is the kind of legislation that has certain inherent dangers if we do not make crystal clear what congressional intent is.

Certain exceptions are set forth in the bill, one being a "seniority system." I think the record ought to show just what is meant by the term "seniority system"—especially the word "system"—because the Secretary may decide to issue a regulation defining a seniority system, a merit system, and so forth. (P. 9203)

Mr. GRIFFIN: I should like to focus the attention of the gentleman upon small roman numeral iv, at the top of page 3 which makes clear and explicitly states that a differential based on any factor or factors other than sex would not violate this legislation. In other words, even though jobs involve the same skill, equal effort, equal responsibility, and are performed under the same working conditions, if there is any other factor not based on sex upon which a differential is based, then no violation of this law can be found. Roman numeral iv is a broad principle, and those preceding it are really examples: such factors as a seniority system, a merit system, or a system which measures earnings on the basis of quality or quantity of production. The other body saw fit to leave out references in the bill to a merit system, a system which measures on the basis of quality and quantity, and a seniority system, and included only the broad language found in roman numeral iv of our bill. However, it should be clear that under either bill a wage differential based upon any factor other than sex is not a violation. (P. 9203)

I do not think this necessarily means a formal system or that it must be written out in any particular form as long as there is actually a practice or a system that is not based on sex. It may be a practice that has not been reduced to writing. (P. 9203)

Factors Other Than Sex

Mr. GOODELL: I think this point should be clarified. The gentleman has made a good point that there are many factors that can be taken into consideration in working out differentials of pay among employees, that the gentleman has mentioned, which would be proper under this legislation so long as they were based on those factors and not on the basis of whether employees are women or men. If any employer wants to set up a system where he pays a job differential relating to absenteeism, regardless of sex, he can do that. If he wants to set up a system of differentials in pay relating to insurance costs of all employees, regardless of sex, he can do that. There are a good many other examples that could be given—all valid under this bill as written, provided the employer does not base his differentials on sex. (P. 9206)

Exceptions

Question by Mr. Waggoner:

My question is whether or not these exceptions must be set forth in writing, or will the Secretary of Labor or his representatives accept a verbal explanation of what these systems consist of, whether they are promulgated in writing or not, should charges be filed? (P. 9208)

Answer by Mr. Griffin:

I should like to make it clear that the burden of proof to show a violation is on the Secretary of Labor; he must prove that any differential in pay which exists is actually based on sex, and he will have to sustain that burden of proof. I think this is a very important part of the legislative history. (P. 9208)

Mr. GOODELL: This is obviously not required in order to fit under the exceptions. If it is established that there is system or practice and he has differentials based on any factor or factors other than sex, then the system or practice is all right, whether or not it has ever been described in writing. (P. 9208)

The burden would be on the Department of Labor to prove that the exceptions are not true. The Secretary would have to establish a prima facie case showing that there is discrimination based on the factor of sex. If that is done, then, of course, the employer could rebut the proof and show that the differential was based upon factors other than sex. (P. 9208)

Explanation of Legislative Intent

Mr. GOODELL: Since this bill before us largely adopts my own personal views, and most of the words in this bill derive from my proposal, I would like to make clear the legislative history, and I think the chairman of the subcommittee agrees on these points:

No. 1. Skill includes a myriad of factors. It is not limited to just a few. It includes training, experience, education, the qualities of the person himself, and a good many other factors that are too numerous to put into the bill specifically, so we used a generality in referring to them. The same is true of effort, the same is true of responsibility, and the same is true of similar working conditions.

No. 2. It is not necessary for an employer to have an elaborate and formal or written job classification system to qualify for exemptions under this bill or to prove that he is not discriminating on the basis of sex. If he has a reasonable standard of differentiation, the Labor Department is not to come in, even, and judge the reasonableness or unreasonableness of this differentiation among employees, except as it shows a clear pattern of discrimination against sex.

In the bill itself we did a little thing. We added an "s" to the word "employee." This is very significant. We said that no employer shall discriminate within any establishment within which such employees are employed between employees on the basis of sex. We did not say discriminate against an employee. The reason for that, which was very specific, is that we feel that there should be established a pattern of discrimination, that there should be something here that is more than an isolated single case, before a violation is held. The employer will not have to come in with his own proof. The burden will be completely on the Department of Labor to establish a prima facie case that there is discrimination.

When the burden of proof lies on the Secretary of Labor, I think it should be made clear that he must show that the violations are not based on a merit system, that he must show they are not based on a seniority system, that the violations he is claiming are not based on piece rates of production, and that the violations he is claiming occur are not based on any of the other factors other than sex. That is his burden.

Having established the prima facie case in the Federal Court, the burden itself will shift to the employer to prove or disprove the allegations of the Secretary of Labor. This is the procedure we have in mind. The employer does not have to prove the exceptions as an affirmative defense. The burden remains on the Secretary of Labor to prove that the exceptions do not apply. We do not have in mind the Secretary of Labor's going into an establishment and saying, "Look, you are paying the women here \$1.75 and the men \$2.10. Come on in here, Mr. Employer, and you prove that you are not discriminating on the basis of sex." That would be just the opposite of what we are doing.

The Labor Department must prove this, and I think the chairman of the subcommittee has amply verified this point in our exchanges thus far.

With reference to regulations, we have talked a great deal about this. It is an oversimplification but, generally speaking, we have three different types of guidance that can be offered by the Administrators to those who are being regulated. One of them is legislative regulation. That is the case when the Congress in effect tells the administrator, "You write the law in these areas, you define what we mean." When they get to court under such circumstances the court will often say, "We cannot even go into that matter. Congress delegated that authority to write regulations, to write the law, so do not question that. We are not even considering that here."

That was in the original proposal this year and it was in the proposal last year, granting legislative regulatory authority. It is out of this bill. We also knocked out the right of the Secretary of Labor even to issue interpretative regulations.

I emphasize that interpretative regulations are also barred. Interpretative regulations involve a case where there is an ambiguity in the law which admits of two or more constructions. Then in that case, if we have given interpretative regulatory authority, the Secretary moves in and tries to say what we meant between the two or three constructions. He does not have such authority here. The Secretary, in my opinion, has the inherent authority to write interpretative bulletins. All this amounts to is telling the public the Secretary's interpretation of the law for the guidance of those who are to be regulated. Such bulletins have no standing in court, but they are there as a guidance to the court as to what the view of the administrator was. They have no other significance, except that if an employer relies on this interpretative bulletin, he is protected. He is not in violation if he has done something in reliance upon those interpretative bulletins. (Pp. 9208 and 9208)

Guidelines

Mr. GOODELL: Mr. Chairman, here are examples and general guidelines as to the intent of Congress in enacting H.R. 6060, the equal-pay-for-women bill:

First. Differences in pay that exist between women alone are not covered by this act.

Second. Differences in pay that exist between men alone are not covered by this act.

Third. Differences in pay between groups or categories of employees that contain both men and women within the group or category are not covered by this act.

Fourth. Only those jobs that are the same and normally related shall be compared.

Fifth. Normally the jobs that are compared will be physically located in the same work area or will fall within closely related job classifications.

Sixth. Differences in pay that are based upon historical and widely accepted differences in job content will not be challenged, if not based on sex.

Seventh. Differences in pay that are based upon a bona fide job classification system will not violate this act, if not based on sex.

Eighth. It is not intended that the Secretary of Labor or the courts will substitute their judgment for the judgment of the employer and his experts who have established and applied a bona fide job rating system. It is not the business of the Secretary of Labor to write job evaluations or judge the merits of job evaluation systems. This sole obligation is to uncover and prosecute cases where a pattern of job differentials in pay is permeated by sex discrimination.

Ninth. Although only the factors, skill, effort, responsibility, and working conditions are listed, such things as experience, ability, and training may be considered under the broad heading of skill. The usual factors of push, pull, lift, and carry come under effort. Direction of others as well as value of commodity worked upon and overall importance of assignment may be considered as part of an employee's job responsibility. Finally, standing as opposed to sitting, pleasantness of surroundings, periodic rest periods, hours of work, difference in shift, all would logically fall within the working condition factor.

Tenth. A difference in pay between male selectors and packers and female selectors and packers who work on the same production line and have the same duties and responsibilities would be invalid.

Eleventh. A difference in pay between male selectors and packers and female selectors and packers would be valid if, in addition to the duties performed by the female selectors and packers, the male selectors and packers are required to lift the crates off of the assembly line, or sweep up the room or work on the loading dock during slack periods.

Twelfth. An installer's job on an assembly line that, for example, requires soldering could not be compared or equated with a welder's job.

Thirteenth. A truck driver's job and a tug operator's job are dissimilar.

Fourteenth. The work of a machine operator and the work of a skilled machinist cannot be equated.

Fifteenth. Plant and office clerical assignments are normally distinguishable. (P. 9209.)

Limited Scope of Legislation

Mrs. DWYER. I hope the House will pass the bill in the form the committee has reported it and without further weakening amendments. I would be less than candid if I suggested that the committee bill is everything that supporters of equal pay legislation had hoped it would be. There are a number of weaknesses in this bill which I believe unwisely limit the scope of its application and unnecessarily encumber its enforcement. (P. 9199).

(Whereupon, at 4:30 p.m., the subcommittee adjourned subject to call of the Chair.)

reader forum

□ The PE welcomes comments from its readers on this provocative communication.

During the current recession, an ugly practice has emerged among many engineering companies. It is the practice of forced overtime—popularly referred to as “white-collar slavery.” Companies find it profitable to lay off engineers and allow those who remain to assume the burden of their laid-off companions by working long hours of overtime.

Engineers are exempt employees. They are excluded in the subsection covering “individuals employed in a bona fide executive, administrative, or professional capacity.” Thus, at present, the Fair Labor Standards Act of 1938 and the Walsh-Healy Act do not provide protection to engineers against overtime exploitation.

Such a practice is not only unfair to employees, it is unfair to companies who treat their employees fairly and must compete for contracts against “slave labor.” In fact, these unfair companies can price bids below cost and still show a profit through forced overtime practices.

A possible solution to the problem might be found in Maryland Senate Bill #448 (1971). This bill provides for compensation for any hours worked in excess of 44 hours during any work week for individuals employed in an executive, administrative, or professional capacity and who earn less than \$19,000 per year. The rate of compensation is at least on a straight-time basis.

This is a landmark bill; it is the first overtime legislation tailored to the needs of the professional. However, since it was first written, the need for certain improvements has come to the attention of the author; also, certain important subsections which were unfavorably compromised to ease passage can now be improved.

The requirement for compensa-

tion after 44 hours should be changed to 44 hours retroactive to the 40th hour. Such a provision would still provide for a four-hour “professional overtime” period where the professional does that little extra which goes to making him the professional. At the same time it would provide an incentive for employers not to exploit their employees and additional man-hours to ease this current depression of the engineering profession.

Another change being considered deals with the \$19,000 cutoff figure. The \$19,000 figure was selected as a separation between upper and lower echelon management, supposedly those with a vested or nonvested interest in their company.

However, since the bill was written many engineers earning more than \$19,000 expressed dismay at their exclusion. Why should they be penalized for their expertise? A company policy of a leading corporation provides a solution. The bill might be amended to provide straight time compensation up to a maximum rate of \$9 per hour (or \$18,720 per year). This would provide a reasonable degree of compensation for those earning more than \$18,720 per year.

At the present time, the overtime bill is being actively supported by the National Political Action Committee for Scientists and Engineers. It is preparing for an all-out effort for passage of the bill in the Maryland Legislature in January. Also, it is attempting to get the bill introduced in other states, in particular California and Massachusetts. Further, it is testifying before the U.S. Senate's Subcommittee on Labor, chaired by Senator Harrison Williams, in order to have the provisions of the bill incorporated into the 1971 Amendment to the Fair Labor Standards Act of 1938.

NPACSE has a comprehensive legislative program. It is supporting legislation to retrain scientists and engineers, to provide loans for unemployed engineers, to provide for early vesting of pensions, to provide professionals overtime compensation, to provide for new jobs, and so forth. Also, it has been and is drafting bills to better meet the needs of the scientist and engineer in practically all areas of concern. Further, to encourage sympathetic legislators, NPACSE is working on “Campaign 72.” Legislators who are interested in the needs and aspirations of engineers and scientists shall be endorsed and supported actively.

Another program is that of publicizing the value of technology and, in particular, the scientist and engineer through the various media (as Wally Schirra, the astronaut, does for the railroads). The need for such a public relations campaign arises from a basic tenet of the NPACSE, the conviction that our country's economy depends on a stable and ever-accelerating technological foundation.

Most important, it will enable its members to have an effective voice in determining their destiny and not just continuing to forfeit their destiny to the all-too-often unsympathetic legislator.

An article of the NPACSE constitution states the organization's goal of having all technical societies and other major engineering organizations unify under the leadership of the NSPE. It is now the time for the NSPE to accept its leadership role. It is also time for all engineering societies and organizations to meaningfully contribute to a strong NSPE.

Samuel J. Taylor
President
National Political Action Committee
for Scientists & Engineers

Professional Engineer

1993

10 February 1971

Sen. Edward T. Conroy
Maryland State House
Annapolis, Md.

Dear Sir:

I understand that labor legislation which would offer "economic protection" to "professional" workers similar to the protection provided to non-professional and semi-professional workers is being considered by our state legislators. I am gratified to see that the present plight of professional people has been recognized.

I am an Electrical Engineer (BSEE 1965, Graduate studies 1965-67, Radio-TV servicing certificate 1962). I have worked on the design and checkout of equipment and systems used on Nuclear Submarined and surveillance aircraft. I have also designed magnetic devices and test instrumentation. In all of these endeavors I have been very successful because I am not a slave to a time-clock, I enjoy my work and have a lot of "Professional pride". I have worked many hours for which my own satisfaction with my performance was my reward.

The present economic situation coupled with the lack of legal protection for professionals has enabled engineering management to coerce engineers into 60 hour work weeks (40 hours of pay of course) with threats of dismissal and promises of no professional recognition. While the 60 hour weeks don't scare me, the motivation does. I am also concerned by the ethics involved relative to the present unemployment situation. I am presently via extended work weeks, doing the job of approximately 1.3 engineers, .2 secretary and .2 production planner. Many times, non-exempt or "hourly" people are not permitted to work overtime for which they must be paid because an engineer who does their job on an overtime basis doesn't get paid. In addition to the obvious contribution to the general unemployment problem, a company that employs these practices has a decided bidding advantage over a competitor who does not. So the competitor must "squeeze" his employees also if he is to survive. Eventually, the situations which fostered labor unions and labor legislation for non-exempt personnel will be a stark reality for professional workers.

I intend to leave the engineering profession as soon as possible. In my office, there is not one engineer who wishes for reasons other than economic survival to remain in his present profession. Frustration, bitterness, fear, and long hours have taken their toll in terms of general performance and job interest. Additionally, "the word is out" on the college campuses and engineering students with good academic standings are transferring to business education and other study programs.

Legislation which will enable "professionals" to work as such is desperately needed. Without it we will not make the type of scientific and technological advances in the next decade that we made in the past decade.

Sincerely,

Kenneth W. Hasilaga, Jr.
12101 Tanglewood Lane
Bowie, Md.

1994



ACTING PRESIDENT PRO TEMPORE
INTERNATIONAL CHEMICAL WORKERS UNION

1655 West Market Street, Akron, Ohio 44313

THOMAS E. BOYLE, PRESIDENT

JOHN GRATZ, SECY-TREAS.



OFFICE OF PRESIDENT

June 23, 1970

The Vice President of the
United States
United States Senate
Washington, DC 20025

Dear Mr. Vice President:

Working men and women should not be forced to work over-
time as a satisfactory condition of employment.

On behalf of all members of the International Chemical
Workers Union, I send you the enclosed Resolution and
ask your assistance in seeing that legislation be im-
plemented which would permit the employee of a company
to have intrinsic rights to accept or reject overtime
without fear of reprisal from his employer.

Your attention in this regard will be appreciated by
all working people.

Sincerely yours,

Thomas E. Boyle

Thomas E. Boyle, President

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COMPULSORY OVERTIME

WHEREAS it has been the practice of many employers to force employees to accept any and all overtime as a condition of employment, subjecting those who refuse to work such overtime to disciplinary action or dismissal; and

WHEREAS it should be the intrinsic right of an individual, having fulfilled his eight hour obligation of employment, to have the option of accepting or rejecting overtime without fear of reprisal from his employer unless it is required in a case of emergency wherein life, limb or property is in danger; and

WHEREAS such compulsory overtime demands by an employer is tantamount to illegal forced labor; therefore, be it

RESOLVED, That the International Chemical Workers Union demand that the Federal government enact appropriate amendments to the Fair Labor Standards Act providing that any and all such overtime should be performed only at the choice of the employee concerned and that it shall be illegal for an employer to force any employee to work overtime by actual punishment or dismissal or threat thereof or in any way create a condition by which overtime becomes compulsory unless extreme emergency demands it; and be it further

RESOLVED, That a copy of this Resolution be sent to the President of the United States, the Vice President, Secretary of Labor and the Members and Committees of Congress.



